

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

In the Matter of:	)	
	)	
Carnival, Inc.	)	License No.: ABRA-60657
t/a Sunset Liquors	)	Case No.: 11-CMP-00221
	)	11-CMP-00334
Holder of a Retailer's Class A License	)	11-CMP-00336
at premises	)	Order No.: 2012-165
1627 First Street N.W.	)	
Washington, D.C. 20001	)	

BEFORE: Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member  
Jeannette Mobley, Member

ALSO PRESENT: Carnival, Inc. t/a Sunset Liquors, Respondent  
  
Shabeg Singh, on behalf of the Respondent  
  
Amy Schmidt, Assistant Attorney General,  
on behalf of the District of Columbia  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

On January 20, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated January 20, 2012, on Carnival, Inc. t/a Sunset Liquors (Respondent), at premises 1627 First Street, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent failed to comply with the provisions of the Voluntary Agreement in violation of D.C. Official Code § 25-446 (2001), for which the Board may take the proposed action pursuant

to D.C. Official Code § 25-823(6). The date of this incident is June 9, 2011.

Charge II: The Respondent failed to comply with the provisions of the Voluntary Agreement in violation of D.C. Official Code § 25-446 (2001) for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6). The date of this incident is August 5, 2011.

Charge III: The Respondent failed to comply with the provisions of the Voluntary Agreement in violation of D.C. Official Code § 25-446 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6). The date of this incident is August 10, 2011.

Charge IV: The Respondent failed to post on the front window or door of the establishment, the name of the licensee, the class, and the number of the license in plain and legible lettering in violation of D.C. Official Code § 25-711(b) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1). The date of this incident is June 23, 2011.

Charge V: The Respondent provided a go cup to a customer in violation of D.C. Official Code § 25-741(a), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1). The date of this incident is June 9, 2011.

Charge VI: The Respondent provided a go cup to a customer in violation of D.C. Official Code § 25-741(a), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1). The date of this incident is August 5, 2011.

The Board held a Show Cause Status Hearing on February 29, 2012. The Respondent failed to appear at the Show Cause Status Hearing, and the matter proceeded to a Show Cause Hearing on April 4, 2012. At the conclusion of the Show Cause Hearing, the Board held a closed meeting pursuant to §405 (b)(13) of the Open Meetings Act. The Board, having considered the evidence, the arguments of the parties, and all 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, dated January 20, 2012. See *ABRA Show Cause File No. 11-CMP-00221, No. 11-CMP-00334, and No.11-CMP-00336*. The Respondent holds a Retailer's Class A License and is located at 1627 1<sup>st</sup> Street, N.W., Washington, D.C. See ABRA Licensing File No. 60657.

2. A Status Hearing related to this matter was held on February 29, 2012. *ABRA Show Cause File No. 11-CMP-00221, No. 11-CMP-00334, and No. 11-CMP-00336.* The Notice to Show Cause, dated January 20, 2012, charges the Respondent with multiple violations enumerated above. See *ABRA Show Cause File No. 11-CMP-00221, No. 11-CMP-00334, and No. 11-CMP-00336.*

3. The Board takes administrative notice that there are two Voluntary Agreements attached to the Respondent's license; the first of which was entered into by the Respondent and Advisory Neighborhood Commission (ANC) 5C, dated December 20, 2006, and approved by the Board on February 7, 2007. See *Board Order No. 2007-015.* The second Voluntary Agreement is between the Respondent, and Thaddeus Corley and Anita Bonds, dated June 1, 2009, and approved by the Board on June 10, 2009. See *Board Order No. 2009-209.*

4. The charges brought forth in the Notice alleged violations of the Respondent's 2007 Voluntary Agreement, which provides in relevant part:

4. The Licensee will take reasonable measures to ensure that the immediate environs of the location are kept free of litter and debris. The Licensee will continue to repair and maintain all boarded up windows and remove all boards from the store. The Licensee will place "No Littering" signs conspicuously on the property.

5. The Licensee will prohibit loitering in front and at the rear of the business, that it will take whatever actions that are reasonable and necessary to enforce such a prohibition; and that it will post "No Loitering" signs in a prominent place on the exterior of the establishment.

6. The Licensee shall place a sign on the exterior of the building that the store is under electronic surveillance.

7. The Licensee will not provide "go-cups" to customers. A "go-cup" is defined in Section 709.7 of the ABC regulations as a "drinking utensil provided at no charge or a nominal charge to customers for the purpose of consuming alcoholic beverages."

9. The Licensee will use clear or translucent plastic bags when making single sales of beer, malt or fortified wines and other alcoholic beverages.

14. The Licensee will not advertise alcoholic beverages on the exterior walls of the property used by the Licensee to conduct business.

15. The Licensee will promptly remove or paint over any graffiti on the exterior walls of the property used by the Licensee to conduct business.

16. The Licensee will post signs in English and Spanish, advising its customers that the Licensee will not sell alcohol to intoxicated persons.

23. The Licensee will obtain and maintain copies of ABC Regulations.

5. Counsel for the Government presented its case-in-chief with three witnesses consisting of ABRA Investigators Earl Jones, Tyrone Lawson and Abyie Ghenene. *Transcript, April 4, 2012* (hereinafter “*Tr.*”), at 18. Investigator Jones conducted an undercover detail at the Respondent’s establishment on June 9, 2011. *Tr.* at 19, 26-27. He requested and successfully purchased a single Heineken beer and a cup of ice. *Tr.* at 19, 91-92. The Respondent’s employee pointed Investigator Jones to a cooler near the front door that contained single white plastic cups filled with ice. *Tr.* at 19, 92. Investigator Jones was charged \$1.50 for the beer and \$1.00 for the cup of ice. *Tr.* at 20.

6. Investigator Jones reviewed the Respondent’s Voluntary Agreement and noted that the Voluntary Agreement prohibits the provision of go-cups to customers. *Tr.* at 20.

7. ABRA Investigator Tyrone Lawson visited the Respondent’s establishment in an undercover capacity on August 5, 2011, to enforce go-cup restrictions. *Tr.* at 32-33. He entered the establishment and asked the cashier for a 200 milliliter (half-pint) bottle of Montebello Long Island Ice Tea, and for some cups. *Tr.* at 33, 42, 46, 55 *Tr.* at 19; Government Exhibit No. 1. Montebello Long Island Ice Tea contains spirits and has an alcohol content of 42 proof. *Tr.* at 44, 53.

8. The Respondent sold the cups to Investigator Lawson in a pre-opened plastic sleeve package that was taped shut. *Tr.* at 33, 37-38, 47-49. The package contained fewer cups than what would be contained in a full sized manufactured plastic sleeve. *Tr.* at 37, 50-52. Investigator Lawson was provided with 12 cups, and an unopened sleeve of cups contains about 50 to 60 cups. *Tr.* at 51. Investigator Lawson paid \$3.50 for the alcoholic beverage and cups. *Tr.* at 34, 45-46.

9. Investigator Lawson returned to the establishment a few days later to speak to the cashier who sold the cups to him. *Tr.* at 34. He advised the cashier, Ms. Valgi Virt, who is also an ABC-licensed Manager, that selling go-cups with the alcoholic beverage was against the law. *Tr.* at 35. Investigator Lawson also reviewed the Respondent’s Voluntary Agreement that states that the licensee will not provide go-cups to customers. *Tr.* at 35. Go-cups is defined as a drinking utensil provided at no charge or a nominal charge to customers for the purpose of consuming alcoholic beverages. *Tr.* at 35.

10. Based upon his experience as an ABRA investigator, Investigator Lawson considers the cups sold to him on August 5, 2011, to be go-cups. *Tr.* at 35-36.

11. The Government called Investigator Abyie Ghenene as its next witness. *Tr.* at 56. Investigator Ghenene instructed Investigator Jones, who was working the Single Sales detail on June 9, 2011, to stop by the Respondent’s establishment, and attempt to purchase an alcoholic beverage with a go-cup. *Tr.* at 60.

12. Investigator Jones completed his assignment, and turned over to Investigator Ghenene, a single bottle of Heineken and a go-cup filled with ice. *Tr.* at 61, Government Exhibit No. 4.1. Investigator Ghenene returned to the establishment on June 23, 2011, and observed various sizes of individual cups behind the Respondent's protective glass and the cash register. *Tr.* at 66. He opened the cooler near the front door and located cups and a bag of ice. *Tr.* at 66, 93. Based on his experience as an ABRA investigator, Investigator Ghenene believes the individual cups to be go-cups. *Tr.* at 67. He was told by one of the Respondent's employees that an ice filled cup costs \$1.00. *Tr.* at 67, 94.

13. Investigator Ghenene also conducted an inspection of the establishment on August 10, 2011. *Tr.* at 68. He did not observe any "No Littering" signs posted in the establishment required by Section 4 of the Respondent's Voluntary Agreement. *Tr.* at 69-70. Investigator Ghenene also observed some of the establishment's windows were boarded up in violation of Section 4 of the Respondent's Voluntary Agreement. *Tr.* at 70; Government Exhibit No. 3.

14. During his monitoring period, Investigator Ghenene did not observe any "No Loitering" signs as required by Section 5 of the Respondent's Voluntary Agreement. *Tr.* at 76-77. Investigator Ghenene also did not observe any signs that stated that the establishment was under electronic surveillance required by Section 6 of the Voluntary Agreement. *Tr.* at 77.

15. Investigator Ghenene observed alcoholic beverage advertisements on the exterior walls of the establishment which is prohibited by Section 14 of the Respondent's Voluntary Agreement. *Tr.* at 77-78, 83; Government Exhibits No.s 12 and 13. On June 8, 2011, Investigator Ghenene observed graffiti on the side of the establishment. *Tr.* at 84. Section 15 of the Voluntary Agreement provides that the licensee will promptly remove or paint over graffiti that is written on the exterior walls of the property. *Tr.* at 85. Investigator Ghenene advised the Respondent on June 23, 2011, that the graffiti was still on the establishment's walls. *Tr.* at 85. He observed that the graffiti was still present when he monitored the establishment on August 10, 2011. *Tr.* at 85.

16. Investigator Ghenene observed signs in English, but not in Spanish, advising the Respondent's customers that the licensee will not sell alcoholic beverages to intoxicated persons. *Tr.* at 86. Section 16 of the Respondent's Voluntary Agreement requires that the warning signs be posted in both English and Spanish. *Tr.* at 86. Ms. Virt could not produce a copy of the ABC regulations required by Section 23 of the Respondent's Voluntary Agreement. *Tr.* at 87.

17. On June 23, 2011, Investigator Ghenene did not observe any lettering on the window or door as is required of licensees. *Tr.* at 89, 94. He took Ms. Virt to the front of the store and pointed out to her the absence of the window lettering. *Tr.* at 90, 95. When he returned on August 10, 2011, to conduct a Voluntary Agreement compliance check, he noticed that the appropriate lettering had been placed on the window. *Tr.* at 90, 96-97. He

discussed with Ms. Virt and the owner, Mr. Singh, each provision of the Voluntary Agreement. *Tr.* at 98.

18. The Respondent's establishment was selected for the undercover operation because ABRA had received a complaint on June 3, 2011, from the community regarding the store's operations. *Tr.* at 60-61, 93. There were additional complaints filed with ABRA on August 8, 2011. *Tr.* at 100. One of the complaints was that the establishment was selling go-cups in violation of the terms of its Voluntary Agreement. *Tr.* at 60. Investigator Ghenene conducted a regulatory inspection at the establishment to discuss with the management the issues that were raised in the complaint. *Tr.* at 95. These issues included selling go-cups, the existence of the boarded up windows, the presence of graffiti, and the absence of the "No Loitering" sign. *Tr.* at 95-96.

19. Mr. Singh testified on behalf of the Respondent. *Tr.* at 106. His staff strictly complies with the law that prohibits selling alcoholic beverages to minors. *Tr.* at 107. When the neighborhood teenagers can't purchase their alcohol at the Respondent's establishment, they become angry and tear down or steal the signs that Mr. Singh has placed on the premises. *Tr.* at 107-108, 110-111, 114. The teenagers also removed the lettering from the front window and door. *Tr.* at 114.

20. Mr. Singh admitted that he has made some mistakes in the operations of his establishment, and that go-cups were sold at his establishment. *Tr.* at 108-109. He charges \$1.00 per cup of ice and he sells them to customers who purchase beverages. *Tr.* at 117. He also admitted that there were no signs on the building when Investigator Ghenene visited on August 10, 2011. *Tr.* at 111. He also admitted that there was alcoholic beverage advertising on the exterior of his establishment, but that it was located in the window. *Tr.* at 112. Mr. Singh also admitted to the existence of the graffiti, but he indicated that he cleans it off with some frequency. *Tr.* at 113. According to Mr. Singh, there was no graffiti on his walls at the time of the Show Cause Hearing. *Tr.* at 118. The "No Loitering" signs are posted now too. *Tr.* at 118.

## CONCLUSIONS OF LAW

21. 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. Code § 25-830 and 23 DCMR § 800, *et seq.*

22. The Board finds that the Respondent violated the terms of its Voluntary Agreement. The law states that it is a violation for a licensee to "fail[] to follow its voluntary agreement, security plan, or Board order." D.C. Code § 25-823(6) (2001); see also D.C. Code § 25-724. The Voluntary Agreement was adopted by Board Order on February 7, 2007. See Board Order No. 2007-015.

23. The Respondent's Voluntary Agreement requires the establishment to abide by its terms, and to comply with all laws and regulations governing the operations of the establishment, including the laws and regulations governing Retailer Class A licenses. The Board finds that the Respondent has failed to comply with multiple terms of the Voluntary Agreement and the law, and has done so on more than one occasion. Specifically, the Board finds that the Respondent sold go-cups on June 9, 2011, and again on August 5, 2011. This finding was substantiated by the credible testimony of Investigators Jones and Lawson, and that testimony was not refuted by the Respondent.

24. Likewise, the Board finds that the Respondent failed to post "No Littering" signs, "No Loitering" signs, "Under Electronic Surveillance" signs; and signs in Spanish regarding the prohibited service of alcoholic beverages to intoxicated individuals. Additionally, the Board finds that the Respondent failed to repair and maintain its boarded up windows, failed to remove alcoholic beverage advertisements, and graffiti, and failed to maintain copies of ABC regulations on its premises, all terms of its Voluntary Agreement. The Board relies on the credible and unrefuted testimony of Investigator Ghenene to substantiate these findings.

25. In addition to the Respondent's failed adherence to its own Voluntary Agreement, the Board finds that the Respondent violated ABC statutes. Specifically, the Board finds that the Respondent failed to post on its front window or door, the required lettering that notifies the public of the Respondent's name, retailer class, and its license number.

26. Moreover, the Respondent admitted that it violated the terms of its Voluntary Agreement with regard to selling go-cups, advertising alcoholic beverages, and not posting the required signs. As such, the Board finds that the Respondent violated the terms of its Voluntary Agreement in violation of § 25-823(6).

27. Lastly, as this Board has stated in previous Orders; a license is a privilege and not a right and as such, there is a presumption that the Respondent knows the laws and regulations related to that privilege. Equally importantly, there is an expectation by the Board that the Respondent will comply with those laws and regulations. The Respondent's failure to comply with its own Voluntary Agreement, the terms to which the Respondent agreed, is a total abandonment of the Respondent's responsibility as a licensee. Indeed, the Board has considerable concern that the Respondent's failure to comply with those terms had not been remedied after the first visit by ABRA investigators in early June. It took the better part of the summer for the Respondent to conform some of its business practices and comply with the law and regulations that govern ABC licensees. This leisurely pace toward corrective action is not tolerable.

## ORDER

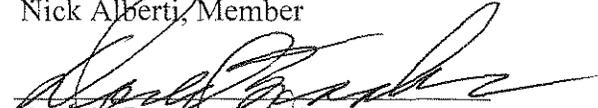
Based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of May 2012, finds that the Respondent, Carnival, Inc, t/a Sunset Liquors, at premises 1627 First Street, N.W., Washington, D.C., holder of a Retailer's Class A License, violated D.C. Code §§ 25-446(e) and 25-823(6). The Board hereby **ORDERS** that:

1. For Charge I, as set forth in the Notice to Show Cause, alleging that the Respondent failed to comply with the terms of the Voluntary Agreement, the Respondent shall pay a fine in the amount of \$500.00.
2. Charge II as set forth in the Notice to Show Cause, alleging that the Respondent failed to comply with the terms of the Voluntary Agreement should be and is hereby **DISMISSED**.
3. Charge III as set forth in the Notice to Show Cause, alleging that the Respondent failed to comply with the terms of its Voluntary Agreement, the Respondent shall pay a fine in the amount of \$750.00.
4. Charge IV as set forth in the Notice to Show Cause, alleging that the Respondent failed to post on the front window and door, lettering regarding the number of the license, the name of the licensee and the trade name, the Respondent shall pay a fine in the amount of \$750.00.
5. Charge V as set forth in the Notice to Show Cause, alleging that the Respondent provided go cups to a customer, the Respondent shall pay a fine in the amount of \$500.00.
6. Charge VI, as set forth in the Notice to Show Cause, alleging that the Respondent provided go-cups to a customer, the Respondent shall pay a fine in the amount of \$750.00 and shall have its license suspended for a period of three days, all three of those days stayed for one year, provided that the Respondent does not commit any ABC violations.
7. In total, the Respondent shall pay a fine in the amount of \$3,250.00 by no later than thirty (30) days from the date of this Order. A total of three days suspension of the license shall be stayed for one year, provided that the Respondent does not commit any ABC violations.

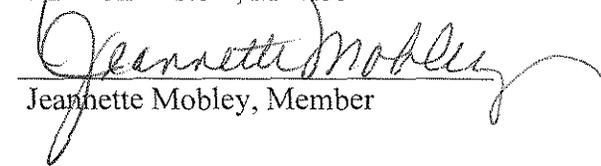
Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia  
Alcoholic Beverage Control Board

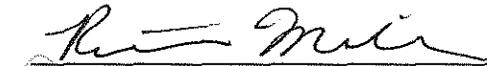
  
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Nick Alberti, Member

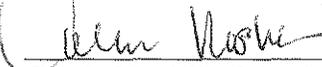
  
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Donald Brooks, Member

  
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Mike Silverstein, Member

  
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Jeannette Mobley, Member

We agree with the majority of the Board as to the finding that the Respondent violated D.C. Official Code §§ 25-401(c), 25-712(a), and 23 DCMR § 2000.2, as set forth in the Notice, but we dissent as to the penalty.

  
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Ruthanne Miller, Chair

  
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Calvin Nophlin, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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).