

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

In the Matter of:)	
)	
Brother’s Burger Bar, LLC)	Case No.: 21-CMP-00038
t/a Felicity Lounge)	License No.: ABRA-112502
)	Order No.: 2021-068
Holder of a)	
Retailer’s Class CR License)	
)	
at premises)	
707 H Street, N.E.)	
Washington, D.C. 20002)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: Anthony Celo, 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 Brother’s Burger Bar, LLC, t/a Felicity Lounge, (hereinafter “Respondent” or “Felicity Lounge”) violated D.C. Official Code § 25-701 and 23 DCMR § 707.1 by failing to have a licensed manager or owner present while the business was in operation on August 13, 2021.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 26, 2021. *ABRA Show Cause File No. 112502*, Notice of

Status Hearing and Show Cause Hearing, 2 (Oct. 26, 2021). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 707 H Street, N.E., Washington, D.C., on November 5, 2021. *ABRA Show Cause File No. 21-CMP-00038*, 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 13, 2021,] [y]ou operated during business hours without a Board-approved ABC Manager or owner on duty, violation of 23 DCMR § 707.1, for which the Board may take the proposed action under D.C. Code §§ 25-823(a)(6) and 25-701.

Charge II: [On August 13, 2021,] [y]ou failed to follow a Board Order requiring Department of Health exemption prior to permitting any smoking or hookah on the premises, in violation of D.C. Code § 25-823(a)(6) and Board Order 2021-221

Notice of Status Hearing and Show Cause Hearing, at 2.

The Government appeared at the Show Cause Status Hearing on December 1, 2021. The case proceeded to a Show Cause Hearing on January 12, 2022. The Respondent failed to appear, and the Government proceeded *ex parte* pursuant to D.C. Official Code § 25-447(e).

The Board notes that it dismisses Charge II because it involves the same type of condition that was the subject of a remand order from the D.C. Court of Appeals in *Family LLC t/a MK Lounge & Restaurant v. D.C. Alcoholic Beverage Control Board*, Case No. 21-AA-439 at 1 (Jan. 10, 2022). Specifically, the Board takes this action because it remains unsettled whether a smoking waiver issued by the D.C. Department of Health constitutes a required license or permit contemplated by D.C. Official Code § 25-311(c), which formed the basis of imposing the condition in the Board's original order. *In re Brother's Burger Bar, LLC, t/a Felicity Lounge*, Case No. 20-PRO-00006, Board Order No. 2021-221, ¶ 35 (D.C.A.B.C.B. Apr. 21, 2021). Therefore, Charge II is dismissed, and only Charge I remains.

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. Felicity Lounge holds a Retailer's Class CR License at 707 H Street, N.E., Washington, D.C. *ABRA License No. 112502*. ABRA Investigator Mark Ruiz arrived at the establishment on August 13, 2021, in response to a complaint at around 11:56 p.m. *Transcript (Tr.)*, January 12, 2021 at 10-11. While Investigator Ruiz talked with various employees that claimed to be a manager, none could produce an ABC Manager's License or demonstrate proper licensure as a

manager. *Id.* at 11-12. Furthermore, one individual also claimed to be an owner; however, he was not listed as an owner in ABRA’s records. *Id.* at 12. While inside, he observed patrons smoking hookah. *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).

I. Standard of Proof

3. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). 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. The Respondent Failed to Have a Manager or Owner on Duty on August 13, 2021.

4. Under § 25-701(a) and (a-1),

(a) A person designated to manage an establishment shall possess a manager's license.

(a-1)(1) . . . an establishment’s owner or Board-approved manager shall be present on the premises at all times during the establishment’s hours of sale, service, and consumption of alcoholic beverages.

D.C. Code § 25-701(a), (a-1); 23 DCMR § 707.1 (West Supp. 2022). On August 13, 2021, no licensed manager or owner was present while the business was in operation. *Supra*, at ¶ 1. Therefore, the Board sustains Charge I.

III. Penalty

5. Felicity Lounge has no prior secondary tier violations. A first secondary tier violation shall have a fine range of between \$250 and \$500. 23 DCMR § 802.1(A) (West Supp. 2022).

ORDER

Therefore, the Board, on this 16th day of February 2022, finds the Respondent, **GUILTY** of violating D.C. Official Code § 25-701 and 23 DCMR § 707.1. The Board imposes the following penalty:

(1) For the violation described in Charge I, Felicity Lounge shall pay a fine of \$500.

(2) Charge II is **DISMISSED**.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within one hundred and twenty (120) 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 (West Supp. 2022), the violations found by the Board in this Order shall be deemed a secondary 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

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430b06b9d5f0be4c730009d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
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James Short, Member

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Edward S. Grandis, 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).