



a.m. See id. The hours of sales, service and consumption are Sunday 11 a.m.- 12 a.m.; Monday through Thursday 11 a.m.- 2 a.m.; Friday 11 a.m. – 3 a.m. and Saturday 11 a.m. – 3 a.m. See id.

2. The Board approved the Respondent's request for a Summer Garden with eighteen seats on July 1, 2010. *ABRA Show Cause File No.*, 13-CMP-00215, Letter from Zacquita Curley, Licensing Specialist, Alcoholic Beverage Regulation Administration to Antonio Roberson, Owner, Langston Bar & Grill, LLC (July 1, 2010) [*Contingent Approval Notification Letter*]. The Board granted the request on the contingency that the Respondent would submit a Certificate of Occupancy, diagram or photos of the area for the proposed Summer Garden, and a fee of \$125.00. Id.

3. On July 18, 2007, the Board approved a Settlement Agreement (formerly "Voluntary Agreement") between the Respondent and ANC 6A. Antonio Roberson t/a Langston Bar & Grill, Board Order No. 2007-036 (D.C.A.B.C.B. July 18, 2007). The parties later amended the Settlement Agreement to include conditions regarding the use of the Summer Garden. Antonio Roberson t/a Langston Bar & Grill, Board Order No. 2007-382 (D.C.A.B.C.B. July 7, 2010).

## II. THE TESIMONY OF ABRA INVESTIGATOR JASON PERU

4. ABRA Investigator Jason Peru testified on behalf of the Government. *Transcript (Tr.)*, 04/23/14 at 9-54.

5. On or about April 18, 2013, Investigator Peru conducted a regulatory inspection at the Respondent's establishment. Id. at 10. At the conclusion of his investigation, he exited the establishment through the rear. Id. at 12, 46. As he approached the exit, Investigator Peru observed what appeared to him as a Summer Garden with a bottom and top level. Id. There was no sign on the door restricting access to either level of the Summer Garden. Id. at 37-38, 41.

6. When Investigator Peru approached the top level of the Summer Garden, the door was closed and the lights were off with no one present. Id. at 28. On the bottom level of the summer garden area, Investigator Peru saw tables, chairs and several glasses. Id. He also saw two individuals, one who was standing up and smoking, and the other who was sitting in the chair. Id. He then proceeded to take photographs of the scene. Id. at 13; See also Government Exhibit 1, 2. The two individuals that were present requested not to be photographed. Id. at 19. The photographs depict two glasses with straws and beverages, hot sauce, a plate with remnants of an unidentified food and an ashtray. Id.; See also Government Exhibit 1, 2.

7. The following evening, Investigator Peru researched ABRA's records to determine whether the Respondent had a current endorsement for a Summer Garden. Id. at 20. Investigator Peru discovered a letter granting a contingent approval of a Summer Garden endorsement from the ABC Board. Id. at 22-24; *Contingent Approval Notification Letter*; See also Government Exhibit 3. There was no time limit for the materials to be sent to ABRA stated in the letter. Id. at 29. After a thorough search, Investigator Peru was unable to locate any additional information submitted from the Respondent in response to the materials requested in this notification letter. Id. at 25. As of April 23, 2014, Investigator Peru is not aware of the

Respondent having submitted any of the additional information in compliance with the contingent approval of a Summer Garden Endorsement. Id. at 33.

### **III. THE TESTIMONY OF ANTONIO ROBERSON**

8. Antonio Roberson testified on behalf of the Respondent. *Tr.*, 04/23/14 at 49-101. Mr. Roberson is the owner of the establishment. Id. at 2.

9. Mr. Roberson was not present on the evening that Investigator Peru conducted his regulatory inspection of the establishment. Id. at 71.

10. There is an entrance way to the Respondent's establishment from Benning Road and an exit towards the alley at the rear of the building. Id. at 70. There is an exit sign above the exit door and there is a sign on the door that says "no food or drink allowed beyond this point." Id. at 70-71; See also Respondent Exhibit 1. One of these doors, the door with this language on the front of it, leads to the basement where the kitchen is located. Id. at 71. Often times, Mr. Roberson's staff will use the tables in the back area as a staging area for taking items to and from the kitchen. Id. The only way for the staff to get down to the kitchen is to go through the rear of the building. Id. There is no access to the kitchen from inside the building. Id.

11. The door that leads to the alleged summer garden area was not locked on April 18, 2013 because Mr. Roberson lost the key. Id. at 80. However, as of April 21, 2014, Mr. Roberson installed a new lock and was able to secure the door. Id. at 87.

12. On the evening in question, the space behind the entry door into the summer garden area was not lit. Id. While the space exists, the summer garden area has not been in customer use during the establishment's operating hours. Id. at 81.

### **CONCLUSIONS OF LAW**

13. 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. Code § 25-830 (West Supp. 2014); 23 DCMR § 800, *et seq.* (West Supp. 2014). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "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. Code § 25-447 (West Supp. 2014).

#### **I. THE RESPONDENT VIOLATED §25-113a (c) WHEN IT PERMITTED ITS OUTDOOR SUMMER GARDEN TO BE USED WITHOUT RECEIVING FINAL APPROVAL FROM THE BOARD**

14. The Board finds that on April 18, 2013, the Respondent violated §25-113a (c) when it allowed its Summer Garden to be used without having first received final approval from the Board. Under §25-113a(c), "the licensee...shall obtain a summer garden endorsement from the Board to be eligible to conduct business operations, which may include the sale service, and

consumption of alcoholic beverage on outdoor public or private space.” D.C. Official Code §25-113 a (c).

15. In the instant case, the Board finds that there is sufficient evidence in the record to support this charge. The Board notes that it granted the Respondent a conditional approval of a Summer Garden in 2010. Supra, at ¶ 2. While the Respondent displayed good intentions by amending the establishment’s Settlement Agreement with ANC 6A, this act does not satisfy the conditions upon which the Board granted conditional approval. Supra, at ¶ 2-3. The Board expressly communicated the necessary supplemental materials needed for full approval. Supra, at ¶ 2,7. However, during the course of four years, from April 2010 to April 2014, the Respondent ignored the Board’s request. Supra, at ¶ 2, 6. As a result of the Respondent’s failure to comply with the terms set forth in the conditional approval, the Respondent did not have a Summer Garden Endorsement on the day in question.

16. Additionally, the Board credits the testimony of Investigator Peru regarding the appearance of a Summer Garden that was in operation at the establishment. Investigator Peru observed, and took photographs of a scene where there was clear usage by patrons. Supra, at ¶ 5. The Government’s Exhibits 1 and 2 clearly show two glasses with straws and beverages, hot sauce, a plate with the remnants of an unidentified food and an ashtray. Supra, at ¶ 5 . The Board finds that the presence of these items, in an area that is supposed to be restricted to the public, is indicative of operation.

17. Accordingly, the Board discredits the testimony of Mr. Roberson that the summer garden area exists but is not in customer use. Supra, at ¶ 12. Not only did Investigator Peru access the Summer Garden without restriction, so did the patrons who were present in the Summer Garden at the time of his inspection. Supra, at ¶ 5. The Board considers that Mr. Roberson’s absence on the evening of the inspection could have contributed to the use of the Summer Garden by the establishment’s patrons. Supra, at ¶ 9. It is possible that Mr. Roberson would have enforced the restriction on the summer garden area upon viewing patrons entering the area. Nonetheless, as the establishment’s owner, it is Mr. Roberson’s duty to superintend the premises and ensure that his establishment operates in compliance with ABRA regulations whether he is present. Furthermore, this restricted area could have been distinguished with a sign, similar to the one that was eventually placed on the door to the bottom level of the Summer Garden. Supra, at ¶ 10. However, the Respondent failed to take this action prior to this incident.

18. For the foregoing reasons, the Board finds that the Respondent operated a Summer Garden without the appropriate Endorsement in violation of §25-113a(c). Therefore, as a matter of law, the Board finds the Respondent guilty of Charge I.

### **ORDER**

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 25th day of June, 2014, finds that the Langston Bar & Grille, LLC t/a Langston Bar & Grille violated D.C. Official Code § 25-113a(c).

The Respondent must pay a total fine of \$1,000 within thirty (30) days from the date of this Order. The breakdown of the Respondent's penalty is as follows:

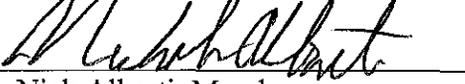
(1) The Respondent

- a. shall pay a \$1,000.00 fine for the violation described in Charge I.

**IT IS FURTHER ORDERED** that the Respondent must pay the fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

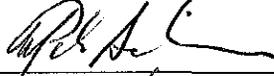
District of Columbia  
Alcoholic Beverage Control Board



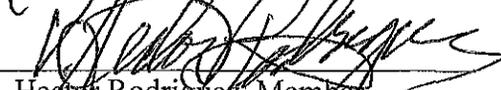
Nick Alberti, Member



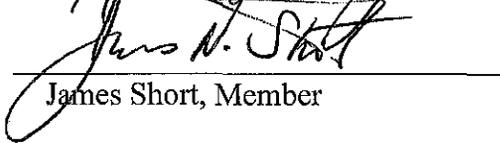
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

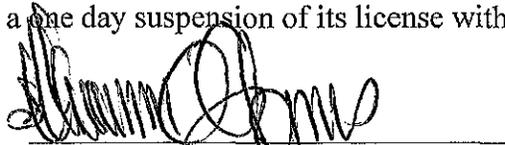
I dissent from the majority of the Board's decision regarding the establishment's liability. Based on the evidence in the record I am not convinced that business operations took place on the outdoor private space, as contemplated by D.C. Official Code § 25-113a(c).

ABRA's investigator did not witness the sale, service, or consumption of alcoholic beverages. In my view it was equally plausible to conclude that employees or patrons may have used the area in an unauthorized manner, contrary to the establishment's restrictions.



Ruthanne Miller, Chairperson

I concur with the majority of the Board's decision regarding the establishment's liability. Nevertheless, I dissent as to the penalty selected by the majority. I believe that the Respondent should have received a \$2,000 penalty and a one day suspension of its license with one day stayed for one year.



Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia 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).