

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

In the Matter of:

Queen Bee, LLC
t/a Quality Convenience Store

Holder of a
Retailer's Class B License

at premises
2922 Martin Luther King Jr. Avenue, S.E.
Washington, D.C. 20032

Case No. 15-CMP-00801
License No. ABRA-083074
Order No. 2016-355

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

ALSO PRESENT: Luula Hagos, Representative of Queen Bee, LLC, t/a Quality
Convenience Store, Respondent

Maureen Zaniel, Senior Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Alcoholic Beverage Control Board (Board) finds that Queen Bee, LLC, t/a Quality Convenience Store (Respondent), violated District of Columbia (D.C.) Official Code § 25-741 (Go-cups and back-up drinks prohibited) on September 18, 2015. As a result, the Respondent must pay a \$750 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on February 24, 2016. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2922 Martin Luther King Jr. Avenue, S.E., Washington, D.C., on March 7, 2016.

The Notice charged the Respondent with the following violation:

Charge I: [On Friday, September 18, 2015] [y]ou provided “go-cups” to a customer, in violation of D.C. Official Code § 25-741...

ABRA Show Cause File No., 15-CMP-00801, Notice of Status Hearing and Show Cause Hearing, 2-3 (February 24, 2016).

On October 15, 2015, Citation #5227 was issued to the Respondent in the amount of \$500.00 for violating D.C. Official Code § 25-741.

On October 20, 2015, the Respondent refused to pay the citation and instead, requested a hearing.

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on March 23, 2016, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on May 11, 2016.

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 February 24, 2016. *See* ABRA Show Cause File No. 15-CMP-00801. Queen Bee, LLC, t/a Quality Convenience Store, holds a Retailer’s Class B License, ABRA License No. ABRA-083074. *See* ABRA Licensing File No. ABRA-083074. The establishment’s premises is located at 2922 Martin Luther King Jr. Avenue, S.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-083074.

2. The Show Cause Hearing was held on May 11, 2016. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 15-CMP-00801.

II. Testimony of ABRA Investigator Dorshae Demby

3. The Government presented its case through the testimony of one witness, ABRA Investigator Dorshae Demby. *Transcript (Tr.)* 5/11/16 at 8.

4. Investigator Demby authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr.* 5/11/16 at 15. Government’s Exhibit 1.

5. On Friday, September 18, 2015, Investigator Demby was conducting undercover “go-cups” compliance checks in several establishments. *Tr.* 5/11/16 at 9. The Respondent’s establishment was one that he visited. *Tr.* 5/11/16 at 10. When ABRA investigators conduct an undercover operation, they dress in a way that allows them to blend into the neighborhood that they are visiting. *Tr.* 5/11/16 at 10. The investigators conduct themselves as though they are patrons of the store. *Tr.* 5/11/16 at 10. Because they are working in an undercover capacity, they do not identify themselves as ABRA investigators, nor do they request to speak with either the owner or an ABC-licensed manager. *Tr.* 5/11/16 at 10.

6. On September 18, 2015 at approximately 3:50 p.m., Investigator Demby entered the Respondent’s establishment. *Tr.* 5/11/16 at 12. He removed a two-pack of Mangoritas from a refrigerator located along the right side wall of the establishment. *Tr.* 5/11/16 at 12. He approached the register and asked the male clerk for two (2) cups to use for the consumption of the purchased alcohol. *Tr.* 5/11/16 at 12. The clerk obtained two (2) cups that were prefilled with ice from behind the counter. *Tr.* 5/11/16 at 12, 30. The clerk placed the cups and a straw inside of a black plastic bag and handed it to Investigator Demby. *Tr.* 5/11/16 at 12, 30. Investigator Demby purchased the alcoholic beverages, took the cups and the straw, and exited the establishment. *Tr.* 5/11/16 at 12.

7. Investigator Demby did not ask the clerk to provide his personal information because he was working in an undercover capacity. *Tr.* 5/11/16 at 22. He stated that Azeria Tugado, the Respondent’s employee who was present at the hearing, was not the male clerk who provided him with the two (2) cups prefilled with ice. *Tr.* 5/11/16 at 23. He further testified that Luula Hagos, the Respondent’s representative, and Mr. Tugado were not on the premises during his visit on September 18, 2015. *Tr.* 5/11/16 at 28.

8. After completing the compliance check operation, Investigator Demby returned to ABRA’s offices and filled out an evidence transmittal sheet. *Tr.* 5/11/16 at 13. He took a photograph of the two-pack of Mangoritas and the two (2) cups with prefilled ice. *Tr.* 5/11/16 at 13-14. *See* ABRA Show Cause File No. 15-CMP-00801. Investigator Demby labeled and secured the evidence in ABRA’s locked evidence cabinet. *Tr.* 5/11/16 at 14.

9. Investigator Demby indicated that after conducting undercover compliance checks for the sale of “go-cups”, the investigators complete daily run sheets. *Tr.* 5/11/16 at 29. The run sheets reflect the establishment’s licensing information, the time when the investigator enters and exits the establishment, and whether there is a violation. *Tr.* 5/11/16 at 29. The investigators are required to review the establishment’s history on the same day of the operation in order to determine the citation fine amount or to determine that an enforcement case should be generated. *Tr.* 5/11/16 at 29.

10. As a result of the undercover operation conducted at the Respondent’s establishment, on October 15, 2015, ABRA issued Citation #5227 to the Respondent. *Tr.* 5/11/16 at 15. The citation was issued in the amount of \$500.00 for violating D.C. Official Code § 25-741. *Tr.* 5/11/16 at 15. *See* ABRA Show Cause File No. 15-CMP-00801. The citation served on the Respondent within thirty (30) days of committing the violation pursuant to ABRA policy. *Tr.* 5/11/16 at 21.

11. Investigator Demby did not request a receipt of the alcoholic beverages' purchase because he was working in an undercover capacity. *Tr.* 5/11/16 at 17, 20. He wanted to keep the transaction as normal as possible, and purposely worked to avoid attracting any unnecessary attention to the undercover operation. *Tr.* 5/11/16 at 26.

III. Testimony of Luula Hagos

12. At the hearing, Luula Hagos served as the representative to Bilen Affa, her daughter and the establishment's owner, through a General Power of Attorney. *Tr.* 5/11/16 at 37-38. *See* ABRA Show Cause File No. 15-CMP-00801.

13. Mrs. Hagos testified that there is no space behind the counter to keep a freezer to store cups that are prefilled with ice. *Tr.* 5/11/16 at 40. The establishment used to have a freezer containing cups that were prefilled with ice but it was located away from the counter area. *Tr.* 5/11/16 at 40. At that time, her customers had access to the cups. *Tr.* 5/11/16 at 40. *Tr.* 5/11/16 at 40. But in December 2014, the Respondent received a fine for selling cups with ice. *Tr.* 5/11/16 at 40, 45. They paid a \$250.00 fine for the 2014 citation. *Tr.* 5/11/16 at 45.

14. Mrs. Hagos believes that Investigator Demby obtained the cups prefilled with ice from another store. *Tr.* 5/11/16 at 40. She is aware that other stores around the area still sell cups prefilled with ice. *Tr.* 5/11/16 at 40.

15. Mrs. Hagos submitted into evidence a photograph, taken on March 23, 2016, of a variety of disposable cups. *Tr.* 5/11/16 at 41-42. *See* Respondent's Exhibit 1. The cups shown in the photograph are kept behind the counter. *Tr.* 5/11/16 at 43. They provide the cups to the customers after they purchase coffee and "things." *Tr.* 5/11/16 at 43-44. She testified that it is not worth it to her to sell .50 cent cups to her customers and then end up receiving a \$500 fine from ABRA. *Tr.* 5/11/16 at 46. This is why they stopped selling cups prefilled with ice in 2014. *Tr.* 5/11/16 at 46.

16. Mrs. Hagos stated that she operates the establishment under the authority of a Power of Attorney executed by Ms. Affa. *Tr.* 5/11/16 at 47. She also has an ABC Manager's License. *Tr.* 5/11/16 at 47.

17. Mrs. Hagos indicated that at the time of the incident, there were three (3) employees: herself, Mr. Tugado, and a part-time employee. *Tr.* 5/11/16 at 41, 48. The employee's responsibilities were stocking and cleaning as well as selling lottery tickets. *Tr.* 5/11/16 at 41, 48. On some occasions the part-time employee will also operate the cash register. *Tr.* 5/11/16 at 48.

IV. Testimony of Azeria Tugado

18. Azeria Tugado is an employee of the Respondent. *Tr.* 5/11/16 at 47-48. He is an ABC licensed Manager and he operates the cash register. *Tr.* 5/11/16 at 47.

19. Mr. Tugado testified that the part-time employee does not work with customers because he does not have the experience and does not have an ABC Manager's License. *Tr.* 5/11/16 at 49.

CONCLUSIONS OF LAW

20. 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

21. The Board finds that the Respondent provided two “go-cups” to Investigator Demby in violation of D.C. Official Code § 25-741. 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.

22. 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. The testimony demonstrates that on September 18, 2015 at approximately 3:50 p.m., Investigator Demby entered into the establishment, purchased a two-pack of Mangoritas, and requested two (2) cups for the consumption of his alcoholic beverages. The record shows and the Board finds that the Respondent’s employee provided two (2) cups prefilled with ice and a straw, and charged him for the alcoholic beverages. Thus the Board finds the Respondent liable for violating D.C. Official Code § 25-741.

II. PENALTY

23. The Respondent’s Investigative History shows that this is the Respondent’s second secondary tier violation within two years. *Licensing File No. ABRA-083074*, Investigative History. Thus, the Board may fine the Respondent between \$500.00 and \$750.00. *Licensing File No. ABRA-083074*, Investigative History; DCMR § 23-802.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 1st day of June, 2016, finds that the Respondent, Queen Bee, LLC, t/a Quality Convenience Store, located at 2922 Martin Luther King Jr. Avenue, S.E., Washington, D.C., holder of a Retailer's Class B license, violated D.C. Official Code § 25-741.

The Board hereby **ORDERS** that:

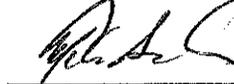
- 1) The Respondent must pay a fine in the amount of \$750.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

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

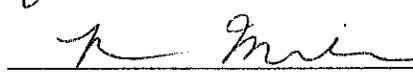
District of Columbia
Alcoholic Beverage Control Board



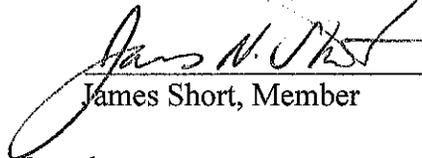
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

I dissent from the majority decision of the Board.



Donovan Anderson, Chairperson

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).