

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

_____)	
In the Matter of:)	
_____)	
Morton's of Chicago/)	License Number: 24326
Washington Square, Inc.)	Case Number: 09-CMP-00157
t/a Morton's of Chicago)	Order No.: 2010-462
_____)	
Holder of a Retailer's Class CR License)	
at premises)	
1050 Connecticut Ave., N.W.)	
Washington, D.C. 20036)	
_____)	

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER DENYING MOTION FOR RECONSIDERATION

On July 7, 2010, the Alcoholic Beverage Control Board ("Board") found the Respondent, Morton's of Chicago/Washington Square, Inc., t/a Morton's of Chicago, in violation of 23 DCMR § 705.10 (2008) in Board Order No. 2010-377. The Board ordered the Respondent to pay a \$1,500.00 fine within thirty (30) days from the date Board Order No. 2010-377 was issued. Pertinent to this decision, in Board Order No. 2010-377, the Board stated in paragraph 19 that:

On a final note, the Board notes that 23 DCMR § 705.10 is not listed in the schedule of penalties found in 23 DCMR. § 800, *et seq.* Therefore, a violation of § 705.10 is a primary tier violation. D.C. Code § 25-830(f) (2009). Board Order No. 2010-377.

Based on the Board's interpretation of D.C. Code § 25-830(f), the Respondent has submitted a Motion for Reconsideration. The Respondent's motion argues that a violation of 23 DCMR § 705.10 is not a primary tier violation under D.C. Code § 25-830(f) and that the Board is only permitted to fine the Respondent for such a violation. The Respondent also claims that under D.C. Code § 25-830(e)(3), the D.C. Council intended that the Board

issue a warning for a first time violation of Title 23 of the Municipal Regulations. The Government opposed the Respondent's Motion for Reconsideration in a written brief.

The Board rejects the Respondent's reasoning that a violation of 23 DCMR § 705.10 cannot be a primary tier violation. Under D.C. Code § 25-830(f), the "Board may fine for a violation not listed on the schedule consistent with the primary tier violation penalties set forth in subsection (c)(1) of this section." The Board notes that "[t]he words of [a] statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 753 (D.C. 1983) (quoting Davis v. United States, 397 A.2d 951, 956 (D.C. 1979)). As a result, so long as the Board's interpretation is reasonable, the Board may use its discretion to interpret Title 25 of the District of Columbia Code. See Roberts v. Police & Firemen's Retirement & Relief Board, 412 A.2d 47, 50 (D.C. 1980).

The Board disagrees with the Respondent's interpretation of § 25-830(f). The only way the Board may fine a licensee "consistent with" the primary tier schedule is if the violation is considered a primary tier violation. The phrase "consistent with" means "agreeing or accordant." consistent, Dictionary.com, <http://dictionary.reference.com/browse/consistent> (last visited September 9, 2010). As such, if the Board followed the Respondent's logic and does not consider a violation of § 705.10 a primary tier violation, then the fine would not agree or be in accordance with the primary tier violations outlined in § 25-830(c). As such, although other interpretations may be plausible, the Board does not find other interpretations to be reasonable. Therefore, the Respondent's violation must be considered a primary tier violation.

The Board also rejects the Respondent's arguments that it should be issued a warning for a first time violation of Title 23 of the District of Columbia Municipal Regulations. The Respondent's brief cites D.C. Code § 25-830(e)(3) generally without citing any specific portion of the statute. Furthermore, the Respondent makes vague allusions to the D.C. Council's intent to require warnings for first time violations without citing any specific legislative history. Lastly, the Respondent claims that the schedule of penalties in § 25-830(a) only pertains to violations of Title 25 of the District of Columbia Code because the statute reads: "Within 90 days after May 3, 2001, the Board shall submit proposed regulations setting forth a schedule of civil penalties ("schedule") for violations of this title." D.C. Code § 25-830(a) (2009).

The plain language of D.C. Code § 25-830(e)(3) does not support the Respondent's arguments. D.C. Code § 25-830(e)(3) merely instructs the Board to recommend to the D.C. Council which violations should require a warning for the first violation committed by a Licensee and has no relation to the present matter. § 25-830(e)(3). As such, whether to issue a warning is left to the Board's discretion.

Finally, the Board rejects the Respondent's arguments that that the schedule of penalties in § 25-830(a) only pertains to violations of Title 25 of the District of Columbia Code. Simply put, the Respondent's interpretation is absurd because § 25-830(a) is a one-time instruction to the Board from the D.C. Council to create a schedule of penalties 90

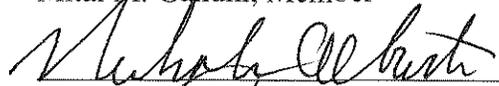
days after May 3, 2001. § 25-830(a). Since 2001, the Board has been free to amend the schedule of penalties to include violations of Title 23 of the District of Columbia Municipal Regulations under § 25-830(f). In addition, the Board notes that the regulations in Title 23 are created directly under the authority granted to the Board by Title 25 of the District of Columbia Code. Therefore, a violation of Title 23 of the District of Columbia Municipal Regulations constitutes a violation of Title 25 of the District of Columbia Official Code because the Board can only act within the narrowly defined powers granted by the D.C. Council in Title 25.

Therefore, upon consideration of the Respondent's Motion and the entire record of this matter, the Board, on this 15th day of September 2010, hereby **DENIES** the Respondent's Motion.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson

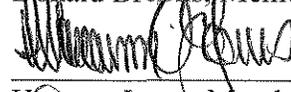
Mital M. Gandhi, Member



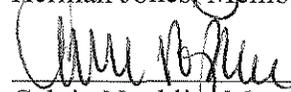
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



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Mike Silverstein, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).