

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

In the Matter of:)	
)	
Green Island Heaven and Hell, Inc.)	Case Nos.: 18-CMP-00051
t/a Green Island Café/Heaven & Hell)	18-251-00095
)	18-251-00084
Holder of a)	18-251-00122
Retailer's Class CT License)	License No.: ABRA-74503
)	Order No.: 2019-170
at premises)	
2327 18th Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell,
Respondent

Jonathan Farmer, Counsel, on behalf of the Respondent

Walter Adams II, 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 Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, (hereinafter "Respondent" or "Green Island Café/Heaven & Hell") failed to hire the Metropolitan Police Department (MPD) Reimbursable

Detail as required by a Board Order on multiple occasions in violation of D.C. Official Code § 25-823(a)(6). In light of these violations, the Respondent shall pay a fine of \$8,000.

Procedural Background Case No. 18-CMP-00051

This case arises from the Notice of Status Hearing and Show Cause Hearing (First Notice), which the Board executed on September 25, 2018. *ABRA Show Cause File No. 18-CMP-00051*, Notice of Status Hearing and Show Cause Hearing, 2 (Sept. 25, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2327 18th Street, N.W., Washington, D.C., on October 4, 2018. *ABRA Show Cause File No. 18-CMP-00051*, Service Form. The First 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: [In violation of D.C. Official Code § 25-823(a)(6),] [y]ou failed to adhere to the terms of the Board Order dated August 16, 2017 regarding the use of MPD Reimbursable Detail [between February 10, 2018, and February 11, 2018] . . .

Procedural Background Case No. 18-251-00095

This case also arises from a second Notice of Status Hearing and Show Cause Hearing (Second Notice), which the Board executed on November 27, 2018. *ABRA Show Cause File No. 18-251-00095*, Notice of Status Hearing and Show Cause Hearing, 2 (Nov. 27, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2327 18th Street, N.W., Washington, D.C., on November 30, 2018. *ABRA Show Cause File No. 18-251-00095*, Service Form. The Second 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.

Charge I: [In violation of D.C. Official Code § 25-823(a)(6),] [y]ou violated the terms of the Board Order dated August 16, 2017[,] by failing to maintain a reimbursable detail [during the period of March 1, 2018, to March 25, 2018]

Procedural Background Case No. 18-251-00084

This case also arises from a third Notice of Status Hearing and Show Cause Hearing (Third Notice), which the Board executed on November 27, 2018. *ABRA Show Cause File No. 18-251-00084*, Notice of Status Hearing and Show Cause Hearing, 2 (Nov. 27, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2327 18th Street, N.W., Washington, D.C., on November 30, 2018. *ABRA Show Cause File No. 18-251-00084*, Service Form. The Third 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.

Charge I: [In violation of D.C. Official Code § 25-823(a)(6),] [y]ou violated the terms of the Board Order dated August 16, 2017[,] by failing to maintain a reimbursable detail [during the period of March 30, 2018, to April 13, 2018]

Procedural Background Case No. 18-251-00122

Finally, this case also arises from a fourth Notice of Status Hearing and Show Cause Hearing (Fourth Notice), which the Board executed on October 2, 2018. *ABRA Show Cause File No. 18-251-00122*, Notice of Status Hearing and Show Cause Hearing, 2 (Oct. 2, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2327 18th Street, N.W., Washington, D.C., on October 4, 2018. *ABRA Show Cause File No. 18-251-00122*, Service Form. The Fourth 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: [In violation of D.C. Official Code § 25-823(a)(6),] [y]ou violated the terms of the Board Order dated August 16, 2017[,] by failing to maintain a reimbursable detail [during the period of April 27, 2018, to April 29, 2018]

Notice of Status Hearing and Show Cause Hearing, 2-3.

Both the Government and Respondent appeared at the Show Cause Status Hearing for the above mentioned cases on November 7, 2018, except for status hearing in Case Numbers 18-251-00095 and 18-251-00084, which occurred on January 16, 2019 for which the Respondent failed to appear. The parties proceeded to a consolidated Show Cause Hearing and argued their respective cases on March 6, 2019. As part of the case, the parties stipulated to various facts during the hearing. *Transcript (Tr.)*, March 6, 2019 at 12.

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:

I. Background and Board Order

1. The Respondent holds a Retailer's Class CT License at 2327 18th Street, N.W., Washington, D.C. *ABRA License No. 74503*. On August 16, 2017, in Board Order No. 2017-439, the Board issued an order requiring the Respondent to "hire at least two officers with the

MPD Reimbursable Detail for a minimum of four hours and at least one hour after the close of business between Thursday and Sunday” *In re Green Island Heaven & Hell, Inc., t/a Green Island Café/Heaven & Hell*, Case No. 16-PRO-00116, Board Order No. 2017-439, 8 (D.C.A.B.C.B. Aug. 16, 2017).

II. Case No. 18-CMP-00051

2. The Metropolitan Police Department (MPD) suspended the Respondent from the reimbursable detail program between February 10, 2018, and February 11, 2018. *Stipulation 18*. ABRA Investigator Felicia Dantzler visited the Respondent’s establishment on February 10, 2018, at around 12:07 a.m. *Stipulation 13*. While at the establishment, which was open and operating, she observed no Metropolitan Police Department (MPD) reimbursable detail present. *Stipulation 14*. She further observed no detail at the establishment, which was open and operating, when she returned on February 11, 2018, at approximately 2:30 a.m. *Stipulation 16*.

III. Case No. 18-CMP-00095

3. MPD suspended the Respondent from the reimbursable detail program between March 2, and March 25, 2018. *Stipulation 29*. On March 2, 2018, MPD Officers McCall Tyler and Dinko Residovic observed the Respondent’s establishment open and operating without the detail present. *Stipulations 19-20*. Various officers observed the establishment operate without the detail on March 3, 2018, March 9, 2018, March 10, 2018, March 15, 2018, March 16, 2018, March 23, 2018, March 24, 2018, and March 25, 2018. *Stipulations 21-27*.

IV. Case No. 18-CMP-00084

4. MPD suspended the Respondent from the reimbursable detail program between March 30, 2018, and April 13, 2018. *Stipulation 37*. Various officers observed the establishment operate without the detail on March 30, 2018, March 31, 2018, April 5, 2018, April 6, 2018, April 7, 2018, April 12, 2018, and April 13, 2018. *Stipulations 30-36*.

V. Case No. 18-CMP-00122

5. MPD suspended the Respondent from the reimbursable detail program between April 27, 2019, and April 29, 2019. *Stipulation 40*. Various officers observed the establishment operate without the detail on April 27, 2018, and April 29, 2018. *Stipulation 38-39*.

VI. Mehari Woldemariam

6. Mehari Woldemariam owns Heaven and Hell. *Id.* at 108. He indicated that he previously disputed Invoice No. 5453 issued by MPD because he believed that he had overpaid for the detail. *Id.* at 112-13. He admitted that he received a delinquency notice from MPD in January 2018 related to the detail program. *Id.* at 113-14. He indicated that he believed he had overpaid, and complained that officers were not showing up, an insufficient number of officers were showing up, or officers were leaving early while he was using the program. *Id.* at 115, 121. The

record does not contain evidence that the Respondent paid Invoice 5403 issued by MPD. *Id.* at 123-24.

CONCLUSIONS OF LAW

7. 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

8. 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. The Respondent Failed to Comply with the Board Order on Multiple Occassions in Violation of D.C. Official Code § 25-823(a)(6).

9. The Board sustains the four charges brought by the Government. Under § 25-823(a)(6), it is a violation for the Respondent to fail to follow a Board Order. D.C. Official Code § 25-823(a)(6). Under Board Order No. 2017-439, the Respondent was required to hire at least two officers with the MPD Reimbursable Detail between Thursday and Sunday for the time period set out by the Board in its Order. *Supra*, at ¶ 1. In this case, it is not contested that the Respondent was open and operating without hiring the required reimbursable detail during the four time periods cited by the Government in the notices. *Supra*, at ¶¶ 2-6.

10. The Board notes that it considered the parties' arguments regarding the payment dispute between MPD and the Respondent. *Supra*, at ¶ 6. Nevertheless, as noted previously,

this is irrelevant to the issue of whether the Respondent complied with the Board's Order. The conditions contained in the Order had no carve out for fee disputes or suspensions from the programs. In this case, the Respondent had adequate notice that he owed money and was suspended from the program during the dates at issue Nothing prevented the Respondent from paying the money and maintaining good standing in the program, while at the same time requesting a refund or credit for any overpayment. Nothing prevented the Respondent from ceasing operations on the relevant days in order to maintain compliance with the Order. And nothing prevented the Respondent from seeking relief from the condition before the violation occurred. Instead, by choosing to operate in violation of the Board's Order, the Respondent assumed the risk of being charged with a violation of § 25-823(a)(6). Consequently, the Board finds its determination of liability entirely justified and appropriate.

In re Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, Case No. 18-CMP-00050, Board Order No. 2019-092, ¶ 13 (D.C.A.B.C.B. Feb. 27, 2019).

III. Penalty

11. The present violations constitutes third level primary tier violations based on the Respondent's history of violations. 23 DCMR §§ 800, 801.1(b) (West Supp. 2019). Nevertheless, as a number of violations are excluded from consideration under the regulations at this time, the present matter is fined as a second level offense, which has a fine range of \$2,000 to \$4,000. 23 DCMR § 808.5 (West Supp. 2019).

ORDER

Therefore, the Board, on this 10th day of April 2019, finds Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, guilty of violating D.C. Official Code § 25-823(a)(6). The Board imposes the following penalty on Green Island Café/Heaven & Hell:

- (1) For each charge, Green Island Café/Heaven & Hell shall pay a fine of \$2,000, which shall result in a total fine of \$8,000.


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 violations found by the Board in this Order shall be deemed primary tier violations.

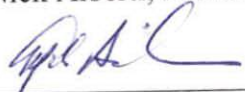
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

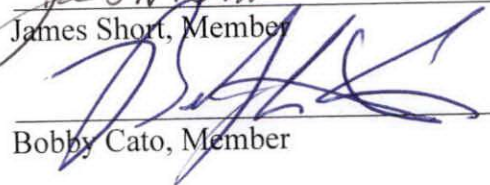
District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


James Short, Member


Bobby Cato, Member

Rema Wahabzadah, 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).