

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

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| _____ )                                  |                           |
| In the Matter of: )                      |                           |
| )  |                           |
| Masawa Corporation )                     | License Number: 025935    |
| t/a Far East Deli )                      | Case Number: 09-CMP-00584 |
| )  | Order No.: 2010-053       |
| Holder of a Retailer's Class B License ) |                           |
| at premises )                            |                           |
| 1612 Kenilworth Avenue, N.W. )           |                           |
| Washington, D.C. 20019 )                 |                           |
| _____ )                                  |                           |

BEFORE: Charles Brodsky, Chairman  
Mital Gandhi, Member  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member

ALSO PRESENT: Walter Adams, Assistant Attorney General,  
Office of the Attorney General, District of Columbia

Bernard Dietz, Counsel for the Respondent

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

On January 27, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated October 7, 2009, on Masawa Corporation, t/a Far East Deli (Respondent), at premises 1612 Kenilworth Avenue, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent failed or refused to allow ABRA Investigators to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interfered with an investigation, for which the Board may take action pursuant to D.C. Official Code § 25-823(5) (2009).

- Charge II: The Respondent divided a manufacturer's package of more than one container of beer, malt liquor, or ale in order to sell individual containers holding 70 ounces or less in violation of D.C. Official Code § 25-342(b), for which the Board may take action pursuant to D.C. Official Code § 25-823(1).
- Charge III: The Respondent sold, gave, offered, exposed for sale, or delivered an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or less in violation of D.C. Official Code § 25-342(c) for which the Board may take action pursuant to D.C. Official Code § 25-823(1).
- Charge IV: The Respondent failed to have on site books and records for inspection in violation of District of Columbia Municipal Regulations 23 § 1208.1 (2008), for which the Board may take action pursuant to D.C. Official Code § 25-823(1).
- Charge V: The Respondent failed to keep and maintain on site all books and records on the licensed premises for a period of 3 years in violation of District of Columbia Municipal Regulations 23 § 1208.3, for which the Board may take action pursuant to D.C. Official Code § 25-823(1).

The matter proceeded to a Show Cause Hearing where the Government and the Respondent presented evidence through the testimony of witnesses and the submission of documentary evidence. The Board, having considered the evidence, the testimony of witnesses, 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 October 7, 2009. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-CMP-00584). The Respondent holds a Retailer's Class B License and is located at 1612 Kenilworth Avenue, N.W., Washington, D.C. (*See* ABRA Licensing File No. 025935).
2. The Show Cause Hearing in this matter was held on January 27, 2010. The Notice to Show Cause charges the Respondent with five violations enumerated above. (*See* ABRA Show Cause File Number 09-CMP-00584).
3. The Government presented its case through the testimony of two witnesses, ABRA Investigator Felecia Dantzler and Investigator Demetrius Nickens. *Transcript (Tr.)*, 1/27/10 at 13, 69. In addition, the Government submitted Case Report 09-CMP-00584

written by Felicia Dantzler, which contained pictures of divided packages at the Respondent's premises. (See ABRA Show Cause File Number 09-CMP-00584).

4. According to Investigator Dantzler's testimony, on July 7, 2009, Investigator Nickens and she went to the Respondent's establishment to perform a regulatory investigation. *Tr.*, 1/27/10 at 15-16. Upon their arrival, Investigator Dantzler noted that the Respondent's establishment was contained in a glass enclosed area so that only store employees could obtain merchandise for customers. *Tr.*, 1/27/10 at 16. Investigator Dantzler observed the Respondent sell a single cigarette to a customer for a dollar. *Tr.*, 1/27/10 at 57.

5. Investigator Dantzler testified that the Investigators identified themselves to the Respondent, who was the only individual working in the store during the investigation. *Tr.*, 1/27/10 at 17. Investigator Dantzler testified that the Respondent identified himself as an employee, even though he was the President of the corporation. *Tr.*, 1/27/10 at 18.

6. According to Investigator Dantzler, the Respondent obtained a poster board that contained the establishment's licenses and let the poster board lean on the glass so that the Investigators could see it from outside the Respondent's store. *Tr.*, 1/27/10 at 19-20. According to her testimony, Investigator Dantzler, at the prompting of Investigator Nickens, observed several containers of alcoholic beverages, which were altered from their original packaging. *Tr.*, 1/27/10 at 21.

7. Investigator Dantzler testified that she requested access to the area inside the store. *Tr.*, 1/27/10 at 22. In response, the Respondent told Investigator Dantzler that he did not have a key and that the owner took the key with him. *Tr.*, 1/27/10 at 22. The Respondent stated that he would make some calls, which the Respondent did between servicing customers. *Tr.*, 1/27/10 at 22.

8. Investigator Dantzler believed that the Respondent was intentionally stalling the investigation. *Tr.*, 1/27/10 at 23. As a result, Investigator Dantzler stated that she asked the Respondent if they could enter through the establishment's rear entrance. *Tr.*, 1/27/10 at 23. The Respondent stated that the rear entrance was locked as well and that he did not have a key. *Tr.*, 1/27/10 at 23. Investigator Dantzler then offered to call the fire marshal so that the authorities could let the Respondent out because she believed that the situation presented a fire hazard. *Tr.*, 1/27/10 at 23-24. Furthermore, Investigator Dantzler also told the Respondent that she believed he was delaying the inspection and warned him that he could be found culpable for impeding an ABRA inspection. *Tr.*, 1/27/10 at 24.

9. After being warned by Investigator Dantzler, Investigator Dantzler stated that the Respondent grabbed a set of keys by the register. *Tr.*, 1/27/10 at 24. She then stated that the Respondent tried two or three keys. *Tr.*, 1/27/10 at 25. However, Investigator Dantzler testified that the Respondent would not insert the keys into the keyhole but rather partially put the key in and jiggle it. *Tr.*, 1/27/10 at 25. Investigator Nickens then told the Respondent to stick the key in the hole and to turn the key. *Tr.*, 1/27/10 at 25. The Respondent then unlocked the door. *Tr.*, 1/27/10 at 25. Based on these facts, Investigator

Dantzler believes the Respondent was pretending not to know which key to use. *Tr.*, 1/27/10 at 25.

10. Upon entering the establishment, Investigator Dantzler reported that she found five separate packages that contained alcoholic beverages had been altered. *Tr.*, 1/27/10 at 34. Investigator Dantzler saw twelve packs that were cut with a sharp object to create two six packs and noticed that several six packs had several beers missing. *Tr.*, 1/27/10 at 21, 35. Investigator Dantzler testified that Exhibit 4A was a picture of packaging that was cut with a sharp object and wrapped with masking tape to secure the bottles. *Tr.*, 1/27/10 at 36; ABRA Show Cause File Number 09-CMP-00584, Exhibit 4A. Investigator Dantzler also noted that Exhibit 6A was a photograph of an eighteen pack of beer that was cut and divided to hold six cans but only had four cans remaining. *Tr.*, at 1/27/10 at 60-3, ABRA Show Cause File Number 09-CMP-00584, Exhibit 6A. Furthermore, Investigator Dantzler testified that Exhibits 7 through 11 were pictures of six packs that were missing individual containers of beer. *Tr.*, 1/27/10 at 36-37. Investigator Dantzler noted that Exhibit 8A should have contained six Schlitz beers instead of the four beers that were present in the photograph. *Tr.*, 1/27/10 at 53, 65, ABRA Show Cause File Number 09-CMP-00584, Exhibit 8A. She also noted that Exhibits 9 and 10 showed a six pack with only two cans left, while Exhibit 11 was a photograph of a six pack with one container missing. *Tr.*, 1/27/10 at 65; ABRA Show Cause File Number 09-CMP-00584, Exhibit 9, Exhibit 10, and Exhibit 11. In Investigator Dantzler's opinion, the establishment was willfully removing singles from their original packaging. *Tr.*, 1/27/10 at 66.

11. Investigator Dantzler admitted that the store did not have any advertisements offering individual containers for sale. *Tr.* 1/27/10 at 40. Furthermore, Investigator Dantzler stated that the Respondent stated that he was not offering single containers for sale. *Tr.*, 1/27/10 at 40. Finally, Investigator Dantzler testified that she did not observe the Respondent sell an individual container. *Tr.*, 1/27/10 at 40.

12. According to Investigator Dantzler, the Respondent stated that the bottles broke during shipment and that a can had fallen off. *Tr.*, 1/27/10 at 37. In response, Investigator Dantzler requested that the Respondent show her the invoices that listed the items as damaged. *Tr.*, 1/27/10 at 37. According to Investigator Dantzler, the Respondent stated that his invoices were with his accountant. *Tr.*, 1/27/10 at 37. The Respondent then provided Investigator Dantzler with three invoices. *Tr.*, 1/27/10 at 38. Investigator Dantzler then requested invoices from the summer of 2007. *Tr.*, 1/27/10 at 38. According to Investigator Dantzler, the Respondent replied that he did not have those invoices. *Tr.*, 1/27/10 at 38. Upon conversing with Investigator Dantzler further, the Respondent identified himself as an owner and President of the corporation. *Tr.*, 1/27/10 at 38.

13. According to Investigator Dantzler, on average, when an ABC licensee makes all certificates and invoices readily accessible, it takes approximately ten minutes to perform a regulatory inspection. *Tr.*, 1/27/10 at 15. The inspection of the Respondent's establishment took approximately fifty minutes. *Tr.*, 1/27/10 at 39.

14. Investigator Nickens testified that he accompanied Investigator Dantzler to the Respondent's establishment on July 7, 2009. *Tr.*, 1/27/10 at 69. Investigator Nickens testified that the Respondent identified himself as an employee of the establishment; however, once they were granted access to the interior of the establishment the Respondent identified himself as an owner of the establishment. *Tr.*, 1/27/10 at 70-71.

15. Investigator Nickens did not recall whether he notified Investigator Dantzler that the packaging had been altered and whether he noted they had been altered from outside the establishment. *Tr.*, 1/27/10 at 73. However, Investigator Nickens testified that he wanted to gain entrance into the employee enclosed area in order to see the Respondent's license. *Tr.*, 1/27/10 at 74. Investigator Nickens testified that he believed a reasonable customer could see the contents of the coolers from the outside. *Tr.*, 1/27/10 at 74.

16. Upon entering the establishment, Investigator Nickens noticed that several of the packages containing alcoholic beverages had been cut down and altered. *Tr.*, 1/27/10 at 74.

17. The Respondent presented its case through the testimony of one witness, Mussie Ghirmai, who is a part-owner of Far East Deli. *Tr.*, 1/27/10 at 77. Furthermore, the Respondent submitted an Incident-Based Event Report form from the Metropolitan Police Department, Log #9677, and a Property Loss Notice, from Ace Insurance Services. (*See* ABRA Show Cause File Number 09-CMP-00584).

18. The Respondent testified that he was the President of Musawa Corporation. *Tr.*, 1/27/10 at 77. The Respondent testified that he considers himself an employee of the corporation. *Tr.*, 1/27/10 at 78.

19. The Respondent testified that his brother, Ashwali, borrowed his car and keys. He stated that after Investigator Dantzler requested entrance to the interior of his premises, the Respondent stated he believed the owner took the key. *Tr.*, 1/27/10 at 80. The Respondent stated that he called his brother and his brother told him that the brother's key was in the back of the store. *Tr.*, 1/27/10 at 80, 88. The Respondent stated that he could not open the door with the key because it was broken from the inside and that he handed the key to the Investigators so that they could open the door from the outside. *Tr.*, 1/27/10 at 80.

20. The Respondent testified that his store was burglarized in the past and, as a result, he keeps all of the documents in the basement. *Tr.*, 1/27/10 at 81. Furthermore, the Respondent testified that the Investigators did not give him a chance to go to the basement and retrieve them. *Tr.*, 1/27/10 at 81, 90. He stated that he had customers waiting to be served and customers were yelling at him while the investigation was proceeding. *Tr.*, 1/27/10 at 81. The Respondent testified that the 2007 invoices were stolen. *Tr.*, 1/27/10 at 83. Finally, the Respondent testified that he never notified the Board about the location of his invoices. *Tr.*, 1/27/10 at 89.

21. The Respondent testified that in his establishment the smallest unit for the sale of twelve ounce cans of beer is a six pack. *Tr.*, 1/27/10 at 83. The Respondent further testified that a salesman told him he could sell six packs. *Tr.*, 1/27/10 at 84. As a result,

the Respondent admitted that his business is cutting the twelve packs in half to make six packs. *Tr.*, 1/27/10 at 84. The Respondent stated that his business no longer breaks packages apart. *Tr.*, 1/27/10 at 84.

## CONCLUSIONS OF LAW

22. 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.*

23. The Board finds that the Government has proven all of the charges against the Respondent. The Respondent refused to allow ABRA Investigators to enter the Respondent's establishment without delay and interfered with an investigation pursuant to D.C. Code § 25-823(5). Further, the Respondent divided manufacturers packages of individual containers of 70 ounces or less and offered them for sale in violation of D.C. Code § 25-342(b)-(c). Finally, the Respondent failed to have his invoices for the past three years on site and available for inspection in violation of D.C. Code § 25-823(1).

24. The Board is not persuaded by the Respondent's excuses for why he failed to open the door to his establishment when requested by Investigators Dantzler and Nickens. The Respondent only obtained keys to his own establishment when Investigator Dantzler suggested calling the fire marshal and threatened greater sanctions. Indeed, nothing in the Respondent's testimony indicates why he made so many calls while the investigators were waiting when he could have called his brother, who he claimed had the keys, the first time. Combined with the Respondent's intentional vagueness about his status as an owner and his antics opening the door, the Board can only conclude that the Respondent sought to impede the investigation of his establishment. Therefore, the Board finds the Respondent is in violation of D.C. Code § 25-823(5).

25. The Respondent admitted that his establishment was cutting up and dividing packages of alcoholic beverages for sale. This is further supported by the photographic evidence provided by the Government. As a result, the Board finds that Respondent violated D.C. Code § 25-342(b).

26. The Board is entitled to infer that the Respondent was selling beer in single containers that were 70 ounces or less. The Government's photographs that show numerous six packs and other packages missing individual containers of beer are sufficient evidence to infer that the Respondent violated the single sale prohibition. Furthermore, the Board is not persuaded by the Respondent's testimony that six packs are the smallest unit of alcohol that his establishment offers. The Board is not convinced that the packages were damaged during shipment, as the Respondent told the Investigators during their investigation. The Respondent has had the opportunity to present the invoices showing that the packages were damaged during shipment; however, Respondent only submitted a

police report and an insurance form, which makes no mention of any missing files or property. Therefore, the Board finds that the Respondent violated D.C. Code § 25-342(c).

27. The three invoices given to the Investigators were not sufficient to meet the Respondent's duty under the law. The Government demonstrated that the Respondent did not have the required invoices on-site, specifically the 2007 invoices requested by Investigator Dantzler, as required. If the Respondent wanted to store his invoices off-site with his accountant he had a duty to seek the Board's approval. Furthermore, this statement made to Investigator Dantzler contradicts the Respondent's testimony that his invoices were in his basement during the Show Cause Hearing. Furthermore, if the Respondent's invoices were stolen, as he claimed, he had a duty to inform the Board of this fact. Therefore, the Board finds that the Respondent is in violation of 23 DCMR § 1208.1.

28. The Respondent admitted that he did not have the 2007 invoices on-site, which he was required to have. If the Respondent's invoices were stolen, as he claimed, he had a duty to inform the Board of this fact. Indeed, the police report and insurance form submitted by the Respondent do not mention any stolen files and are not sufficient to show that the Respondent's 2007 invoice was stolen. Therefore, the Board finds that the Respondent violated 23 DCMR § 1208.3

29. The Board concludes that the Government has proven Charges I, II, III, IV, and V. Therefore, the Board imposes a fine of \$3,000 payable within 30 days and a fourteen day suspension with two days stayed pending no further violations for a period of one year.

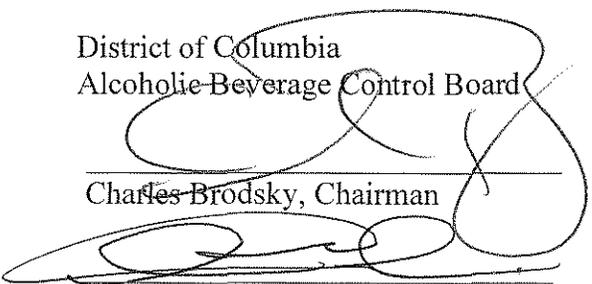
### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 7 day of April, 2010, finds that the Respondent, Masawa Corporation, t/a Far East Deli at premises 1612 Kenilworth Avenue, N.W., Washington, D.C., holder of a Retailer's Class B License, violated D.C. Code § 25-823(1); D.C. Code § 25-823(5); D.C. Code § 25-342(b); D.C. Code § 25-342(c); District of Columbia Municipal Regulations 23 § 1208.1; and District of Columbia Municipal Regulations 23 § 1208.3

The Board hereby **ORDERS** that:

1. The Respondent shall pay a fine in the amount of \$3,000.00 by no later than thirty (30) days from the date of this Order. The Respondent shall receive a suspension of its license for fourteen (14) days; twelve (12) days served and two (2) days stayed for one (1) year, provided that the Respondent does not commit any ABC violations.

District of Columbia  
Alcoholic Beverage Control Board



Charles Brodsky, Chairman

Mital Gandhi, Member



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).