

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

In the Matter of:)
)
)

MCHAP, Inc.)
t/a The Saloon)

Case No.: 15-CMP-00036

License No: 71086

Order No: 2016-022

Holder of a)
Retailer's Class CT License)
)

at premises)

1205 U Street, N.W.)

Washington, D.C. 20009)
)

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

ALSO PRESENT: MCHAP, Inc., t/a The Saloon, Respondent

Kamal Jahabein, Owner, on behalf of the Respondent

Fernando Rivero, 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds MCHAP, Inc., t/a The Saloon, (hereinafter "Respondent" or "Saloon") in violation of one count of violating District of Columbia (D.C.) Official Code § 25-701 on June 4, 2015. The Saloon is advised that it has an obligation to have a licensed manager or owner present whenever the establishment is in operation. The Board emphasizes that this means that it is illegal for Mr. Jahabein to leave the

establishment while it is in operation if no employee or manager remaining at the establishment holds an ABC manager's license—even if the owner only leaves for a minute. The Saloon is advised to take appropriate steps to prevent this violation from occurring in the future, such as ensuring that various employees obtain an ABC Manager's license.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 16, 2015. *ABRA Show Cause File No., 15-CMP-00036*, Notice of Status Hearing and Show Cause Hearing, 2 (Sept. 16, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1205 U Street, N.W., Washington, D.C., on September 23, 2015, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00036*, Service Form. The Notice charges the Respondent with one violation, 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 violation:

Charge I: **You failed to keep a licensed ABC manager on duty at all times, in violation of D.C. Official Code § 25-701 . . .**

On Thursday, June 4, 2015, at approximately 6:40 p.m., an ABRA Investigator visited the establishment. During the visit, the ABRA Investigator requested to speak with the ABC Manager or owner. An employee, Mr. Kaleabe, reported that there was no ABC Manager present. Subsequently, Kamal Jahabein, who identified himself as the owner, entered the establishment and spoke with the ABRA Investigator.

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on October 21, 2015. The parties proceeded to a Show Cause Hearing and argued their respective cases on December 2, 2015.

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. The Saloon holds a Retailer's Class CT License at 1205 U Street, N.W., Washington, D.C. *ABRA License No. 71086*. ABRA Investigator John Suero conducted an undercover compliance check at Saloon on June 4, 2015 as part of a sale to minor investigation. *Id.* at 11. On that day, Investigator Suero's role was to enter the establishment and notify the licensee of the violation if the undercover operation conducted by other investigators revealed a violation. *Id.* at 12.

2. During the investigation, ABRA Investigator Jason Peru entered the establishment with two minors. *Id.* While inside the establishment, Investigator Peru believed that the minors were able to obtain alcohol from Saloon's bartender. *Id.* In response, Investigator Suero entered the establishment and took photographs of the alcohol and identified himself to the bartender. *Id.*

3. Upon identifying himself and the purpose of his visit, Investigator Suero requested that the bartender get the manager or owner. *Id.* at 13. The bartender informed Investigator Suero that no manager or owner was present. *Id.* Moreover, Investigator Suero observed that the owner, Kamal Jahabein, was not present at the beginning of the investigation, but entered once various forms were being presented to the bartender. *Id.* at 13, 27-28.

4. Mr. Jahabein indicated that he was at home writing an email before entering the establishment. *Id.* at 40, 44-45. He indicated that he lives approximately fifty feet from the establishment. *Id.* at 43.

CONCLUSIONS OF LAW

5. 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. 2015). 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 operated without an owner or licensed manager present on March 8, 2015.

6. There is no dispute that the establishment violated the licensed manager requirement. Under § 25-701, "A person designated to manage an establishment shall possess a manager's license." D.C. Official Code § 25-701(a). The Board credits Investigator Suero's observations and the bartender's statements that the establishment failed to have a licensed manager or owner superintend the establishment on June 4, 2015. *Supra*, at ¶¶ 1-4. Consequently, the Board sustains Charge I.

II. Penalty

7. A violation of D.C. Official Code § 25-701 is deemed a secondary tier violation under the law. 23 DCMR § 800 (West Supp. 2016). A first time secondary tier violation, as is the case here, allows the Board to impose a fine ranging from \$250 to \$500. 23 DCMR § 8002.1(A); *Investigative History*, The Saloon, ABRA License No. 71086 (last updated Nov. 23, 201) [*Investigative History*]. In imposing the minimum fine of \$250, the Board took into account Saloon's willingness to acknowledge the violation. *Investigative History* (see Case Nos. 10-AUD-00021(a); Case #8827); *supra*, at ¶ 4.

ORDER

Therefore, the Board, on this 20th day of January 2016, finds that MCHAP, Inc., t/a The Saloon, guilty of violating D.C. Official Code § 25-701(a). The Board imposes the following penalty on the licensee:

- (1) For the violation described in Charge I, Saloon shall pay a fine of \$250.

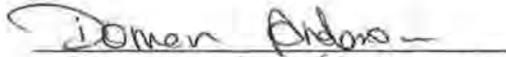
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

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

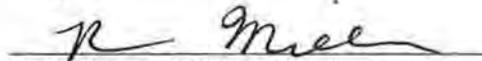
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

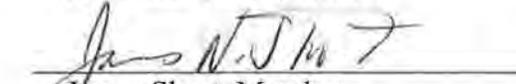
The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Mike Silverstein, Member


Ruthanne Miller, Member


James Short, Member

I concur as to liability, but dissent to the penalty imposed by the majority. I find that a fine of \$350 is more appropriate in this case.


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).