

ISSUED MAY 22, 1997

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

GOOK JIN & HEI YOUNG ANN	)	AB-6739m
dba Rose Market	)	
511 Rose Avenue	)	File: 20-250760
Venice, California 90291,	)	Reg: 96036505
Appellants/Licensees,	)	
	)	
v.	)	Date and Place of the
	)	Appeals Board Hearing:
DEPARTMENT OF ALCOHOLIC	)	February 5, 1997
BEVERAGE CONTROL,	)	Los Angeles, CA-
Respondent.	)	
	)	

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Gook Jin Ann and Hei Young Ann, doing business as Rose Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control which suspended their off-sale beer and wine license for 20 days with 10 days stayed, for appellants' permitting the sale of alcoholic beverages to a minor and for permitting harmful materials to be sold or rented in an area without an "adults only" sign, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code § §24200, subdivision (a), and 25658, subdivision (a), and Penal Code § §313 and 313.1, subdivision (a).

This matter is before the Appeals Board on its own motion to determine whether the Board has jurisdiction to review the appeal.

Appearances on appeal include appellants Gook Jin Ann and Hei Young Ann, appearing through their counsel, Ralph Barat Saltsman; and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

#### FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on September 6, 1990. Thereafter, on March 25, 1996, co-appellant Hei Young Ann signed a stipulation and waiver form authorizing the Department to impose a suspension on appellants' license for the alleged violations of law. The waiver form states in pertinent part: "...waive all rights to a hearing, reconsideration and appeal...."<sup>1</sup>

Thereafter, the Department entered a decision based on the stipulation and waiver signed by co-appellant. The final date to timely appeal to the Appeals Board from that Department's decision, but for the waiver, would have been August 14, 1996.

On September 13, 1996, counsel for appellants wrote a letter to the Department's District Administrator who, apparently, was willing to talk with his headquarters in Sacramento to see if a fine could be paid in lieu of serving the suspension. The Department rejected appellants' counsel's request.<sup>2</sup>

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<sup>1</sup>The stipulation and waiver form which the Department used is a single page, barely four paragraphs long. In it, co-appellant Hei acknowledged by signing, among other things, the receipt of the accusation and forms for filing a notice of defense [which would allow for a hearing on the matter]. Also, the stipulation which was signed states that [by signing], the license would be suspended for 20 days with 10 days thereof stayed.

<sup>2</sup>Appellants' counsel's letter of September 13, 1996, and the Department's rejection letter of October 17, 1996, are set forth in the appendix.

Appellants subsequently filed a notice of appeal on October 24, 1996. The Appeals Board returned the notice of appeal, stating that "the letter of the Department dated October 17, 1996, is not considered a final decision of the Department ..." as the October 17, 1996, letter essentially refers to a request to set aside the waiver form and commence the proceedings anew.

Appellants then filed an amended notice of appeal which restated the prior listed statutory grounds, and further stated: "The letter of October 17, 1996 constituted a decision of the Department in that it is a 'determination ... affecting a license' declining to set aside a Stipulation and Waiver signed by the mistake occasioned by the licensee's inability to comprehend the language in which the document was written."

The Appeals Board accepted the filing of the amended appeal notice on a tentative basis so that all parties to the matter could argue their respective positions before the Appeals Board at a formal hearing.

#### DISCUSSION

It is a fundamental principle of law that public policy favors resolution of disputes by negotiation rather than by litigation. (Kirby v. Alcoholic Beverage Control Appeals Board (1971) 17 Cal.App.3d 255 [94 Cal.Rptr. 514].)

Appellants apparently are not contesting the actual suspension of 20 days with the stay of 10 days. Their contention seems to be that when co-appellant Hei agreed to the resolution of the case, he had in mind an earlier discipline against the

license where a fine was paid in lieu of the suspension. The present suspension will not allow for the payment of a fine.

Appellants further complain that co-appellant Hei did not have an English-Korean interpreter at the "waiver" signing meeting.

Appellants apparently did not seek legal counsel until September 10, 1996, a period of 169 days following the signing of the waiver form and 27 days after the right to appeal had lapsed.

The Department's letter of October 17, 1996, was nothing more than a rejection of a request to set the waiver aside and begin again the matter by allowing for a hearing on the merits of the matter before the Department.<sup>3</sup>

We conclude that the decision of the Department dated July 3, 1996, was the final decision of the Department which was appealable up to and including the date of August 14, 1996. That opportunity lost would have allowed appellants to contest all the issues raised by the present tentative appeal. The question is whether the appeal was timely filed. The licensees not having done so, this Board had no jurisdiction to hear the matter. (Slawinski v. Mocettini (1965) 45 Cal.2d 70 [45 Cal.Rptr. 15].)

#### CONCLUSION

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<sup>3</sup>The Board has previously taken the position that a licensee is bound by a signed stipulation and waiver form, unless a licensee can show that the signing in some material manner was entered into without deference to fairness and proper legal principles. (Elzofri and Saif (1996) AB-6601, and Kato and Talia (1995) AB-6551.)

It is our understanding that litigation must come to finality at some reasonable point. To allow an appeal on these particular facts would open the door to litigation without end or finality, thus ignoring legions of appellate cases which state that a tardy notice of appeal deprives an appellate tribunal of jurisdiction.<sup>4</sup> The issues raised by the letter of September 10, 1996, are issues which could have been raised in a timely appeal, except for the issue raised that the Department erred in not setting aside the waiver and allowing for a full litigation of the entire matter. We do not believe that issue raised comes within the intent and purposes of the Constitution, article XX, §22, as argued.

The appeal is dismissed.<sup>5</sup>

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

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<sup>4</sup>See 9 Witkin, California Procedure, §407, for an exhaustive listing of authorities, mainly to the effect that a late notice of appeal is void.

<sup>5</sup>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.