

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

AB-9838

File: 41-597555; Reg: 19089091

BRYANT CEBALLOS,
dba La Korita Restaurant & Sports Bar
2142 Mitchell Road, Suite A
Ceres, CA 95307-2833,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: N/A

Appeals Board Hearing: N/A

ISSUED MARCH 19, 2020

Appearances: *Appellant:* Bryant Ceballos, *in propria persona*,

Respondent: Sean Klein, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Bryant Ceballos, doing business as La Korita Restaurant & Sports Bar, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending his license for 15 days because his agent or employee sold an alcoholic beverage to a police minor decoy, in violation of Business and Profession Code² section 25658(a); he

¹Both the Decision Following Default of the Department, dated September 20, 2019, as well as the First Amended Decision Following Default, dated September 25, 2019, are set forth in the appendix.

² All statutory references are to the California Business and Professions Code unless otherwise stated.

permitted unauthorized persons to exercise privileges of the license, in violation of sections 23300 and 23355, and; purchased alcohol beverages from a retailer, in violation of section 23402.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine eating place license was issued on November 8, 2018. There is no record of prior departmental discipline against the license.

On July 18, 2019, the Department filed a six-count accusation against appellant, charging that, on various dates, appellant permitted unauthorized persons to exercise privileges of his license, and purchased alcohol from an entity other than a licensed distributor. The accusation further charged that, on May 22, 2019, appellant's agent/employee sold an alcoholic beverage to 19-year-old Brayden Green Grove (the decoy). Although not noted in the accusation, the decoy was working for the Ceres Police Department at the time.

The accusation was served on appellant by certified mail on July 18, 2019, along with the Notice of Defense, copies of Government Code sections 11507.5, 11507.6, and 11507.7, and the Department's Request for Discovery. Pursuant to Government Code section 11506(a) and Code of Civil Procedure section 1013, appellant had 20 calendar days, or until August 7, 2019, to file a Notice of Defense.

On September 20, 2019, the Department issued a Decision Following Default. A First Amended Decision Following Default was issued five days later to correct an error in the original order. There is nothing in the record indicating that appellant responded to the accusation on or before August 7, 2019. Likewise, there is nothing in the record that appellant requested that the Department vacate the default decision.

The first record of action by appellant in this matter was his Notice of Appeal, timely filed on September 30, 2019.

DISCUSSION

As a preliminary matter, the Board notes that appellant failed to file an opening brief. The 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, the Board may treat unsupported and unasserted contentions as waived or forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [57 Cal.Rptr.3d 363, 377] ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [183 Cal.Rptr.3d 654] ["It is the responsibility of the appellant ... to support claims of error with meaningful argument and citation to authority. [Citations.] When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration. [Citations.] In addition, citing cases [or statutes] without any discussion of their application to the present case results in forfeiture".])

Further, under Government code section 11520(c), the recipient of a Decision Following Default may serve a written motion on the Department requesting that the decision be vacated. After receiving said motion, the Department 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. (See *Ray Kizer Constr. Co. v.*

Young (1968) 257 Cal.App.2d 766, 65 [Cal.Rptr. 267] (“[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.”)

Here, however, there is nothing in the record showing that appellant requested the Department to vacate its default decision. Thus, there is no finding by the Department of whether good cause existed to vacate the default. Without that finding, there is nothing for the Board to review; the Board may only review a Department’s decision based upon “insufficiency of the evidence, excess of jurisdiction, errors of law, or abuse of discretion.” (*Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 95, [84 Cal.Rptr. 113].) There is no error by the Department for issuing a default decision after a licensee fails to respond to the accusation. (Gov. Code, § 11520(a).)

Further, even if appellant had requested the Department to vacate the default, and the Department denied his request, appellant failed to raise the issue of “good cause” in his notice of appeal.³ Likewise, appellant failed to file an opening brief, or offer any factual basis to support the existence of good cause and explain why he did not respond to the accusation. Therefore, even if it wanted to, the Board cannot consider the issue of good cause because there is no record or argument from the appellant.

³ Appellant’s Notice of Appeal is a one-page document which seems to contest the penalty and seek negotiation with the Department. However, if appellant is dissatisfied with the penalty, or had another penalty in mind, he should have requested a hearing and presented oral argument to the Department. The Board is unaware of any authority that allows it to consider the issue of excessive penalty when that issue was not first brought before the Department.

Based on the above, the Board determines that sufficient cause exists to dismiss the appeal under title 4, section 199(d) of the California Code of Regulations. The Board has no jurisdiction to consider the merits of the instant appeal, where appellant failed to request the Department to vacate the default decision, and failed to raise the issue in his Notice of Appeal or opening brief.

ORDER

The instant appeal is dismissed under 4 CCR section 199(d).

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

APPENDIX

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

IN THE MATTER OF THE ACCUSATION
AGAINST:

BRYANT CEBALLOS
DBA: LA KORITA RESTAURANT & SPORTS BAR
PREMISES: 2142 MITCHELL RD, STE A
CERES, CA 95307-2833

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FILE: 41-597555

REG: 19089091

**1st AMENDED DECISION
FOLLOWING DEFAULT**

RECEIVED

SEP 25 2019

Alcoholic Beverage Control
Office of Legal Services

under the Alcoholic Beverage Control Act.

This 1st Amended Decision Following Default is issued pursuant to Government Code section 11518.5 to correct an error in the original Decision Following Default. The Order on the Decision Following Default is hereby amended to:

This proceeding is conducted pursuant to Government Code section 11520. An Accusation against the above-referenced Respondent-licensee was registered by the Department July 18, 2019.

According to Department records the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery were served on Respondent-licensee on July 18, 2019.

According to Department records, no timely 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 timely 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.

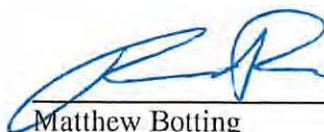
Conclusions of Law:

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 be, and hereby is, suspended for a period of 15 days, to be followed by an indefinite suspension until compliance with the requirements of Section 23300 & 23355 of the Business and Professions Code. The suspension will not commence until after a representative of the Department posts the Notice of Suspension. A representative of the Department will call on Respondent-licensee on or after OCT 07 2019 to pick up the license certificate. This Decision Following Default is hereby adopted and is effective immediately.

Dated: SEPT. 25 2019


Matthew Botting
General Counsel For

Should you have any questions regarding the penalty imposed herein contact your local Alcoholic Beverage Control office.

Any Motion to Vacate this default decision must be made in accordance with Government Code section 11520, subdiv. (c), which states:

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

If you wish to file a Motion to Vacate this default decision, it must be directed to the General Counsel. In addition, any other parties in the matter, including the Department's Office of Legal Services, must be served. The Motion must be sent by mail, but you may also e-mail it. The addresses for filing and service are:

ABC General Counsel
c/o Administrative Records Secretary
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Department of Alcoholic Beverage Control
Office of Legal Services
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Mark.Kinyon@abc.ca.gov

Beth.Matulich@abc.ca.gov

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.

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

IN THE MATTER OF THE ACCUSATION
AGAINST:

BRYANT CEBALLOS
LA KORITA RESTAURANT & SPORTS BAR
2142 MITCHELL RD, STE A
CERES, CA 95307-2833

ON-SALE BEER AND WINE EATING PLACE -
LICENSE

under the Alcoholic Beverage Control Act.

File: 41-597555

Reg: 19089091

DECLARATION OF SERVICE BY MAIL

The undersigned declares:

I am employed at the Department of Alcoholic Beverage Control. I am over 18 years of age and not a party to this action. My business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. On September 25, 2019, I served, by CERTIFIED mail (unless otherwise indicated) a true copy of the following documents:

1st AMENDED DECISION FOLLOWING DEFAULT

on each of the following, by placing them in an envelope(s) or package(s) addressed as follows:

BRYANT CEBALLOS
1200 CONRAD WAY
MODESTO, CA 95358

Office of Legal Services
Headquarters, Inter Office Mail

7018 0680 0000 9834 1007

and placing said envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this department's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, County of Sacramento, State of California, in an envelope with the postage fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 25, 2019 at Sacramento, California.


Mark Kinyon

STOCKTON DISTRICT OFFICE (INTEROFFICE MAIL)
 DIVISION OFFICE (INTEROFFICE MAIL)

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

RECEIVED

SEP 20 2019

Alcoholic Beverage Control
Office of Legal Services

IN THE MATTER OF THE ACCUSATION
AGAINST:

BRYANT CEBALLOS
DBA: LA KORITA RESTAURANT & SPORTS BAR
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2. Pursuant to Exhibits 1 and 3 it is found that Respondent-licensee did violate the Alcoholic Beverage Control Act.

Conclusions of Law:

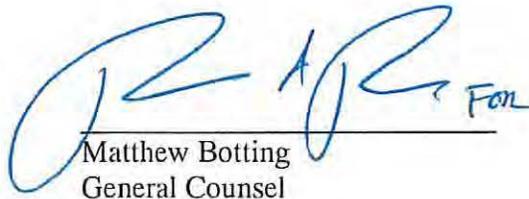
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3. That by reason of the foregoing Findings of Fact and Conclusions of Law, grounds for suspension or revocation of such license(s) exist and the continuance of such license(s) would be contrary to public welfare and morals, as set forth in Article 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 be, and hereby is, suspended for a period of **15** days, to be followed by an indefinite suspension until compliance with the requirements of Section 23038 of the Business and Professions Code. The suspension will not *commence* until *after* a representative of the Department posts the Notice of Suspension. A representative of the Department will call on Respondent-licensee on or after OCT 01 2019 to pick up the license certificate. This Decision Following Default is hereby adopted and is effective immediately

Dated: _____

9/20/19

 For
Matthew Botting
General Counsel

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

In the Matter of the Accusation Against:

BRYANT CEBALLOS

DBA: LA KORITA RESTAURANT & SPORTS BAR

PREMISES: 2142 MITCHELL RD
STE A
CERES, CA 95307-2833

FILED
JUL 18 2019
ALCOHOLIC BEVERAGE CONTROL

File: 41-597555

Reg: 19089091

**ACCUSATION UNDER
ALCOHOLIC BEVERAGE
CONTROL ACT AND
STATE CONSTITUTION**

LICENSE(S): On-Sale Beer And Wine - Eating Place

I hereby complain and accuse the above respondent(s), holding the above license(s), based on the following statement of facts:

COUNT 1

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about May 22, 2019, respondent-licensee's agent or employee, Maria Guillen Garcia, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: beer, to Brayden Green Grove, a person under the age of 21 years, in violation of Business and Professions Code Section 25658(a).

COUNT 2

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about and between the dates of January 2019 to May 2019, respondent-licensee permitted Maria Guillen Garcia, an unauthorized person, to exercise a privilege or perform an act upon the premises under the authority of a license, while not licensed by the Department or being the true owner of the business, in violation of Business and Professions Code Section 23300 and 23355.

901

COUNT 3

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about and between the dates of January 2019 to May 2019, respondent-licensee permitted Luis Sanchez Preciado, an unauthorized person, to exercise a privilege or perform an act upon the premises under the authority of a license, while not licensed by the Department or being the true owner of the business, in violation of Business and Professions Code Section 23300 and 23355.

COUNT 4

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about March 22, 2019, respondent-licensee purchased an alcoholic beverage, to-wit: Modelo beer, for resale from Food 4 Less Supermarket, who did not hold a beer manufacturers, wine growers, rectifiers, brandy manufacturers, or wholesaler's license, in violation of Business and Professions Code Section 23402.

COUNT 5

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or before May 22, 2019, respondent-licensee purchased an alcoholic beverage, to-wit: Corona beer, for resale from Food 4 Less Supermarket, who did not hold a beer manufacturers, wine growers, rectifiers, brandy manufacturers, or wholesaler's license, in violation of Business and Professions Code Section 23402.

COUNT 6

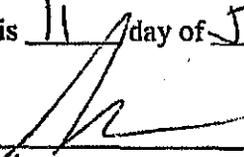
By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about May 3, 2019, respondent-licensee purchased an alcoholic beverage, to-wit: Modelo beer, for resale from WalMart, who did not hold a beer manufacturers, wine growers, rectifiers, brandy manufacturers, or wholesaler's license, in violation of Business and Professions Code Section 23402.

Licensee(s) Previous Record: Licensed as above since November 8, 2018.

WHEREFORE, I recommend that a hearing be held on this accusation.

Dated this 11 day of July 2019.



Sean Klein
Attorney
Department of Alcoholic Beverage Control