

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

**AB-8986**

File: 51-41387 Reg: 08068048

I.B.P.O.E. of W. GOODWILL LODGE 325,  
dba Charles Chops Lawrence Lodge No. 325  
1414 East California Avenue, Bakersfield, CA 93307,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: February 4, 2010  
Los Angeles, CA

**ISSUED MAY 19, 2010**

I.B.P.O.E. of W. Goodwill Lodge 325, doing business as Charles Chops Lawrence Lodge No. 325 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> suspending its license for 20 days for its bartender selling an alcoholic beverage to a person who was neither a club member nor a bona fide guest of a club member, a violation of Business and Professions Code<sup>2</sup> section 23431.

Appearances on appeal include appellant I.B.P.O.E. of W. Goodwill Lodge 325, appearing through its Exalted Ruler, Gregory Carter, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree Wortham.

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<sup>1</sup>The decision of the Department, dated December 4, 2008, is set forth in the appendix.

<sup>2</sup>Unless otherwise indicated, all statutory references in this opinion are to the Business and Professions Code.

## FACTS AND PROCEDURAL HISTORY

Appellant's club license was issued on January 1, 1965. On February 28, 2008, the Department instituted a two-count accusation charging appellant with selling alcoholic beverages in the licensed premises to two persons, Department investigator Raymund Box and Bakersfield police officer Claude Brooks, who were neither club members nor bona fide guests of club members.

At the administrative hearing held on September 17, 2008, documentary evidence was received and testimony concerning the violation charged was presented by officer Brooks. The bartender on duty that night testified that she did not remember seeing or serving the officer or the investigator in the club that night. Five members of the club also testified. The Department moved to dismiss count 1 of the accusation, which involved investigator Box, who did not appear at the hearing.

Exhibit 2 consisted of documents showing that appellant's license was suspended for 10 days for violations in July and August 2006 of section 23431, the same section appellant was charged with violating in the present case. The suspension was pursuant to a stipulation and waiver that was dated and filled out, but not signed. Carter, appellant's representative at the hearing, acknowledged that the lodge served a suspension in 2007. [RT 10.]

Subsequent to the hearing, the Department issued its decision which dismissed count 1 and determined that the violation alleged in count 2 had occurred as alleged in the accusation. In determining the penalty, consideration was given to the earlier section 23431 violations that had occurred less than 12 months before the violation in the present case.

Appellant filed a timely appeal contending that the prior violations should not have been considered to aggravate the penalty.

#### DISCUSSION

Appellant contends that the violation found in this case should not have been treated as the lodge's second such violation in less than 12 months. It argues that since the stipulation and waiver does not bear the signature of a lodge official, the suspension imposed in 2007 was illegal and cannot be used to aggravate the penalty in the present case.

Although there was no signature on the stipulation and waiver form, both the Department and appellant proceeded in the prior case as if the form had been signed. The prior disciplinary action has been final now for several years; it is simply too late for appellant to contest the decision in that case.

"[A] party's failure to seek judicial review of an administrative agency determination precludes the party from later challenging the merits of that determination in a collateral proceeding. (Citation.)" (*Healing v. Cal. Coastal Com.* (1994) 22 Cal.App.4th 1158, 1175 [27 Cal. Rptr. 2d 758].) Appellant could have contested the earlier action before it became final, but it did not. Instead, it complied with the Department's imposition of discipline, which ratified the stipulation and waiver as effectively as signing it would have.

ORDER

The decision of the Department is affirmed.<sup>3</sup>

FRED ARMENDARIZ, CHAIRMAN  
SOPHIE C. WONG, MEMBER  
TINA FRANK, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>3</sup>This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.