

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

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H & Y Chun Corporation	)		
t/a Michigan Liquors	)		
	)	Case No.	12-CMP-00383
Holder of a Retailer's Class A License	)	License No.	ABRA-023640
	)	Order No.	2013-287
at premises	)		
3934 12th Street, N.E.	)		
Washington, D.C. 20017	)		
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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Heung Chun, on behalf of H & Y Chun Corporation, t/a Michigan Liquors, Respondent

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

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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The Alcoholic Beverage Control Board (Board) finds that H & Y Chun Corporation, t/a Michigan Liquors, (Respondent), violated District of Columbia (D.C.) Official Code § 25-734 on August 1, 2012. The Respondent has not committed any previous violations. Therefore, the Board does not believe that a fine is warranted in this matter. Rather, the Respondent is warned against committing this violation in the future.

On February 19, 2013, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 14, 2013, on the Respondent charging the Respondent with the following violation:

Charge I: The Respondent permitted the sale of alcoholic beverage on credit, in violation of D.C. Official Code § 25-734 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(3) (2001).

On October 31, 2012, the Board requested a Staff Settlement on this matter. On December 4, 2012, the Respondent chose not to settle, and requested a hearing instead.

The Board held a Show Cause Status Hearing on March 27, 2013. There was no settlement of the matter and the Board proceeded to a Show Cause Hearing on May 1, 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 14, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00383. The Respondent holds a Retailer's Class A license and is located at 3934 12th Street, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-023640.
2. The Show Cause Hearing was held on May 1, 2013. *See* ABRA Show Cause File No. 12-CMP-00383. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-CMP-00383.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Brian Molloy. *Transcript (Tr.)*, 5/1/13 at 7-8. On August 1, 2012, Investigator Molloy and Investigator Vincent Parker conducted a regulatory inspection at the Respondent's establishment. *Tr.*, 5/1/13 at 9. Investigators Molloy and Parker identified themselves as ABRA Investigators to Heung Chun, who identified himself as the owner. *Tr.*, 5/1/13 at 9.
4. During the regulatory inspection, Investigator Molloy observed a male customer requesting to "pay off" his bill. *Tr.*, 5/1/13 at 10. According to Investigator Molloy, Mr. Chun seemed to have no knowledge of the customer's unpaid bill. *Tr.*, 5/1/13 at 10. The customer told Mr. Chun that the piece of paper on the counter contained information regarding his bill. *Tr.*, 5/1/13 at 10. The customer then paid Mr. Chun. *Tr.*, 5/1/13 at 10.
5. Investigator Parker approached the customer and asked him about the money transaction that had just transpired between him and Mr. Chun *Tr.*, 5/1/13 at 10-11. The customer stated that he was at the establishment the day before and bought a bottle of vodka on credit. *Tr.*, 5/1/13 at 11. The customer also indicated that he was a regular customer of the Respondent and that he was allowed by the Respondent to buy on credit. *Tr.*, 5/1/13 at 11.

6. Investigator Parker advised Mr. Chun that selling alcoholic beverages on credit was a violation. *Tr.*, 5/1/13 at 11. Mr. Chun claimed that he was unaware of the credit arrangement and that the arrangement must have been established by one of his employees. *Tr.*, 5/1/13 at 11.

7. Mr. Chun testified on behalf of the Respondent H & Y Chun Corporation, t/a Michigan Liquors. *Tr.*, 5/1/13 at 17. He stated that he was not present when the alcoholic beverage was sold on credit. *Tr.*, 5/1/13 at 17. Mr. Chun informed his employee, Robert Adler, that employees were not permitted to sell on credit. *Tr.*, 5/1/13 at 17-18.

8. Mr. Chun stated that he was behind the counter when the customer came to the establishment to pay his unpaid bill. *Tr.*, 5/1/13 at 24. The customer placed the money on the counter turntable, and left the establishment. *Tr.*, 5/1/13 at 26. Mr. Chun stated that Investigator Parker informed him that selling alcoholic beverages on credit was a violation. *Tr.*, 5/1/13 at 29.

9. Mr. Chun indicated that Mr. Adler denied that he was selling alcoholic beverages on credit. *Tr.*, 5/1/13 at 31. After Mr. Chun asked Mr. Adler about selling on credit to customers, Mr. Adler stated that he loaned \$2.00 to a friend, who also happened to be a customer. *Tr.*, 5/1/13 at 30-31. Mr. Chun was unaware that the sale of alcoholic beverages on credit was not permitted. *Tr.*, 5/1/13 at 31-32. Mr. Chun does not give credit to his customers. *Tr.*, 5/1/13 at 32

10. Anthony Caldwell testified on behalf of the Respondent. *Tr.*, 5/1/13 at 33. On June 28, 2012, he visited the Respondent's establishment to borrow \$2.00 from Mr. Adler and to buy a pint of Velicoff Vodka. *Tr.*, 5/1/13 at 34-35. Mr. Caldwell has been a customer of the establishment for approximately five to six years. *Tr.*, 5/1/13 at 35-36.

11. On August 1, 2012, Mr. Caldwell visited the establishment again to pay back the \$2.00 that he borrowed from Mr. Adler on June 28, 2012. *Tr.*, 5/1/13 at 41-42. Mr. Caldwell instead gave the \$2.00 to Mr. Chun because Mr. Adler was absent. *Tr.*, 5/1/13 at 43-43. Mr. Caldwell has borrowed money from Mr. Adler on other occasions. *Tr.*, 5/1/13 at 45. Normally, Mr. Caldwell pays the money back directly to Mr. Adler. *Tr.*, 5/1/13 at 50-51.

### CONCLUSIONS OF LAW

13. 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.*

14. 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).

15. With regard to Charge I, the Board must determine whether the Respondent permitted the sale of an alcoholic beverage on credit, in violation of D.C. Official Code § 25-734. Under D.C. Official Code § 25-823(1), the Board has authority to fine, suspend or revoke a license if the licensee violates any of the provisions of District laws and regulations governing the sale of alcoholic beverages. A violation of D.C. Official Code § 25-734 is considered a primary tier violation.

16. The Board finds that the Respondent violated D.C. Official Code § 25-734 when it sold alcoholic beverages to its customers on credit. There is no dispute that ABRA investigators witnessed a customer's payment for vodka bought on the previous day and that the customer admitted to having purchased the vodka on credit. The evidence also shows that the employee who extended this credit did so on more than one occasion. While there is insufficient evidence to conclude that the owner knew of this arrangement, the owner is ultimately responsible for his employee's actions in the course of their employment.

17. Notwithstanding the finding of liability in this instance, the Board recognizes that the Respondent has not committed any previous violations. Therefore, the Board does not believe that a fine is warranted in this matter, but rather, the Respondent is warned against committing this violation in the future. It must be understood by Mr. Chun and his employees, that selling alcoholic beverages on credit is a violation of the law and will not be tolerated.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 3rd day of July, 2013, finds that the Respondent, H & Y Chun Corporation, t/a Michigan Liquors, located at 3934 12th Street, N.E., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code § 25-734.

The Board hereby **ORDERS** that:

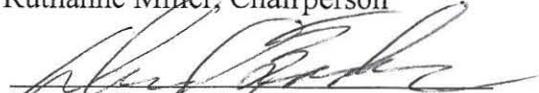
- 1) For the violation described in Charge I, the Respondent is **WARNED** against committing this violation in the future, and orders that the Respondent comply with the laws and regulations that govern ABC licensees.

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

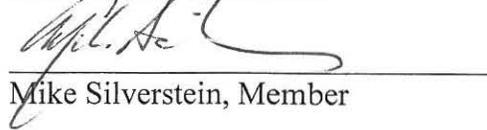
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Donald Brooks, Member

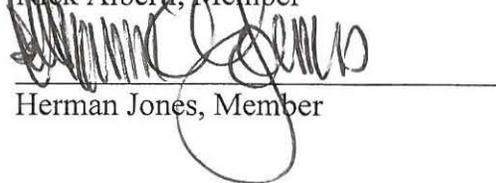


Mike Silverstein, Member

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. We believe that a fine is warranted in this matter.



Nick Alberti, Member



Herman Jones, 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 14<sup>th</sup> 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).