

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

|   |   |                         |
|---|---|-------------------------|
| <b>In the Matter of:</b>                | ) |                         |
|   | ) |                         |
| Afrique International, Inc.             | ) |                         |
| t/a Kendejah                            | ) |                         |
|   | ) | Case No. 10-CMP-00633   |
| Holder of a Retailer's Class CT License | ) | License No. ABRA-079219 |
| at premises                             | ) | Order No. 2011-307      |
| 5828 Georgia Avenue, N.W.               | ) |                         |
| Washington, D.C. 20011                  | ) |                         |

**BEFORE:** Nick Alberti, Interim Chairperson  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Afrique International, Inc., t/a Kendejah, Respondent  
  
Louise Phillips, Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

On April 29, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated April 20, 2011 on Afrique International, Inc., t/a Kendejah (Respondent), at premises 5828 Georgia Avenue, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Licensee failed to comply with Section 28 (IV) of the Voluntary Agreement approved by the Board on November 6, 2008, in violation of the D.C. Official Code § 25-446 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6) (2001).

Charge II: The Licensee failed to obtain a summer garden endorsement from the Board before selling, serving, or allowing consumption of alcoholic beverages on outdoor private space, in violation of the D.C. Official

Code § 25-113(a), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Respondent was served with the Notice on April 29, 2011, and the Board held a Show Cause Status Hearing on May 25, 2011. The Respondent failed to appear at the Show Cause Status Hearing. The Board held a Show Cause Hearing on June 8, 2011. The Respondent failed to appear at the Show Cause Hearing and the Board proceeded pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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

### FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated April 20, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00633. The Respondent holds a Retailer's Class CT license and is located at 5828 Georgia Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-079219.

2. The Show Cause Hearing was held on June 8, 2011. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 10-CMP-00633.

3. The Government presented its case through the testimony of one witness, ABRA Investigator Jabriel Shakoor. *Transcript (Tr.)*, 06/08/11 at 6. Investigator Shakoor is an investigator with ABRA and has been so employed for three years. *Tr.*, 06/08/11 at 6. His job responsibilities include conducting regulatory inspections and compliance checks on ABC-licensed establishments. *Tr.*, 06/08/11 at 7.

4. Investigator Shakoor testified that he conducted an investigation after receiving a noise complaint from an individual who lives near the Respondent. *Tr.*, 06/08/11 at 7. He stated that the noise complaint was received on ABRA's hotline number on September 5, 2010. *Tr.*, 06/08/11 at 6.

5. Investigator Shakoor testified that although the Complainant resides in a commercial zone, the Respondent's Voluntary Agreement in Section 28(IV), prohibits noise that emanates from the establishment to be heard in private residences. *Tr.*, 06/08/11 at 12, 16-17. He stated that on September 18, 2010 at 2:18 a.m., he entered the residence of the Complainant and could hear music that was being played at the establishment. *Tr.*, 06/08/11 at 13. The Complainant's doors and windows were closed. *Tr.*, 06/08/11 at 14. He then went to the establishment to confirm that the music he heard in the private residence was the same music being played at the establishment. *Tr.*, 06/08/11 at 13.

6. While Investigator Shakoor was in the Complainant's residence, he looked out the window to the establishment and observed that the Respondent's patrons were located in the summer garden and consuming alcoholic beverages. *Tr.*, 06/08/11 at 14-15, 20. Investigator Shakoor testified that the Respondent does not have a Summer Garden

Endorsement approved by the Board. *Tr.*, 06/08/11 at 15. When he observed the alleged violation, he then conducted a regulatory inspection. *Tr.*, 06/08/11 at 15; Government's Exhibit A.

### CONCLUSIONS OF LAW

7. 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 DCMR. 800, *et seq.* (2008).

8. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a "reasonable mind[] might accept as adequate to support the conclusion" and there must be a "rational connection between facts found and the choice made." 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008). The Board also notes that an administrative agency's determination of credibility is entitled to "special deference." Gross v. D.C. Dep't of Employment Services, 826 A.2d 393, 395 (D.C. 2003); NGOM v. D.C. Dep't of Employment Services, 913 A.2d 1266, 1269 (D.C. 2006).

9. With regard to Charge I, failure to comply with Section 28 (IV) of the Respondent's Voluntary Agreement approved by the Board on November 6, 2008, the Board finds that based on the credible testimony presented by Investigator Shakoor, there is sufficient evidence to establish that the Respondent failed to comply with Section 28(IV) of his Voluntary Agreement which noise from being heard outside the establishment. Specifically, Investigator Shakoor testified that he visited the private home of a person who resides near the establishment and he could hear the music emanating from the establishment. This was confirmed by Investigator Shakoor who returned to the establishment to ensure it was the same music in both locations.

10. With regard to Charge II, failure to obtain a Summer Garden Endorsement, the Board finds that based on the credible testimony presented by Investigator Shakoor, there is sufficient evidence to establish that the Respondent failed to obtain a Summer Garden Endorsement. Specifically, Investigator Shakoor testified that when he was in the Complainant's residence, he looked out the window and witnessed the Respondent's patrons consuming alcoholic beverages on the Summer Garden. He then conducted a regulatory inspection and determined that the Respondent was not authorized to have alcoholic beverage service on the Summer Garden.

11. The Board takes into consideration in formulating its Order on Charge I, that the Respondent has entered into a new Voluntary Agreement with the Advisory Neighborhood Commission 4C, dated January 12, 2011, which sets forth new terms and conditions. Nonetheless, the charges brought against the Respondent stem from an alleged violation received for noncompliance of the Voluntary Agreement in place at the time of the violation.

12. Thus, based on the credible and unrefuted testimony of Investigator Shakoor, the Board finds that the Respondent violated the statues and regulations of the District of Columbia and concludes that the appropriate remedy in this case is the imposition of a fine.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 6th day of July 2011, finds that the Respondent, Afrique International Inc., t/a Kendejah, at premises 5828 Georgia Avenue, N.E., Washington, D.C., Holder of a Retailer's Class CT License, violated D.C. Code § 25-113(a) and § 25-446. The Board hereby **ORDERS** that:

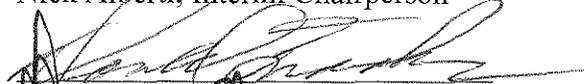
1. Charge I: The Respondent shall pay a fine in the amount of \$500.00.
2. Charge II: The Respondent shall pay a fine in the amount of \$1,000.00.
3. In total, the Respondent shall pay a fine in the amount of \$1,500.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely fashion may subject the Respondent to additional sanctions.

Copies of this Order shall be sent to the Respondent and the Government.

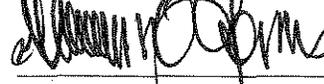
District of Columbia  
Alcoholic Beverage Control Board



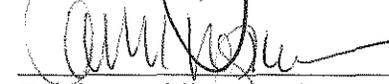
Nick Alberti, Interim Chairperson



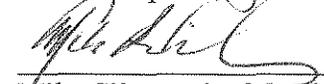
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.

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 (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).