

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

In the Matter of:)	
Spo-dee-o-dee, LLC)	
t/a The Showtime)	License No.: ABRA-089186
Holder of a)	Case No.: 14-CMP-00429
Retailer's Class CT License)	Order No.: 2015-072
at premises)	
113 Rhode Island Avenue, N.W.)	
Washington, D.C. 20002)	

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

ALSO PRESENT: Spo-dee-o-dee, LLC, t/a The Showtime, Respondent

Paul Vivari, on behalf of the Respondent

Rosemarie Salguero, Counsel, on behalf of the Respondent

Louise Phillips, 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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Spo-dee-o-dee, LLC, t/a The Showtime (Respondent) violated District of Columbia (D.C.) Official Code § 25-723(b). As a

result, the Respondent must pay a \$1,000.00 fine.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on November 19, 2014. *ABRA Show Cause File No. 14-CMP-00429*. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 113 Rhode Island Avenue, N.W., Washington, D.C. 20002, on November 22, 2014. *ABRA Show Cause File No. 14-CMP-00429*, Service Form.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent permitted the service of an alcoholic beverage in its establishment after the permitted hours of sale, in violation of D.C. Official Code § 25-723(b) (2012 repl.) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2012 repl.).

The Show Cause Status Hearing occurred on January 7, 2015. The Government and the Respondent appeared at the Show Cause Hearing for this matter on February 11, 2015.

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 November 19, 2014. See ABRA Show Cause File No. 14-CMP-00429. The Spo-dee-o-dee, LLC, t/a The Showtime, holds a Retailer's Class CT License, ABRA License Number ABRA-89186. See ABRA Licensing File No. ABRA-89186. The establishment's premises are located at 113 Rhode Island Ave., N.W., Washington, D.C. See ABRA Licensing File No. ABRA-89186.
2. The Respondent's authorized hours of operation, service and sales at the time of the violation were Sunday 3:00 p.m. to 1:30 a.m., Monday through Thursday 10:00 a.m. to 1:30 a.m., and Friday and Saturday 10:00 a.m. to 2:30 a.m. See Licensing File No. ABRA-089186.
3. As of August 6, 2014, the Respondent's authorized hours of operation, service and sales are Sunday 3:00 p.m. to 2:00 a.m., Monday through Thursday 10:00 a.m. to 2:00 a.m., and Friday and Saturday 10:00 a.m. to 3:00 a.m. See Licensing File No. ABRA-089186.
4. The Show Cause Hearing was held on February 11, 2015. The Notice charges the Respondent with a single violation enumerated above. See ABRA Show Cause File No. 14-CMP-00429.

II. Stipulation to Facts

5. The Government and the Respondent stipulated to the admissibility, sufficiency and accuracy of the evidence contained in ABRA's investigative report and the Notice to Show Cause. *Transcript (Tr.) 2/11/15* at 4, 9. See ABRA Show Cause File No. 14-CMP-00429.

Specifically, the stipulated facts are:

- (a) On Friday, July 25, 2014, at approximately 1:50 a.m., ABRA Investigator Dorshae Demby was monitoring the Respondent's establishment. *Notice* at 2.
- (b) On that night and at that time, Investigator Demby observed that the Respondent was operating, and that multiple patrons were inside the establishment.
- (c) When Investigator Demby entered the establishment, he observed a patron at the bar consuming an alcoholic beverage, specifically, beer from a beer can.
- (d) When Investigator Demby spoke to the Respondent regarding his observations, the Respondent admitted that he was aware that his hours of operation, sales and service for that day are 10:00 a.m. to 1:30 a.m. and that these hours are listed on his ABC license.

III. Arguments as to Penalty

6. The Government recommends that because the violation is a primary tier violation, the Board fine the Respondent \$1,150 to be paid within thirty (30) days from the date of the Order. *Tr. 2/11/15* at 4, 6.

7. The Respondent does not dispute the facts in Investigator Demby's report, and states that he had no intention of violating the law. *Tr. 2/11/15* at 6-7.

8. At the time that his ABC license issued, he was informed during his final inspection that last call was 30 minutes prior to closing. *Tr. 2/11/15* at 7. He knew that the statutory hours were 2:00 a.m. for weekdays and 3:00 a.m. for weekends, and believed that the last call provision triggered at 1:30 a.m. *Tr. 2/11/15* at 7. Therefore, he stopped serving and selling alcoholic beverages at 1:30 am, and allowed his patrons the 30 additional minutes to 2:00 a.m. to leave the establishment. *Tr. 2/11/15* at 7,9.

9. Additionally, the Respondent relied on ABRA's Quick Guide reference that states ABC licensed establishments may operate until 2:00 am Sunday through Thursday, and until 3:00 a.m. on Friday and Saturday. *Tr. 2/11/15* at 7. Upon learning from Investigator Demby that his understanding of his hours of operation was wrong, the Respondent took immediate steps to apply for the additional hours. The Board approved his application and he is no longer in violation of the law. *Tr. 2/11/15* at 8.

10. The Respondent argues that because he relied on good faith and information that he received from ABRA staff, his penalty should be reduced from a primary tier violation to a

secondary tier violation. *Tr.* 2/11/15 at 8. The Respondent is willing to pay the fine; he is simply requesting a reclassification of the violation. *Tr.* 2/11/15 at 9. The Respondent has incurred no other violations or warnings. *Tr.* 2/11/15 at 9. He has worked in other ABC licensed establishments, but has never owned or managed one. *Tr.* 2/11/15 at 10.

CONCLUSIONS OF LAW

11 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 § 25-723(b)

12. The Board finds that the Respondent operated after hours in violation of D.C. Official Code § 25-723(b). D.C. Official Code sets forth hours of sale and service for on-premises retail licensees. D.C. Official Code § 25-723. The hours of sale and service are listed on a licensee’s ABC license and posted inside the establishment pursuant to D.C. Official Code § 25-711.

13. The Respondent admitted to the violation by stipulating to the facts. The stipulated facts are received into evidence in lieu of further proof and testimony. Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-723(b).

II. PENALTY

14. A violation of D.C. Official Code § 25-723(b) is a primary tier violation under the law. The present violation is the Respondent’s first primary tier violation within a two year period and as such, the Board imposes a fine of \$1,000.00. *Licensing File No. ABRA-089186*, Investigative History; D.C. Official Code § 25-723(b).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 4th day of March, 2015, finds that the Respondent, Spo-dee-o-dee, LLC, t/a The Showtime, located at 113 Rhode Island Avenue, N.W., Washington, D.C., holder of a Retailer's Class CT license, violated D.C. Official Code § § 25-723(b).

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$1,000.00 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.

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

District of Columbia
Alcoholic Beverage Control Board

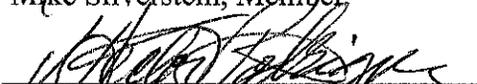

Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member

I recuse myself from the decision reached by the majority in this matter.


James Short, Member

Pursuant to D.C. Official Code § 25-433, 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).