

ISSUED MARCH 30, 1998

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

ASADA ENTERPRISES, INC.	)	AB-6970
dba Sparks)	
3470-1 Wilshire Boulevard	)	File: 47-24571
Los Angeles, CA 90010,	)	Reg: 97040424
Appellant/Licensee,)	
	)	Appeal from a Decision
v.	)	Pursuant to a Stipulation
	)	And Waiver
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	January 7, 1998
	)	Los Angeles, CA
)	

Asada Enterprises, Inc., doing business as Sparks (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its on-sale public eating place license for 30 days with 10 days stayed during a one-year probationary period, pursuant to the signing of a stipulation and waiver form by appellant's representative consenting to sanctions that would be imposed pursuant to the agreement. A decision of the Department was thereafter entered in accordance with the terms of the stipulation and waiver form.

¹The decision of the Department, dated November 20, 1997, is set forth in the appendix.

Appearances on appeal include appellant Asada Enterprises, Inc., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

The record shows that appellant's on-sale general eating place license was issued on December 11, 1978. Thereafter, the Department instituted an accusation against appellant on July 8, 1997, charging various violations of law. Appellant signed a notice of defense dated August 1, 1997, and requested a hearing. Appellant thereafter made a timely request for discovery of documentation pursuant to the Government Code, which documentation the Department provided on August 15, 1997.

An administrative hearing was set for October 28, 1997, with notice of the hearing being sent to appellant and his then counsel. On October 2, 1997, appellant's counsel requested a continuance of the hearing. There is no indication as to any resolution of the request, but counsel withdrew from representation of appellant as of October 15, 1997.

Apparently, on October 22, 1997, a new counsel ("counsel") was engaged to represent appellant, and again, a request was made to continue the hearing for about a two- month period. It is inferred from an absence of a record, that no continuance was granted.

The record does indicate that there were discussions between the counsel for appellant and counsel for the Department as to a complete resolution of the matter. On October 24, 1997 (the Friday before the upcoming Tuesday hearing), counsel for appellant sent a letter [by fax] to the Department's counsel commenting

on a possible resolution provided service of the suspension would be delayed for three months [to a date approximately at the end of January 1998].

On Monday, October 27, 1997, appellant's representative signed the stipulation and waiver form.² The record does not indicate if counsel for appellant was present at the signing. At the oral argument before the Appeals Board, counsel for appellant stated he was not present at the time of the signing of the stipulation, but had reviewed the document. After signing, the stipulation was delivered to the Department. Subsequently, on November 20, 1997, the Department issued its decision pursuant to the stipulation and waiver form, calling for the service of the suspension to commence on or after December 4, 1997.

Appellant thereafter filed a timely notice of appeal. Subsequently, appellant filed briefs and motions for production of documents and continuance of the oral argument proceedings. The motion for continuance was denied. Pursuant to the motion for discovery, the Appeals Board requested the Department to augment the record with all correspondence and other documents relating to the present appealed issue, including such documentation in the head offices, district offices, and legal offices. Augmentation was provided on December 10, 1997.³

The Department filed a brief, and a motion to dismiss upon the grounds that the Appeals Board has no jurisdiction to hear the matter.

²The stipulation and waiver form dated October 27, 1997, is set forth in the appendix.

³Motions for discovery before the Appeals Board have no standing as this appellate tribunal has no statutory authority to order such, except by order of augmentation.

In its appeal, appellant raises the issue that the stipulation and waiver form was signed by appellant's representative with the understanding that the suspension would not be imposed until after a three-month period had elapsed.

DISCUSSION

Appellant contends that the stipulation and waiver form was signed by appellant's representative with the understanding that the suspension would not be imposed until after a three-month period.

Appellant in its brief, states:

"This appeal arises from an attempt by the Department of Alcoholic Beverage Control to impose a suspension of Appellant's liquor license, no. 47-02457, prior to the date agreed upon by the Department's counsel and Appellant's counsel. Upon learning of the Department's intended breach of its agreement two days prior to the date the Department proposed the suspension to being"

Appellant further states in that brief, that upon ascertaining that the date of suspension was not that date supposed by appellant to be set in January 1998, demand was made to allow the stipulation and waiver to be withdrawn. The Department denied the request to set aside the stipulation and waiver and vacate the decision.

The only issue before the Appeals Board is whether there was an agreement that the suspension would be served in late January 1998, and the Department breached that agreement. All other issues raised by appellant are not properly raised, as the Appeals Board's jurisdiction is to test the final decisions of the Department, being in the present matter, the decision of November 20, 1997.

We have reviewed the voluminous record in detail and have found little to support appellant's contention of fraud or at least, breach of any agreement made. The record and oral argument by appellant's counsel were punctuated with "great heat" but they produced "little light" on the subject at hand which could illuminate the controversy.

Appellant's counsel's letter of October 24, 1997, which was vigorously used in support of the argument that a contract had been made between counsel, lends little in support of a definite contract or agreement. We read the letter as showing that ongoing discussions were in progress, and at best, the letter is an invitation to counsel for the Department to offer an acceptable agreement, for which, the letter attests, appellant's counsel was waiting with great concern. To say the letter is a memorandum of understanding contorts the wording of that letter beyond its apparent meaning.⁴

Appellant's representative signed the stipulation and waiver form on October 27, 1997, after its counsel had reviewed the document. Counsel for appellant at the oral argument proceedings advised the Board, which was concerned whether counsel had seen the document before the signing, that he, counsel, was not concerned as to the wording of the document even though no mention was made as to the suspension date.

In any event, notwithstanding the excessive hyperbole and self-serving documents and arguments submitted to the Appeals Board by appellant's counsel,

⁴The letter of October 24, 1997, is set forth in the appendix.

it is concluded that the allegations of fraud or misconduct, on the part of the Department, are without foundation. The stipulation and waiver form does not set forth any time constraints as to suspension dates.

CONCLUSION

The Appeals Board is not unmindful that appellant has obtained the benefit of its alleged bargain, and in a manner lawfully set forth in the statutes. However, the issue before the Appeals Board is whether the decision of the Department was issued arbitrarily or unfairly, a question the Appeals Board is authorized to determine, within narrow limits.

Having found no arbitrary conduct on the part of the Department or its authorized agents, the Appeals Board may not inquire further. There is no need to consider the Department's motion to dismiss.

The decision of the Department of Alcoholic Beverage Control is affirmed.⁵

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

⁵This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

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