

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

In the Matter of:)	
)	
Desperado Pizza, LLC)	Case No.: 18-CMP-00112
t/a Desperados Pizza)	License No.: ABRA-84731
)	Order No.: 2019-887
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
1342 U Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: Stephen Ortiz, 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 Desperado Pizza, LLC, t/a Desperados Pizza, (hereinafter "Respondent" or "DP") violated D.C. Official Code §§ 25-723(b) and 25-823(a)(7) for illegally permitting the consumption of alcohol on the premises after its Board-approved hours on April 14, 2018. The Respondent shall pay a fine of \$2,000 for the offense.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 20, 2019. *ABRA Show Cause File No. 18-CMP-00112*, Notice of Status Hearing and Show Cause Hearing, 2 (Aug. 20, 2019). The Alcoholic Beverage

Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1342 U Street, N.W., Washington, D.C., on August 22, 2019. *ABRA Show Cause File No. 18-CMP-00112*, 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 April 14, 2018,] [y]ou failed to follow the terms of your Board-approved license by operating outside the approved hours of sales in violation of D.C. Official Code §§ 25-723(b) and 25-823(a)(7)

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on October 2, 2019. The matter proceeded to a Show Cause Hearing; however, the Respondent failed to appear on November 6, 2019. The Board heard the case *ex parte* in accordance with 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. Desperado Pizza, LLC, t/a Desperados Pizza, holds a Retailer's Class CT License at 1342 U Street, N.W., Washington, D.C. *ABRA License No. 84731*. On Friday going into Saturday morning, the establishment must cease operations at 3:00 a.m. *Id.*
2. Metropolitan Police Department (MPD) Officer Matthew Rider and his partner were in the alley across the street from DP on Saturday, April 14, 2018, around 4:30 a.m. *Transcript (Tr.)*, November 6, 2019 at 8. While in the alley, they observed three female patrons exit DP, stand in front of DP's window, and begin passing a wine glass amongst themselves while talking. *Id.* at 8-9. He then observed the female patrons reenter the establishment. *Id.* at 9. The officers then sought admittance into the establishment. *Id.* Inside, Officer Rider saw the three females, and he also saw a man sitting at the bar. *Id.* Officer Rider asked the bartender why the bar was open after hours. *Id.* The bartender indicated that he called last call but that the female patrons did not want to leave. *Id.* The establishment's manager was not present. *Id.* While waiting for the manager to arrive, he and his partner stepped outside. *Id.* The bartender then attempted to lock the door. *Id.* When the manager arrived at the scene, he was slightly intoxicated. *Id.* at 9-10.
3. ABRA Investigator Kevin Puente later investigated the incident observed by Officer Rider. *Id.* at 14. On April 20, 2018, he spoke with the owner, Koray Bozkurt. *Id.* at 16-17. The owner indicated that on April 14, 2018, his family and staff were present at the establishment cleaning up and consuming alcohol. *Id.* at 17.

CONCLUSIONS OF LAW

4. 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).

I. Standard of Proof

5. 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).

II. Violation

6. DP operated beyond its Board approved hours of operation. Section 25-723(b) prohibits the sale, service, and consumption of alcoholic beverage after 3:00 a.m. on Saturday. D.C. Code § 25-723(b). Licensees are further prohibited from operating past their Board-approved hours in accordance with § 25-823(a)(7). D.C. Code § 25-823(a)(7). In this case, DP was not permitted to allow anyone to consume alcohol on the premises after 3:00 a.m.; nevertheless, this is what occurred on April 14, 2018. *Supra*, at ¶¶ 2-3. For these reasons, the Board sustains Charge I.

III. Penalty

7. DP has no prior primary tier violations on its record. A violation for a first level primary tier violation allows for a fine of between \$1,000 and \$2,000. 23 DCMR § 801.1(a) (West Supp. 2019).

ORDER

Therefore, the Board, on this 4th day of December 2019, finds DP guilty of violating §§ 25-723(b) and 25-823(a)(7). The Board imposes the following penalty on DP:

(1) For the violation described in Charge I, the Respondent shall pay a fine of \$2,000.

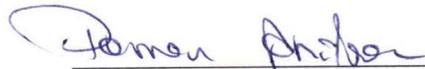
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

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



James Short, Member



Bobby Cato, Member



Rafi Aliya Crockett, 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).