

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

In the Matter of:)
)
)

Asefu Alemayehu)
t/a Yegna)

License No.: 74241
Case No.: 11-CMP-00321
Order No.: 2013-094

Holder of a Retailer's Class CT License)
at premises)
1920 9th Street, N.W.)
Washington, D.C. 20001)
)

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Asefu Alemayehu, t/a Yegna, Respondent

Wendell C. Robinson, Esq., on behalf of the Respondent

Fernando Rivero, Esq., Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

On February 27, 2013, we found that Asefu Alemayehu, t/a Yegna, (Respondent), permitted her establishment to operate past the legal hours of operations found in District of Columbia (D.C.) Official Code § 25-723(b). In re Asefu Alemayehu, t/a Yegna, Case No. 11-CMP-00321, Board Order No. 2013-049, 4 (D.C.A.B.C.B. Feb. 27, 2013). Based on the licensee's repeated violations of her hours of operation, we revoked the Respondent's license under our discretionary authority under D.C. Official Code § 25-823, and because such action was mandated by law under D.C. Official Code § 25-830. Id. at ¶¶ 5-6.

On March 11, 2013, the Respondent submitted a Motion for Reconsideration to set aside our judgment, schedule a new hearing, and permit the Respondent to operate. Resp. Mot. for Recon, 5 [Motion]. The Government opposed this motion in a reply, which we received on March 27, 2013. Dist. of Col. Opp. to Resp. Mot. for Recon., 1.

I. Motion to Exclude Prior Violations History

First, the Respondent argues that we did not address the Respondent's Motion to Exclude Prior Violations History (Motion to Exclude). This is incorrect. In our prior Order, we addressed the Respondent's Motion to Exclude by noting that (1) the Respondent received adequate notice of the charge and the possible penalties; thereby, defeating any procedural and substantive due process claims raised by the Respondent in her Motion to Exclude; (2) the Respondent's arguments regarding D.C. Official Code § 25-822 are irrelevant, because § 25-822 was not charged in the present case; and (3) no legal authority supports the position raised by the Respondent. In re Asefu Alemayehu, t/a Yegna, Board Order No. 2013-049, 2. While we believe this sufficiently addressed the Respondent's arguments in the Motion to Exclude, if any arguments remain outstanding, they remain unaddressed, because they are baseless, conclusory, unsupported by legal authority, and without merit.

II. Prior Counsel

Second, the Respondent argues that the Board should grant a new hearing and permit the Respondent to reopen her business, because (1) Andrew Kline, the Respondent's prior counsel, was suspended from the bar and engaged in the unauthorized practice of law by representing the Respondent at Show Cause Hearing on January 9, 2013; and (2) the Respondent required an Amharic interpreter in order to knowingly and voluntarily stipulate to any facts or understand the consequences of her actions. We deny this request.

First, the argument that Andrew Kline was not permitted to represent the Respondent is without merit. Mr. Kline is permitted to practice before the Board under D.C. Court of Appeals Rule 49(c)(5), which permits unlicensed individuals to practice before District of Columbia agencies. D.C. Court of Appeals Rule 49(c)(5) (2011). Furthermore, we note that such representation is permitted by 23 DCMR § 1706.5. 23 DCMR § 1706.5 (West Supp. 2013). Consequently, we do not agree with the Respondent that Mr. Kline engaged in the unauthorized practice of law, and we find that he was properly authorized to represent the Respondent.

Second, the Respondent has no basis to claim that Ms. Alemayehu lacked a basic understanding of English and was incapable of voluntarily and knowingly stipulating to the facts in this matter. This assertion on the part of the Respondent is simply disingenuous when the Board raised the issue of the Respondent's ability to understand English at the Show Cause hearing and discussed with the Respondent's counsel whether a translator would be necessary at the hearing. *Transcript (Tr.)*, January 9, 2013, at 12-15.

In reply to the Board's concerns, which we raised *sua sponte*, the Respondent's counsel stated,

MR. KLINE: The only way that I can address that is I have spent a great deal of time with Ms. Alemayehu. I'm satisfied that she understands the terms of the deal. I'm happy to have her answer any questions that the Board may have, so that the Board might be satisfied. Obviously, in my role, I've got to make a decision as to whether the client understands what is going on or not. And in this case, given the time that I have spent with her in our review of the offer and other considerations, I don't have a question in my mind at this point.

Tr., 1/9/13 at 13.

Then, after the Respondent's counsel agreed that Ms. Alemayehu would understand the proceedings if the Board rejected the Offer-in Compromise, counsel stated,

MR. KLINE: I beg your indulgence. Ms. Alemayehu is willing to make a statement that she does understand what is going on and understands the nature of the proceeding and will understand what is going on here. I was not present at the last hearing, so I'm not directly privy to what went on in terms of what the difficulties are. I can tell you with respect to this offer and the discussions and preparations, I'm comfortable. If the Board is not comfortable, that's a different issue.

Id. at 14.

III. Ineffective Assistance of Counsel

As a final note, during the Show Cause Hearing, the Respondent's strategy was to focus on arguing for an "appropriate penalty" by arguing that the Board should be lenient, because the Respondent intended to transfer the business. *Id.* at 39, 42. Thus, counsel likely stipulated to the facts in order to dispose of an issue, which in his professional view, he probably deemed unwinnable. *Id.* at 39, 41-42.¹ As noted in *Long*, "[i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence" *Long v. U.S.*, 36 A.3d 363, 373 (D.C. 2012). While different attorneys may have chosen a different strategy, the strategy chosen by counsel at the Show Cause Hearing was reasonable and well argued. Unfortunately for the Respondent, the majority of the Board found the argument unpersuasive based on the Respondent's history of violations.² As a result, the Board rejects the argument that the performance of the Respondent's counsel at the Show Cause hearing was somehow deficient in any manner.

ORDER

Therefore, the Alcoholic Beverage Control Board, on this 17th of April 2013, hereby **DENIES** the Motion for Reconsideration filed by Asefu Alemayehu, t/a Yegna. Copies of this Order shall be delivered to the Respondent and the Government.

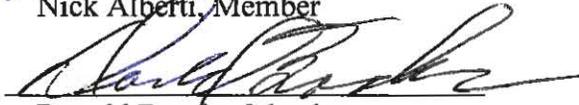
¹ We only speculate as to counsel's trial strategy to show that it appeared reasonable under the circumstances.

² We also note that one Board member voted for a lesser penalty.

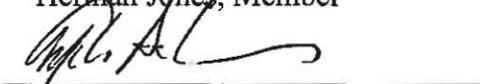
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member

Herman Jones, 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).