

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

In the Matter of:)	
)	
Ms. Hana, LLC)	Case No.: 21-CMP-00011
t/a Nana Ethiopian Restaurant)	License No.: ABRA-100407
(formerly Mignot))	Order No.: 2022-035
)	
Holder of a)	
Retailer’s Class CR License)	
)	
at premises)	
4815 Georgia Avenue, N.W.)	
Washington, D.C. 20011)	

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

ALSO PRESENT: Ms. Hana, LLC, t/a Nana Ethiopian Restaurant, Respondent

Rbeka Asefa, Owner, on behalf of the Respondent

James Jordan, 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 Ms. Hana, LLC, t/a Nana Ethiopian Restaurant, (hereinafter “Respondent” or “Nana Ethiopian Restaurant”) violated various regulations implemented to curb the spread of the coronavirus disease and illegally expanded its operations to another floor on February 5, 2021. The Respondent is advised to file

an application for a substantial change and to seek the adjustment of its Certificate of Occupancy before using the basement of the premises in the future.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 6, 2021. *ABRA Show Cause File No. 21-CMP-00011*, Notice of Status Hearing and Show Cause Hearing, 2 (Aug. 6, 2021). 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 February 5, 2021,] [y]ou permitted patrons in your establishment not to wear masks, [had] occupancy in excess of [the] 25% limit, a lack of social distancing among patrons, consumption of alcoholic beverages by patrons while standing, less than six feet between seated parties, and you allowed the consumption of alcoholic beverages after 10:00 p.m., in violation of 23 DCMR § 810.2 (Jan 13, 2021)

Charge II: [On February 5, 2021,] [y]ou failed to obtain ABC Board approval for the expansion of your operation to another floor, in violation of D.C. Code § 25-762(b)(3)

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

Only the Government appeared at the Show Cause Status Hearing on October 10, 2021. The parties proceeded to a Show Cause Hearing and argued their respective cases on December 1, 2021.

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

1. Nana Ethiopian Restaurant holds a Retailer's Class CR License at 4815 Georgia Avenue, N.W., Washington, D.C. *ABRA License No. ABRA-100407*. ABRA Investigator Mark Ruiz was in the vicinity of the establishment around 12:30 a.m. *Transcript (Tr)*, December 1, 2021 at 10-12. He believed the establishment was illegally operating past approved hours based on vehicle activity in front of the premises. *Id.* at 10.

2. After he was joined by a second investigator, the two investigators approached the premises. *Id.* at 11. At first, no one inside responded to Investigator Ruiz knocking on the door.

Id. at 10-11. Nevertheless, he approached a person that opened the door while someone was trying to get out of the premises and was let in. *Id.* at 11.

3. Inside the premises, the investigators went downstairs to the basement. *Id.* at 11. In the basement, they observed multiple tables with individuals sitting at the tables that were spaced approximately three feet apart. *Id.* at 11-12. Furthermore, he observed red cups with beer on the tables. *Id.* at 11. He also observed that people were playing cards and were unmasked at the tables. *Id.* at 12. The establishment’s Certificate of Occupancy indicates that it is only authorized to use the first floor. *Id.* at 15. The Board notes that the owner testified but was not present at the establishment during the incident. *Id.* at 21.

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. 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 Violated Various Regulations Implemented to Curb the Spread of COVID-19.

6. Under ABRA’s regulations, in effect at the time of the incident, the Respondent was obligated to comply with the following regulations:

810.2 After the expiration of the prohibition of on-premises sales, service and consumption indoors under § 810.1, an ABC-licensed establishment may resume on-premises alcohol sales, service and consumption indoors if the establishment:

(a) Limits indoor capacity to twenty-five percent (25%) of the lowest indoor occupancy load or seating capacity on its certificate of occupancy, excluding employees and outdoor seating;

(b) Ceases indoor on-premises alcohol sales, service, and consumption at 10:00 p.m. each day, and ceases operations at 12:00 Midnight each day, unless otherwise restricted by settlement agreement;

810.4 A licensee who holds an on-premises retailer license . . . , may sell, serve and allow the consumption of beer, wine, or spirits indoors or on a Board-approved outdoor

sidewalk café or summer garden, including an existing rooftop patio; Provided, that the licensee shall:

(a) Place indoor or outdoor tables on the sidewalk café or summer garden so that separate parties are at least six feet (6 ft.) apart from one another;

(b) Ensure for non-movable communal tables that parties are seated at least six feet (6 ft.) apart from one another and that the communal table is marked with six-foot (6 ft.) divisions, such as with tape or signage

23 DCMR § 810.2, (a)-(b), 810.4 (a), (c) (West Supp. 2022) (citing emergency order effective January 13, 2021, until March 21, 2021). In this case, the Respondent was observed permitting the possession of open containers after 10:00 p.m. and failed to have tables adequately spaced apart. *Supra*, at ¶¶ 2-3. Therefore, the Board sustains Charge I.

III. The Respondent Illegally Expanded its Operations to Another Floor.

7. Furthermore, under D.C. Official Code § 25-762,

(a) Before a licensee may make a change in the interior or exterior, or a change in format, of any licensed establishment, which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board in accordance with § 25-404.

(b) In determining whether the proposed changes are substantial, the Board shall consider whether they are potentially of concern to the residents of the area surrounding the establishment, including changes which would:

(3) Expand the operation of the licensed establishment to another floor, roof, or deck

D.C. Code § 25-762, (b)(3). In this case, the Respondent expanded its operations to the basement without approval by permitting patrons to use the unapproved space. *Supra*, at ¶ 3. Therefore, the Board sustains Charge II.

IV. Penalty

8. Based on the violation of § 810, the Board imposes a penalty of \$1,000 for the offense. D.C. Code § 25-823(f). Furthermore, because the substantial change violation constitutes the Respondent's first primary offense, the Board imposes a penalty of \$2,000 for Charge II. 23 DCMR § 800 (West Supp. 2022). The Board also considered the Respondent's request to dismiss the case or issue a warning; however, a warning or dismissal is not merited where the expansion to an additional floor constitutes a public safety issue.

ORDER

Therefore, the Board, on this 2nd day of February 2022, finds Ms. Hana, LLC, t/a Nana Ethiopian Restaurant, guilty of violating D.C. Code § 25-762, 23 DCMR § 810.2, and 23 DCMR § 810.4. The Board imposes the following penalty on Nana Ethiopian Restaurant:

- (1) For the violation described in Charge I, Nana Ethiopian Restaurant shall pay a fine of \$1,000.
- (2) For the violation described in Charge II, Nana Ethiopian Restaurant shall pay a fine of \$2,000.

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 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: ac430b06c9d5f0b64c730093d1dccc8

Donovan Anderson, Chairperson

James Short, Member

eSigned via SeamlessDocs.com
James Short
Key: 286d3fca1b6146d7f4b75bd7917d2bd

Bobby Cato, Member

eSigned via SeamlessDocs.com
Rafi Allen Crockett, Member
Key: 1501c924e1f6a44b4b5bdc1281e7

Rafi Crockett, Member

Jeni Hansen, Member

I concur with the decision of the Board to find the Respondent liable for Charge I. Nevertheless, I dissent from the majority's decision to find the Respondent liable for Charge II.

eSigned via SeamlessDocs.com
Edward Grandis, Member
Key: 5027bda7f9f0040ec14adeb52541ce5

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).

