THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
Rainbow Inn, Inc. t/a Jackey Café	)	License Number: 74004 Case Number: 09-251-00030 ORDER NUMBER: 2010-019
Holder of a Retailer's Class CR License at premises 611 H Street, N.W. Washington, D.C. 20001	)	

BEFORE: Charles Brodsky, Chair
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: Mike Stern, Senior Assistant Attorney General, on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 26, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 21, 2009, on Rainbow Inn, Inc., t/a Jackey Café (Respondent), at premises 611 H Street, N.W., Washington, D.C. 20001, charging the Respondent with the following two violations:

Charge I: The Respondent permitted the sale or delivery of alcoholic beverages outside the allowed hours, in violation of D.C. Code § 25-723(b)(2). The date of this alleged incident was November 22, 2008.

Charge II: The Respondent failed to keep a licensed ABC manager on duty at all times in violation of D.C. Code § 25-301(6). The date of this alleged incident was November 22, 2008.

The matter proceeded to a Show Cause Hearing on January 13, 2010. The Respondent failed to appear for the hearing and the Board proceeded ex parte pursuant to D.C. Code § 25-447(e). The Government presented evidence through the testimony of witnesses and the submission of documentary evidence. The Board, having considered the evidence, the testimony of a witness, the arguments of counsel, 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 September 21, 2009. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-251-00030). The Respondent holds a Retailer's Class CR License and is located at 611 H Street, N.W., Washington D.C.

2. The Show Cause Hearing in this matter was held on January 13, 2010. The Respondent was charged with two violations. Charge I alleges that the Respondent permitted the sale or delivery of alcoholic beverages outside the allowed hours in violation of D.C. Code § 25-723(b)(2). Charge II alleges that the Respondent failed to keep an ABC licensed manager on duty at all times in violation of D.C. Code § 25-301(6). The date of the violations was November 22, 2008. (*See* ABRA Show Cause File Number 09-251-00030).

3. The Government presented its case through the testimony of one witness, ABRA Investigator Susan Mitchell. *Transcript (Tr.)*, 01/13/10 at 4.

4. Investigator Mitchell testified that on November 22, 2008, she received a tip from the District of Columbia Metropolitan Police Department (MPD) regarding after-hours activity at the Respondent's establishment. *Tr.*, 01/13/10 at 6. Investigator Mitchell, accompanied by MPD Officer Kevin Whaley, entered the establishment about 3:45 a.m. on Saturday, November 22, 2008. *Tr.*, 01/13/10 at 6. Investigator Mitchell and Officer Whaley witnessed numerous patrons consuming alcoholic beverages, both in bottles and in plastic cups. *Tr.*, 01/13/10 at 6, 15; *See* Government Exhibit No. 1, 2 and 3. It was clear to Investigator Mitchell that the beverages being consumed by the patrons were alcoholic beverages. *Tr.*, 01/13/10 at 12.

5. Investigator Mitchell requested to see the Respondent's license and noted that the Board approved hours for the establishment limited sales and service of alcoholic beverages to 3:00 a.m. *Tr.*, 01/13/10 at 7. She then advised Simon Chow, the Respondent's night manager, that he had to cease service of alcoholic beverages and to clear the tables. *Tr.*, 01/13/10 at 7, 14-15. Investigator Mitchell testified that Officer Whaley informed Mr. Chow that patrons needed to leave. *Tr.*, 01/13/10 at 15. Investigator

Mitchell then asked to speak to either the owner or the licensed ABC manager and learned from Mr. Chow that neither person was on duty that night. *Tr.*, 01/13/10 at 8.

CONCLUSIONS OF LAW

6. 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 D.C.M.R. 800, *et seq.*

7. The Board finds that the Government has proven that the Respondent violated D.C. Code § 25-723(b)(2) by permitting the sale or delivery of alcoholic beverages outside the allowed hours. The Board also finds that the Government has proven that the Respondent violated D.C. Code § 25-301(6) by failing to keep an ABC licensed manager on duty at all times.

8. The Board credits the testimony of Investigator Mitchell that she entered the establishment at 3:45 a.m. on Saturday, November 22, 2008 and witnessed numerous patrons inside the establishment consuming alcoholic beverages after the allowed licensed hours. The Board takes administrative notice that the Respondent's approved hours are until 3:00 a.m. on Saturday nights. Investigator Mitchell further testified that when she asked the night manager to speak to the owner or an ABC licensed manager, she was informed that neither person was on duty that night.

9. Based upon the Government's witness testimony and given no testimony to the contrary, the Board finds that the violation of D.C. Code § 25-723(b)(2) as set forth in Charge I and the violation of D.C. Code § 25-301(6) as set forth in Charge II, of the Notice of Show Cause dated September 21, 2008, warrants the suspension of the Respondent's Retailer's Class CR license for seven days, with two days served on February 4 and 5, 2010, and five days to be stayed for a one-year period absent any further violations. The Board also finds that the violations warrant a $1,500.00 fine payable within 30 (thirty) days of receipt of this Order.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 27th day of January, 2010, finds that the Respondent, Rainbow Inn, t/a Jackey Café, holder of a Retailer's Class CR License, located at premises 611 H Street, N.W., Washington, D.C. 20001 violated D.C. Code §§ 25-723(b)(2) and 25-301(6). The Board hereby **ORDERS** that:

1. The Respondent shall pay civil penalties in the amount of fifteen hundred dollars ($1,500) within thirty (30) days from receipt of this Order. Failure to remit the amount in full within the time specified may result in the imposition of additional sanctions; and

2. The Respondent shall incur a suspension of its license for seven (7) days with two days served on February 4 and 5, 2010 and five (5) days stayed for one (1) year absent further violations.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chair

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 (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).