

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

AB-9887

File: 20-528048; Reg: 20090146

Citrus Petroleum, Inc.,
dba Arco
539 East Redlands Boulevard
Redlands, CA 92373-5228,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: n/a

Appeals Board Hearing: February 5, 2021
Telephonic

ISSUED FEBRUARY 5, 2021

Appearances: *Appellant:* Mark Sabbah, of Sabbah & Mackoul, APC, as counsel
for Citrus Petroleum, Inc.,

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

OPINION

Citrus Petroleum, Inc., doing business as Arco (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department)¹ suspending its license for 25 days because its employee sold alcohol to a minor, in violation of Business and Professions Code section 25658, subdivision (a).

¹ The Order on Motion to Vacate Decision Following Default, dated September 3, 2020, as well as the Decision Following Default, dated July 24, 2020, are set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 16, 2013. There are three instances of prior discipline against the license, all for violations of section 25658(a).

On June 3, 2020, the Department instituted an accusation against appellant charging that, on January 24, 2020, its employee sold alcohol to an 18-year-old individual who was working as a minor decoy for the Redlands Police Department. The clerk failed to ask for identification and did not ask the decoy his age.

The accusation was sent via certified mail, on June 3, 2020, to the address on file with the Department along with a Notice of Defense, Request for Discovery, and copies of the relevant sections of the Government Code.

On June 25, 2020, having received no response from appellant, an agent from the Department's Riverside District Office contacted Christine Jackson, appellant's Vice President of Operations, who indicated the accusation had not been received and asked that it be sent to her via email. The accusation packet was sent to Ms. Jackson via email on June 30, 2020, giving appellant an extension of time to respond to July 14, 2020. The accusation packet sent via U.S. Mail was later returned to the Department undelivered.

The Department received no response by the deadline of July 14, 2020. On July 24, 2020, it filed and served a Decision Following Default on appellant. On July 27, 2020, Ms. Jackson contacted the Department to ask for an extension of time to seek legal counsel — saying she had been out of the office and had not seen the email sent on June 30, 2020 — but was informed that the Decision Following Default had already been issued.

Appellant filed a Motion to Vacate the Default Decision on August 6, 2020, claiming it: (1) failed to receive notice of the accusation, (2) that the default was taken due to the licensee's mistake, inadvertence, surprise, or neglect; and (3) that the licensee has a credible defense, to wit: that the email sent by the Department to Ms. Jackson was not reviewed because she was out of the office due to the current pandemic. No declarations or other evidence were submitted in support of the motion — contrary to counsel's assertion at oral argument that a declaration was submitted.

On September 3, 2020, the Department issued its Order on Motion to Vacate Default Decision, denying the Motion and finding that appellant failed to establish good cause to vacate the default decision. Thereafter, appellant filed a timely appeal in the instant matter maintaining: (1) appellant was unaware of the content of the accusation, (2) the Department was notified by appellant's employee that the company had not received the accusation, and (3) the email sent by the Department was not reviewed by Ms. Jackson because she was out of the office due to the current pandemic.

DISCUSSION

Appellant cites no legal authority in support of its contentions, nor did it offer any declarations or other evidence in support of these assertions. To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. Where a point is merely asserted without any argument or support for the proposition, it is deemed to be without foundation and requires no discussion by a reviewing authority. (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [199 Cal.Rptr. 72].) 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."].) Nevertheless, we will address appellant's general argument that the Decision Following Default should be vacated.

Under Government code section 11520(c), the recipient of a Decision Following Default is entitled to serve a written motion on the Department, requesting that the decision be vacated — either on the basis that notice was not received, or on the basis of mistake, inadvertence, surprise, or excusable neglect. (Gov. Code §11520, subs. (c)(1) & (c)(2)). The Department then 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, although appellant timely requested to vacate the default decision, the Department denied the request, finding that appellant failed to establish good cause.

As the Order denying appellant's motion notes:

The Motion simply asserts that the Licensee was "unaware of the content of the accusation." While the Motion acknowledges that the Department sent an email to its representative, that person did not review the email because "she was out due to the current pandemic." No declarations or other evidence were submitted in support of the Motion.

(Order on Motion to Vacate Default Following Default.)

As noted in the Department's Order, appellant offered no evidence to substantiate its request that the default be set aside. It's employee specifically asked that the accusation be sent to her via email, then claimed she was out of the office because of the pandemic and did not receive notice. An employee's failure to open her email — after specifically asking that the accusation be forwarded in this format — does not establish a failure to receive notice. Nor does it fulfill appellant's burden to show that some mistake, inadvertence, surprise, or excusable neglect established good cause to set aside the default decision.

Furthermore, contrary to counsel's assertion during oral argument, there is no evidence in the record to establish that the employee had COVID-19, or that she submitted a declaration to that effect. This Board may only consider documents contained in the record on appeal, and "shall not receive any evidence other than that contained in the record of the proceedings of the department." (Bus. & Prof. Code, §23083.)

Appellant offered no factual basis to support the existence of good cause in its Motion to Vacate the Decision Following Default. Accordingly, it did not constitute an abuse of discretion, nor was it arbitrary or capricious, for the Department to deny that motion for the failure to make the requisite showing of good cause. We find no error.

ORDER

The decision of the Department is affirmed.²

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

² This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

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

APPENDIX

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Citrus Petroleum, Inc.
Dba ARCO
539 E. Redlands Blvd.
Redlands, CA 92373-5228

File No.: 20-528048

Reg. No.: 20090146

Licensee.

ORDER ON MOTION TO VACATE DECISION FOLLOWING DEFAULT

On July 24, 2020, the Department issued a Decision Following Default (“Decision”) and served it by mail on that same date. The Licensee filed a timely Motion to Vacate Default Decision (“Motion”).

The Motion simply asserts that the Licensee was “unaware of the content of the accusation.” While the Motion acknowledges that the Department sent an email to its representative, that person did not review the email because “she was out due to the current pandemic.” No declarations or other evidence were submitted in support of the Motion.

Based upon the foregoing, Licensee has failed to establish good cause to vacate the Decision. The Motion is denied. This Order is adopted effective immediately.

Sacramento, California

Dated: September 3, 2020

RECEIVED

SEP 09 2020

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department’s power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

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

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

RECEIVED

JUL 27 2020

**CITRUS PETROLEUM INC
ARCO
539 E REDLANDS BLVD
REDLANDS, CA 92373-5228**

FILE: 20-528048

Alcoholic Beverage Control
Office of Legal Services

REG: 20090146

**DECISION FOLLOWING
DEFAULT**

under the Alcoholic Beverage Control Act.

This proceeding is conducted pursuant to Government Code section 11520. An Accusation against the above-referenced Respondent-licensees was registered by the Department June 3, 2020.

According to Department records the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery were served on Respondent-licensees on June 3, 2020.

According to Department records, no timely Notice of Defense has been filed. Accordingly, it is hereby found that Respondent licensees are 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-licensees, 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-licensees were 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-licensees did violate the Alcoholic Beverage Control Act.

Conclusions of Law:

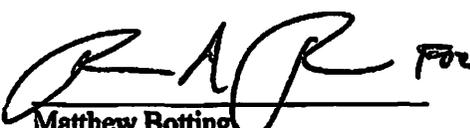
1. Pursuant to Finding 1 above, Respondent-licensees have defaulted in this matter and the Department is authorized pursuant to Government Code section 11520 to conduct this default proceeding.
2. Pursuant to Finding 2 above, Respondent-licensees did violate the Alcoholic Beverage Control Act as alleged 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 25 days. 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 AUG 04 2020 to pick up the license certificate.

This Decision Following Default is hereby adopted and is effective immediately.

Dated: 7/29/2020


Matthew Botting
General Counsel