

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

In the Matter of:	)	
	)	
The Bodega Incorporated	)	Case No.: 14-CMP-00380
t/a The Cupboard	)	License No.: ABRA-086607
	)	Order No.: 2015-101
Holder of a Retailer's Class B License	)	
	)	
at premises	)	
1504 East Capitol Street, N.E.	)	
Washington, D.C. 20002	)	

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

**ALSO PRESENT:** Mary Ann Brazell, on behalf of The Bodega Incorporated t/a The Cupboard, Respondent

Amy Schmidt, 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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**ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION**

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**Introduction**

This matter comes before the Alcoholic Beverage Control Board (Board) on a Motion for Reconsideration, filed by The Bodega Incorporated t/a The Cupboard (Respondent) in response to Board Order No. 2015-039.

### Procedural History

On June 25, 2014, Citation #4802 was issued to the Respondent in the amount of \$500.00 for violating D.C. Official Code § 25-741(a). As noted on the back of the Respondent's citation, the Respondent had thirty days from the date of issuance to remit payment to ABRA or request a Show Cause Hearing. *Show Cause File No. ABRA-086607*, Citation No. 4802. The Respondent did neither by the proscribed deadline. *Show Cause File No. ABRA-086607*, Notice of Delinquency. Instead, on July 17, 2014, the Respondent submitted correspondence requesting that the citation be dismissed due to the mistake of the Respondent's employee. *Show Cause File No. ABRA-086607*, Letter of Appeal, dated July 17, 2014.

On August 13, 2014, the Board sent a Notice of Delinquency to the Respondent informing it that payment of the \$500.00 fine must be paid within five days or else the matter would be referred to the Office of the Attorney General (OAG) for prosecution. *Show Cause File No. ABRA-086607*, Notice of Delinquency. The Respondent was also advised that should the matter proceed to prosecution, the Respondent may incur additional penalties to include a doubling of the original fine. *Id.* The Respondent again failed to remit payment of the fine by the proscribed deadline. As a result, shortly thereafter, the Board forwarded this matter to OAG for prosecution. *Show Cause File No. ABRA-086607*, Board Legal Agenda, July 30, 2014.

On November 5, 2014, the Board executed a Notice of Status Hearing and Show Cause Hearing in Case No. 14-CMP-00380. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent on November 10, 2014. *Show Cause File No. ABRA-086607*, Service Form. The Board held the Show Cause Status Hearing on December 10, 2014, at which both Parties were present. There was no settlement of the matter and it proceeded to a Show Cause Hearing on January 21, 2015. The Respondent failed to appear at the Show Cause Hearing and the Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e) which allows for an ex parte proceeding.

On February 4, 2015, the Board found the Respondent liable for selling "go-cups" in violation of D.C. Official Code § 25-741(a) and imposed a fine of \$750.00. *Licensing File No. ABRA-086607*, Investigative History; *See also The Bodega Incorporated t/a The Cupboard*, Case No. 14-CMP-00380, Board Order No. 2015-039 (D.C.A.B.C.B. Feb. 4, 2015). This is the Respondent's second secondary tier violation within two years. *Licensing File No. ABRA-086607*, Investigative History; *See also The Bodega Incorporated t/a The Cupboard*, Case No. 14-CMP-00380, Board Order No. 2015-039, 3 (D.C.A.B.C.B. Feb. 4, 2015).

On February 23, 2015, the Board received a Motion for Reconsideration requesting a reduction in the fine payment imposed by the Board from the Respondent. *Mot. for Recon.*, 1. In this Motion, the Respondent admitted that its employee gave a "go-cup" to an undercover [ABRA] agent. *Id.* Further, the Respondent requested that the imposed fine be reduced to the original citation amount of \$500.00. *Id.*

### Discussion

The Board affirms its prior Order and denies the Respondent's Motion for Reconsideration for two reasons. First, the Board finds the Respondent's arguments of mistake to be unpersuasive. The Record shows that the Respondent was first notified of Citation #4802, to be paid within thirty days of receipt, on June 25, 2014. Yet, the Respondent failed to pay the \$500.00 fine by the proscribed deadline. The Respondent was then given an extension until August 18, 2014 to pay the amount of \$500.00. Further, the Respondent was also informed that if referred to the OAG, the Respondent may incur additional penalties to include a doubling of the original fine. The Board finds that the Respondent was given ample opportunity over a three month period to pay the original fine amount of \$500.00. Furthermore, this opportunity was lost after the repeated failure to submit payment when the matter was finally referred to the OAG for prosecution, after notice to the Respondent.

In addition, the Board sees no reason to depart from its penalty determination. Here, the Board made its determination based upon substantial evidence on the record showing that the Respondent violated D.C. Code § 25-741(a). This violation became the Respondent's second secondary tier violation within two years. By imposing a fine of \$750.00, the Board did not exceed the maximum penalty allowed by law. *See* 23 DCMR § 800. Based on these facts, the Board finds that the Respondent's request for leniency of the imposed penalty as unpersuasive.

### **ORDER**

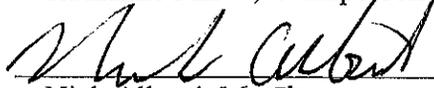
Therefore, based on the foregoing, the Board, on this 18<sup>th</sup> day of March 2015, **DENIES** the Motion for Reconsideration filed by The Bodega Incorporated t/a The Cupboard.

**IT IS FURTHER ORDERED** that the penalty fines totaling \$750.00 set forth in Board Order No. 2015-039 remain in effect and that the Respondent is to pay these penalty fines by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

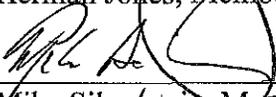
District of Columbia  
Alcoholic Beverage Control Board

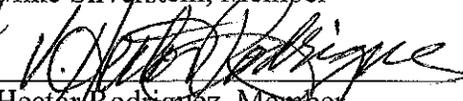
  
Ruthanne Miller, Chairperson

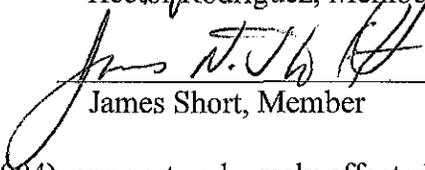
  
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Donald Brooks, Member

  
Herman Jones, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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 (April 2004) 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).