

ISSUED JANUARY 27, 1997

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

GUILLERMINA VARGAS and	)	AB-6577
RIGOBERTO VARGAS)	
dba Rio Verde	)	File: 40-210855
6522 South Compton Avenue	)	Reg: 92026583
Los Angeles, CA 90001,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	[NONE]
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 2, 1996
	)	Los Angeles, CA

Guillermina Vargas and Rigoberto Vargas, doing business as Rio Verde (appellants), appeal from an order of the Department of Alcoholic Beverage Control¹ which set aside a stayed revocation order, based on subsequent violations during a three-year probationary period.

Appearances on appeal include appellants Guillermina Vargas and Rigoberto Vargas, appearing through their counsel, Armando H. Chavira; and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

¹The decision of the Department dated February 20, 1992, the stipulation and waiver form dated November 25, 1991, upon which the decision was based, and the Department's order dated October 18, 1995, are set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer license was issued on January 25, 1988. The Department first instituted an accusation against appellants' license on November 12, 1991 [Reg. 92026583], alleging soliciting-of-drinks violations. On November 25, 1991, appellants signed a stipulation and waiver form in which they agreed to a revocation of their license, stayed for three years, until February 20, 1995, on condition that no subsequent violations occurred within the stayed period. A 15-day actual suspension was also imposed.

Thereafter, the Department instituted another accusation against appellants' license on November 22, 1994 [Reg. 94031454], alleging the same types of violations as in the previous accusation. On April 20, 1995, Rigoberto Vargas signed a stipulation and waiver form and agreed to the revocation of the license, to be effective November 1, 1995. The Department issued its decision on May 4, 1995, imposing revocation.

On October 18, 1995, the Department issued an order in Reg. 92026583 vacating the stay order, stating that the licensees had not "complied with the terms of the Department's decision dated February 20, 1992" and stating that the license certificate would be picked up by a Department representative on or after November 1, 1995. Appellants appealed from the order in Reg. 92026583.

DISCUSSION

I

Appellants contend that their appeal was timely filed after the Department

issued its order of October 18, 1995, reimposing the stayed revocation. The Department argues that the October 18 order was only a ministerial act and therefore not appealable.

Clearly, the time had long passed for appealing the Department's decision of February 20, 1992, which had imposed the stayed revocation. However, the order of October 18, 1995, from which appellant filed a timely appeal, was an appealable order, even if merely ministerial from the Department's point of view.

Article XX, §22, of the California Constitution provides, in relevant part: "When any person aggrieved thereby appeals from a decision of the department ordering any penalty assessment, issuing, denying, transferring, suspending or revoking any license for the manufacture, importation, or sale of alcoholic beverages, the board shall review the decision" Business and Professions Code §23081 also provides that "any party aggrieved by a final decision of the department may file an appeal with the board from such decision." On October 18, 1995, the Department ordered that the penalty of revocation be imposed on appellant's license, by which action appellant was aggrieved. Therefore, we determine that we have the authority to consider the order of revocation and whether appellants have raised any reasonable issues that the action of the Department to finally revoke the license was arbitrary and unfair.

II

Appellant argues that the October 18, 1995, order was arbitrary and unfair in that the probationary period expired before any triggering event occurred, and,

therefore, there was no cause for reimposing the stayed revocation. Appellant points out that the dates from decision to decision, from stipulation to stipulation, from accusation to accusation, and from the first decision to the second stipulation all exceed the required three-year period. It is only if the time is counted from the first violation date to the second violation date that there is less than a three-year gap, and that gap is two years and eleven months.

However, the relevant three-year period is clearly set out in the Department's decision of February 20, 1992, as "from the effective date of the Department's decision until February 20, 1995" One of the conditions for the stay of the revocation was "That no cause for disciplinary action occur within the stayed period." The incidents upon which the second accusation was based occurred in June and July of 1994. These incidents were the "cause for disciplinary action" and they occurred well within the probationary period. The fact that the stipulation and waiver and the Department's decision, which finalized the proceedings arising out of the accusations, were after the probationary period has no effect whatsoever on the fact that the "cause for disciplinary action" occurred within the period, thereby allowing the Department to reimpose the revocation.

We conclude that the "trigger" for vacating the stay occurred within the three-year probationary period.

III

Appellants argue that using the violation date as the trigger for vacating the stay is "arbitrary and capricious, and an abuse of discretion." Appellants appear to

base this contention on their asserted “fundamental right to possession of a license” and their conclusion that the second violations occurred “just shy of the expiration of the [probationary] period.”

Neither of these bases is correct, because 1) appellants do not have any fundamental right to an alcoholic beverage license (see, e.g., Gore v. Harris (1964) 229 Cal.App.2d 821 [40 Cal.Rptr. 666, 670]; Schaub’s, Inc. v. Department of Alcoholic Beverage Control (1957) 153 Cal.App.2d 858 [315 P.2d 459,467]), and 2) appellants have erroneously counted the probationary period as running from violation to violation, resulting in a time lapse of two years and eleven months, instead of from the Department’s decision to the second violation. We find nothing that would support the contention that the action of the Department in vacating the stay was arbitrary or unreasonable.

CONCLUSION

The decision of the Department is affirmed.²

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.