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

AB-8672
File: 20-356490 Reg: 05059705

FAHD GEHAM MUBARAK, dba Star 1 Market
1506 Second Street, Selma, CA 93662,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: July 10, 2008
San Francisco, CA

ISSUED: OCTOBER 8, 2008

Fahd Geham Mubarak, doing business as Star 1 Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which suspended his license for 25 days for his clerk, Fasal Saleem, selling or furnishing a twenty-pack of Budweiser beer to Jason Lopez, a 20-year-old non-decoy minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Fahd Geham Mubarak, appearing through his counsel, Lawson K. Renge, and the Department of Alcoholic Beverage

[1]The decision of the Department dated November 30, 2006, made under the authority of Business and Professions Code section 11517, subdivision ©, dated November 30, 2006, is set forth in the appendix, together with the administrative law judge's proposed decision.

Control, appearing through its counsel, Dean R. Lueders.

PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 17, 2000. On May 24, 2005, the Department instituted an accusation against appellant charging, in separate counts, the sale of an alcoholic beverage (beer) to Jason Lopez (count 1), and Jaime Yanez, both non-decoy minors.

An administrative hearing was held on November 15, 2005, and April 12, 2006, at which time documentary evidence was received and testimony concerning the violations charged was presented. Subsequent to the hearing, the administrative law judge (ALJ) issued a proposed decision in which he recommended that both counts of the accusation be dismissed.

The Department, in a decision made under the authority of Business and Professions Code section 11517, subdivision ©, determined that the charge in count 1 of the accusation, involving Jason Lopez, had been established. The Department dismissed count 2 of the accusation.

Appellant filed a timely notice of appeal in which he raises a single issue. He claims that the Department failed to comply with Business and Professions Code section 11517, subdivision (c)(2); thus, according to appellant, the proposed decision was adopted as a matter of law.

DISCUSSION

Appellant contends that the Department failed to comply with the requirement of Business and Professions Code section 11517, subdivision (c)(2), in that its decision was untimely, in that it was made in excess of 100 days from the date of the proposed

decision.[2]

The proposed decision was signed by the administrative law judge (ALJ) on April 20, 2006. The Department decision is dated November 30, 2006. Describing the Department's decision as affirming in part and reversing in part the proposed decision, appellant points to the interval between April 20 and November 30 as well in excess of 100 days which, he argues, does not comply with the 100-day requirement.

Appellant appears to have read only part of the statute.

What appellant has overlooked is that part of subparagraph (c)(2)(E)(iv) of section 11517 which provides: "*If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the*

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[2] Section 11517, subdivision (c)(2) provides, in pertinent part:

> Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:
> ...
> (E) Reject the proposed decision, and decide the case upon the record including the transcript, or upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply
>
> > ...
> > (iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523

administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript." (Emphasis added.)

The hearing took place on separate days approximately five months apart, on November 15, 2005, and April 12, 2006. The Department received the proposed decision on May 4, 2006, and on July 27, 2006, issued its notice that it intended to decide the case itself. The transcript for November 15, 2005, was received by the Department on February 21, 2006, while the transcript for the April 12, 2006, portion of the hearing was not received until September 1, 2006. It is at this point that the Department's 100 days began to run.[3]

One hundred days from September 1, 2006 would have been December 10, 2006. The Department's decision was issued on November 30, 2006, so was timely under section 11517, subdivision (c)(2)(E)(iv).

ORDER

The decision of the Department is affirmed.[4]

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[3] We agree with the Department that it was entitled to receipt of a transcript covering all days of the hearing before its 100-day countdown began.

[4] 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.