

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

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| In the Matter of: |) | |
| Big Bear Café |) | Case No.: N/A |
| t/a Big Bear Café |) | License No.: 084379 |
| Order to Cease and Desist |) | Order No.: 2019-319 |
| 1700 First Street, N.W. |) | |
| Washington, D.C. 20001 |) | |
| |) | |

TO: Big Bear Café LLC, t/a Big Bear, Applicant

ORDER VACATING RENEWAL AND TO CEASE AND DESIST

The Alcoholic Beverage Control Board has determined that the renewal of ABRA License No. 17-PRO-00036, which is held by Big Bear Café LLC, t/a Big Bear, (Applicant) was made under the incorrect presumption that the license holder had “clean hands.” Specifically, when the Board renewed this license, the Board presumed that the Applicant could satisfy D.C. Official Code § 25-301(b), which requires that the Applicant not owe more than \$100 in debt to the District as a condition of renewal. Nevertheless, the Office of Tax and Revenue (OTR) has informed ABRA’s licensing department that the Applicant does not qualify for “clean hands,” or any exception provided by Title 47, the title administered by OTR. As the Board is bound by the decisions and interpretations of coordinate agencies on matters falling under their jurisdiction, the Board must hold that the present Applicant does not satisfy the clean hands requirement, and that the renewal must be vacated. *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) *citing Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C.1980).

Title 25 of the District of Columbia (D.C.) Official Code (Title 25) further provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public . . .” D.C. Code § 25-829(a). The Board notes that it is a violation for the Applicant to operate on an expired license under D.C. Official Code § 25-830(i).

In light of this law, the Board finds that the continued sale and service of alcohol at the Applicant’s establishment under the expired license causes irreparable harm to the public by allowing the establishment to maintain a public nuisance. All violations of Title 25 are deemed

nuisances pursuant to § 25-805. D.C. Code § 25-805; *see also Com. ex rel. Preate v. Danny's New Adam & Eve Bookstore*, 625 A.2d 119, 122 (1993) (It is well-settled that even a lawful business may be enjoined from operation if it is shown that, under the particular circumstance, its operation constitutes a public nuisance); *Camp v. Warrington*, 227 Ga. 674, 674, (1971) (“where it is made to appear with reasonable certainty that irreparable harm and damage will occur from the operation of an otherwise lawful business amounting to a continuing nuisance, equity will restrain the construction, maintenance or operation of such lawful business.”). Therefore, the continued use of the license cannot be permitted.

ORDER

Therefore, the Board on this 8th day of May 2019, hereby **VACATES** the renewal of ABRA License No. 084379. The License holder is further ordered to surrender its invalid license to the Board and to cease and desist the sale, service, and consumption of alcoholic beverages at its premises.

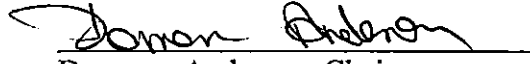
IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-115(c) and 23 DCMR § 1003.1, that ABRA shall no longer issue temporary licenses and one-day substantial change licenses for the above mentioned address.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance) should it be deemed necessary.

Please be **ADVISED** that a copy of this Order is being forwarded to the Metropolitan Police Department to ensure compliance. If it is found that the establishment is continuing to sell, serve, or permit the consumption of alcoholic beverages without approval from the Board, all of the persons engaging in such activity may be subject to both civil and criminal penalties.

ABRA shall serve notice by certified mail or personal delivery on the parties.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Mike Silverstein, Member


James Short, Member


Bobby Cato, Member

Rema Wahabzadah, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order,

with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b).