

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

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| In the Matter of: |) | |
| |) | |
| Daryl Cobham and Ben Zine, LLC |) | Case No.: 24-ULC-00037 |
| t/a District 93 |) | License No.: N/A |
| |) | Order No.: 2024-694 |
| |) | |
| Cease and Desist |) | |
| |) | |
| at premises |) | |
| 1015 U Street, N.W. |) | |
| Washington, D.C. 20009 |) | |

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Jr., Member

PARTIES: Daryl Cobham and Ben Zine, LLC
t/a District 93, Respondents
1015 U Street, N.W.
Washington, D.C. 20009

1015 U Street LLC, Respondent
50 Rhode Island Avenue, N.E.
Washington D.C., 20002

ORDER TO CEASE AND DESIST

On October 9, 2024, the Alcoholic Beverage and Cannabis Board (Board) reviewed compelling evidence that Daryl Cobham and Ben Zine, LLC, t/a District 93, and 1015 U Street LLC, and their agents engaged in a violation of Chapter 16B of Title 7 of the D.C. Official Code or permitted such illegal activity to occur. These persons and entities are hereby ordered to cease the illegal purchase, sale, exchange, delivery, or any other form of commercial transaction involving cannabis immediately.

FINDINGS OF FACT

The following statements represent the Board’s findings of fact based on the evidentiary record.

1. The Board incorporates by reference the facts and evidence presented in Case Report No. 24-ULC-00037.
2. On April 25, 2024, Alcoholic Beverage and Cannabis Administration (ABCA) Supervisory Investigator (SI) Jason Peru and other District agencies inspected 900 M Street, N.W, related to illegal cannabis activities. *Case Report No. 24-ULC-00036*, at 1. The premises were being occupied and run by a business identifying itself as District 93, operated by Daryl Cobham and Ben Zine, LLC. *Id.* The landlord of the premises is 1015 U Street LLC. *Id.* at 1. During the inspection, the establishment was found to have engaged in illegal cannabis activity. *Id.* In response, a warning letter was issued advising of violations regarding the illegal sale and distribution of cannabis. *Id.* at *Exhibit No. 2*.
3. On October 2, 2024, SI Peru returned to the premises for a follow up inspection. *Id.* Inside, he found that the establishment was continuing to sell cannabis products containing tetrahydrocannabinol (THC). *Id.* For example, a product called “White Bubblegum Dulce” cannabis flower was purchased by an undercover buyer for \$40. *Id.* at 2. A field test conducted by officers with the Metropolitan Police Department indicated that the purchased products contained THC and amphetamines. *Id.* The label on the product claims that it contains THC and did not list the presence of amphetamines. *Id.* at 2, *Exhibit Nos. 3*.
4. There is no indication that the purchased product conforms with Chapter 16B and the associated regulations’ manufacturing, testing, labeling, and packaging requirements.
5. There is no indication in ABCA’s records that District Tobacco has been issued any license, permit, endorsement, or other authorization from the Board that would authorize commercial cannabis operations. *Id.* at 2.

CONCLUSIONS OF LAW

6. Under § 7-1671.12a(a) of Chapter 16B of Title 7 of the D.C. Official Code,

If the ABC Board, after investigation but before a hearing, has cause to believe that a person is violating a provision of this chapter and the violation has caused or may cause, immediate and irreparable harm to the public, the ABC Board may issue an order requiring the alleged violator to cease and desist immediately from the violation.

D.C. Code § 7-1671.12a(a). The Board may issue a cease-and-desist order when there is sufficient evidence for the Board to have cause to believe that a person is violating Chapter 16B to such extent that it has caused or may cause immediate and irreparable harm to the public. § 7-1671.12a(a). Similar to a preliminary injunction, § 7-1671.12a(a) commits the decision to grant or deny a cease-and-desist order to the sound discretion of the Board. *See Zirkle v. Dist. of Columbia*, 830 A.2d 1250, 1255 (D.C. 2003). Moreover, similar to a preliminary injunction, in order to uphold the cease-and-desist, the Board must find that there is a “*substantial likelihood*” that a violation has occurred and that it has or will cause immediate and irreparable harm to the public. *Id.* (emphasis added).

7. A cease-and-desist order is not a criminal proceeding; therefore, it relies on a “less stringent standard[]” of proof than “the reasonable doubt standard.” *See Rivas v. United States*, 783 A.2d 125, 133 (D.C. 2001); *In re R.G.*, 917 A.2d 643, 648 (D.C. 2007). Instead, the Board is merely required to base its decision on the “substantial evidence” contained in the record. 22-C DCMR § 9719.2. 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” or “more than a mere scintilla [of evidence].” *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); *Rodriguez v. Filene's Basement Inc.*, 905 A.2d 177, 181 (D.C. 2006). It should be further noted that “. . . hearsay evidence is admissible in administrative proceedings” and may constitute “substantial evidence.” *Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 476 (D.C. 2004). In that vein, “The weight to be given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility.” *Id.* at 477.

8. Under Title 7, “Cannabis” is defined as “all parts of the plant genus Cannabis.” D.C. Code §§ 48-901.02(3), 7-1671.01(2A). In accordance with § 7-1671.08(f),

Beginning January 31, 2024, the ABC Board may issue the following fines to an unlicensed establishment that violates § 7-1671.06(c-1) or § 7-1671.06b(e), or has not filed an accepted and pending application with the ABC Board and knowingly engages or attempts to engage in the purchase, sale, exchange, delivery, or any other form of commercial transaction involving cannabis that is not purchased, sold, exchanged, or delivered in accordance with the provisions of this chapter or § 48-904.01.

D.C. Code § 7-1671.08(f).

9. Under § 7-1671.08(a),

Any person who manufactures, cultivates, possesses, administers, dispenses, distributes, or uses cannabis, or manufactures, possesses, distributes, or uses paraphernalia, in a manner not authorized by this chapter or the rules issued pursuant to § 7-1671.13 shall be subject to criminal prosecution and sanction under subchapter I of Chapter 11 of Title 48 [§ 48-1101 et seq.].

D.C. Code § 7-1671.08(a).

10. Under § 48-904.1(a)(1),

Except as authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance. Notwithstanding any provision of this chapter to the contrary, it shall be lawful, and shall not be an offense under District of Columbia law, for any person 21 years of age or older to:

(A) Possess, use, purchase, or transport marijuana weighing 2 ounces or less; [or]

- (B) Transfer to another person 21 years of age or older, without remuneration, marijuana weighing one ounce or less

D.C. Code § 48-904.1(a)(1). As noted in *Kornegay*, in accordance with § 48-904.01(a)(1)(D), this cannabis decriminalization statute does not shield persons that sell cannabis or cannabis plants, offer to sell cannabis or cannabis plants, or makes cannabis or cannabis plants available for sale. *Kornegay v. United States*, 236 A.3d 414, 420 (D.C. 2020) (“we understand § 48-904.01(a)(1) to permit an adult to possess two ounces or less of marijuana regardless of their intent, so long as that adult does not ‘sell, offer for sale, or make available for sale’ the marijuana”).

12. An “Unlicensed establishment” is

a sole proprietorship, partnership, or other business entity that:

- (A) Sells, exchanges as part of a commercial transaction, or delivers cannabis and cannabis products;
- (B) Operates at or delivers from a specific location in the District; and
- (C) Is not licensed by ABCA as a cultivation center, retailer, internet retailer, manufacturer, courier, or testing laboratory.

D.C. Code § 7-1671.01(22).

13. Under § 7-1671.12e(a),

Any building, ground, or premises where cannabis is sold, exchanged as part of a commercial transaction, delivered, or permitted to be consumed by an unlicensed establishment shall be a nuisance, except any building, ground, or premises of an applicant that filed an accepted and pending application with the Board during the 90-calendar day open application period.

D.C. Code § 7-1671.12e(a).

14. The Board is persuaded that Daryl Cobham and Ben Zine, LLC, t/a District 93, and 1015 U Street LLC, and their agents operate an unlicensed establishment or allowed an unlicensed establishment to operate and engage in the illegal sale and distribution of cannabis. *Supra*, at ¶¶ 2-3. In this case, an undercover buyer was able to purchase cannabis laced with amphetamines in exchange for cash. *Supra*, at ¶ 3. Therefore, the Board is satisfied that the operations observed by SI Peru on October 2, 2024, constitute a violation of § 7-1671.08(f), 7-1671.08(a), and 7-1671.12e(a). Moreover, the sale of cannabis that occurred eliminates any of the protections afforded by § 48-904.1(a)(1).

15. The Board further notes that the sale and distribution of illegal cannabis immediately threatens the health and safety of the public because unregulated product may contain

inappropriate and harmful substances (e.g., pesticides, other narcotics). In addition, unlicensed businesses are at risk of selling cannabis to persons that should not have access to cannabis, such as minors. Finally, such activity constitutes a nuisance under D.C. Official Code § 7-1671.12e. *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 immediate cessation of all cannabis activity at the premises is appropriate under § 7-1671.12a(a).

ORDER

Therefore, the Board, on this 9th day of October 2024, hereby **ORDERS** Daryl Cobham and Ben Zine, LLC, t/a District 93, and 1015 U Street LLC, and their agents to immediately **CEASE AND DESIST** the illegal purchase, sale, exchange, delivery, or any other form of commercial transaction involving cannabis or allowing or permitting such activity to occur.

The parties are also **ADVISED** that information obtained as part of ABCA’s investigation or hearings related to these proceedings may be shared with other law enforcement agencies or used in future administrative, civil, and criminal proceedings.

The ABCA shall deliver a copy of this order to the Parties by hand delivery or certified mail in accordance with D.C. Official Code § 7-1671.12a(a).

District of Columbia
Alcoholic Beverage and Cannabis Board

eSigned via SeamsDoc.com
Donovan Anderson
Key: ac430b9b59d5f0e4b730060d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamsDoc.com
James Short
Key: 547ac373f820de0ac8d1b3325d2049ec

James Short, Member



Silas Grant, Jr., Member

Pursuant to D.C. Official Code § 7-1671.12a(b)(1), “[t]he alleged violator [or violators] may, within 15 days after the service of the order, submit a written request to the ABC Board to hold a hearing on the alleged violation.” D.C. Code § 7-1671.12a(b)(1). Upon receipt of the request, the Board will provide the requestor with a “a hearing in accordance with the procedures set forth in Chapter 5 of Title 2” to challenge the cease and desist and the Board shall “issue a decision within 90 days after the hearing.” D.C. Code § 7-1671.12a(b)(2).

The requestor may also request an expedited hearing if they submit a written request “within 10 days after the service of an order” and “request [that] the ABC Board [hold] an expedited hearing on the alleged violation.” D.C. Code § 7-1671.12a(c)(1). If a timely request for an expedited hearing is made, the “Board shall conduct a hearing within 10 days after the date of receiving the request and shall deliver to the alleged violator at their last known address a written notice of the hearing by any means guaranteed to be received at least 5 days before the hearing date.” D.C. Code § 7-1671.12a(c)(2). After the expedited hearing, the Board shall issue a decision within 30 days. D.C. Code § 7-1671.12a(c)(3).

Please note that the failure to request a hearing shall result in the order being deemed final. Please further note that if you fail to comply with the order of the Board, the Board may file a petition against you with the Superior Court of the District of Columbia and seek compliance by judicial order in addition to other enforcement actions permitted by law. D.C. Code § 7-1671.12a(f)(3).

If you request a hearing, you may appear at the virtual hearing unless other instructions to appear are provided, 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.

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, D.C. 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. However, the timely filing of a Motion for Reconsideration 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).