

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

In the Matter of:)	
)	
Justin's Café, LLC)	License Number: 083690
t/a Justin's Café)	Case Number: 12-CMP-00558(a)
)	Order Number: 2013-380
)	
Holder of a Retailer's Class CR License)	
at premises)	
1025 First Street, SE)	
Washington, D.C. 20003)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member

ALSO PRESENT: Christine Gephardt, Assistant Attorney General, on behalf of the
District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

PROCEDURAL BACKGROUND

On April 23, 2013, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated April 22, 2013, on Justin's Café, LLC t/a Justin's Cafe (Respondent), at premises 1025 First Street, SE, Washington, DC 20003, charging the Respondent with the following violations:

Charge I: Failure to Obtain Approval for a Substantial Change in Operation (Increase in Occupancy) (D.C. Official Code § 25-762(b)(1)). The dates of these alleged incidents were September 14-15, 2012.

Charge II: Violation of Settlement Agreement (D.C. Official Code § 25-446). The dates of these alleged incidents were September 14-15, 2012.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and all documents comprising the Board's official file, makes the following findings:

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated April 22, 2013. (See *Alcoholic Beverage Regulation Administration Show Cause File Number 12-CMP-00558(a)*). The Respondent holds a Retailer's Class CR License and is located at 1025 First Street, SE, Washington, DC 20003.
2. The Show Cause Hearing in this matter was held July 17, 2013. The Respondent was charged with two violations: (i) failure to obtain Board approval for a substantial change in operation, in violation of D.C. Official Code § 25-762(b)(1); and (ii) failure to abide by its Settlement Agreement, in violation of D.C. Official Code § 25-446).
3. The Government presented its case through the testimony of Investigator Felicia Martin. *Transcript, 5/1/13* at 6. On September 14, 2012, in response to two e-mails and photographs received from a citizen complaining about abuses of the establishment's approved sidewalk café, including occupancy exceeding the approved limit, patrons consuming alcoholic beverages outside of the sidewalk café on the public space, beer kegs on the public space and a "Block Party" atmosphere, ABRA Investigator Martin visited the establishment to verify the complaint. *Tr.* at 9-14. According to Investigator Martin, the Respondent's Supplement to Voluntary Agreement with Advisory Neighborhood Commission 6D, dated June 14, 2010, limits the capacity of the sidewalk café area to four tables of four seats each, for a total of 16 seats, with allowance for additional standees, primarily to smoke. *Tr.* at 10, 26-27. *Govt. Ex.* 6. Investigator Martin found, consistent with the complainant's photographs, two trash cans located approximately 50 feet outside of the boundary of the sidewalk café and in the public right of way, both filled with ice and containing a keg of beer. *Tr.* at 15-18. Investigator Martin did not observe the complained about overcrowding on the sidewalk café when she arrived at the establishment. *Tr.* at 19. However, in discussing the complaint with Joe Gonzalez, the ABC Manager on duty at the establishment, Investigator Martin stated that Mr. Gonzalez conceded to her that the sidewalk café had been overcrowded during the time that evening when he was monitoring the establishment. *Tr.* at 23. This is borne out by one of the photographs provided by the complainant to Investigator Martin, which shows a substantially overcrowded sidewalk café. *Tr.* at 9-11; *Govt. Ex.* 1. Moreover, contrary to the Settlement Agreement requirement, Investigator Martin observed that the outdoor furniture in the sidewalk café area consisted of two picnic-style tables with benches that provided for seating at each table of between four and six patrons. *Tr.* at 27.

4. Investigator Martin returned to the establishment the following evening, September 15, 2002, to again monitor compliance with the Settlement Agreement and ABRA laws and regulations. *Tr.* at 28-29. She noted that the same outdoor furniture was in place as the previous evening and that, when she was leaving the establishment, occupancy of the outdoor sidewalk café was twenty-one seated patrons and seven standing patrons, for a total occupancy of twenty-eight patrons. *Tr.* at 30.

5. The Respondent did not appear at the hearing, nor did Respondent send an agent to testify on Respondent's behalf. *Tr.* at 4-5. As noted above, Respondent acknowledged receipt of the Notice of Status and Show Cause Hearings on April 23, 2013.

CONCLUSIONS OF LAW

The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Official Code § 25-830 and 23 DCMR § 800 *et seq.*

Charge I: Failure to Obtain Approval for a Substantial Change in Operation

The Board finds that, as to Charge I, there is sufficient credible evidence to establish that the Respondent failed to obtain the Board's approval for a change in occupancy for its sidewalk café, in violation of D.C. Official Code § 25-762(b)(1). The testimony and evidence provided by the Government clearly detail that the occupancy of the establishment's sidewalk café on the dates in question exceeded the occupancy limits of Respondent's license. Respondent did not appear at the Show Cause Hearing to refute any of the Government's testimony or evidence with regard to this charge.

The Government has requested that Respondent be fined \$2,000 for this violation. The Board concurs with the Government and finds that this violation warrants a penalty in the amount of \$2,000. This is the third time that Respondent has either been cited or found liable for the same violation within a one-year period. *See, e.g., Case No. 12-CMP-00233, Order on Offer in Compromise, 1/16/13; Case No. 12-CMP 00558.* Given Respondent's repeated violation of this statutory requirement, the Board also imposes a five-day suspension on Respondent, with two days to be served and the other three days stayed for one year, provided that Respondent does not violate any provision of ABRA laws and regulations during that time.

Charge II: Violation of Settlement Agreement

The Board finds that, as to Charge II, there is sufficient credible evidence to establish that the Respondent failed to abide by its Settlement Agreement, in violation of D.C. Official Code § 25-446). The testimony and evidence provided by the Government clearly detail that the occupancy of the establishment's sidewalk café on the dates in

question exceeded the occupancy limits that Respondent agreed to abide by in the Supplement to Voluntary Agreement with Advisory Neighborhood Commission 6B dated June 14, 2010 and approved by the Board. *See, Board Order No. 2011-095, 1/26/11.* Again, Respondent failed to appear at the Show Cause Hearing to refute any of the Government's testimony or evidence with regard to this charge.

Settlement Agreements are approved by the Board and become part of an establishment's license. They document an agreement between an establishment and the community in which they are located and define how an establishment will operate in harmony with its surrounding neighborhood. Moreover, they are, in essence, contracts which set forth the terms and conditions by which the neighborhood agrees to accept an establishment as an addition to the community. As such, an establishment cannot simply ignore the terms and conditions placed upon its operations in a Settlement Agreement. It must first work with the parties to the agreement if it determines a need to operate differently from that envisioned by the Settlement Agreement.

The Government has requested that Respondent be fined \$750 for this violation. The Board concurs with the Government and finds that this violation warrants a penalty in the amount of \$750. This is the fourth time that Respondent has either been cited or found liable for the same violation within a one-year period. *See, e.g., Case No. Case #12-CMP-00215(a), Order on Offer in Compromise, 21/6/13; Case No. 12-CMP 00558.* The Board strongly encourages Respondent to either abide by its Settlement Agreement or, if Respondent feels that the limitations in the Settlement Agreement are not workable, work with the ANC and the surrounding neighborhood to amend the Settlement Agreement

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 11th day of September, 2013, finds that the Respondent, Justin's Café, LLC t/a Justin's Café, holder of a Retailer's Class CR License (i) failed to obtain Board approval for a substantial change in its sidewalk café occupancy, in violation of D.C. Official Code § 25-762(b)(1); and (ii) did not abide by its Settlement Agreement, in violation of D.C. Official Code § 25-446). The Board hereby **ORDERS** that:

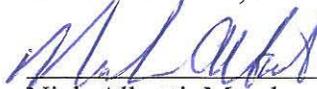
1. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$2,000 for the violation of D.C. Official Code § 762(b)(1).
2. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$750 for the violation of D.C. Official Code § 25-446.
3. Respondent's license is suspended for five (5) days for its violation of D.C. Official Code § 762(b)(1). Two (2) days of the suspension shall be served concurrently on October 18 and 19, 2013. Three (3) days of the suspension are stayed for one year, provided that Respondent does not violate any provision of ABRA laws and regulations during that time.

The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Government and to the Respondent.

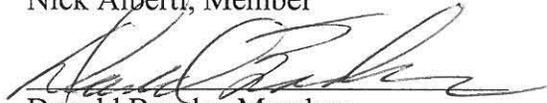
District of Columbia
Alcoholic Beverage Control Board



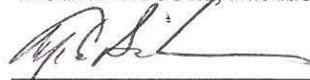
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member

Under 23 DCMR § 1719.1, 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, Suite 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, 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 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).