

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

In the Matter of:)	
)	
Southeast Restaurant Group, LLC)	Case No.: 18-CIT-110
t/a DCity Smokehouse)	License No.: 098368
)	Order No.: 2018-579
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
203 Florida Avenue, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Donald Isaac, Sr., Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Southeast Restaurant Group, LLC, t/a DCity Smokehouse, Respondent

Fernando Rivero, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Southeast Restaurant Group, LLC, t/a DCity Smokehouse, (hereinafter "Respondent" or "DCity Smokehouse") violated D.C. Official Code § 25-701(a). The Respondent shall pay a fine of \$750.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 4, 2018. *ABRA Show Cause File No. 18-CIT-110*, Notice of Status Hearing and Show Cause Hearing, 2 (Jun. 4, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 203 Florida Avenue, N.W., Washington, D.C., on June 26, 2018. *ABRA Show Cause File No. 18-CIT-110*, Service Form. The Notice charges the Respondent with one violation, 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 violation:

Charge I: [On February 25, 2018,] [y]ou failed to keep a licensed ABC manager on duty at all times, in violation of D.C. Official Code § 25-701(a) . . . and 23 DCMR § 707.1

Notice of Status Hearing and Show Cause Hearing, 2.

The Respondent did not appear at the Show Cause Status Hearing on July 18, 2018. The Respondent also failed to appear at the Show Cause Hearing on September 19, 2018; therefore, the Government proceeded ex parte pursuant to D.C. Official Code § 25-447(e).

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. DCity Smokehouse holds a Retailer's Class CT License at 203 Florida Avenue, N.W., Washington, D.C. *ABRA License No. 95030*. ABRA Investigator Countee Gilliam visited the Respondent's establishment on February 25, 2018, at around 8:19 p.m. *Transcript*, September 19, 2018 at 9. Inside, the investigator spoke to the Respondent's assistant manager and asked to speak with the manager or owner. *Id.* at 11. In response, the assistant manager indicated that no manager or owner was present at the time. *Id.* The investigator then performed a regulatory inspection of the premises and notified the assistant manager of the violation for failing to have a licensed manager or owner present. *Id.* at 12.

CONCLUSIONS OF LAW

2. 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. 2018). 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).

3. Under D.C. Official Code § 25-701, “[a] person designated to manage an establishment shall possess a manager’s license.” D.C. Code § 25-701(a). Under § 707.1, “In the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises.” 23 DCMR § 707.1 (West Supp. 2018). In this case, on February 25, 2018, during the investigator’s visit, no licensed manager or owner was present and the assistant manager did not present a manager’s license issued by ABRA. *Supra*, at ¶ 1. Under these circumstances, the Board sustains Charge I and finds the Respondent guilty.

4. The present offense constitutes the Respondent’s second secondary tier violation within a four year period, and the fine range falls between \$500 and \$750. 23 DCMR §§ 800, 802 (West Supp. 2018).

ORDER

Therefore, the Board, on this 17th day of October 2018, finds Southeast Restaurant Group, LLC, t/a DCity Smokehouse, guilty of violating § 25-701. The Board imposes the following penalty on DCity Smokehouse:

- (1) For the violation described in Charge I, DCity Smokehouse shall pay a fine of \$750.

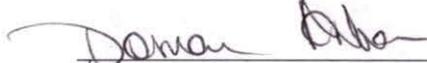
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

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

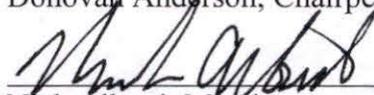
IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

Donald Isaac, Sr., Member

Bobby Cato, 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).