

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

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In the Matter of:	)		
	)		
Po Boy Jim, LLC	)	Case No.:	16-CMP-00117
t/a Po Boy Jim	)	License No:	87903
	)	Order No:	2016-521
Holder of a	)		
Retailer's Class CR License	)		
	)		
at premises	)		
709 H Street, N.W.	)		
Washington, D.C. 20002	)		

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**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
Ruthanne Miller, Member  
James Short, Member

**ALSO PRESENT:** Po Boy Jim, LLC, t/a Po Boy Jim, Respondent

Maureen Zaniel, 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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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds Po Boy Jim, LLC, t/a Po Boy Jim, (hereinafter "Respondent" or "Po Boy Jim") in violation of one count of violating D.C. Official Code § 25-446 for leaving the lids to its recycling containers open. The Respondent shall pay a fine of \$500 for the violation.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 4, 2016. *ABRA Show Cause File No., 16-CMP-00117*, Notice of Status Hearing and Show Cause Hearing, 2 (May 4, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 709 H Street, N.W., Washington, D.C., on May 26, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 16-CMP-00117*, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violations:

- Charge I: [On January 12, 2016,] [y]ou failed to take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter in violation of D.C. Official Code § 25-726(a) . . . .
- Charge II: [On January 12, 2016,] [y]ou violated your [Settlement] Agreement, as approved by the Board on February 22, 2012, by failing to ensure that the dumpster covers fit property and remain fully closed . . . .

*Notice of Status Hearing and Show Cause Hearing, 2-3.*

Both the Government and Respondent appeared at the Show Cause Status Hearing on June 8, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on July 13, 2016.

### **FINDINGS OF FACT**

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Po Boy Jim holds a Retailer's Class CR License at 709 H Street, N.W., Washington, D.C. *ABRA License No. 87903.*
2. ABRA Investigator Earl Jones visited the Po Boy Jim's premises on the morning of January 12, 2016. *Transcript (Tr.)*, Jul. 13, 2016 at 6. When he arrived at the establishment, he examined the alleyway by the establishment. *Id.* at 7. Inside the alley, he observed that Po Boy Jim's trash containers in the alley were open and overfilled with trash. *Id.* He also noticed a male employee of the establishment in the alley and a dead rat in front of the dumpster area. *Id.* at 22, 24. Pictures taken by Investigator Jones show two large blue dumpster and two small blue recyclable containers. *Case Report No. 16-CMP-00117*, Exhibits Nos. 2-4. Both containers had

their lids wide open, and the two recyclable containers had boxes piled far above the top of the container. *Id.* One recyclable container had an open lid with a three to four foot pile of boxes coming out of the container, while a second container had the lid open by about a foot by boxes piled inside the container. Exhibit No. 4. After taking the pictures, Investigator Jones left the area to monitor the neighborhood. *Id.* at 10. He later returned to the establishment on January 19, 2016, where the Respondent's manager identified the containers in the pictures as belonging to the establishment. *Id.*

3. The Respondent's Settlement Agreement contains the following language: "The Licensee shall keep dumpster lids tightly closed." *Id.* at Exhibit No. 5, § 6.

4. Investigator Jones indicated that there was trash on the ground, but did not elaborate as to the amount of trash on the ground, what type of items were on the ground, or other facts showing that the trash belonged to the Respondent. *Tr.*, 7/13/16 at 33.

5. The owner of Po Boy Jim, Rebecca Antoine, indicated that at the time Investigator Jones visited the establishment on January 12, 2016, her employee was throwing out trash from the establishment. *Id.* at 34. She indicated that the trash was so high because the trash was put out for removal by the establishment's trash company on that day. *Id.* at 36.

## CONCLUSIONS OF LAW

6. 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 (D.C.) Official Code pursuant to D.C. Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). 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. Standard of Proof

7. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

### II. The Board dismisses Charge I because there is insufficient evidence in the record to determine that litter was present.

8. The Board dismisses the charge based on the failure to show the presence of litter. Section 25-726(a) requires that "[t]he licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property

used by the licensee to conduct its business, are kept free of litter.” D.C. Official Code § 25-726(a). In the past, the Board has found “that the presence of litter is an element of the charge.” *In re Union Kitchen, LLC, t/a Union Kitchen*, Case No. 15-CMP-00662, ¶ 12 (D.C.A.B.C.B. Jun. 15, 2016). Under common parlance, the term litter means “[a] disorderly accumulation of objects [and] . . . carelessly discarded trash.” *Webster’s II New College Dictionary*, 640 (2001) (litter). In this case, Exhibit No. 2 does not show any litter on the ground around the dumpster area. *Supra*, at ¶ 2. Moreover, there is insufficient evidence in the record identifying the nature of the litter observed by Investigator Jones. *Id.* Therefore, the Board finds insufficient evidence to sustain Charge I.

### **III. The Board sustains Charge II because the open lids represent a violation of the Settlement Agreement.**

9. Licensees have an obligation to comply with the terms of any settlement agreement attached to their license. D.C. Official Code § 25-446(c). Settlement agreements are interpreted using the principles of contract law; therefore, the Board looks to the agreement’s own terms in interpreting it. *North Lincoln Park Neighborhood Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 727 A.2d 872, 875 (D.C. 1999). In this case, the agreement may be reasonably read to require the lids of all trash containers used by the Respondent to remain closed except when in use. *Supra*, at ¶ 2. While the Respondent argues that the establishment was in the act of preparing trash for removal when the investigator arrived, it cannot be disputed that the Respondent was throwing out more recycling than its bins could handle, which inevitably lead to the lids of the recycling containers remaining open, instead of being tightly closed as the agreement required. *Id.* Indeed, based on the amount of trash being thrown out there was no way for the employee to conceivably close the lids. Therefore, the Board sustains Charge II.

### **IV. Penalty**

10. The Respondent’s history shows that this is its second secondary tier violation in a two year period, which allows the Board to impose a fine ranging from \$500 to \$750. 23 DCMR § 800, 802.1 (West Supp. 2016). In this case, the Board imposes a fine of \$500.

### **ORDER**

Therefore, the Board, on this 28th day of September 2016, finds that Po Boy Jim, LLC, t/a Po Boy Jim, guilty of violating § 25-446. The Board imposes the following penalty on Po Boy Jim:

- (1) For the violation described in Charge II, Po Boy Jim shall pay a fine of \$500.

**IT IS FURTHER ORDERED** that the Respondent must pay all 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.

**IT IS FURTHER ORDERED**, in accordance with 23 DCMR § 800.1, the violation found by the Board in this Order shall be deemed a secondary tier violation.

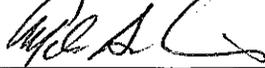
**IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

District of Columbia  
Alcoholic Beverage Control Board



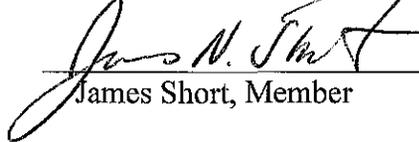
Donoyan Anderson, Chairperson



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

I concur with the Board's determination regarding Charge II, but dissent with the majority's decision to dismiss Charge I.



Nick Alberti, 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, Reeves Center, 2000 14th Street, NW, 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, 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 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).