

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

Micherie, LLC)	Case Number:	N/A
t/a Cheerz)	License Number:	095178
)	Order Number:	2014-392
Holder of a)		
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

ORDER TERMINATING SETTLEMENT AGREEMENT

INTRODUCTION¹

In Board Order No. 2014-279, the Alcoholic Beverage Control Board (Board) informed the parties to the settlement agreement approved in *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) that the terms of the agreement rendered the agreement null and void. The Board is persuaded that the terms of the agreement render it no longer in effect; therefore, the Board terminates the agreement.

¹ This Order was written before the issuance of the transcript in this matter. The Board did not hear any argument or receive any evidence that persuades the Board that its prior Order was incorrect.

Procedural Background

Micherie, LLC, t/a Cheerz (Licensee) filed a Petition to Terminate its Settlement Agreement (Petition) related to the settlement agreements 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 found language in the agreement, which led the Board to conclude that the agreement has terminated by mutual agreement of the parties.² The Board held a hearing with the parties to the agreement on October 1, 2014. Upon consideration the arguments made at the hearing, the Board affirms its decision to terminate the settlement agreement.

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. 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 was not the initial applicant for the Silver Sands License, was not formed by Dr. Wesley Gordon, and does not own or operate a business established by the initial applicant or Dr. Wesley Gordon. Dr. Wesley Gordon also does not serve as a member of the Licensee's limited liability company. The Board is aware that Dr. Wesley Gordon is deceased.
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.

² If this is the case, this means that the Petition filed by the Licensee is moot, because the agreement no longer exists.

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”)

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 as identified in the settlement agreement, the agreement is no longer in effect and must be terminated pursuant to § 25-446(d)(1).

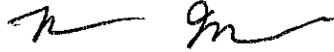
ORDER

Therefore, the Board, on this 8th day of October 2014, finds the settlement agreement attached to the Retailer’s Class CR License held by Micherie, LLC, t/a Cheerz (Licensee) has **TERMINATED** under the terms of the agreement in accordance with § 25-446(d)(1).

IT IS FURTHER ORDERED that the Petition to Terminate its Settlement Agreement is rendered moot by this Order.

ABRA shall provide a copy of this Order to the Licensee, ANC 4A, and Alpha McPherson.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



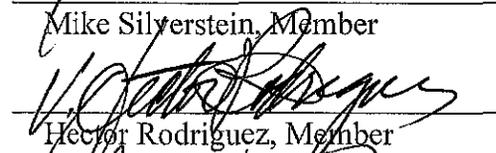
Donald Brooks, Member



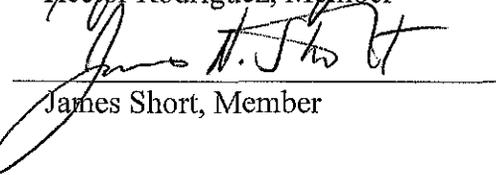
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, 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).