

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

_____)		
Micherie, LLC)	Case Number:	N/A
t/a Cheerz)	License Number:	095178
Holder of a)	Order Number:	2014-279
Retailer's Class CR License)		
at premises)		
7303 Georgia Avenue, N.W.)		
Washington, D.C. 20012)		
_____)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Micherie, LLC, t/a Cheerz (Licensee)

Advisory Neighborhood Commission (ANC) 4A

Alpha McPherson, President, GFEDDS

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**NOTICE OF INTENT TO NULLIFY AND VOID SETTLEMENT AGREEMENT AND
STAY OF ENFORCEMENT OF SETTLEMENT AGREEMENT**

INTRODUCTION

Micherie, LLC, t/a Cheerz (Licensee) filed a Petition to Terminate its Settlement Agreement (Petition) related to the Settlement Agreement attached to the Licensee's Retailer's Class CR License. The Settlement Agreement was executed by the Board on November 1, 2000. In re Carib Food Corporation, t/a Silver Sands Restaurant, Case No. 6015-00073P, 1-3 (D.C.A.B.C.B. Nov. 1, 2000) [In re Carib].

Upon review of the Petition and the Licensee’s Settlement Agreement, the Board finds language in the Settlement Agreement which leads the Board to conclude that the Agreement has terminated by mutual agreement of the parties.¹

Consequently, unless the parties to the Agreement can show evidence to the contrary, the Board announces its intent to declare the Agreement null and void in accordance with the mutual agreement of the parties. The factual and legal basis relied upon by the Board is described below:

FINDINGS OF FACT

1. The Retailer’s Class CR License (ABRA License No. 095178) is currently held by Micherie, LLC, t/a Cheerz (Licensee). This license was previously held by Carib Food Corporation, t/a Silver Sands Restaurant (Silver Sands). The Settlement Agreement was previously approved by the Board on November 1, 2000.
2. The Licensee has no connection to Silver Sands other than currently possessing its license. The Licensee was not the initial applicant for the Silver Sands License, has no connection to Dr. Wesley Gordon, and does not own or operate a business established by the initial applicant or Dr. Wesley Gordon.
3. The “Interim Off-Street Parking Agreement” portion of the Agreement states, “This Interim Off-street Parking Agreement expires one year from date Interim Off-street Parking Agreement was signed or at anytime when it’s determined Carib Food Corp. is not in full compliance. In re Carib, at Interim Off-Street Parking Agreement, ¶ 4. Because the Agreement was executed on November 1, 2000, it is clear that this portion of the Agreement is no longer in effect.
4. The “Voluntary Agreement” portion of the Agreement states in paragraph 22 that

The term of this Agreement shall be the entire period during which Applicant, Dr. Wesley Gordon, or any company established by Applicant or Dr. Wesley Gordon, holds any ABC license for any business at the Premises.

Id. at Voluntary Agreement, ¶ 22.

5. The Agreement states that notice in accordance with the Agreement may be provided solely to Alpha McPherson with GFEDDS. Id. at § 21.

CONCLUSIONS OF LAW

6. Under § 25-446(d)(1), the parties to an agreement may choose to have the agreement terminate under its own terms and not operate for the life of the license. D.C. Official Code § 25-446(d)(1) (“Unless a shorter term is agreed upon by the parties”)

¹ If this is the case, this means that the Petition filed by the Licensee is moot, because the agreement no longer exists.

7. Here, the interim-parking portion of the Agreement expired within one year; therefore, because one year has elapsed, this portion of the Agreement is no longer in force. Supra, at ¶ 3.

8. Additionally, the language of paragraph 22, as interpreted by the Board, creates an expiration provision. Under its terms, the Agreement only applies to the initial applicant for the license, Dr. Wesley Gordon, and any company created by those two entities. Supra, at ¶ 4. Consequently, because the Licensee has no relation to any entities or individuals listed in paragraph 22, the Agreement is no longer in effect.

ORDER

Therefore, the Board, on this 16th day of July 2014, finds the Settlement Agreement attached to the Retailer's Class CR License held by Micherie, LLC, t/a Cheerz (Licensee) is null and void by mutual agreement of the parties. **This Order shall be deemed final if no party to the Agreement files a written objection with the Board within thirty (30) days of receipt of this Order.** It is the responsibility of the Licensee, to file a motion with the Board requesting a final order confirming this result, should no objection be filed.

IT IS FURTHER ORDERED, because the Agreement appears to be no longer in effect, that the Agreement attached to the license shall be **STAYED** pending the resolution of the issues raised by the Board in this Order. The Licensee shall not be held in violation of any action taken in violation of the Settlement Agreement while this stay is in effect. This stay shall only be lifted by a future Order of the Board.

IT IS FURTHER ORDERED that the petition to terminate filed by the Licensee shall be **STAYED** pending the resolution of the issues raised by the Board in this Order.

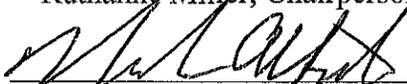
IT IS FURTHER ORDERED that if any party to the Agreement files an objection, the Board will hold a contested fact finding hearing to resolve the competing claims of the parties.

ABRA shall serve copies of this Agreement on the Licensee, ANC 4A, and Alpha McPherson, President, GFEDDS, located at 715 Georgia Avenue, N.W., Washington, D.C. 20012 in accordance with 23 DCMR § 1703.

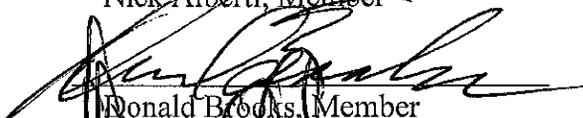
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



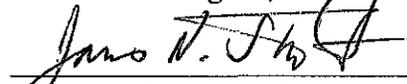
Herman Jones, Member



Mike Silverstein, Member



Héctor Rodríguez, Member



James Short, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 23 DCMR § 1719.1 (2008) 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).