

ISSUED JANUARY 17, 2001

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD  
OF THE STATE OF CALIFORNIA

CRAIG SHELBY, INC.	)	AB-7362
dba T. J. Schooner's Restaurant &	)	
Sports Bar	)	File: 48-340013
14051 Indian Avenue	)	Reg: 98043910
Moreno Valley, CA 92553,	)	
Appellant/Licensee,	)	Motion to Reinstate
	)	An Appeal Previously
v.	)	Dismissed
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 5, 2000
	)	Los Angeles, CA

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Craig Shelby, Inc., doing business as T. J. Schooner's Restaurant & Sports Bar (appellant), filed a motion to reinstate a previously filed appeal but which was dismissed at the request of appellant.

Appearances on appeal include appellant Craig Shelby, Inc., appearing through its counsel, Walter Greene, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on April 6, 1998. Thereafter, the Department instituted an accusation on June 26, 1998, charging three patron intoxication

counts. An administrative hearing was held on December 16, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision dated February 4, 1999, which determined that two of the violations had occurred, and suspended appellant's license for 20 days.

Appellant thereafter filed a timely notice of appeal on March 5, 1999. Appellant's counsel was notified by the Department of the estimated costs of the record. However, for some unexplained reason, the transcript portions of the record were not ordered from the court reporters until February 22, 2000. The record, including the transcripts, was received on March 14, 2000. On March 27, 2000, appellant through his counsel, requested that the appeal be dismissed, as appellant was selling the premises.<sup>1</sup> The appeal was dismissed by order of the Appeals Board on April 12, 2000. On April 17, appellant filed a motion to reinstate the appeal.<sup>2</sup> On May 3, 2000, counsel for the Appeals Board wrote counsel for appellant stating the Board did not have jurisdiction to reinstate the appeal.<sup>3</sup>

On or about May 3, 2000, appellant filed a Petition for Writ with the court of appeal. The court on May 4, 2000, ordered the Department not to suspend appellant's license until further order of the court. On July 21, 2000, the court

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<sup>1</sup>The request to dismiss the appeal is found in the appendix.

<sup>2</sup>The Motion to Reinstate Appeal dated April 17, 2000, and points and authorities supporting the motion; the Department's opposition to the motion; and appellant's reply to the Department's brief; are found in the appendix. Attachments to the motion are not included as they are redundant.

<sup>3</sup>Counsel's letter is found in the appendix.

further ordered that the previously ordered stay was still in effect, but declined jurisdiction over the matter, except as ordered previously. On September 27, 2000, appellant's counsel informed the acting presiding justice of the court that the request to reinstate the appeal was on calendar before the Appeals Board, with hearing set for October 5, 2000.

### DISCUSSION

The authority and powers of the Appeals Board are derived from the California Constitution, article XX, §22, and Business and Professions Code §§23080 through 23089.<sup>4</sup>

Section 23085 states in pertinent part:

“... the board shall enter an order either affirming or reversing the decision of the department ...”

Section 23088, which most closely concerns Appeals Board orders, states:

“Each order of the board on appeal from a decision of the department shall be in writing and shall be filed by delivering copies to the parties personally or by mailing copies to them by certified mail. Each such order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the board.”

Appellant in its points and authorities appears to characterize the pending problem as if it were a default. Such is not the case. As the record indicates, appellant through its counsel, requested the Appeals Board to dismiss the appeal as apparently appellant had sold or was in the process of selling the premises. While appellant strongly implies that its counsel did not know the Department was not

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<sup>4</sup>All references to code sections shall be to the Business and Professions Code unless otherwise indicated.

duty bound to approve all transfers of licenses, we find it almost inconceivable that appellant could assume that it could avoid the penalty assessed by the Department by the mere sale of the license to another. Apparently, from the record, it appears that appellant and the Department had come to some resolution, as the request to dismiss the appeal was copied to counsel for the Department and the supervisor of the Hearing and Legal Section of the Department. While the procedural policies of the courts are not usually applicable in proceedings like this, we do try to gain insight from prior matters in the courts as well as code provisions, such as Code of Civil Procedure §913, which holds a dismissal of an appeal final, unless the order states otherwise.

When the Appeals Board issued its Order dismissing the matter, jurisdiction was reinvested in the Department and the Appeals Board had no more jurisdiction in the matter, as §23088 readily attests.

The Department makes a strong point that, to the Department, it is apparent that appellant tried to circumvent the statutes concerning penalties and transfer of licenses without following the law and procedures of the Department. Be that as it may, jurisdiction was passed to the Department and we do not believe we have power to recall the matter. If it were otherwise, chaos would reign supreme as parties could dismiss their matters, and at some later time if their arrangements with the Department did not suit them, force the Appeals Board to rehear the matters. Since the intent of the entire administrative procedure is to move the matters along as rapidly as possible, actions similar to those under consideration

would thwart the process of dispatch and effective governing and regulation.

ORDER

The Motion of appellant to reinstate the appeal is denied.<sup>1</sup>

TED HUNT, CHAIRMAN  
E. LYNN BROWN, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>1</sup>This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.