

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

PRIMAL K. SOOD)	AB-7404
dba Nora's)	
9000 Woodman Avenue)	File: 20-334590
Arleta, CA 91331,)	Reg: 98045375
Appellant/Licensee,)	
)	Motion to Dismiss Appeal
v.)	Pursuant to Waiver
)	
DEPARTMENT OF ALCOHOLIC)	Date and Place of the
BEVERAGE CONTROL,)	Appeals Board Hearing:
Respondent.)	November 5, 1999
)	Los Angeles, CA

Primal K. Sood, doing business as Nora's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which seeks to revoke appellant's off-sale beer and wine license, pursuant to appellant signing a stipulation and waiver form.

Appearances on appeal include appellant Primal K. Sood, appearing through his counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the

¹The Certificate of Decision dated April 15, 1999; Proposed Decision of the Administrative Law Judge dated March 26, 1999; and Stipulation and Waiver form dated March 18, 1999, are set forth in the appendix.

Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

FACTS AND PROCEDURAL HISTORY

Appellant was before an Administrative Law Judge on March 18, 1999, on a matter not connected to the current appeal (but which is now on appeal in case AB-7405).

The record the Appeals Board has before it in the current appeal, shows that the Administrative Law Judge accepted a signed Stipulation and Waiver form from appellant, noting the form as State's Exhibit No. 1. The Administrative Law Judge submitted his proposed decision without recommendation, and thereafter, the Department certified the Proposed Decision as its own, and advised appellant that his license would be taken on July 20, 1999.

DISCUSSION

Appellant was in the second day of a hearing in another matter, which concerned the selling of an alcoholic beverage to a minor.

At that other hearing, appellant, in the presence of his attorney signed a stipulation and waiver form for the present appeal. He waived all rights to appeal. The form also states that the Department "... MAY, without further notice, enter an order revoking ..." the license. The notation on the stipulation and waiver form of "REVOCATION EFF 7-20-99 (¶) ADVISED OF RULE 66," are notations placed on the form by "someone," for "some reason." These notations are not an order of the Department to revoke, but appear to be notes by someone as to some

understanding as to a future resolution.

The Administrative Law Judge's Proposed Decision was signed without any recommendation as to resolution: " ORDER (§) The Administrative Law Judge submits the Proposed Decision without recommendation. (§) So Ordered."

The Department's Certificate of Decision states: "... having reviewed the findings of fact, determination of issues [there are none], and recommendation [there is none] in the attached proposed decision ...," the Department adopted the proposed decision.

The issue raised by the Department in the Motion to Dismiss, is on the narrow issue that appellant waived his rights to appeal. It has been the Board's position in all cases previously decided, that appellants may not, in matters where a stipulation and waiver form waives appeal, raise substantive issues on the merits of the facts of the case. However, appellants may raise the narrow issues of due process and substantial justice: has the appellant been dealt with fairly. In this matter, the issue is whether the Department actually and properly entered an order of revocation based on the stipulation and waiver form.

We conclude that the stipulation and waiver form is not a Department decision, as it merely states, the Department "may" revoke the license; the Certificate of Decision references the proposed decision as its foundation, which proposed decision makes no order of revocation. The certificate standing, as it were, alone, has no legal significance. We, therefore, conclude there is no proper order of revocation.

ORDER

The Department's Motion to Dismiss the appeal is denied. The decision of the Department is reversed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.