

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

AB-7980

File: 21-355378 Reg: 02052615

ZERAY G. WELDEZGHI, ANDEBRHAN G. WOLDEZGHI, and HEDRU G. WOLDEZGI
dba Haz San Francisco Liquor
1401 Polk Street, San Francisco, CA 94109,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: None

Appeals Board Hearing: October 24, 2002
San Francisco, CA

ISSUED JANUARY 15, 2003

Zeray G. Weldezghi, Andebrahn G. Woldezghi, and Hedri G. Woldezghi, doing business as Haz San Francisco Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ entered pursuant to stipulation and waiver, which suspended their license for 25 days, with 5 days thereof conditionally stayed for one year, for, on four separate occasions, having violated a condition on their license limiting hours of operation, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, section 22, arising from violations of Business and Professions Code section 23804.

Appearances on appeal include appellants Zeray G. Weldezghi, Andebrahn G. Woldezghi, and Hedru G. Woldezgi, and the Department of Alcoholic Beverage

¹The decision of the Department, dated May 30, 2002, is set forth in the appendix, together with a copy of the stipulation and waiver.

Control, appearing through its counsel, Matthew Botting.²

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on September 24, 1999. Thereafter, on March 27, 2002, the Department instituted an accusation against appellants charging that, on four separate dates in November 2001 and January 2002, appellant and co-licensee Zeray Weldezghi sold alcoholic beverages after 10:00 p.m., in violation of a condition on their license limiting sales to the hours between 8:00 a.m. and 10:00 p.m.

On May 7, 2002, Zeray Weldezghi executed a stipulation and waiver which authorized the Department to impose a suspension of 25 days, with 5 days stayed, based upon the facts set forth in the accusation, and which waived all rights to hearing, reconsideration, or appeal. On May 30, 2002, the Department issued its decision based upon the stipulation and waiver. This appeal followed.

Appellants, in a letter brief, appear to be contending that the stipulation was not entered into voluntarily.

DISCUSSION

It is difficult to determine just what it is appellants contend is improper about the order entered by the Department. They say in their letter brief that the 10:00 p.m. limitation on sales was a condition on the license when they purchased it, and were told by the Department "to change the time after one year." It is not clear whether, prior to the dates of the violations alleged in the accusation, they ever filed an application to modify the condition. After the suspension was ordered, they asked in a letter

² Haile Beyen acted as an interpreter on behalf of appellants.

complaining to the Department about the suspension that the condition be removed.

The Department advised them they would have to follow the proper procedure for doing so, and to contact the district office for information.

Appellants state in their letter brief that English is their second language, and we are told that the co-licensee who signed the stipulation and waiver did not understand its full import, and executed the stipulation on the advice of appellants' then attorney. Appellants do not appear to have questioned the authority of Zeray Weldezighi to execute the stipulation and waiver. They blame their problem on bad advice from an attorney

Under traditional principles of partnership law, one partner has the power to bind the partnership. For example Corporations Code section 16301, subdivision (1), provides:

“Every partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership unless the partner had no authority to act for the partnership in the particular matter and the person with whom he was dealing knew or had received a notification that the partner lacked authority.”

The statute, in subdivision (2), excludes from the above rule, an act of a partner that is not apparently for carrying on the ordinary business of the partnership and which was not authorized by the other partners. Whether an acceptance of a net 20-day suspension of the right to sell alcoholic beverages could be said to be such an act is an open question. Quite clearly, an agreement to accept an order of revocation would come within the subdivision, but a short-term suspension is very different, and itself one of the normal risks to be encountered in the ordinary course of business.

Upon execution of a stipulation and waiver, the person signing it agrees to the existence of grounds for, and to the entry of an order of, discipline. The document identifies the statute the Department believes was violated, provides for a specific measure of discipline, and recites the waiver of any right to appeal.

It is apparent that appellants lack strong English language skills. Be that as it may, it does appear that they consulted an attorney and acted on his advice. In the absence of any compelling grounds for setting aside the stipulation and waiver, none of which appear in the record, the Board has no alternative but to affirm the Department's order of suspension.

Although appellants' letter brief paints a compelling picture of their good citizenship and sincere concern over their plight, it does not, at least in our opinion, identify any grounds upon which the Board may grant relief.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ This 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.