

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

In the Matter of:

The Bodega Incorporated
t/a The Cupboard

Holder of a
Retailer's Class B License

at premises
1504 East Capitol Street, N.E.
Washington, D.C. 20002

Case No. 14-CMP-00380
License No. ABRA-086607
Order No. 2015-039

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Amy Schmidt, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Alcoholic Beverage Control Board (Board) finds that The Bodega Incorporated, t/a The Cupboard (Respondent), violated District of Columbia (D.C.) Official Code § 25-741(a), on May 5, 2014. As a result, the Respondent must pay a \$750.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on November 5, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1504 East Capitol Street, N.E., Washington, D.C., on November 10, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent provided a go cup to a customer, in violation of D.C. Official Code § 25-741(a), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2012 repl.).

On June 25, 2014, Citation #4802 was issued to the Respondent in the amount of \$500.00 for violating D.C. Official Code § 25-741(a).

On July 17, 2014, the Respondent submitted correspondence requesting that the citation be dismissed. On July 30, 2014, the Board had the case forwarded to the Office of the Attorney General (OAG) for prosecution.

The Show Cause Status Hearing occurred on December 10, 2014. There was no settlement of the matter and it proceeded to a Show Cause Hearing on January 21, 2015.

The Respondent was served with the Notice on November 10, 2014. The Respondent failed to appear at the Show Cause Hearing held on January 21, 2015. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

I. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated November 5, 2014. *See* ABRA Show Cause File No. 14-CMP-00380. The Bodega Incorporated, t/a The Cupboard, holds a Retailer's Class B License, ABRA License Number ABRA-86607. *See* ABRA Licensing File No. ABRA-86607. The establishment's premises are located at 1504 East Capitol Street, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-086607.

2. The Show Cause Hearing was held on January 21, 2015. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 14-CMP-00380.

II. Testimony of ABRA Investigator Shawn Townsend

3. The Government presented its case through the testimony of one witness, ABRA Investigator Shawn Townsend. *Transcript (Tr.)* 1/21/15 at 3.

4. Investigator Townsend conducted an undercover "go-cups" Compliance Check at the Respondent's establishment on May 5, 2014, at approximately 12:50 p.m. *Tr.* 1/21/15

at 4-5. He purchased a two-pack of Miller Genuine Draft beer from the store clerk. *Tr.* 1/21/15 at 5.

5. At the time of the purchase, Investigator Townsend asked the clerk if could buy a cup to use for the beer. *Tr.* 1/21/15 at 5. The clerk informed Investigator Townsend that he could have a coffee cup. *Tr.* 1/21/15 at 5. Investigator Townsend was not charged for the cup. *Tr.* 1/21/15 at 5. Investigator Townsend paid \$3.49 for the beer, took the cup and left the establishment. *Tr.* 1/21/15 at 6.

6. The Respondent failed to appear at the Show Cause Hearing. The Respondent did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance of the hearing.

CONCLUSIONS OF LAW

7. 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. 2013). 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 VIOLATED § 25-741

8. The Board finds that the Respondent provided a “go-cup” to Investigator Townsend in violation of D.C. Official Code § 25-741. D.C. Official Code defines go-cup as a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment. D.C. Official Code § 25-741.

9. It is undisputed that Investigator Townsend entered into the establishment, purchased a two-pack of beer, and requested a cup to accompany his beer. The clerk provided the cup at no charge. Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-741.

II. PENALTY

10. A violation of D.C. Official Code § 25-741 is a secondary tier under the law. The present violation is the Respondent’s second secondary tier violation within a two year period and as such, the Board imposes a fine of \$750.00. *Licensing File No. ABRA-086670*, Investigative History; D.C. Official Code § 25-741.

ORDER

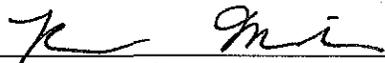
Based on the foregoing findings of fact and conclusions of law, the Board, on this 4th day of February, 2015, finds that the Respondent, The Bodega Incorporated, t/a The Cupboard, located at 1504 East Capitol Street, N.E., Washington, D.C., holder of a Retailer's Class B license, violated D.C. Official Code § 25-741(a).

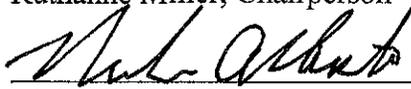
The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$750.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

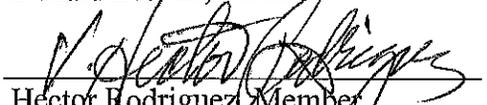
Copies of this Order shall be sent to the Respondent and the Government.

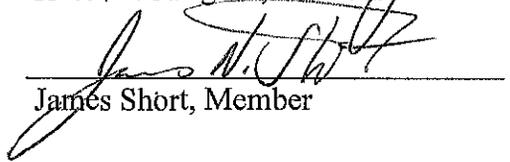
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to D.C. Official Code § 25-433, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 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 (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).