

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

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| In the Matter of: |) | |
| |) | |
| Solomon Enterprises, LLC |) | License Number: 088290 |
| t/a Climax Restaurant & Hookah Bar |) | Case Number: 12-CMP-00228 |
| |) | Order Number: 2013-370 |
| |) | |
| Holder of a Retailer's Class CT License |) | |
| at premises |) | |
| 900 Florida Avenue, NW |) | |
| Washington, D.C. 20001 |) | |
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BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

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

Solomon Yegzaw, on behalf of the Respondent

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

PROCEDURAL BACKGROUND

On December 18, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated December 10, 2012, on Solomon Enterprises, LLC t/A Climax Restaurant & Hookah Bar (Respondent), at premises 900 Florida Avenue, NW, Washington, DC 20001, charging the Respondent with the following violation:

Charge I: Failure to Obtain Board Approval for Sidewalk Café and Summer Garden (D.C. Official Code § 25-762(a)). The date of this alleged incident was June 16, 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 December 10, 2013. (*See Alcoholic Beverage Regulation Administration Show Cause File Number 12-CMP-00228*). The Respondent holds a Retailer's Class CT License and is located at 900 Florida Avenue, NW, Washington, DC 20001.
2. The Show Cause Hearing in this matter was held May 1, 2013. The Respondent was charged with one violation: Failure to Obtain Board Approval for Summer Garden (D.C. Official Code § 25-762(a)).
3. The Government presented its case through the testimony of Investigator Earl Jones. *Transcript, 5/1/13* at 5. On June 16, 2012, as part of the Noise Task Force monitoring of establishments that have previously been the subject of noise complaints, Investigator Jones visited establishments that were on a list of such establishments that were to be monitored that evening. *Tr.* at 8. Respondent's establishment was on the list. *Id.* Investigator Jones went to the back of the establishment and determined that noise was coming from the upper level of the rear of the establishment. *Id.* At approximately 2:35 am, Investigator Jones then entered the establishment, accompanied by a representative from the Department of Consumer and Regulatory Affairs and an officer from the Metropolitan Police Department, spoke with the Owner, Solomon Yegzaw, and requested to be taken to the second level, which had been identified by Investigator Jones as the source of outdoor noise coming from the establishment. *Tr.* at 9-11. The Owner led Investigator Jones to the second level. *Tr.* at 12. Once on the second level, Investigator Jones observed an open door that led to an outdoor patio area. *Id.* Once on the patio, Investigator Jones observed at least four patrons sitting around a table consuming bottles of alcoholic beverages. *Id.* Investigator Jones then requested a copy of the establishment's license and observed from the license that the establishment did not possess a summer garden endorsement. *Tr.* at 13. After establishing that the establishment did not have a summer garden endorsement, Investigator Jones informed the Owner of the violation, counseled him to seek a summer garden endorsement from ABRA if he wished to continue to use the outdoor space and told the Owner to stop utilizing the space until he had obtained a summer garden endorsement. *Tr.* at 17. The Owner stated that he thought that since the outdoor patio was part of his property that he was allowed to have patrons consume alcoholic beverages on the patio. *Tr.* at 14. Thereafter, on June 26, 2012, during another tour of duty with the Noise Task Force, Investigator Jones returned to the establishment

and noted that that the summer garden area outside of the second floor was still being utilized without the proper endorsement. *Tr.* at 29-30.

4. Solomon Yegzaw testified on behalf of Respondent. *Transcript* at 46. Mr. Yegzaw testified that the deck was not being used as a summer garden and that no alcohol was being served or sold on the deck. *Tr.* at 49. He further stated that patrons who wished to smoke were allowed on the deck but were to leave their drinks behind. *Id.* Mr. Yegzaw contended that the beer bottles seen by Investigator Jones were part of the trash that was collected on the outside patio prior to being placed in the establishment's dumpster. *Tr.* at 50. He further testified that the tables on the outside patio area were there for storage purposes and not for use by patrons. *Tr.* at 85. Finally, Mr. Yegzaw stated that he had applied for a summer garden endorsement. *Tr.* at 85-86.

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)(2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. § 800 *et seq.*

Charge I: Operating a Summer Garden Without A Board Approved Endorsement

The Board finds that, as to Charge I, there is sufficient credible evidence to establish that the Respondent failed to obtain Board approval for a summer garden, in violation of D.C. Official Code § 25-762(a). The testimony and evidence provided by the Government clearly detail the use of the second floor outdoor patio as a summer garden. Respondent's testimony that there were no patrons on the outdoor patio consuming alcoholic beverages, that the bottles that were on the table at which patrons were seated were not beer bottles but simply water bottles that were part of the collected trash, that patrons were only allowed to use the outdoor patio for smoking, and that the tables on the outdoor patio, including the one at which patrons were seated, were only for indoor use simply is not credible. Finally, Respondent's statement to Investigator Jones that he believed that alcoholic beverages could be consumed on the outdoor patio directly contradicts Respondent's testimony on how the outdoor patio was being used.

The Board finds that this violation warrants a penalty in the amount of \$2,000. Respondent's investigative history set forth in ABRA's official records shows that Respondent has accepted liability for a similar violation that occurred within ten days of the subject violation. *See, Case No. 12-CMP-00279, Order on Offer in Compromise, 2/27/13*. Given the record in this matter, including what appears to be a blatant disregard of the summer garden regulations, the Board also imposes a two-day suspension on Respondent. The suspension is stayed for one year, provided that Respondent does not violate any provision of ABRA laws and regulations during that time.

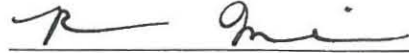
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 18th day of September, 2013, finds that the Respondent, Solomon Enterprises, LLC t/a Climax Restaurant & Hookah Bar, holder of a Retailer's Class CT License to obtain Board approval for a summer garden, in violation of D.C. Official Code § 25-762(a). The Board hereby **ORDERS** that:

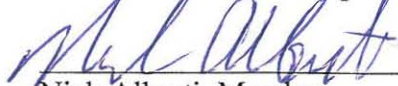
1. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$2,000 for the violation of D.C. Official Code § 25-762(a).
2. Respondent's license is suspended for two (2) days for its violation of D.C. Official Code § 25-762(a). The suspension is stayed for one year, 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



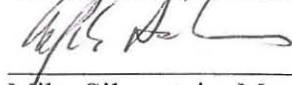
Ruthanne Miller, Chairperson



Nick Alberti, Member

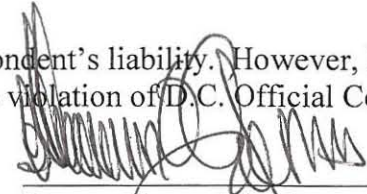


Donald Brooks, Member



Mike Silverstein, Member

I concur with the Board's decision as to Respondent's liability. However, I believe that, in this instance, the penalty is insufficient for the violation of D.C. Official Code § 25-762(a).



Herman Jones, 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).