

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

In the Matter of:)
)
McCormick & Schmick Restaurant Corp.)
t/a McCormick & Schmick Seafood)
)
Holder of a)
Retailer's Class CR License)
)
at premises)
1642 K Street, N.W.)
Washington, D.C. 20002)
)

Case No. 14-CMP-000094
License No. ABRA-026432
Order No. 2015-399

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: McCormick & Schmick Restaurant Corp., t/a McCormick & Schmick Seafood, Respondent

Stephen O'Brien, Counsel, of the law firm Mallios and O'Brien, on behalf of the Respondent

Fernando Rivero, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING RESPONDENT'S REQUEST TO STAY PENDING APPEAL

Upon the stipulation by the parties as to the facts of the matter, the Alcoholic Beverage Control Board (Board), found that McCormick & Schmick Restaurant Corp. t/a McCormick & Schmick Seafood (Respondent) violated D.C. Official Code § 25-781 by selling alcohol to two minors on June 16, 2015. *McCormick & Schmick Corp. t/a McCormick & Schmick Seafood*, Case No. 14-CC-00094, Board Order No. 2015-295 (D.C.A.B.C.B. Aug. 5, 2015).

As a result, the Board imposed a \$5,000 fine and suspended the Respondent's license for ten (10) days; four (4) days to be served from September 3, 2015 to September 6, 2015. *Id.* The Board further ordered that the remaining six (6) day suspension would be stayed as long as the Respondent provided alcohol awareness training from a certified provider to all of its current employees within thirty (30) days from the date of the issued Order. *Id.*

Subsequently, on August 14, 2015, the Respondent filed an appeal with the District of Columbia Court of Appeals and the Board received a petition to stay the Board's prior Order pending appellate review. *ABRA Show Cause File 14-CMP-00094, Respondent's Motion for Stay Pending Appeal* dated August 14, 2015 [*Resp. Mot.*].

In response, the Government filed an Opposition to Respondent's Motion For Stay Pending Appeal on August 18, 2015 [*Gov't Resp.*]. The Government argued that the District of Columbia would be harmed by the stay as it is entitled to the fine of \$5,000 by law. *Gov't Resp.*, at 2. Further, the Government argued that the public interest would favor alcohol awareness training for the Respondent's employees. *Id.* at 2-3. Thus, the Government requested that the Board deny the Respondent's Motion. *Id.* at 3. However, if the Board were inclined to issue a stay, it should be limited to the training and suspension of the license portion of the Order. *Id.*

Discussion

Under D.C. Code § 25-433(d)(3) (2015), "A stay shall be granted only upon good cause, which shall consist of unusual or exceptional circumstances." Further, as the Government has articulated in its Opposition, the Court of Appeals has well demonstrated the exceptional circumstances under which a stay may be granted. This includes a likeliness to succeed on the merits, the irreparable injury that will result if the stay is denied, the opposing parties will not be harmed and that the public interest favors the granting of a stay. *Gov't Resp.* at 2 (citing *Salvattera v. Ramirez*, 105 A.3d 1003, 1005 (D.C. 2014)).

Here, weighing the Respondent's motion against the four factors set forth above, the Board finds that the Respondent is not entitled to a stay of the Board's Order. See *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Further, instead of demonstrating good cause as required by D.C. Code § 25-433(d)(3), the Respondent only advances the argument of the "validity of the 'combination approach' underlying the Board's ruling" *Resp. Mot.* at 1. As a result, the Respondent's Motion fails and the Motion For Stay Pending Appeal is denied.

The Board notes that the Respondent solely filed a request for a stay and has not filed a motion for reconsideration with the Board at this time. Consequently, the Respondent has waived its opportunity to file a motion for reconsideration under D.C. Official Code § 25-433 (d)(1).

ORDER

The Board does hereby, this 20th day of August, 2015, **DENIES** the Motion for Stay Pending Appeal filed by the Respondent.

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

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson

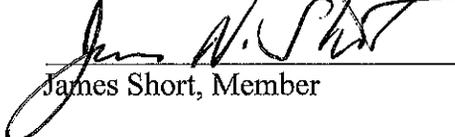


Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Hector Rodriguez, Member



James Short, Member

I dissent from the position of the majority of the Board. I find that the Board's denial of the stay will impose irreparable harm on the Respondent, especially where it concerns the suspension of the license. Should the respondent prevail on its appeal, the matter of refunding the fine is of no consequence; however, a suspension, once served, cannot be undone. There is no way the District can adequately provide restitution for the Respondent's lost business revenue or lost wages to wait staff and other employees. I think that's the very definition of irreparable harm.



Mike Silverstein, 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 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).