

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 14-AA-1286

SOLOMON ENTERPRISES, INC. T/A CLIMAX RESTAURANT AND HOOKAH BAR,  
PETITIONER,

v.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD, RESPONDENT.

Petition for Review of a Decision of the  
District of Columbia Alcoholic Beverage Control Board  
(CMP-12-228)

(Submitted February 10, 2017)

Decided June 27, 2017)

Before BLACKBURN-RIGSBY, *Chief Judge*,\* EASTERLY, *Associate Judge*,  
and FARRELL, *Senior Judge*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Solomon Enterprises<sup>1</sup> (“Solomon”) appeals an order issued by the District of Columbia Alcoholic Beverage Control Board (“Board”), suspending its license and requiring it to pay a \$4,000 penalty after admittedly failing to make timely payment of an earlier-imposed fine.<sup>2</sup> We affirm.

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\* Chief Judge Blackburne-Rigsby was an Associate Judge of the court at the time the case was submitted. Her status changed to Chief Judge on March 18, 2017.

<sup>1</sup> Solomon does business as Climax Restaurant and Hookah Bar.

<sup>2</sup> See D.C. Code § 25-823 (a)(6) (authorizing suspension of a license and issuance of a fine, inter alia, if a licensee fails to follow a Board order).

Solomon argues that the Board's finding that Solomon had received notice of the initial order was not supported by substantial evidence. We agree that that is the correct standard of review,<sup>3</sup> but disagree that it has not been met. To satisfy its burden to establish notice, the District presented evidence at the hearing that the Board had issued an order on September 18, 2013 ("2013 Order") fining Solomon \$2,000 for a violation of D.C. Code § 25-762 (a) (2013 Repl.), and giving Solomon thirty days to pay. The order, admitted into evidence as Exhibit 1, directed the Alcoholic Beverage Regulation Administration (ABRA) to "distribute copies of the Order to the Government and to the Respondent." The District also presented testimony that a notice of delinquency dated October 25, 2013 was sent to Solomon. Lastly the District presented evidence, in the form of a receipt, that Solomon had paid the \$2,000 fine imposed by the 2013 Order on March 10, 2014, two days prior to a status hearing that had been scheduled in a Notice of Status and Show Cause Hearings ("Show Cause Notice"),<sup>4</sup> issued in January 2014.<sup>5</sup> Solomon

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<sup>3</sup> See D.C. Code § 2-510 (a)(3)(E) (2013 Repl.); *Tiger Wyk Ltd. v. District of Columbia Alcoholic Beverage Control Bd.*, 825 A.2d 303, 307 (D.C. 2003).

<sup>4</sup> The charge informed Solomon:

**You failed to comply with the terms of a Board Order for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (6) (2001).**

On September 18, 2012, the Board issued a Findings of Fact, Conclusions of Law, and Order in case 12-CMP-00228, which required you to pay a fine in the amount of \$2,000 within 30 days of the issuance of the Order. You have failed to pay the fine as ordered.

<sup>5</sup> The Board discussed the timing of the Show Cause Notice earlier in the hearing when it rejected the offer in compromise that would have allowed Solomon to pay only an additional \$2,000 penalty. In his argument in support of the offer in compromise, counsel for Solomon suggested lenience was appropriate because this was not a case "where the Show Cause Notice went out and then payment was made"; instead this was a case where payment "was late, but it was made." A Board member subsequently had the following exchange with counsel:

(continued...)

argued that it had not received any notice but presented no evidence in support of this argument, in the form of testimony or otherwise.

As the District argued at the hearing, we conclude that this un rebutted evidence alone amounts to substantial evidence that Solomon had notice of the order. Testimony that a notice of delinquency was issued after payment was not timely received is some evidence that ABRA issued the order as directed by the Board. In addition, we *know* that Solomon received notice of the 2013 Order and \$2,000 fine because it finally paid the fine on March 10, 2014. There is no evidence in the record that it paid under protest, nor is there any explanation that it had only learned of the fine from the Show Cause Notice. It is thus reasonable to infer that it paid the fine because it had timely received a copy of the 2013 Order. Even if the payment on March 10, 2014 was motivated by the receipt of the Show Cause notice in January 2014, *see supra* notes 4 & 5 and accompanying text, the fact remains that Solomon had notice of the 2013 Order and \$2,000 fine at that point and did not pay within 30 days.

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(...continued)

[Board Member]: [Y]ou said that . . . the fine was paid before the Show Cause Notice was issued. Did I hear you correctly on that?

[Counsel]: Correct.

[Board Member]: When was the fine paid?

[Counsel]: The fine was paid on March 10, 2014.

[Board Member]: I have a Show Cause Notice issued on January 8, 2014, which is prior – two months prior to the payment of the fine. Two months.

[Counsel]: Okay. I apologize.

Solomon refers to the Show Cause Notice in its Brief and has included a copy of the Show Cause Notice in its Appendix.

Because we conclude the Board's determination that Solomon had notice is supported by substantial evidence presented at the hearing, we need not address Solomon's second argument that the Board acted improperly by taking administrative notice of agency records—an ABRA log indicating that the 2013 Order had been served both by mail and email, along with a copy of the Notice of Delinquency about which the government had presented testimony at the hearing—without giving Solomon an opportunity to contest their consideration or import. Even if the Board erred in considering these materials, any error would be harmless.

Lastly, Solomon argues that the Board erred by determining that the government had fulfilled its service obligations under 23 DCMR § 1703.5 (2008) (specifying various means of proper service, e.g., personal service and service by registered or certified mail). On this question of law our review is *de novo*.<sup>6</sup> We conclude that, contrary to the assumptions of the parties<sup>7</sup> and the Board, this regulation has no application to this case. By its plain language, 23 DCMR § 1703 addresses party filings—“papers filed *with* the Board”—not issuance of decisions by the Board.<sup>8</sup> 23 DCMR § 1703.1 (emphasis added). *Compare id.*, with 7 DCMR § 228 (a) (1994) (detailing, under the workers' compensation statute, how “[s]ervice *by* the Office . . . shall be accomplished” (emphasis added)). Other subsections contain language supporting this limited reach; they only make sense if they apply to filings by parties. *See* § 1703.5 (allowing service through first-class mail by a party if “[d]eposit[ed] . . . by an attorney of record”—the Board would not have “an attorney of record”); § 1703.8 (providing that a party's “[f]ailure to

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<sup>6</sup> “Where questions of law are concerned, we review the agency's rulings *de novo* . . . .” *Panutat, LLC v. District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 272 (D.C. 2013) (brackets omitted).

<sup>7</sup> Although the District adopts the Board's argument that § 1703.5 (g) was satisfied, it notes that the regulation might apply “solely to the parties” and contends that “papers” in § 1703.5 references “filings by parties.”

<sup>8</sup> As far as we can tell, no ABRA regulation specifies the means by which the Board must serve its orders on the parties, but we disagree with Solomon's argument that the absence of a regulation means that ABRA “could theoretically have served [Solomon] by ‘distributing’ the 2013 Order by dropping copies of it from an airplane.” Of course, due process protections would still apply.

serve all parties of record . . . may result in the Board delaying action”—but regardless of how a Board order is transmitted to the parties, the Board through such an order will have already acted).

Accordingly, the order of the Alcoholic Beverage Control Board is

*Affirmed.*

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

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