

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

In the Matter of:)	
Justin's Café, LLC)	License No.: 83690
t/a Justin's Café)	Case No.: 13-CMP-00119
)	Order No.: 2014-049
)	
)	
)	
Holder of a Retailer's Class CR License)	
at premises)	
1025 1 st Street S.E.)	
Washington, D.C. 20003)	
)	

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

ALSO PRESENT: Justin's Café, LLC t/a Justin's Cafe, Respondent

Justin Ross, on behalf of the Respondent

Chrissy 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Justin's Café, LLC t/a Justin's Café, (Respondent) provided live entertainment without proper authorization on February 21, 2013. In light of these violations and the Respondent's history of prior violations, § 25-830 requires the Board to impose a fine of \$4,000.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on November 6, 2013. *ABRA Show Cause File No.*, 13-CMP-00119, Notice of Status Hearing and Show Cause Hearing, 1-3 (November 6, 2013) [Notice, 1-3]. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1025 1st Street S.E., Washington, D.C. 20003, on July 30, 2013. *ABRA Show Cause File No.*, 13-CMP-00119, Service Form.

The Notice charges the Respondent with Failure to Obtain an Entertainment Endorsement and Violation of Settlement Agreement, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license. Specifically, the Notice, charges the Respondent with the following violations:

Charge I:

[On February 21, 2013,] [y]ou provided entertainment at your establishment without having first obtained an Entertainment Endorsement in violation of D.C. Official Code § 25-762(a)

Charge II:

[On February 21, 2013,] [y]ou violated the terms of the settlement agreement you entered into on June 14, 2010 by having live music inside your establishment in violation of D.C. Official Code § 25-446. . . .

Notice, 2-3.

The Show Cause Status Hearing occurred on September 11, 2013. The Government and the Respondent appeared at the Show Cause Hearing for this matter on November 6, 2013.

FINDINGS OF FACT

The Board, having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a Retailer's Class CR License, ABRA License Number 83690. See ABRA Licensing File No. 83690. The establishment's premises are located at 1025 1st Street SE, Washington, D.C. 20003. Id.
2. ABRA Investigator Earl Jones testified on behalf of the Government at the hearing. Transcript (Tr.), November 6, 2013 at 7. On February 21, 2013 at approximately 7:30 p.m., Investigator Earl Jones went to the licensed establishment to conduct a regulatory inspection. Id. at 9. Upon entering the premises, Investigator Jones observed a two-member band providing live entertainment. Id. at 10. The band consisted of a singer and guitarist. Id.

3. Investigator Jones spoke with the establishment's owner, Justin Ross, about the nature of his visit. Id. at 11. Mr. Ross provided Investigator Jones with the establishment's current license. Id. at 11. The Investigator saw that the license did not have an entertainment endorsement listed on it. Id.

4. After the inspection, Investigator Jones reviewed ABRA's records to confirm whether the establishment had an approved or pending entertainment endorsement on file. Id. at 12-13. He found none. Id. at 13. Investigator Jones also saw a supplement to the establishment's current settlement agreement which contained a stipulation stating, "There will be no live music either indoors or in the sidewalk café." Id. at 13-14, 16. In re Justin's Café, LLC t/a Justin's Café, Board Order 2011-095, 5 (D.C.A.B.C.B. Jan. 26, 2011).

5. At the hearing, Mr. Ross testified on behalf of the Respondent. Id. at 19. During his testimony, he admitted that the establishment did not have an entertainment endorsement in place when Investigator Jones visited on February 21, 2013. Id. Mr. Ross also acknowledged that he read and signed the settlement agreement containing the entertainment prohibition. Id. at 21. He attributes the incident as being an "oversight on [his] part" and his being unclear about the regulations regarding entertainment endorsements. Id.

CONCLUSIONS OF LAW

6. The Board determines that the Respondent committed the violations described in Charges I and II in Case Number 13-CMP-00119.

7. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to D.C. Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013) Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Official Code § 25-447.

I. Failure to Obtain Entertainment Endorsement (Charge I)

8. The Board determines that the Respondent provided entertainment at the licensed establishment without having first obtained an Entertainment Endorsement on February 21, 2013, in violation of D.C. Official Code § 25-762(a).

9. Section 25-762(a) states, "Before a licensee may make a change in the interior or exterior, or a change in format, of any licensed establishment, which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board in accordance with § 25-404." D.C. Official Code § 25-762(a). The law further provides "In determining whether the proposed changes are substantial, the Board shall consider whether they are potentially of concern to the residents of the area surrounding the establishment, including changes which would... Provide music or entertainment if none was provided previously." D.C. Official Code § 25-762(b)(8).

10. On February 21, 2013, Investigator Earl Jones went to the licensed establishment to conduct a regulatory inspection. Supra, at ¶ 2. Upon entering the premises, Investigator Jones observed a two-member band providing live entertainment. Id. At this time, the Respondent did not have a valid Entertainment Endorsement for the licensed premises; therefore the entertainment observed by Investigator Jones was in violation of the law. Supra, at ¶¶ 2-3.

II. Violation of Settlement Agreement (Charge II)

11. The Board also concludes that the Respondent violated the terms of its existing settlement agreement in violation of D.C. Official Code § 25-446 on February 21, 2013.

12. Clause 2 of the Supplement to the existing settlement agreement between the Respondent and Advisory Neighborhood Commission 6D states, in part, “There will be no live music either indoors or in the sidewalk café.” In re Justin’s Café, LLC t/a Justin’s Café, Board Order 2011-095, 5 (D.C.A.B.C.B. Jan. 26, 2011). By providing live music without authorization, the Respondent violated this term.

III. Penalty

13. The Respondent’s Investigative History shows that this is Respondent’s fifth violation within five years. *ABRA Licensing File No. 83690*, Investigative History.

14. Under the law, “A licensee found in violation of a secondary tier violation for the fifth time within 5 years shall be fined according to the schedule for primary tier violations.” D.C. Official Code § 25-802. Pursuant to that schedule, the Board is required to penalize the Respondent for each of the fifth secondary tier violations, as if they were a second primary tier violation (\$2,000 to \$4,000). Id.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 5th day of February 2014, finds Justin’s Café, LLC t/a Justin’s Cafe, is guilty of Charges I, and II in Case Number 13-CMP-00119. Accordingly, it is **ORDERED** that:

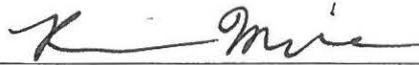
- (I) For the violation described in Charge I, the Respondent shall pay a fine of \$2,000 within 30 days from the date of this order.
- (II) For the violation described in Charge II, the Respondent shall pay a fine of \$2,000 within 30 days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall pay the fine levied by the Board within 30 days from the date of this order or its license shall be suspended until all outstanding fines are paid.

IT IS FURTHER ORDERED, based on the violation that occurred on February 21, 2013, that the Respondent's Investigative History shall show that it committed a single secondary tier violation on the date of this Order in accordance with D.C. Official Code § 25-830(b)(2).

The ABRA shall deliver copies of this Order to the Government, the Respondent, and the Metropolitan Police Department.

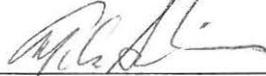
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 400S, Washington, D.C. 20009.

Also, 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 (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).