

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

In the Matter of:)	
)	
Family, LLC)	Case No.: 20-PRO-00024
t/a MK Lounge & Restaurant)	License No.: ABRA-88787
)	Order No.: 2022-012
Application to Renew a)	
Retailer's Class CT License)	
)	
at premises)	
1930 9th Street, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: Family, LLC, t/a MK Lounge & Restaurant, Applicant

Richard Bianco, Counsel, on behalf of the Applicant

Evan Schlom, Abutting Property Owner, Protestant

Pierson Stoecklein, Westminster Neighborhood Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER AMENDING BOARD ORDER NO. 2021-297

In Board Order No. 2021-297, issued on May 26, 2021, the Alcoholic Beverage Control Board (Board) approved the Application to Renew a Retailer's Class CT License filed by Family, LLC, t/a MK Lounge & Restaurant (hereinafter "Applicant" or "MK Lounge") with conditions. The first condition provided that

1. The Applicant shall not allow or permit smoking or hookah at the establishment until it applies for, obtains, and submits to the Board, a smoking exemption issued by the District of Columbia Department of Health.

In re Family, LLC, t/a MK Lounge & Restaurant, Case No. 20-PRO-00024, Board Order No. 2021-297, 11 (D.C.A.B.C.B. May 26, 2021).

The Applicant filed an appeal objecting to the imposition of this specific condition and the matter was remanded to the Board for additional consideration. *Family LLC t/a MK Lounge & Restaurant v. D.C. Alcoholic Beverage Control Board*, Case No. 21-AA-439 at 1 (Jan. 10, 2022). In order to resolve the appeal, the Board strikes the condition and the justification for the condition provided in paragraph 43 of the Order. 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 order to resolve this legal issue, the Board replaces the condition with an advisory that changes the legal posture of the decision but has the same practical effect. Specifically, instead of prosecution under § 25-823(a)(6) for violating a Board condition, as previously contemplated, any future potential hookah smoking could be prosecuted by the Department of Health under its own laws and regulations or through the Board under D.C. Official Code §§ 25-823(a)(1) and (a)(2).¹ The Board further notes that evidence of prior tobacco smoking and hookah use at the establishment in this case do not merit finding the Application inappropriate or merit the imposition of conditions where there exist clear enforcement remedies against the Applicant and there is no evidence such behavior actively or immediately disturbs the surrounding community.²

ORDER

Therefore, the Board, on this 12th day of January 2022, hereby **STRIKES** paragraph 43 and Condition 1 in Board Order No. 2021-297 rendering them inoperative. The Board further **AMENDS** Board Order No. 2021-297 by adding the following paragraph to the Order section:

IT IS FURTHER ORDERED that this Order shall be forwarded to the District of Columbia Department of Health with a recommendation that the Applicant be investigated for compliance with the District's tobacco laws. The Board advises the Applicant that the failure to comply with the District's tobacco laws in the future may also result in a violation of the District's alcohol laws and prosecution under D.C. Official Code sec. 25-823(a)(1) and 25-823(a)(2). *Club 99, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 457 A.2d 773, 774 (D.C. 1982) (“The Board's authority to sanction a liquor licensee for violations of the D.C. Code is by statute provided for directly.”). The parties are further advised that the agency retains

¹ Information regarding the District's tobacco laws and the smoking waiver process may be found at D.C. Official Code § 7-741.05 and 20 DCMR § 2106.

² Unlike other types of disturbances that may immediately impact or disturb the surrounding community or otherwise support a finding of inappropriateness, such as those related to noise, rowdiness, public urination, interfering with residential parking, etc.

the discretion to refer future violations of the District's tobacco laws to the Department of Health rather than seek direct enforcement under Title 25 of the District of Columbia Official Code.

IT IS FURTHER ORDERED that all other terms and conditions of Board No. 2021-297 shall remain in full force and effect and remain enforceable against the Applicant.

The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb969d5f09e46730003d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
Bobby Cato
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Bobby Cato, Member

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Rafi Crockett, Member

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Jeni Hansen, Member

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Edward Grandis, Member
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Edward S. Grandis, Member

I dissent from the position taken by the majority of the Board and would not renew the license in this case. My dissent is based on the testimony given during this hearing regarding violations of the Mayor's emergency orders relating to curbing the spread of COVID-19, illegally permitting the use of hookah at the establishment, and creating conditions that negatively impact the peace, order, and quiet of the community.

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f820d6ac6d1b3325d2049ec

James Short, 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. 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 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).