

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

In the Matter of:)	
)	
Dunmore, LLC)	License Number: 72017
t/a Sonoma)	Case Number: 09-CMP-00553
)	Order No.: 2010-046
Holder of a Retailer's Class CR License)	
at premises)	
223 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20004)	

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

ALSO PRESENT: Jared Rager, Respondent

Michael Stern, Senior Assistant Attorney General
District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On October 10, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated October 7, 2009, on Dunmore, LLC t/a Sonoma (Respondent), at premises 223 Pennsylvania Avenue, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent permitted a substantial change in the operation of the licensed establishment without first getting approval from the Board in violation of D.C. Official Code § 25-762(b) (2001). The date of this alleged incident was June 10, 2009.

Charge II: The Respondent permitted a substantial change in the operation of the licensed establishment without first getting approval from the Board in violation of D.C. Official Code § 25-762(b) (2001). The date of this alleged incident was July 7, 2009.

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-00553). The Respondent holds a Retailer's Class CR License and is located at 2007 1st Street, N.W., Washington D.C. (*See* ABRA Licensing File No. 72017).
2. The Show Cause Hearing in this matter was held on January 6, 2010. The Notice to Show Cause, dated October 7, 2009, charges the Respondent with two violations enumerated above. (*See* ABRA Show Cause File Number 09-CMP-00359).
3. The Government presented its case through the testimony of one witness, ABRA Investigator Felecia Dantzler. *Transcript (Tr.)*, 1/6/10 at 8.
4. Investigator Dantzler testified that on June 10, 2009, she visited the Respondent's establishment to conduct a regulatory inspection. *Tr.*, 1/6/10 at 9, 32. Upon her arrival at the establishment, she spoke to the Roneeka Bhagotra, who identified herself as the ABC licensed manager. *Tr.*, 1/6/10 at 9. Investigator Dantzler noticed during her inspection that the Public Space Permit stated that the seating for the outdoor sidewalk café was 10 seats. *Tr.*, 1/6/10 at 10. Investigator Dantzler walked outside and took note that there were more than 10 seats on the sidewalk café. *Tr.*, 1/6/10 at 10, 32. She counted 20 seats. *Tr.*, 1/6/10 at 11, 33-34.
5. Investigator Dantzler advised Ms. Bhagotra that the establishment needed to come into compliance with the number of seats approved by the Department of Regulatory and Consumer Affairs (DCRA)¹. *Tr.*, 1/6/10 at 11. Investigator Dantzler issued a warning to the establishment, but she did not issue a citation because the excessive seating was not occupied. *Tr.*, 1/6/10 at 33, 85. Ms. Bhagotra showed Investigator Dantzler a copy of an

¹ The Board notes that the public often confuses the terms and authorization for use of space outside of a licensed establishment. DCRA is the agency responsible for issuing Certificates of Occupancy for use of private space such as a summer garden and the Department of Transportation is the agency responsible for issuing Public Space permits for the use of public space such as a sidewalk café.

application filed by Sonoma to increase its seating occupancy. *Tr.*, 1/6/10 at 11. Ms. Bhagotra told Investigator Dantzler that there was not a final number determination on the application. *Tr.*, 1/6/10 at 12.

6. Investigator Dantzler testified she returned to the establishment on July 7, 2009 to ascertain whether the Respondent was now in compliance. *Tr.*, 1/6/10 at 12, 34. On this occasion, she counted two patrons and 22 seats on the sidewalk café. *Tr.*, 1/6/10 at 12, 35. She again spoke to Ms. Bhagotra who indicated that she believed the establishment had been approved for a new Public Space Permit, although she didn't have any paperwork supporting that contention. *Tr.*, 1/6/10 at 12-13.

7. Investigator Dantzler confirmed that she did not obtain a copy or take a photograph of the 2005 Certificate of Use application. *Tr.*, 1/6/10 at 24. She did not make any copies of the 2007 application either. *Tr.*, 1/6/10 at 25. Investigator Dantzler saw the application for outdoor seating and the application listed ten seats. *Tr.*, 1/6/10 at 36-37. ABRA's licensing records reflect the same number. *Tr.*, 1/6/10 at 37. She never saw a government-issued certificate that allowed for more than ten seats. *Tr.*, 1/6/10 at 37-38.

8. The Respondent presented its case through the testimony of one witness, Jared Rager, who is the owner and managing member. *Tr.* 1/6/10 at 42.

9. Mr. Rager testified he was the operational manager when the establishment first opened in 2005. *Tr.* 1/6/10 at 42, 57. When he first took over the business, he inherited all of the permits and licenses associated with the business. *Tr.* 1/6/10 at 43. He then took steps to transfer the ownership and renew the licenses. *Tr.* 1/6/10 at 43-44, 57. Mr. Rager understood that he needed authority from the Department of Transportation (DDOT) to use the sidewalk café. *Tr.* 1/6/10 at 42. He believed that when he received approval from DDOT, then the sidewalk café endorsement was placed on his ABC license so that alcohol could be served and consumed on that public space. *Tr.* 1/6/10 at 44. He thought he had authorization for 35 seats for the outdoor space because that is what he submitted on his application. *Tr.* 1/6/10 at 58.

10. Mr. Rager had a Public Space Permit but there was no number associated with it. *Tr.* 1/6/10 at 45. There was also no record of drawings or dimensions of the public space. *Tr.* 1/6/10 at 42. He disputed the testimony of ABRA Investigator Dantzler, because he has no document that authorizes ten seats on the sidewalk café. *Tr.* 1/6/10 at 45. He never received a new Public Space Permit when the permits transferred to his ownership. *Tr.* 1/6/10 at 45. Mr. Rager was told by the agency to place a copy of the receipt behind the framed license and the inspector would know that payment was current. *Tr.* 1/6/10 at 45. He begged the agency for a new Public Space Permit so that he could demonstrate that he had a permit for the sidewalk café. *Tr.* 1/6/10 at 46. He also testified that when he filed the new application, it contained the number 35 seats. *Tr.* 1/6/10 at 46, 69.

11. Mr. Rager stated that he has been inspected by DDOT multiple times and understood from them that the number of seats he had on his sidewalk café was the de facto number approved by them. *Tr.* 1/6/10 at 47-48. On only one occasion did DDOT request

modification to the space, but they never indicated to the Respondent that there was a violation of the number of seats. *Tr.* 1/6/10 at 47-48. He testified that all of the applications he has filed with DDOT listed the number “35”. *Tr.* 1/6/10 at 45.

12. Mr. Rager became aware of Investigator Dantzler’s regulatory inspection when he was contacted by his manager, Roneeka. *Tr.* 1/6/10 at 52, 69, 72. Following ABRA’s visit, he sent his manager, Karim Haizoun to DDOT to ensure the permits were all in order. *Tr.* 1/6/10 at 53, 71. Mr. Haizoun was assured by the agency that his application stating 35 seats had been accepted and that everything was fine regarding the use of the sidewalk café. *Tr.* 1/6/10 at 53, 74-75. If DDOT had informed Mr. Rager that he was only permitted ten seats, he would have only had ten seats. *Tr.* 1/6/10 at 77, 95.

13. He was never notified that he could not operate with no more than ten seats. *Tr.* 1/6/10 at 53, 75. Following Investigator Dantzler’s second regulatory inspection in July 2009, the Respondent removed the extra seats and reduced the seating to ten seats. *Tr.* 1/6/10 at 54, 72, 84, 89-90. Mr. Rager added that he runs a clean business that benefits the city. *Tr.* 1/6/10 at 55. But for one unfortunate incident with a bartender years ago, there have been no serious incidents. *Tr.* 1/6/10 at 55.

14. Mr. Rager was under the belief that because he had no documentation from the Government limiting his outdoor seating to 10 seats, that he wasn’t committing a violation. *Tr.* 1/6/10 at 56. He was advised by his attorney that he had done everything he needed to do to address the matter. *Tr.* 1/6/10 at 56, 83. Mr. Rager stated that DDOT acknowledged that he is in compliance. *Tr.* 1/6/10 at 56, 61, 95. He has never received written approval for his Public Space permit application for the sidewalk café. *Tr.* 1/6/10 at 56. DDOT provides a Permit with no number on it, a copy of the application and a receipt of the application fee, and then asks establishments to keep these documents with their licenses as verification of their authorization. *Tr.* 1/6/10 at 61-62, 91-93.

15. Mr. Rager identified an ABRA document issued to the predecessor establishment for the approval of sales and service of alcoholic beverages on the sidewalk café. *Tr.* 1/6/10 at 63-64, 92; *see* Government Exhibit No. 3. Mr. Rager had never seen the ABRA document before, but he acknowledged that it stated that the outdoor café has ten seats. *Tr.* 1/6/10 at 64-65, 96. He had never asked to see any ABRA documentation with the exception of the written endorsement on the liquor license, nor did he ask ABRA staff to clear up his confusion. *Tr.* 1/6/10 at 66, 72, 86. He was not aware that ABRA had any responsibility for the number of seats for the outdoor café. *Tr.* 1/6/10 at 66, 71. He thought he was only required to get ABRA’s approval for service of alcoholic beverages on the outdoor patio regardless of the number of seats. *Tr.* 1/6/10 at 67-68.

16. The Government asked that the Board impose, in total, a fine of \$7,000.00 and a suspension of seven days, with three days served and four days stayed for one year pending no further violations. *Tr.* 1/6/10 at 105-107. The Respondent argued that increased seating on the outdoor café does not rise to the level of a substantial change because on the investigator’s first visit there were 20 seats and no patrons and on the investigator’s second visit, there were 22 seats and two patrons seated. *Tr.* 1/6/10 at 108. Thus, the Respondent

argues that the violations should not be deemed a primary tier offense and as a result, they don't merit that steep a penalty. *Tr.* 1/6/10 at 109-111.

CONCLUSIONS OF LAW

17. 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.*

18. The Board finds that the Government has proven that the Respondent violated D.C. Official Code § 25-762(b) (2001) by permitting a substantial change in the operation of the licensed establishment without first getting approval from the Board. The substantial change in this instance is the increase in seating for the establishment's sidewalk café.

19. The Board credits the testimony of Investigator Dantzler with regard to the two inspections she conducted of the licensed establishment and its compliance with the authorized occupancy of the sidewalk café. Specifically, Investigator Dantzler testified that she observed 20 seats on the Respondent's sidewalk café on June 10, 2009. At the conclusion of that inspection, she informed the ABC Manager of the excess number of seats and issued a warning citation to the Respondent. Investigator Dantzler returned almost a month later on July 7, 2009 to ensure compliance and discovered upon a second inspection, that the Respondent now had 22 seats on the sidewalk café. Investigator Dantzler testified that ABRA's licensing files contained documentation setting forth authorization for ten seats on the sidewalk café. Additionally, Investigator Dantzler testified that the establishment never produced any documentation that authorized a different number of seats.

20. The Respondent testified that when he assumed ownership of the establishment, he renewed all permits and licenses and that his permit application for the sidewalk café seating contained the number "35". Furthermore, he testified that he had been assured by his counsel and by DDOT that he was in compliance with the Public Space Permit and that everything was fine with regard to his use of the sidewalk café. Mr. Rager also testified that he wasn't aware that ABRA has responsibility for the enforcement of occupancy for the sidewalk café.

21. The Board is not sympathetic to the Respondent's confusion regarding the number of seats permitted on the sidewalk café. Once the Respondent was informed by Investigator Dantzler that ABRA's records indicated he was authorized for only ten seats, the Respondent should have contacted ABRA to reconcile the two numbers. Instead, he relies solely on the governmental agency that issued the permit; a permit that listed no approved number at all.

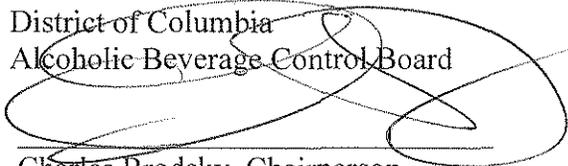
22. The Board takes administrative notice that ABRA's licensing files do indicate an endorsement for the sidewalk café and that the permitted number of seats for that area at the time of the inspections was ten. The Board also recognizes that at the time of the June 10, 2009 inspection, Investigator Dantzler issued a warning citation and, thus, the Board will not now impose a different penalty for Charge I. However, the Board is concerned that the Respondent did not heed that initial warning and, thus, was still not in compliance with the terms of the license a mere month later. Therefore, the Board finds that the Respondent did permit a substantial change as outlined in Charge II and imposes a fine of \$2,000 payable within 30 days and a three day suspension with all three days stayed for one year pending no further violations.

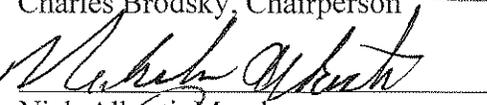
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 17 day of March, 2010, finds that the Respondent, Dunmore, LLC t/a Sonoma at premises 223 Pennsylvania Avenue, N.W., Washington, D.C., holder of a Retailer's Class B License, violated D.C. Code § 25-762(b) (2001). The Board hereby **ORDERS** that:

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

District of Columbia
Alcoholic Beverage Control Board


Charles Brodsky, Chairperson


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).