

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

AB-9700

File: 20-466957; Reg: 17086184

GOLDEN HORIZON GASCO, INC.,
dba Golden Horizon Gasco
195 Niblick Road,
Paso Robles, CA 93446-4845,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: n/a

Appeals Board Hearing: November 1, 2018
Ontario, CA

ISSUED NOVEMBER 20, 2018

Appearances: *Appellant:* Golden Horizon Gasco, Inc. did not appear,

Respondent: Matthew Gaughan, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Golden Horizon Gasco, Inc., doing business as Golden Horizon Gasco, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 15 days because its agent or employee sold an alcoholic beverage to a minor, in violation of Business and Professions Code section 25658, subdivision (a).

¹The Decision Following Default of the Department, dated March 21, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 6, 2008, and there is one prior instance of discipline on the license, from 2014, for a sale to minor violation.

On December 4, 2017, the Department instituted a one-count accusation against appellant charging that on June 16, 2017, its agent or employee sold an alcoholic beverage to a person under the age of 21, in violation of Business and Professions Code section 25658(a). The accusation was served on appellant, along with the Notice of Defense, Statement re: Discovery, and the Department's Request for Discovery by certified mail to the address of record as required by California Code of Regulations, title 4, section 145.

On December 8, 2017, the Department received a letter from appellant (see attachment to Decision Following Default), asking for a copy of the “report for the case that happen [sic] June 16, 2017.” The letter also asked that the Department contact appellant by phone, and asked that a hearing be set up. The record does not indicate whether a hearing was ever scheduled — and if not, why not.

Subsequently, on March 21, 2018, the Department issued a Decision Following Default and it was served on appellant on the same day. Appellant did not file a Notice of Defense, nor did it request relief from the default judgement.

Appellant then filed a timely appeal in which it asks to appeal the decision of the Department, but offers no basis for the appeal other than reiterating the fact that appellant spoke to Matthew Botting “way back” and requested a copy of the police report at that time to forward to its attorney for review, but never received such a report.

DISCUSSION

Under Government code section 11520(c), the recipient of a Decision Following Default is entitled to serve a written motion on the Department, requesting that the decision be vacated. The Department then has discretion to vacate the decision and grant a hearing — provided the respondent has demonstrated good cause.

"Good cause" includes (but is not limited to): failure to receive notice, mistake, inadvertence, surprise, or excusable neglect. "[A] default may not be set aside unless the moving party fulfills the burden of showing its entry through mistake, inadvertence, surprise, or excusable neglect." (*Ray Kizer Constr. Co. v. Young* (1968) 257 Cal.App.2d 766, 65 [Cal.Rptr. 267].)

Appellant did not request that the default decision be vacated, nor did it demonstrate any of the permissible bases to establish good cause. Appellant's Notice of Appeal fails to put forth a basis for an appeal. It provides no rationale for why the Appeals Board should offer relief from the 15-day suspension imposed for violating Business and Professions Code section 25658(a), nor does it contend that the Department erred in any way.

Written notice of the opportunity to file briefs in support of appellant's appeal was given on July 10, 2018. Appellant, however, did not file a brief. We have reviewed appellant's notice of appeal, but it lacks sufficient information for this Board to determine the basis for appellant's appeal.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that some error existed. Without such assistance by appellant, the Appeals Board may

deem the general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880].)

ORDER

The decision of the Department is affirmed.²

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
MEGAN McGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

RECEIVED

IN THE MATTER OF THE ACCUSATION
AGAINST:

MAR 21 2018

GOLDEN HORIZON GASCO INC
GOLDEN HORIZON GASCO
195 NIBLICK RD
PASO ROBLES, CA 93446-4845

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}
} FILE: 20-466957
}
} REG: 17086184
}

**Alcoholic Beverage Control
Office of Legal Services**

OFF-SALE BEER AND WINE - LICENSE

**DECISION FOLLOWING
DEFAULT**

under the Alcoholic Beverage Control Act.

This proceeding is conducted pursuant to Government Code section 11520. An Accusation against the above-referenced Respondent-licensee was registered by the Department December 4, 2017.

According to Department records the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery were served on Respondent-licensee on December 4, 2017.

According to Department records, no Notice of Defense has been filed. Accordingly, it is hereby found that Respondent licensee is in default and the Department makes the following Findings of Fact, Conclusions of Law, and Order:

Exhibits:

1. A true and correct copy of the Accusation registered in this matter is identified and admitted into evidence as Exhibit 1. Official Notice is taken of the license history as outlined in said Accusation.
2. A true and correct copy of the Proof of Service of Notice of Defense, Accusation, Department's Request for Discovery and Statement re Discovery, establishing service on Respondent-licensee, is identified and admitted into evidence as Exhibit 2.
3. A true and correct copy of the Department form ABC-333, Report of Investigation, and related documents are identified and admitted into evidence as Exhibit 3.

Findings of Fact:

1. Pursuant to Exhibit 2 as well as Government Code section 11505 and Miller Family Home, Inc. v. Department of Social Services (1997) 57 Cal.App.4th 488, it is found that Respondent-licensee was properly served with the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery in this matter. No Notice of Defense has been received.

2. Pursuant to Exhibits 1 and 3 it is found that Respondent-licensee did violate the Alcoholic Beverage Control Act.


Conclusions of Law:

1. Pursuant to Finding 1 above, Respondent-licensee has defaulted in this matter and the Department is authorized pursuant to Government Code section 11520 to conduct this default proceeding.
2. Pursuant to Finding 2 above, Respondent-licensee did violate the Alcoholic Beverage Control Act as alleged in said Accusation.
3. That by reason of the foregoing Findings of Fact and Conclusions of Law, grounds for suspension or revocation of such license(s) exist and the continuance of such license(s) would be contrary to public welfare and morals, as set forth in Article XX, Section 22, State Constitution, and Section(s) 24200(a) and (b) of the Business and Professions Code.

Order:

WHEREFORE, it is hereby ordered that Respondent-licensee's license number 466957 be, and hereby is, suspended for a period of **15** days. This decision is hereby adopted and is effective immediately. A representative of the Department will call on Respondent-licensee on or after APR 02 2018 to pick up the license certificate.

Dated: March 21, 2018


Matthew Botting
General Counsel

Any Motion to Vacate this decision must be made in accordance with Government Code §11520.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.