

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

<b>In the Matter of:</b>	)	
	)	
JC 7, LLC	)	
t/a NY NY Diva	)	
	)	Case No. 13-CMP-00359
Holder of a	)	License No. ABRA-092380
Retailer's Class CR License	)	Order No. 2014-294
	)	
at premises	)	
2406 18 <sup>th</sup> Street, N.W.	)	
Washington, D.C. 20009	)	
	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Mike Silverstein, Member  
James Short, Member

**ALSO PRESENT:** Michael Stern, Senior 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 JC 7, LLC, t/a NY NY Diva (Respondent), violated District of Columbia (D.C.) Official Code § 25-762(b)(13). As a result, the Respondent must pay a \$2,000.00 fine.

***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on February 12, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 2406 18<sup>th</sup> Street, N.W., Washington, D.C., on February 21, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent made a substantial change in the operation of the establishment without Board approval, in violation of D.C. Official Code § 25-762(b)(13) (2001) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The factual basis of Charge I is an allegation that on Saturday, August 10, 2013 at approximately 1:45 a.m., ABRA investigators observed several patrons occupying the Respondent's Summer Garden. The ABC license states that the Summer Garden shall close at 11:00 p.m. Notice at 2.

On October 2, 2013, the Board requested a Staff Settlement on this matter. On November 5, 2014, the Respondent failed to attend a settlement conference.

The Respondent was personally served with a copy of the Notice on February 21, 2014. The Respondent failed to appear at the Show Cause Status Hearing held on March 26, 2014.

The Respondent also failed to appear at the Show Cause Hearing held on June 18, 2014. 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:

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated February 12, 2014. *ABRA Show Cause File No. 13-CMP-00359.*
2. The Respondent was charged with the single violation enumerated above. Notice at 2.
3. The Show Cause Hearing in this matter was held on June 18, 2014. *ABRA Show Cause File No. 13-CMP-00359.*
4. The Respondent holds a Retailer's Class CR License and is located at 2406 18<sup>th</sup> Street, N.W., Washington, D.C. *Licensing File No. ABRA-092380.* The establishment's authorized Summer Garden hours of operation and sales, service and consumption are as follows: Sunday through Wednesday 5:30 p.m. to 10:30 p.m. and Thursday through Saturday 5:30 p.m. to 11:00 p.m. *Licensing File No. ABRA-092380.*
5. The Government presented its case through the testimony of ABRA Investigator Jason Peru. *Transcript (Tr.)*, 6/18/14 at 4-5. On Saturday, August 10, 2013, Investigator Peru and Supervisory Investigator Craig Stewart visited the Respondent's establishment in response to a noise complaint. *Tr.*, 6/18/14 at 6.

6. Investigator Peru and Supervisory Investigator Stewart meet with the owner, Sami Khan, when they arrived at the establishment at 1:45 a.m. *Tr.*, 6/18/14 at 6. Investigator Peru advised Mr. Sami of the noise complaint. *Tr.*, 6/18/14 at 6.

7. Investigator Peru observed patrons present on the Summer Garden. *Tr.*, 6/18/14 at 7. Investigator Peru examined the Respondent's ABC license to confirm the approved hours for the Summer Garden. *Tr.*, 6/18/14 at 7. The ABC license provides that the Summer Garden shall close at 11:00 p.m. Thursday through Saturday. *Tr.*, 6/18/14 at 7.

8. Investigator Peru informed Mr. Khan that the establishment was operating after approved hours for the Summer Garden. *Tr.*, 6/18/14 at 8. Mr. Khan stated that he was not aware that he had to stop operating the Summer Garden at 11:00 p.m. *Tr.*, 6/18/14 at 8.

### CONCLUSIONS OF LAW

9. 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. Official Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

10. The Board finds, as to Charge I, that there is sufficient credible evidence to establish that the Respondent made a substantial change in operations by operating the Summer Garden after its Board-approved hours in violation of D.C. Official Code § 25-762(b)(13). Here, the Board credits Investigator Peru who observed patrons located on the Respondent's Summer Garden at approximately 1:45 a.m., more than two hours after the Respondent is to close the Summer Garden in compliance with the terms of its license. The ABC license provides that the Summer Garden must close at 11:00 p.m. Thursday through Saturday.

11. The Board finds that Charge I is the Respondent's first primary tier violation and as such the Board imposes a fine of \$2,000.00. Licensing File No. ABRA-092380. Investigative History; D.C. Official Code § 25-830.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 23rd day of July, 2014, finds that the Respondent, JC 7, LLC, t/a NY NY Diva, holder of a Retailer's Class CR License, violated D.C. Official Code § 25-762(b)(13).

The Board hereby **ORDERS** that:

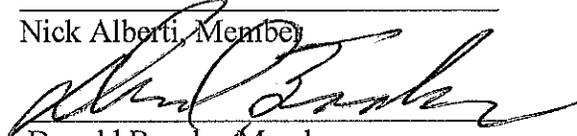
- 1) The Respondent must pay a fine in the amount of \$2,000.00. by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

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

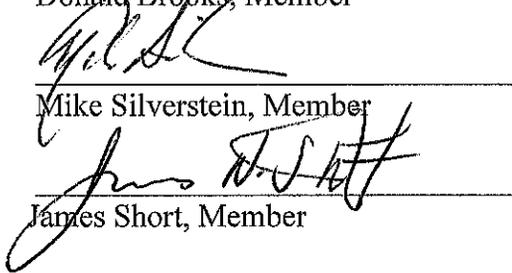
District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

Nick Alberti, Member

  
Donald Brooks, Member

Mike Silverstein, Member

  
James Short, 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).