

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on December 12, 2018. *ABRA Show Cause File No. 18-CMP-00204*, Notice of Status Hearing and Show Cause Hearing, 2 (Dec. 12, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1834 Wisconsin Avenue, N.W., Washington, D.C., on December 17, 2018. *ABRA Show Cause File No. 18-CMP-00204*, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violations:

Charge I: [On August 20, 2018,] [y]ou failed to take reasonable measures to ensure that the immediate environs of the establishment are kept free from litter in violation of D.C. Official Code § 25-726

Charge II: [On August 20, 2018,] [y]ou substantially changed the nature of the operation of the licensed establishment in violation of D.C. Official Code § 25-762(b)(2)

Notice of Status Hearing and Show Cause Hearing, 2-3.

Both the Government and Respondent appeared at the Show Cause Status Hearing on January 30, 2019. The parties proceeded to a Show Cause Hearing and argued their respective cases on March 13, 2019.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Café Divan holds a Retailer's Class CR License at 1834 Wisconsin Avenue, N.W., Washington, D.C. *ABRA License No. 60603*.
2. The parties stipulated that on August 20, 2018, the Respondent did not have an endorsement for a sidewalk café issued by ABRA. *Transcript (Tr.)*, March 13, 2019 at 5. Moreover, on that same day, an ABRA investigator observed tables and chairs for a sidewalk café set up outside the establishment. *Id.*
3. ABRA Investigator Mark Brashears visited the Respondent's establishment on August 20, 2018, based on a complaint regarding trash. *Id.* at 12. Outside the establishment, he observed a discarded gate and other fencing, uncut cardboard boxes, and other trash on the ground. *Id.* at 12, 16; *Government Exhibit No. 7*. He also observed a photo on Google Earth that showed that the discarded fencing had been outside the establishment since at least June 2017.

Tr., 3/13/19 at 18. The investigator further observed that some of the trash was blocking a fire escape. *Id.* at 27.

4. Mr. Cavit indicated that he has trash pickup six days per week. *Id.* at 32. He indicated that the fencing sitting outside the establishment is covering refrigeration equipment. *Id.* at 33.

CONCLUSIONS OF LAW

5. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1). In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2019). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

6. Under § 25-726,

(a) The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter.

(b) A licensee under a retailer's license shall ensure that all solid waste inside the property and in the outdoor spaces immediately surrounding the property are stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or other animals, or create a nuisance or fire hazard.

D.C. Code § 25-726.

7. In this case, the presence of unbroken cardboard boxes and the blocking of the fire escape by the trash violate § 25-726. *Supra*, at ¶ 3. The Respondent shall receive a warning for this offense because the Respondent does not have a history of prior trash violations.

8. Under § 25-762, a license holder shall not create a sidewalk café on public space without the approval of the Board. D.C. Code § 25-762(b)(2). In this case, it is admitted that the Respondent created a sidewalk café on public space without the authorization of the Board. *Supra*, at ¶ 2. In light of this first level primary tier offense, the Respondent shall pay a fine of \$1,500. 23 DCMR §§ 800, 801.1(a); *Investigative History*, Café Divan (ABRA License No. 60603).

ORDER

Therefore, the Board, on this 10th day of April 2019, finds Cavit Ozturk, t/a Café Divan, guilty of violating § 25-762. The Board imposes the following penalty on Café Divan:

- (1) For the violation described in Charge I, Café Divan shall receive a **WARNING**.
- (2) For the violation described in Charge II, Café Divan shall pay a fine of \$1,500.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed a primary tier violation.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


James Short, Member


Bobby Cato, Member

Rema Wahabzadah, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. 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, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). 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) (2004).