

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

In the Matter of:)
)
Meseret Ali & Yonas Chere)
t/a Merkato Ethiopian Restaurant)
)
Holder of a Retailer's)
Class CR License)
)
at premises)
1909 9th Street, N.W.)
Washington, D.C. 20001)
)

Case No. 12-CMP-00678
License No. ABRA-089019
Order No. 2013-348

BEFORE: Nick Alberti, Acting Chairman
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Fernando Rivero, 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

The Alcoholic Beverage Control Board (Board) finds that Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, (Respondent), violated title 23 of the District of Columbia Municipal Regulations (DCMR) § 705.9 (2012) on November 16, 2012. As a result, the Respondent must pay a \$2,000.00 fine.

On April 11, 2013, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated March 27, 2013, on the Respondent charging the Respondent with the following violation:

Charge I: The Licensee permitted the consumption of alcoholic beverages outside the allowed hours, in violation of 23 DCMR § 705.9 (2012), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Respondent was personally served with a copy of the Notice on April 11, 2013. The Respondent failed to appear at the Show Cause Status Hearing held on May 8, 2013.

The Respondent failed to appear at the Show Cause Hearing held on June 26, 2013. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated March 27, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00678. The Respondent holds a Retailer's Class CR license and is located at 1909 9th Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-089019. On the day of the violation, the establishment's authorized hours of operation were 6:00 a.m. to 2:00 a.m. and the hours of sales, service, and consumption were 12:00 p.m. to 2:00 a.m. *See* ABRA Licensing File No. ABRA-089019.
2. The Show Cause Hearing was held on June 26, 2013. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-CMP-00678.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Earl Jones. *Transcript (Tr.)*, 6/26/13 at 5-6. Investigator Jones' duties include monitoring the 1900 block of 9th Street, N.W., Washington, D.C., for any violations or after-hours activities. *Tr.*, 6/26/13 at 7. During his monitoring on November 16, 2012, Investigator Jones visited the Respondent's establishment. *Tr.*, 6/26/13 at 7. *See* ABRA Show Cause File No. 12-CMP-00678.
4. On November 16, 2012, Investigator Jones arrived at the 1900 block of 9th Street, N.W., Washington, D.C., at approximately 2:00 a.m. *Tr.*, 6/26/13 at 8. Investigator Jones heard loud music emanating from the Respondent's establishment. *Tr.*, 6/26/13 at 8.
5. The Respondent's establishment was locked when Investigator Jones attempted to enter. *Tr.*, 6/26/13 at 8. Investigator Jones knocked on the door several times, but there was no response. *Tr.*, 6/26/13 at 8. Investigator Jones heard patrons cheering and observed a Disc Jockey (DJ) playing music through a window located to the left of the front door of the establishment. *Tr.*, 6/26/13 at 8.
6. Investigator Jones returned to his vehicle located on the street three or four car lengths down from the establishment. *Tr.*, 6/26/13 at 9. Investigator Jones was able to observe from his vehicle that patrons were exiting the establishment. *Tr.*, 6/26/13 at 8. Investigator Jones entered the establishment while patrons were exiting. *Tr.*, 6/26/13 at 9.
7. Once inside the Respondent's establishment, Investigator Jones observed approximately twenty patrons around the bar area. *Tr.*, 6/26/13 at 9. Investigator Jones also observed waitresses and/or bartenders removing alcoholic beverages from the bar area and throwing them in trash cans. *Tr.*, 6/26/13 at 10.

8. Investigator Jones asked to speak to an ABC-licensed manager or the owner. *Tr.*, 6/26/13 at 10. Meseret Ali, owner of the establishment, greeted Investigator Jones. *Tr.*, 6/26/13 at 10. Ms. Ali apologized when Investigator Jones informed her about the after-hours violation. *Tr.*, 6/26/13 at 10. Ms. Ali claimed that this was the first time that the establishment stayed open after hours, due to the patrons' request for another song from the DJ. *Tr.*, 6/26/13 at 10.

9. Investigator Jones asked Ms. Ali to have the DJ stop playing music. *Tr.*, 6/26/13 at 11. Ms. Ali asked the patrons to leave the establishment. *Tr.*, 6/26/13 at 11. Investigator Jones advised Ms. Ali again about the after-hours violation. *Tr.*, 6/26/13 at 11.

10. Investigator Jones stated that the bottles that were removed from the bar were beer bottles. *Tr.*, 6/26/13 at 12-13.

CONCLUSIONS OF LAW

11. 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) (2009). 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.*

12. 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).

13. With regard to Charge I, the Board finds that the Respondent permitted the consumption of alcoholic beverages beyond its Board-approved hours. Specifically, the Board finds that the Respondent allowed the consumption of alcoholic beverages after 2:00 a.m. The Board makes this finding based on the testimony of Investigator Jones, who testified that he observed twenty people inside of the establishment, a DJ playing music, and bottles of beer being removed from the bar area after 2:00 a.m.

14. Therefore, based upon the above, the Board finds that the Respondent's violation of 23 DCMR § 705.9, as set forth in Charge I of the Notice to Show Cause, dated March 27, 2013, warrants the imposition of a fine set forth below.

15. The Board takes administrative notice that Charge I is a first primary tier violation for the Respondent.

ORDER

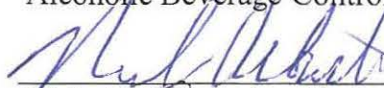
Based on the foregoing findings of fact and conclusions of law, the Board, on this 31st day of July, 2013, finds that the Respondent, Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, located at 1909 9th Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated 23 DCMR § 705.9.

The Board hereby **ORDERS** that:

- 1) The Respondent shall pay a fine in the amount of \$2,000.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

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

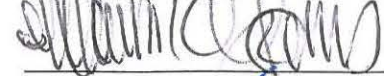
District of Columbia
Alcoholic Beverage Control Board




Nick Alberti, Acting Chairman



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433, 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 14th 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 D.C. Official Code § 25-433, 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).