

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

In the Matter of:)	
)	
Meseret Ali & Yonas Chere)	
t/a Merkato Ethiopian Restaurant)	
)	License No.: ABRA-089019
Holder of a)	Case No.: 14-251-00055
Retailer's Class CR License)	Order No.: 2014-406
)	
at premises)	
1909 9th Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, 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 District of Columbia (D.C.) Official Code §§ 25-723(b)(2) and 25-823(5). As a result, the Respondent must pay a \$6,000.00 fine. In addition, the Respondent shall have its license suspended for ten (10) days, five (5) days to be served, and five (5) days to be stayed for a one-year period which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 25, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1909 9th Street, N.W., Washington, D.C., on July 2, 2014 and a subsequent Notice on August 13, 2014.

The Notice charged the Respondent with the following violations:

- Charge I: The Respondent permitted the establishment to operate beyond the allowed operating hours for on premise retail licensees, in violation of D.C. Official Code § 25-723(b)(2) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1).
- Charge II: The Respondent interfered with an investigation conducted by a member of the MPD, in violation of D.C. Official Code § 25-823(5) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1).

The factual basis of Charge I and Charge II is an allegation that on Saturday, January 18, 2014 at approximately 4:30 a.m., Metropolitan Police Department (MPD) responded to the establishment to investigate after-hours activity and had to force their way into the front¹ door after an unknown individual had prevented their entry. Inside the establishment, the officers witnessed multiple individuals consuming alcoholic beverages. Notice at 2.

The Respondent was personally served with a copy of the Notice on July 2, 2014. The Respondent failed to appear at the Show Cause Status Hearing held on July 30, 2014.

The Respondent was personally served with the new date for the Show Cause Hearing on August 13, 2014. The Respondent also failed to appear at the Show Cause Hearing held on October 1, 2014. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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 Board issued a Notice of Status Hearing and Show Cause Hearing, dated June 25, 2014. *ABRA Show Cause File No. 14-251-00055.*
2. The Respondent was charged with two violations enumerated above. Notice at 2.

¹ In Case No. 14-251-00055, the Government erroneously stated "front" instead of "back." On October 1, 2014, at the Show Cause Hearing, the Government amended the Notice to reflect front.

3. The Show Cause Hearing in this matter was held on October 1, 2014. *ABRA Show Cause File No. 14-251-00055.*
4. The Respondent holds a Retailer's Class CR License and is located at 1909 9th Street, N.W., Washington, D.C. *Licensing File No. ABRA-089019.* The establishment's authorized hours of operation are Sunday through Thursday 6:00 a.m. to 2:00 a.m. and Friday and Saturday 6:00 a.m. to 3:00 a.m.; and the hours of sales, service and consumption of alcoholic beverages are Sunday through Thursday 12:00 p.m. to 2:00 a.m. and Friday and Saturday 12:00 p.m. to 3:00 a.m. *Licensing File No. ABRA-089019.*
5. On October 1, 2014, at the Show Cause Hearing, the Government moved to amend the Notice of Status Hearing and Show Cause Hearing (Motion), dated June 25, 2014. *Transcript (Tr.), 10/1/14 at 4-5.* The Government moved to amend the allegation listed in Charge I to change the word "back" to the word "front." *Tr., 10/1/14 at 5.* The Board granted the Government's Motion and the Notice was amended. *Tr., 10/1/14 at 5.*
6. The Government presented its case through the testimony of MPD Sergeant Carlos Heraud. *Transcript (Tr.), 10/1/14 at 6-7.* On Saturday, January 18, 2014 at approximately 4:24 a.m., Sgt. Heraud received a radio assignment through the Third District dispatcher that the Respondent was operating after hours. *Tr., 10/1/14 at 7-8.*
7. Sgt. Heraud and four more MPD officers arrived at the establishment at approximately 4:26 a.m. *Tr., 10/1/14 at 8.* Sgt. Heraud stated that the front door was locked from the inside. *Tr., 10/1/14 at 9.* Sgt. Heraud could hear people inside the establishment. *Tr., 10/1/14 at 9.* MPD officers knocked on the front door for three or four minutes, but no one responded. *Tr., 10/1/14 at 9.*
8. Sgt. Heraud stated that two MPD officers, Officers Buckley and Malcolm, went to the rear entrance of the establishment and observed several individuals exiting the establishment through the back door. *Tr., 10/1/14 at 9.* The individuals who were still inside of the establishment, closed the back door when they observed the MPD officers presence. *Tr., 10/1/14 at 9.* The MPD officers made several verbal commands and knocked on the door several times but no one opened the door. *Tr., 10/1/14 at 9.* After several minutes, someone opened the back door and the MPD officers were able to force their entry into the establishment. *Tr., 10/1/14 at 9-10.* Sgt. Heraud indicated that he was aware of what was happening because Officer Buckley was relaying the information over the Third District radio zone. *Tr., 10/1/14 at 10.*
9. Sgt. Heraud and the other MPD officer were able to enter the establishment when the MPD officers, who gained entry to the establishment through the back door, opened the front door. *Tr., 10/1/14 at 10-11.* Sgt. Heraud observed about fifteen (15) to twenty (20) individuals, who appeared to be patrons, inside of the establishment. *Tr., 10/1/14 at 11.* The individuals were sitting at the tables, engaged in conversation, and had cups in front of them. *Tr., 10/1/14 at 11.*
10. Sgt. Heraud requested to speak to an ABC Manager or the owner. *Tr., 10/1/14 at 11.* A female, who identified herself as the owner of the establishment, apologized to Sgt. Heraud when he informed her that she was operating after-hours. *Tr., 10/1/14 at 12.* She admitted to Sgt. Heraud that she had erred. *Tr., 10/1/14 at 12.*

11. Sgt. Heraud observed hookahs, cigarettes, bottles of beer, and cups containing liquid that appeared to be alcohol. *Tr.*, 10/1/14 at 13-14. Sgt. Heraud stated that he documented the owner's information and took photographs. *Tr.*, 10/1/14 at 16.

12. Sgt. Heraud examined the Respondent's ABC license to confirm the approved hours of operation and hours of sales, service and consumption of alcoholic beverages. *Tr.*, 10/1/14 at 13. The ABC license provides that the Respondent's establishment shall close and stop selling, serving, and the consumption of alcoholic beverages at 3:00 a.m. Friday and Saturday. *Tr.*, 10/1/14 at 13.

CONCLUSIONS OF LAW

13. The Board determines that the Respondent committed the violations described in Charge I and Charge II of the Notice.

14. 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). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830.

15. The Board finds, as to Charge I, that there is sufficient credible evidence to establish that the Respondent was operating beyond the allowed operating hours in violation of D.C. Official Code § 25-723(b)(2). The Board makes this finding based on the testimony of MPD Sergeant Carlos Heraud, a government official, who testified that he observed patrons inside of the establishment at approximately 4:24 a.m., about an hour and a half after the Respondent is required to close the establishment in compliance with the terms of its ABC license. Sgt. Heraud's credible testimony is supported by the MPD 251 Incident Report. In addition, the ABC license provides that the establishment must close at 3:00 a.m. Friday and Saturday. Furthermore, the owner admitted to Sgt. Heraud that she had erred and apologized to him.

16. The Board finds, as to Charge II, that there is sufficient evidence to establish that the Respondent interfered with an investigation conducted by MPD officers in violation of D.C. Official Code § 25-823(5). Sgt. Heraud testified that took him eight to ten minutes to enter the establishment, which was not because the Respondent's cooperation, but rather that the MPD officers forced their entry through the back door of the establishment and opened the front door to Sgt. Heraud and the other officer.

17. The Board takes administrative notice that Charge I and Charge II are the Respondent's second primary tier violation within two (2) years. *Licensing File No. ABRA-089019*, Investigative History. Thus, the Board may fine the Respondent between \$2,000.00 and \$4,000.00 for each Charge. *Licensing File No. ABRA-089019*, Investigative History; 23 DCMR § 801.

ORDER

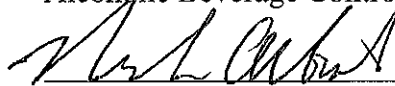
Based on the foregoing findings of fact and conclusions of law, the Board, on this 5th day of November, 2014, finds that the Respondent, Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, holder of a Retailer's Class CR License, violated D.C. Official Code §§ 25-723(b)(2) and 25-823(5).

The Board hereby **ORDERS** that:

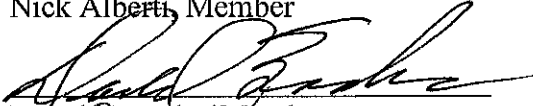
- 1) Charge I: Respondent must pay a fine in the amount of \$3,000.00 and its license shall be suspended for five (5) days; two (2) days to be served, and three (3) days to be stayed for a one-year period.
- 2) Charge II: Respondent must pay a fine in the amount of \$3,000.00 and its license shall be suspended for five (5) days; three (3) days to be served, and two (2) days to be stayed for a one-year period.
- 3) In total, the Respondent must pay a fine in the amount of \$6,000.00 by no later than sixty (60) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.
- 4) In total, the Respondent's five (5) suspension days shall begin on November 26, 2014, and end on November 30, 2014.

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

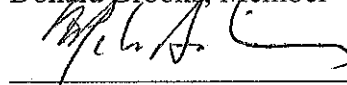
District of Columbia
Alcoholic Beverage Control Board



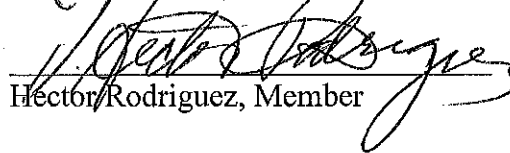
Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member

James Short, Member

I concur with the majority of the Board's decision regarding the establishment's liability. Nevertheless, I dissent as to the suspensions imposed by the majority because the majority does not "identify a consistent pattern of violations demonstrating a flagrant disregard for the "public safety and welfare" to justify the suspensions. See 1900 M Rest. Ass'ns, Inc., 56 A.3d. at 486, 492 (D.C. 2012).



Ruthanne Miller, Chairperson

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).