

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

In the Matter of:	)	
	)	
Black Whiskey, LLC	)	Case No.: 15-CMP-00592
t/a Black Whiskey	)	License No: 91434
	)	Order No: 2016-078
Holder of a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
1410 14th Street, N.W.	)	
Washington, D.C. 20009	)	

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
Ruthanne Miller, Member  
James Short, Member

**ALSO PRESENT:** Black Whiskey, LLC, t/a Black Whiskey, Respondent  
  
Marc Zahorchak, General Manager, on behalf of the Respondent  
  
Fernando Rivero, Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds Black Whiskey, LLC, t/a Black Whiskey, (hereinafter "Respondent" or "Black Whiskey") in violation of one count of violating District of Columbia (D.C.) Official Code § 25-701 on August 19, 2015. Black Whiskey shall pay a \$500 fine for the violation.

Black Whiskey is further advised that during the hearing, the Respondent's representative testified that the establishment stores beer in the basement, which is not part of the licensed premises. *Transcript (Tr.)*, January 13, 2016 at 52. The Board reminds Black Whiskey that under the law it cannot store or keep for sale any alcoholic beverages in the basement unless the basement is added to the license. D.C. Official Code § 25-754(a). If the Respondent intends to continue storing beer in the building's basement, Black Whiskey should immediately file a substantial change application and amend the establishment's certificate of occupancy, if necessary, to legally permit the use of the basement as a storage site. Otherwise, Black Whiskey may face an additional enforcement action in the future.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 28, 2015. *ABRA Show Cause File No., 15-CMP-00592*, Notice of Status Hearing and Show Cause Hearing, 2 (Oct. 28, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1410 14th Street, N.W., Washington, D.C., on October 30, 2015, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00592*, Service Form. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violation:

**Charge 1: You failed to keep a licensed ABC manager on duty at all times, in violation of D.C. Official Code § 25-701 . . .**

*Notice of Status Hearing and Show Cause Hearing, 2.*

Both the Government and Respondent appeared at the Show Cause Status Hearing on December 9, 2015. The parties proceeded to a Show Cause Hearing and argued their respective cases on January 13, 2016.

### **FINDINGS OF FACT**

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Black Whiskey holds a Retailer's Class CT License at 1410 14th Street, N.W., Washington, D.C. *ABRA License No. 71086*. The owner of the establishment is Daren Lee Norris. *Case Report No. 15-CMP-00592*, at 1. Black Whiskey is licensed for the first and second floor of 1410 14th Street, N.W. *Tr.*, 1/13/16 at 20.
2. ABRA Investigator Anthony Howze performed an inspection at Black Whiskey on August 19, 2015. *Id.* at 11. Investigator Howze entered the establishment at 11:10 p.m. *Id.* He saw general manager Marc Zahorchak and requested that he get the manager or owner. *Id.* at 12.

Mr. Zahorchak indicated that the owner was at another establishment assisting with the closing of a second business. *Id.* at 12-13. Investigator Howze performed a regulatory inspection at the establishment. *Id.* at 21. At the end of the investigation, the owner entered the establishment as Investigator Howze was leaving. *Id.* at 22, 28.

3. Mr. Zahorchak testified that after speaking to the investigator, he called the owner and asked where he was. *Id.* at 35. He learned that the owner was in the basement of the building, but not in the establishment itself. *Id.* at 35, 37, 39, 43, 45-46.

## CONCLUSIONS OF LAW

4. 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 District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2015). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines “that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed.” D.C. Official Code § 25-447.

### **I. The Respondent operated without an owner or licensed manager present on August 19, 2015.**

5. There is no dispute that the establishment violated the licensed manager requirement. Under § 25-701, “A person designated to manage an establishment shall possess a manager’s license.” D.C. Official Code § 25-701(a). The Board has always interpreted this requirement as requiring an owner or manager to be present on the premises, because the establishment cannot be properly superintended without their presence. *See* D.C. Official Code § 25-301(a)(6) (requiring management “in person”). In this case, the owner of Black Whiskey left an unlicensed manager in charge of the establishment and left the licensed premises to go to the unlicensed basement. *Supra*, at ¶¶ 1-3. In obtaining a license, the Respondent made a promise to always have a licensed manager or owner present on the licensed premises while the business is in operation. Nevertheless, the record in this matter shows that the Respondent broke that promise and violated the law.

### **II. Penalty**

7. A violation of D.C. Official Code § 25-701 is deemed a secondary tier violation under the law. 23 DCMR § 800 (West Supp. 2016). A second secondary tier violation, as is the case here, allows the Board to impose a fine ranging from \$500 to \$750. 23 DCMR § 8002.1(B) (West Supp. 2016); *Investigative History*, Black Whiskey, ABRA License No. 91434 (last updated Jan. 19, 2016) [*Investigative History*]. The Board solely imposes the minimum fine in this case, because, although unintentional, the establishment was left without the appropriate supervision as required by the law.

## **ORDER**

Therefore, the Board, on this 24th day of February 2016, finds that Black Whiskey, LLC, t/a Black Whiskey, guilty of violating D.C. Official Code § 25-701(a). The Board imposes the following penalty on the licensee:

(1) For the violation described in Charge I, Black Whiskey shall pay a fine of \$500.

**IT IS FURTHER ORDERED** that the Respondent must pay the fine imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

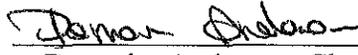
**IT IS FURTHER ORDERED**, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed a secondary tier violation.

**IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

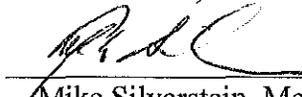
Black Whiskey is **ADVISED** that it should immediately take steps to correct its license if it intends to use the basement as an alcoholic beverage storage site.

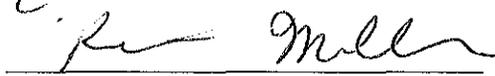
The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia  
Alcoholic Beverage Control Board

  
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Donoyan Anderson, Chairperson

  
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Nick Alberti, Member

  
\_\_\_\_\_  
Mike Silverstein, Member

  
\_\_\_\_\_  
Ruthanne Miller, Member

  
\_\_\_\_\_  
James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).