

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

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Lusk's Corporation)		
t/a Eddie's Carryout)		
)	Case No.	12-CMP-00579
Holder of a Retailer's Class B License)	License No.	ABRA-075795
)	Order No.	2013-339
at premises)		
1251 Bladensburg Road, N.E.)		
Washington, D.C. 20002)		
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BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Lan Yiu Yong, on behalf of Lusk's Corporation, t/a Eddie's Carryout, Respondent

Christine Gephardt, 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 Lusk's Corporation, t/a Eddie's Carryout, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-25-711, 25-712, and 25-713. As a result, the Respondent must pay a \$1,100.00 fine.

On February 22, 2013, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 20, 2013, on the Respondent charging the Respondent with the following violations:

Charge I: The Respondent failed to post its ABRA license information on the front door or exterior window, in violation of D.C. Official Code

§ 25-711 (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge II: The Respondent failed to post, in a conspicuous place, a warning sign regarding the dangers of alcohol consumption during pregnancy, in violation of D.C. Official Code § 25-712 (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge III: The Respondent failed to post a notice in a place clearly visible from the point of entry to the establishment, stating the current legal drinking age, in violation of D.C. Official Code § 25-713 (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On September 26, 2012, Citation #6991 was issued to the Respondent in the amount of \$600.00 for violating D.C. Official Code §§ 25-25-711, 25-712, and 25-713, the three charges listed above.

On September 27, 2012, the Respondent refused to pay the citation and instead, requested a hearing. The Respondent was personally served with a copy of the Notice on February 22, 2013. The Respondent failed to appear at the Show Cause Status Hearing held on March 27, 2013.

The Board held a Show Cause Hearing on April 17, 2013.

The Board having considered the evidence, the testimony of the witnesses, the arguments of parties, 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 to the Respondent, dated February 20, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00579. The Respondent holds a Retailer's Class B license and is located at 1251 Bladensburg Road, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-075795.
2. The Show Cause Hearing was held on April 17, 2013. *See* ABRA Show Cause File No. 12-CMP-00579. The Notice charges the Respondent with the three violations enumerated above. *See* ABRA Show Cause File No. 12-CMP-00579.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Earl Jones. *Transcript (Tr.)*, 4/17/13 at 10-11.
4. On September 26, 2012, Investigator Jones conducted a regulatory inspection at the licensed establishment. *Tr.*, 4/17/13 at 12. Prior to entering the Respondent's establishment, Investigator Jones observed that the Respondent did not have the required

ABRA license information posted on the front door, or on any of the exterior windows. *Tr.*, 4/17/13 at 13.

5. Once inside the establishment, Investigator Jones identified himself, and asked to speak to an ABC-licensed manager or the owner. *Tr.*, 4/17/13 at 13. Lan Yiu Yong identified himself as the owner of the establishment. *Tr.*, 4/17/13 at 13-14.

6. Investigator Jones informed Mr. Yong that Mr. Yong did not have the required window lettering posted on the front door, or on any of the exterior windows. *Tr.*, 4/17/13 at 14. Mr. Yong informed Investigator Jones that he just replaced some of the front windows, and that he had not yet posted the window lettering. *Tr.*, 4/17/13 at 14-15.

7. Investigator Jones also observed that the Respondent did not have a sign posted warning the public about the dangers of alcohol consumption during pregnancy. *Tr.*, 4/17/13 at 15. Nor did the Respondent have a legal drinking age sign posted. *Tr.*, 4/17/13 at 15. Investigator Jones advised Mr. Yong that failure to post the two signs was a violation. *Tr.*, 4/17/13 at 16. Mr. Yong apologized and claimed that he had the signs, but that he could not locate them. *Tr.*, 4/17/13 at 16-17.

8. Investigator Jones issued Citation #6991 to the Respondent in the amount of \$600.00 for the three observed violations. *Tr.*, 4/17/13 at 17-18. *See* ABRA Show Cause File No. 12-CMP-00579.

9. At the Show Cause Hearing, Mr. Yong, as owner of Eddie's Carryout, provided all answers through a translator, Mr. Gary Cheng. He stated that the ABRA license information was not posted on the exterior window because the window was replaced, and he did not think to replace the lettering. *Tr.*, 4/17/13 at 24. Mr. Yong also stated that after Investigator Jones left the establishment, he posted the pregnancy warning sign and the legal drinking age sign. *Tr.*, 4/17/13 at 24-25.

10. Mr. Yong admitted that he was aware of the legal requirement to post the ABRA license information, a pregnancy warning sign, and a legal drinking age sign. *Tr.*, 4/17/13 at 34. He stated that the window was replaced in April 2012. *Tr.*, 4/17/13 at 35.

11. Investigator Jones made a second visit to the Respondent's establishment and observed that the warning sign and the legal drinking age sign were posted on the glass installed all the way across the counter where the orders are placed by the customers. *Tr.*, 4/17/13 at 38-39.

12. Mr. Yong stated that he's been with the restaurant 20 years, 17 years as manager, and that the restaurant has a very clean record. *Tr.* 4/7/13 at 26.

CONCLUSIONS OF LAW

12. 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) (2009). 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.*

13. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a “reasonable mind might accept as adequate to support the conclusion” and there must be a “rational connection between facts found and the choice made.” 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008).

14. The Board finds, as to Charge I that there is sufficient credible evidence to establish that the Respondent failed to post the ABRA license information on the front door or exterior window, in violation of D.C. Official Code § 25-711. This violation was observed by Investigator Jones during a regulatory inspection on September 26, 2012. Moreover, Mr. Yong admitted that the window where the ABRA license information was once posted, was replaced on April, 2012, and that he had not thought to replace the lettering. This was confirmed by Investigator Jones at the time of his inspection in September 2012, almost five months later.

15. The Board finds, as to Charge II that there is sufficient credible evidence to establish that the Respondent failed to post, in a conspicuous place, a warning sign regarding the dangers of alcohol consumption during pregnancy in violation of D.C. Official Code § 25-712. The Board makes this finding based on the testimony of Investigator Jones, and Mr. Yong’s statement that he posted the pregnancy warning sign after the investigator’s visit.

16. The Board finds, as to Charge III that there is sufficient credible evidence to establish that the Respondent failed to post the legal drinking age sign in violation of D.C. Official Code § 25-713. The Board makes this finding based on the testimony of Investigator Jones and Mr. Yong’s statement that he posted the drinking age sign after the investigator’s visit.

17. Therefore, based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-711, as set forth in Charge I, § 25-712, as set forth in Charge II, and § 25-713 as set forth in Charge III, of the Notice to Show Cause, dated February 20, 2013, warrants the imposition of a fine set forth more fully below.

18. The Board takes administrative notice that Charge I, Charge II, and Charge III are first secondary tier violations for the Respondent.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 24th day of July, 2013, finds that the Respondent, Lusk's Corporation, t/a Eddie's Carryout, located at 1251 Bladensburg Road, N.E., Washington, D.C., holder of a Retailer’s Class B license, violated D.C. Official Code §§ 25-711, 25-712, and 25-713.

The Board hereby **ORDERS** that:

- 1) Charge I: Respondent must pay a fine in the amount of \$500.00.

- 2) Charge II: Respondent must pay a fine in the amount of \$100.00.
- 3) Charge III: Respondent must pay a fine in the amount of \$500.00.
- 4) In total, the Respondent must pay a fine in the amount of \$1,100.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

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

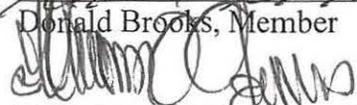
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

We concur with the majority's decision as to its finding of the Respondent's liability, but we dissent as to the penalty selected by the majority of the Board for Charges I and III. We would assess the Licensee the minimum \$250 penalty for each of those charges in light of the facts that these charges are minor in the context of ABRA's violations and these charges are Licensee's first secondary violations in its long history of operation, as confirmed by ABRA's investigative history records.



Ruthanne Miller, Chairperson



Mike Silverstein, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).