

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

In the Matter of:)	
Parkside Assoc. Ltd. Partnership)	License No: 014581
t/a Circle 7 Market)	Case No.: 15-CC-0145
Holder of a)	Order No: 2016-063
Retailer's Class B License)	
740 Kenilworth Avenue, N.E.)	
Washington, D.C. 20019)	
)	

TO: Marilyn Melkonian, on behalf of
Parkside Associates Limited Partnership, t/a Circle 7 Market
Telesis Corporation
740 Kenilworth Avenue, N.E.
Washington, D.C. 20019

Emmanuel Tesfay

ORDER ON CEASE AND DESIST AND SURRENDER OF LICENSE

INTRODUCTION

On February 10, 2016, the Alcoholic Beverage Control (Board) reviewed compelling evidence that Parkside Associates Limited Partnership, t/a Circle 7 Market, (Circle 7) illegally transferred ABRA License No. 014581 to Emmanuel Tesfay in violation of D.C. Official Code § 25-405 and 23 DCMR §703.1. Circle 7 is ordered to cease and desist and surrender its license to ABRA for safekeeping in accordance with D.C. Official Code §§ 25-791 and 25-829.

FINDINGS OF FACT

The Board bases its decision on the following facts:

I. Background

1. Parkside Associates Limited Partnership, t/a Circle 7 Market (Circle 7) holds a Retailer's Class B License at premises 740 Kenilworth Avenue, N.E. *ABRA License No. 014581.*

2. The Alcoholic Beverage Regulation Administration (ABRA) conducted a sale to minor investigation at Circle 7 on December 17, 2015. *Case Report No. 15-CC-00145*, 2. During the investigation, Emmanuel Tesfay identified himself as the owner during the investigation. *Id.* On December 18, 2015, ABRA Investigator Kevin Puente reviewed ABRA's records related to Circle 7. *Id.* ABRA's records showed that the sole owner of the establishment is Marilyn Melkonian. *Id.*

3. Investigator Puente returned to the establishment on December 18, 2015. *Id.* He spoke with Ronald Dickenson, the ABC Manager on duty, at Circle 7. *Id.* Mr. Dickenson identified Mr. Tesfay as the owner. *Id.* In addition, Tonya Basmil, a representative of Telesis Corporation, indicated that Mr. Tesfay was the establishment's owner. *Id.* at 2-3.

4. Records produced by the Department of Consumer and Regulatory Affairs (DCRA) indicate that DCRA issued Mr. Tesfay a basic business license to operate Circle 7. *Id.* at 2-3. Further, D.C. licensed wholesaler Capital Eagle indicated that Emmanuel Tesfay signed multiple payment checks issued by Circle 7. *Id.* at 3.

5. ABRA has no record of Mr. Tesfay filing a transfer application. *Id.*

CONCLUSIONS OF LAW

6. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease ". . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public . . ." D.C. Official Code § 25-829(a).

I. CIRCLE 7 FAILED TO FILE A TRANSFER APPLICATION BEFORE TRANSFERRING ITS LICENSE.

7. Circle 7 unlawfully transferred ABRA License No. 014581 without the permission of the Board in violation of § 25-405. Under § 25-405(b), "[a]n application to transfer a license to a new owner shall be filed by the transferee and approved by the Board before the consummation of the transfer." D.C. Official Code § 25-405(a). Further, § 25-405(e) states, "[i]f the Board finds that the licensee is in violation of this title or regulations promulgated under this title, the Board shall deny the application for transfer." D.C. Official Code § 25-405(e). In this case, Mr. Tesfay never filed a transfer application before consummating the transfer of Circle 7; therefore, the Board finds Circle 7 in violation of § 25-405. *Supra*, at ¶ 5.

II. CIRCLE 7 FAILED TO OBTAIN A TEMPORARY OPERATING RETAIL PERMIT.

8. Under § 703.1, "The purchaser of an ABC licensed establishment awaiting Board approval on a transfer of ownership application where no substantial change will occur may apply to the Board for a permit to temporarily operate under the license . . ." 23 DCMR § 703.1

(West Supp. 2015). In this case, Circle 7 has never applied for or received a Temporary Operating Retail Permit in accordance with § 703. Consequently, Mr. Tesfaye does not have the authority to operate the establishment as an owner.

III. CIRCLE 7'S LICENSE MUST BE SURRENDERED TO THE BOARD BASED ON THE CESSATION OF ITS OPERATIONS.

9. Under § 25-791(a), "A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping." D.C. Official Code § 25-791(a). In this case, Circle 7 is no longer owned by Marilyn Melkonian. *Supra*, at ¶ 2. Therefore, the operations have been discontinued as a matter of law and require the Licensee to return the license to ABRA for safekeeping.

IV. CIRCLE 7'S CONTINUED OPERATIONS CONSTITUTE AN IMMEDIATE AND IRREPERABLE HARM TO THE PUBLIC.

10. Under the law, § 25-829(a) permits the issuance of a cease and desist order when a violation threatens "immediate and irreparable harm to the public." D.C. Official Code § 25-829(a). The Council of the District of Columbia provided the Board with a cease and desist power for the purpose of combatting the unlicensed sale and service of alcohol. D.C. Council, Report on Bill 13-449 at 155 (Nov. 20, 2000). Therefore, the Board finds sufficient grounds to order Circle 7 to cease its illegal operations.

ORDER

Therefore, the Board on this 10th day of February 2016, hereby orders Circle 7, Emmanuel Tesfay, and their agents to **CEASE AND DESIST** distributing, purchasing, selling, serving, or otherwise permitting the consumption of alcoholic beverages at 740 Kenilworth Avenue, N.E.

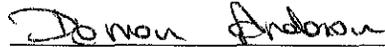
IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance), if necessary.

IT IS FURTHER ORDERED that Circle 7's license shall be surrendered to ABRA pursuant to D.C. Official Code § 25-791 for safekeeping. Alternatively, ABRA is hereby authorized to seize Circle 7's license pursuant to this Order and D.C. Official Code § 25-801(f) and (g).

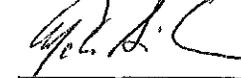
The Board **ADVISES** Circle 7 that a copy of this Order is being forwarded to the Metropolitan Police Department and licensed wholesalers to ensure compliance. If it is found that you are continuing to sell, serve, or permit the consumption of alcoholic beverages without approval from the Board, you may be subject to both civil and criminal penalties.

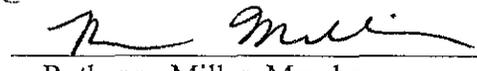
ABRA shall serve notice by certified mail or personal delivery on the above-mentioned parties.

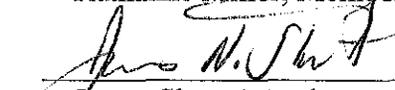
District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


Ruthanne Miller, Member


James Short, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia 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 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).