

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

|   |                           |
|---|---------------------------|
| _____ )                                   |                           |
| In the Matter of: )                       |                           |
| _____ )                                   |                           |
| Pangean Investment Group, LLC )           | License No.: 78475        |
| t/a 19 <sup>th</sup> (formerly Skye) )    | Case No.: 10-AUD-00016(a) |
| _____ )                                   | Order No.: 2011-332       |
| Holder of a Retailer's Class CR License ) |                           |
| at premises )                             |                           |
| 1919 Pennsylvania Avenue, N.W. )          |                           |
| Washington, D.C. 20006 )                  |                           |
| _____ )                                   |                           |

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

ALSO PRESENT:    Pangean Investment Group, LLC, t/a 19<sup>th</sup> (formerly Skye),  
                          Respondent

                          Andrew Kline, on behalf of the Respondent

                          Walter Adams II, 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 March 5, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated March 2, 2010, on Pangean Investment Group, LLC, t/a 19<sup>th</sup> (formerly Skye) (Respondent), at premises 1919 Pennsylvania Avenue, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I:            The Respondent violated D.C. Code §§ 25-113(b)(3)(B)(i)(I) and 25-113(b)(3)(B)(i)(II) (Supp. 2011) and 23 DCMR § 2101 (2008) by failing to meet the annual gross food sales requirement of either

\$2,000.00 per occupant or 45 percent of gross annual receipts, for which the Board may take the proposed action pursuant to D.C.Code § 25-823(1) (Supp. 2011).

### FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated May 26, 2010. See ABRA Show Cause File No. 10-AUD-00016(a). The Respondent holds a Retailer's Class CR License and is located at 1919 Pennsylvania Avenue, N.W., Washington, D.C. See ABRA Licensing File No. 78475.
2. The Show Cause Hearing in this matter was held on May 11, 2011. The Notice to Show Cause, dated May 26, 2010, charges the Respondent with the violation enumerated above. See ABRA Show Cause File No. 10-AUD-00016(a).
3. The parties agreed to stipulate to the following facts:
  - (A) Adenihi O. "Neal" Adejunmobi serves as an Auditor for the Alcoholic Beverage Regulation Administration (ABRA).
  - (B) Mr. Adejunmobi collects and reviews quarterly statements filed by all ABC-licensed establishments.
  - (C) Around July 19, 2010, Mr. Adejunmobi reviewed the Respondent's compliance with the District of Columbia's annual food sales requirements.
  - (D) Mr. Adejunmobi drafted Case Report No. 10-AUD-00016(a).
  - (E) The Respondent filed four quarterly statements reporting its food sales during 2009, which were incorporated into Case Report No. 10-AUD-00016(a).
  - (F) Between January 1, 2009, and December 31, 2009, the Respondent reported that its total gross sales were \$591,224.00, of which only \$69,180.00 were from the sale of food.
  - (G) The Respondent's food sales only accounted for 12 percent of its gross annual sales.
  - (H) The Respondent's Certificate of Occupancy, dated August 4, 2003, indicates that the establishment's occupancy is 62 seats.
  - (I) The Respondent's annual gross food sales per occupant in 2009 was \$1,116.00.

*Transcript (Tr.)*, May 11, 2011 at 4-5; ABRA Show Cause File No. 10-AUD-00016(a), *Proposed Stipulations of Fact*, 1-2.

4. During the hearing, former Chairperson Charles Brodsky stated, “we get a little cheat sheet about each case that we can refer to.” *Tr.*, at 11-12. The Board clarifies the record that the “cheat sheet” referenced by the former Chairperson was a copy of the Respondent’s Investigative History, which is produced by the Alcoholic Beverage Regulation Administration and made available to the public for review.

5. The Board’s records indicate that the Respondent has two prior primary-tier violations and three prior secondary-tier violations in the past four years. On September 16, 2010, the Respondent agreed to a staff settlement, agreeing that the establishment violated D.C. Code § 25-762(2) on July 15, 2010, by “increasing the summer garden seating capacity and permitting the consumption of an alcoholic beverage in an unapproved area.” ABRA Show Cause File No. 10-CMP-00502, *Consent to Waiver of Hearing and Payment of Fine*. This violation is a primary-tier violation because 23 DCMR § 800 indicates that a substantial change involving the expansion of an establishment’s exterior private space, which includes the unauthorized use of a summer garden, is a primary-tier violation. 23 DCMR § 800 (2008). In addition, on September 24, 2008, the Respondent committed a primary-tier violation by having an unauthorized sidewalk café. ABRA Show Cause File No. 10-AUD-00016(a), *Investigative History*. The notice charging the Respondent with the violation on September 24, 2008, indicates that the Respondent was charged with violating §§ 25-762(2) and 25-113(a). ABRA Show Cause File No. 10-AUD-00016(a), *Letter from Andrew J. Kline to the Board, Exhibit C, 2* (Jun. 7, 2011). There is no indication in the record that the prosecution dropped Charge I, which charged the Respondent with violating § 25-762(2). As such, the offer-in-comprize accepted by the Board to resolve the violations that occurred on September 24, 2008, includes a primary-tier violation. Finally, the Respondent also has three prior secondary-tier violations involving the failure of the establishment to submit its Quarterly Reports. *Investigative History*.

## 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 DCMR § 800, *et seq.*

7. We find that the Respondent violated D.C. Code §§ 25-113(b)(3)(B)(i)(I) and 25-113(b)(3)(B)(i)(II) and 23 DCMR § 2101 by failing to meet its gross annual food sales requirements of either \$2,000.00 per occupant or 45 percent of gross annual receipts. The facts stipulated by the parties indicate that in 2009 the Respondent’s gross annual food sales only accounted for 12 percent of its gross annual sales and that the establishment’s annual gross food sales per occupant was only \$1,116.00.

8. Therefore, based on these facts, it is uncontested that the Respondent violated D.C. Code §§ 25-113(b)(3)(B)(i)(I) and 25-113(b)(3)(B)(i)(II) and 23 DCMR § 2101.

9. On a final note, the Board notes that the Respondent argues that it is unclear that violations it committed on July 15, 2010, and September 24, 2008, were primary-tier violations. We disagree. Contrary to the Respondent's arguments, the size of the penalty is irrelevant to the determination of whether an offense is a primary-tier or secondary-tier offense because, when settling a matter without a hearing, the prosecution is entitled to use its discretion and can offer penalties below the statutory minimum. Furthermore, it is clear to the Board that the Respondent violated § 25-762(2) on July 15, 2010, because the settlement agreement entered into by the Government and the Respondent clearly describes a § 25-762(2) violation. In addition, it is clear that the § 25-762(2) violation is part of the offer-in-compromise for the violation on September 24, 2008, because there is no indication in the record that the Government dropped this charge before entering into the agreement. As such, we find that the Respondent knowingly and voluntarily agreed that it committed a primary-tier violation on July 15, 2010, and September 24, 2008.

10. In light of the above, pursuant to D.C. Code §25-830, the Board is obligated to impose a penalty of no less than \$4,000.00 because this violation was the Respondent's third violation in the past three years. D.C. Code § 25-830(c)(1) (2001).

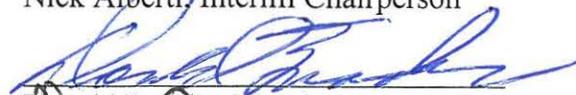
### **ORDER**

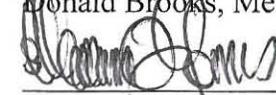
Based on the foregoing findings of fact and conclusions of law, the Board, on this 20th day of July 2011, finds that the Respondent, Pangean Investment Group, LLC, t/a 19<sup>th</sup> (formerly Skye), at premises 1919 Pennsylvania Avenue, N.W., Washington, D.C., holder of a Retailer's Class CR License, violated D.C. Code §§ 25-113(b)(3)(B)(i)(I) and 25-113(b)(3)(B)(i)(II) (Supp. 2011) and 23 DCMR § 2101 (2008). The Board hereby **ORDERS** that:

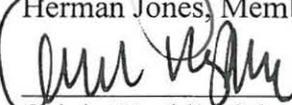
1. The Respondent shall pay a fine in the amount of \$4,000.00 by no later than thirty (30) days from the date of this Order.

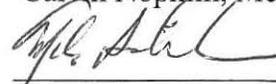
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
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, 1250 U Street, N.W., 3<sup>rd</sup> Floor, 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).