

The Notice charged the Respondent with the following violations:

Charge I: [On Tuesday, August 25, 2015] [y]ou permitted the sale of go-cups in your establishment, in violation of D.C. Official Code § 25-741(a)...

Charge II: [On Wednesday, August 26, 2015] [y]ou failed to keep a licensed ABC manager on duty at all times, in violation of D.C. Official Code § 25-701...

ABRA Show Cause File No., 15-CMP-00584, Notice of Status Hearing and Show Cause Hearing, 2 (October 28, 2015).

On August 26, 2015, Citation #4678 was issued to the Respondent in the amount of \$500.00 for violating D.C. Official Code § 25-741(a).

On September 4, 2015, the Respondent refused to pay the citation and instead, requested a hearing.

The Respondent failed to appear at the Show Cause Status Hearing held on December 9, 2015. A Show Cause Hearing was scheduled for February 3, 2016.

The Respondent also failed to appear at the Show Cause Hearing held on February 3, 2016. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

I. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated October 28, 2015. See ABRA Show Cause File No. 15-CMP-00584. Minnesota Store, LLC, t/a Minnesota Store, holds a Retailer's Class B License, ABRA License No. ABRA-095245. See ABRA Licensing File No. ABRA-095245. The establishment's premises is located at 3728 Minnesota Avenue, N.E., Washington, D.C. See ABRA Licensing File No. ABRA-095245.

2. The Show Cause Hearing was held on February 3, 2016. The Notice charges the Respondent with two violations enumerated above. See ABRA Show Cause File No. 15-CMP-00584.

II. Testimony of ABRA Investigator Vernon Leftwich

3. The Government presented its case through the testimony of one witness, ABRA Investigator Vernon Leftwich. *Transcript (Tr.)* 2/3/16 at 6.
4. Investigator Leftwich authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr.* 2/3/16 at 8. Government's Exhibit 1.
5. Investigator Leftwich conducted an undercover "go-cups" Compliance Check at the Respondent's establishment on August 25, 2015. *Tr.* 2/3/16 at 7. He purchased two (2) alcoholic beverages known as Lemon-ade-rita from the store clerk. *Tr.* 2/3/16 at 7.
6. At the time of the purchase, Investigator Leftwich asked the clerk if he could buy a cup to use for the consumption of the purchased alcohol. *Tr.* 2/3/16 at 7. The clerk directed Investigator Leftwich to a cooler containing Styrofoam cups. *Tr.* 2/3/16 at 7. The cups were prefilled with ice. *Tr.* 2/3/16 at 7. Investigator Leftwich purchased the alcoholic beverages as well the Styrofoam cup and a bag. *Tr.* 2/3/16 at 7. The clerk charged Investigator Leftwich fifty cents (\$.50) for the Styrofoam cup. *Tr.* 2/3/16 at 10.
7. On August 26, 2015, Investigator Shawn Townsend visited the Respondent's establishment to deliver the citation for the go-cups violation. *Tr.* 2/3/16 at 9. *See* ABRA Show Cause File No. 15-CMP-00584. Investigator Townsend later informed Investigator Leftwich that during his visit, while the establishment was open and operating, there was no ABC-licensed manager or owner on the premises. *Tr.* 2/3/16 at 9.
8. The Respondent was given adequate notice of the charges brought against it, and adequate notice of the Show Cause Hearing before the Board. The Respondent did not appear at the hearing and did not file any testimony or exhibits refuting the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General or ABRA to request a continuance of the hearing. As such, the finding of facts are undisputed.

CONCLUSIONS OF LAW

9. 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. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines "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. Official Code § 25-447.

I. THE RESPONDENT VIOLATED § 25-741(a)

10. The Board finds that the Respondent provided a "go-cup" to Investigator Leftwich in violation of D.C. Official Code § 25-741(a). D.C. Official Code defines go-cup as a

drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment. D.C. Official Code § 25-741.

11. It is undisputed that Investigator Leftwich entered into the establishment, purchased two (2) Lemon-ade-ritas, and requested a cup for the consumption of his alcoholic beverages. The clerk provided the cup and charged him fifty cents (\$.50) for it. Thus the Board finds the Respondent liable for violating D.C. Official Code § 25-741(a).

II. THE RESPONDENT VIOLATED § 25-701

12. The Board finds the Respondent liable for permitting the licensed establishment to operate on August 26, 2015, without either the licensee or an ABC-licensed Manager superintending during the hours of operation in violation of D.C. Official Code § 25-701.

13. ABRA's regulations are clear that either the licensee or an ABC-licensed Manager must be present while the establishment is operating. Title 23 of the DCMR § 707.1 provides that in the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises.

14. The Board finds that the facts set forth in the Investigative Report support the charge and support a finding of liability as to the Respondent. It is unrefuted that on August 26, 2015, during Investigator Townsend's visit to the Respondent's establishment to deliver a citation for the go-cups violation, there was no ABC-licensed manager or owner on the premises.

III. PENALTY

15. The Respondent's Investigative History shows that these are the Respondent's second secondary tier violations within two years. *Licensing File No. ABRA-095245*, Investigative History. Thus, the Board may fine the Respondent between \$500.00 and \$750.00. *Licensing File No. ABRA-095245*, Investigative History; DCMR § 23-802.

ORDER

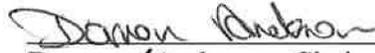
Based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of March, 2016, finds that the Respondent, Minnesota Store, LLC, t/a Minnesota Store, located at 3728 Minnesota Avenue, N.E., Washington, D.C., holder of a Retailer's Class B license, violated D.C. Official Code § 25-741(a) on August 25, 2015, and § 25-701 on August 26, 2015.

The Board hereby **ORDERS** that:

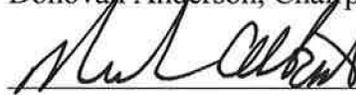
- 1) Charge I: Respondent must pay a fine in the amount of \$750.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$750.00.
- 3) In total, the Respondent must pay a fine in the amount of \$1,500.00 by no later than thirty (30) from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

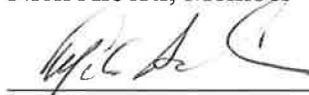
District of Columbia
Alcoholic Beverage Control Board



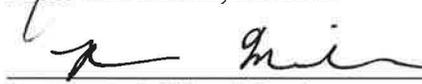
Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 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) (2004).