

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

In the Matter of:)	
)	
Lace Hospitality, LLC)	License Number: 76369
t/a Lace)	Case Number: 10-CMP-00205
)	Order Number: 2011-001
Holder of a Retailer's Class CT License)	
at premises)	
2214 Rhode Island Ave., N.E.)	
Washington, D.C.)	

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Linda McAllister, on behalf of the Respondent,
Lace Hospitality, t/a Lace

Maureen Zaniel, Senior Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On September 24, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 15, 2010, on Lace Hospitality, LLC t/a Lace (Respondent), at premises 2214 Rhode Island Avenue, N.E., Washington, D.C., charging the Respondent with the following five violations:

Charge I: The Respondent permitted the establishment to operate without the presence of a Board-approved manager in violation of D.C. Code § 25 - 701, for which the Board may take the proposed action pursuant to D.C. Code § 25-823(1) (2001).

- Charge II: The Respondent failed to frame the license under glass and post it conspicuously in the licensed establishment in violation of D.C. Code § 25-711(a), for which the Board may take the proposed action pursuant to D.C. Code § 25-823(1) (2001).
- Charge III: The Respondent failed to post in a conspicuous place on the front window or front door of the licensee's premises, the correct name or names of the licensee or licensees and the class and number of the license in plain and legible lettering not less than one inch nor more than 1.25 inches in height in violation of D.C. Code § 25-711(b), for which the Board may take the proposed action pursuant to D.C. Code § 25-823(1) (2001).
- Charge IV: The Respondent failed to post warning signs regarding the dangers of alcohol consumption during pregnancy in violation of D.C. Code § 25-712(a), for which the Board may take the proposed action pursuant to D.C. Code § 25-823(1) (2001).
- Charge V: The Respondent failed to post a notice, maintained in good repair and in a place clearly visible from the point of entry to the establishment, stating: (1) the minimum age required for the purchases of an alcoholic beverage; and (2) the obligation of the patron to produce a valid identification document displaying proof of legal drinking age in violation of D.C. Code § 25-713(a), for which the Board may take the proposed action pursuant to D.C. Code § 25-823(1) (2001).

The matter proceeded to a Show Cause Hearing on December 1, 2010, 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 September 15, 2010. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 10-CMP-00205. The Respondent holds a Retailer's Class CT License and is located at 2214 Rhode Island Avenue, N.E., Washington, D.C. *See* ABRA Licensing File No. 76369.
2. The Show Cause Hearing in this matter was held on December 1, 2010. The Notice to Show Cause charges the Respondent with the five violations enumerated above. *See* ABRA Show Cause File Number 10-CMP-00205.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Felecia Martin. *Transcript (Tr.)*, 12/1/10 at 5. The Government submitted

Investigator Martin's Case Report No. 10-CMP-00205. *Tr.*, 12/1/10 at 7; ABRA Show Cause File Number 10-CMP-00205; Government's Exhibit No. 1. The Government also submitted a copy of ABRA's Notice of Issuance. ABRA Show Cause File Number 10-CMP-00205; Government's Exhibit No. 2.

4. Investigator Martin is an investigator with ABRA and has been so employed for three years. *Tr.*, 12/1/10 at 5-6. She testified that on March 26, 2010, at 10:37 p.m., she and Investigator Vincent Wills entered the Respondent's establishment to conduct a regulatory inspection. *Tr.*, 12/1/10 at 6, 8. Investigator Martin asked the male bouncer if she could speak to an ABC licensed manager or owner. *Tr.*, 12/1/10 at 8. While waiting to speak to a manager or the owner, Investigator Martin observed approximately 22 people and four employees inside the establishment. *Tr.*, 12/1/10 at 8, 19.

5. Investigator Martin also observed a female bartender accepting orders for alcoholic beverages and receiving payment for those beverages. *Tr.*, 12/1/10 at 8. After waiting five minutes for the bouncer to return with a manager or the owner, Investigator Martin then asked the female bartender to retrieve them. *Tr.*, 12/1/10 at 9. The owner finally appeared, walking into the establishment through the front entrance, from the outside. *Tr.*, 12/1/10 at 9. By that time, Investigator Martin had been inside the establishment waiting for eight to ten minutes and she is certain that the owner was not in the establishment during that time. *Tr.*, 12/1/10 at 9, 17-18. The owner, Linda McAllister, told Investigator Martin that she was returning from her nearby residence. *Tr.*, 12/1/10 at 20-21.

6. Investigator Martin then conducted the regulatory inspection. *Tr.*, 12/1/10 at 10. The female bartender handed Investigator Martin a Xeroxed copy of the Respondent's ABC license, which was framed under glass and located behind the bar visible to the public. *Tr.*, 12/1/10 at 10, 24, 31-32. She looked for the original ABRA-issued ABC license but could not locate it. *Tr.*, 12/1/10 at 11, 23-26. Investigator Martin informed Ms. McAllister that the original license needed to be posted, not the Xeroxed copy. *Tr.*, 12/1/10 at 28-30.

7. Investigator Martin also observed that the required licensee information lettering was not on the establishment's window and there were no "pregnancy" or "21 legal age" warning signs posted in the establishment. *Tr.*, 12/1/10 at 11-12.

8. Investigator Martin did not issue a citation for the alleged violations at the time of her visit, but rather returned to the ABRA offices to write up the findings of the regulatory inspection. *Tr.*, 12/1/10 at 12, 22. She later issued the citation to the Respondent on April 10, 2010. *Tr.*, 12/1/10 at 12-13. Investigator Martin's investigation at the establishment took approximately 40 minutes. *Tr.*, 12/1/10 at 36.

9. Investigator Martin then identified Government's Exhibit 2. *Tr.*, 12/1/10 at 13. Investigator Martin identified Linda McAllister's signature on Government's Exhibit 2. *Tr.*, 12/1/10 at 14. The Government then moved both exhibits into the record, which the Board admitted. *Tr.*, 12/1/10 at 14.

10. The Respondent presented its case through the testimony of one witness, Linda McAllister. *Tr.*, 12/1/10 at 37. Ms. McAllister is the owner of Lace, which is located in Ward 5. *Tr.*, 12/1/10 at 37-38. She opened the restaurant to improve her community. *Tr.*, 12/1/10 at 14. She began the process in 2005 and received her ABC license in November 2008. *Tr.*, 12/1/10 at 40, 49. She testified that she has tried to ensure that she is operating within the bounds of the law. *Tr.*, 12/1/10 at 40. She took the ABC Manager's licensing training through an approved Alcohol Awareness Training service. *Tr.*, 12/1/10 at 40. She was notified by an ABRA Licensing Specialist that her license was approved. *Tr.*, 12/1/10 at 41. When she asked if there was anything else she needed to do with regard to the license, she was told "no." *Tr.*, 12/1/10 at 41.

11. Ms. McAllister stated that because she was unaware of the licensing process, she thought all was in order when she received her license. *Tr.*, 12/1/10 at 41-42. She informed ABRA Investigator Tyrone Lawson that she had not been given a final inspection by ABRA prior to opening for business. *Tr.*, 12/1/10 at 42. Ms. McAllister claims that if she had been given a final inspection, she would have been instructed to place license information lettering in the window and to post the various warning signs. *Tr.*, 12/1/10 at 42. She stated that she did not intentionally ignore the ABC laws and regulations. *Tr.*, 12/1/10 at 42.

12. Ms. McAllister acknowledged that she received the Notice of Issuance and that the Notice indicated that the license must be framed in glass, but she argued that the document said nothing about the *original* license being framed. *Tr.*, 12/1/10 at 43. She also called ABRA and asked the Director for a copy of the Licensee Reference Guide. *Tr.*, 12/1/10 at 44. The Director informed Ms. McAllister that the Reference Guide was posted to the ABRA website and available for download to all licensees. *Tr.*, 12/1/10 at 44, 70-71. She said she had never seen it and that she was unable to print it. *Tr.*, 12/1/10 at 53, 69. She further stated that several investigators have offered to meet with her to ensure that she knows the law and the regulations and she has taken them up on their offer. *Tr.*, 12/1/10 at 72.

13. Ms. McAllister testified that she was present on the night of the regulatory inspection, but that she had stepped outside the restaurant momentarily to escort a customer to her car. *Tr.*, 12/1/10 at 45, 49-50. In addition to the framed copy of the license, she also stated that the framed original license was in the bar area by the work station, but that Investigator Martin failed to locate it. *Tr.*, 12/1/10 at 46, 56-57. She further stated that she retrieved the original license and handed it to the investigator accompanying Investigator Martin. *Tr.*, 12/1/10 at 58-61.

14. Ms. McAllister argued that ABRA did not give her proper instruction to post the warning signs and that when she learned of the requirement, she requested the signs and no one delivered them to her. *Tr.*, 12/1/10 at 46. She then went to ABRA after the regulatory inspection to pick up the warning signs. *Tr.*, 12/1/10 at 46. She stated that if ABRA had informed her of what a licensee's obligations are under the law, she would have gladly complied with them. *Tr.*, 12/1/10 at 47. Ms. McAllister admitted she was represented by counsel throughout the licensing process. *Tr.*, 12/1/10 at 48-49.

15. Ms. McAllister testified that the Respondent's cook is also a licensed ABC manager and the cook was present on the night of the regulatory inspection. *Tr.*, 12/1/10 at 64-66.

However, the cook left work that night between 8:00 p.m. and 9:00 p.m. so she wasn't present when the ABRA investigators arrived. *Tr.*, 12/1/10 at 65-66. Ms. McAllister gets to work around 9:00 p.m. every night and she and the cook overlap so that there is full coverage. *Tr.*, 12/1/10 at 66-68.

CONCLUSIONS OF LAW

16. 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 DCMR §800, *et seq.* (2008).

17. 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). The Board also notes that an administrative agency’s determination of credibility is entitled to “special deference.” Gross v. D.C. Dep’t of Employment Services, 826 A.2d 393, 395 (D.C. 2003); NGOM v. D.C. Dep’t of Employment Services, 913 A.2d 1266, 1269 (D.C. 2006).

18. With regard to Charge I, permitting the establishment to operate without the presence of a Board-approved ABC Manager in violation of D.C. Code §§ 25-301 and 25-701, the Board finds that due to the testimony presented by Investigator Martin and Ms. McAllister, there is insufficient evidence to establish that the Respondent failed to operate with an ABC-licensed manager. Investigator Martin testified that she witnessed Ms. McAllister walk in through the front door of the establishment and Ms. McAllister admitted that she had walked a customer to her car. As a result of the testimony and the lack of clear and sufficient evidence to establish the absence of an ABC-licensed Manager, the Board is dismissing Charge I.

19. With regard to Charge II, failure to frame the ABC license and post it conspicuously in the licensed establishment, in violation of D.C. Code § 25-711(a), the Respondent failed to post its ABC license conspicuously. The Board makes this finding based on the testimony of Investigator Martin.

20. With regard to Charge III, failure to post in a conspicuous place on the front window or front door of the licensee’s premises, the correct name or names of the licensee or licensees and the class and number of the license in plain and legible lettering not less than one inch nor more than 1.25 inches in height in violation of D.C. Code § 25-711(b), Respondent did violate this statute. The Board makes this finding based on the testimony of Investigator Martin. The Respondent did not refute the testimony.

21. With regard to Charge IV, failure to post warning signs regarding the dangers of alcohol consumption during pregnancy, in violation of D.C. Code § 25-712(a), the Respondent failed to

post the warning sign. The Board makes this finding based on the testimony of Investigator Martin. The Respondent did not refute the testimony.

22. With regard to Charge V, failure to post a notice, maintained in good repair and in a place clearly visible from the point of entry to the establishment, stating: (1) the minimum age required for the purchases of an alcoholic beverage; and (2) the obligation of the patron to produce a valid identification document displaying proof of legal drinking age, in violation of D.C. Code § 25-713(a), the Respondent failed to post the minimum age sign. The Board makes this finding based on the testimony of Investigator Martin. The Respondent did not refute the testimony.

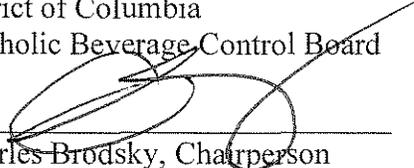
23. The Board takes into consideration in formulating its Order that the alcoholic beverage industry is highly regulated in the District of Columbia. As this Board has repeatedly stated; a license is a privilege and not a right and as such, there is a presumption that the licensee knows the laws and regulations related to that privilege. Equally importantly, there is an expectation that a licensee will comply with those laws and regulations. Additionally, the Respondent admitted that she had legal counsel assisting her with the licensing process, so the Board is disinclined to rely on the Respondent's statements that she did not know the law. Thus, the Respondent's arguments that she did not know the law are without merit and the Board concludes that the appropriate remedy in this case is the imposition of a fine.

ORDER

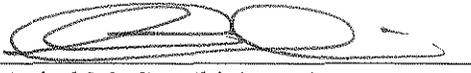
Based on the foregoing findings of fact and conclusions of law, the Board, on this 5th day of January 2011, finds that the Respondent, Lace Hospitality, t/a Lace, at premises 2214 Rhode Island Avenue, N.E., Washington, D.C., Holder of a Retailer's Class CT License, violated D.C. Code § 25-711(a), 25-711(b), 25-712(a), and 25-713(a). The Board hereby **ORDERS** that:

1. Charge II: Respondent shall pay a fine in the amount of \$250.00.
2. Charge III: Respondent shall pay a fine in the amount of \$250.00.
3. Charge IV: Respondent shall pay a fine in the amount of \$250.00.
4. Charge V: Respondent shall pay a fine in the amount of \$250.00.
5. In total, the Respondent shall pay a fine in the amount of \$1,000.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely fashion may subject the Respondent to additional sanctions.
6. It is **FURTHER ORDERED** that Charge I, as set forth in the Notice to Show Cause dated September 15, 2010, alleging that the Respondent permitted the establishment to operate without the presence of a Board-approved manager in violation of D.C. Official Code § 25- 701, should be and is hereby **DISMISSED**.

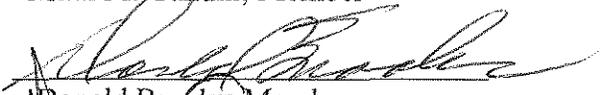
District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



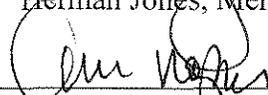
Mital M. Gandhi, Member



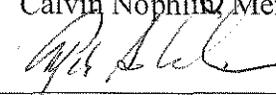
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

I dissent from the position taken by the majority of the Board as I do not believe that Charge I should be dismissed. Given the totality of the evidence, I do not find Ms. McAllister's testimony that she was momentarily absent from the establishment on the night of the regulatory inspection to be credible.



Nick Alberti, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 1250 U Street N.W., Suite 300, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

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).