

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

In the Matter of:)

Murray C. Warren, Inc.)
t/a Raven Grill)

Holder of a Retailer's Class CT License)

at premises)
3125 Mt. Pleasant Street, N.W.)
Washington, D.C. 20010)
_____)

) License Number: 005864
) Case Number: 10-CMP-00592
) Order Number: 2011-287

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

ORDER DENYING THE GOVERNMENT'S MOTION FOR RECONSIDERATION

Murray C. Warren, Inc., t/a Raven Grill (Respondent), at premises 3125 Mt. Pleasant Street, N.W., Washington, D.C., was served a Notice of Status Hearing and Show Cause Hearing (Notice), dated January 5, 2011, by the Alcoholic Beverage Control Board (Board) due to allegations that the establishment served customers alcoholic beverages after 3:00 a.m. in violation of 23 DCMR § 705.9 (2008). The Show Cause Hearing was held on February 16, 2011. On April 27, 2011, the Board dismissed the charge against the Respondent based on substantial evidence that Respondent did not violate 23 DCMR § 705.9. See generally Murray C. Warren, Inc., t/a Raven Grill, Board Order No. 2011-179 (D.C.A.B.C.B. Apr. 27, 2011). The Government subsequently filed a Motion for Reconsideration on May 6, 2011, and the Respondent replied on May 17, 2011.

In summary, the Government argues that the Board's decision was in error. According to the Government, the Board should not have relied on the fact that Investigator Parker did not determine that alcoholic beverages were in the cups being consumed by the people in the Respondent's establishment. The Government then argues that the Board ignored testimony that some of the people in the establishment may have been patrons.

In turn, the Respondent argues that the Government is incorrect and argues that the Board's finding was justified. The Respondent notes that the issue is whether the Government proved that alcohol was being consumed in the establishment, which is a key element when proving a violation of 23 DCMR § 705.9. According to the Respondent, Investigator Parker was not justified in concluding that alcoholic beverages were in the red cups being used by the people inside the establishment. Finally, the Respondent notes that

the Board is entitled to rely on the testimony of Ms. Georgiadis, because the Board is entitled to make its own credibility determinations.

We agree with the Respondent and uphold the Board's decision to dismiss the charge.

As stated in Title 23 of the District of Columbia Code, "Findings of Fact and Conclusions of Law shall be supported by and in accordance with reliable, probative, and substantial evidence." 23 DCMR § 1718.3 (2008). Substantial evidence is defined as evidence that "rationally lead to conclusions of law" that are "legally sufficient to support the agency's decision" and "sufficient to convince reasonable minds of its adequacy." Coumaris v. District of Columbia Alcoholic Beverage Control Bd., 660 A.2d 896, 899 (D.C. 1995) (citation omitted).

The Respondent was alleged to have violated 23 DCMR § 705.9., which states in full:

The holder of a Retailer's license Class C, D, F, or G, or a Caterer's license may *sell, serve, or permit the consumption of alcoholic beverages* on the licensed premises at any time except between the hours of:

- (a) 2:00 a.m. and 8:00 a.m., Monday through Friday;
- (b) 3:00 a.m. and 8:00 a.m., on Saturday; and
- (c) 3:00 a.m. and 10:00 a.m., on Sunday.

§ 705.9 (emphasis added).

As a result, based on the plain language of the regulation, the only issue in this case is whether the establishment sold, served, or permitted the consumption of alcoholic beverages after 3:00 a.m., not whether the establishment had customers or employees inside its premises.

In its Motion, the Government ignores the fact that the Board relied on two independent and separate grounds for dismissing the charge against the Respondent.

First, the Government's Motion does not discuss that fact that the Board found the testimony of Ms. Georgiadis more credible than Investigator Parker's testimony. Raven Grill, at para. 29. We note 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). Regardless of the employment status of the other individuals in the establishment, the Board found credible Ms. Georgiadis's testimony that the people in the establishment were not drinking alcohol. Raven Grill, at para. 27. As a result, because the Board was persuaded by the testimony of Ms. Georgiadis, the Government failed to prove an important element of its case and the case was subsequently dismissed.

Second, the Board's decision was also based on the fact that the circumstantial evidence provided by the Government through Investigator Parker was not persuasive. Id. at para. 28. During Investigator Parker's investigation, he did not smell any alcohol in the red cups, observe any alcoholic liquid on the ground, observe intoxicated behavior, or smell alcohol on the breath on any of the people inside the establishment, which more likely than not, should have been apparent if the people in the establishment were consuming alcohol. As a result, based on these facts, the Board did not find it was reasonable to conclude that the people in the establishment were consuming alcohol and the Board was entitled to determine that the Government presented no evidence that the Respondent violated § 705.9.

As such, the Board denies the Government's Motion for Reconsideration because the Board decision was based on the credibility of the witnesses and the failure of the Government to provide substantial evidence to the Board that the Respondent violated § 705.9.

ORDER

Therefore, it is hereby **ORDERED**, on this 15th day of June 2011 that the Motion for Reconsideration filed by the Government is **DENIED**. Copies of this Order shall be sent to Murray C. Warren, Inc., t/a Raven Grill, and the Government.

District of Columbia
Alcoholic Beverage Control Board



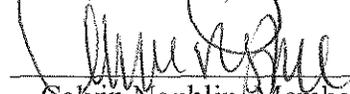
Nick Alberti, Interim Chairperson



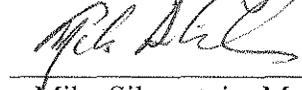
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (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, 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).