

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

In the Matter of:)	
)	
MCHAP, Inc.)	License No. 71086
t/a The Saloon)	Case No. 09-AUD-00021
)	Order No. 2010-545
Holder of a Retailer's Class CR License)	
at premises)	
1205-1207 U Street N.W.)	
Washington, D.C. 20009)	

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Kamal Jahanbein, on behalf of the Respondent

Fernando Rivero, Assistant Attorney General
District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On September 21, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated August 18, 2010, on MCHP, Inc. t/a The Saloon (Respondent), at premises 1205-1207 U Street N.W., Washington, D.C. 20002, charging the Respondent with the following violation:

Charge I: Respondent failed to meet the requirement that a holder of a Class CR license must at least have annual gross food sales of either \$2,000 per occupant or 45% of gross annual receipts, in violation of D.C. Official Code § 25-113(b)(3)(B)(i)(I) and (II) (2001) and 23 DCMR 2101, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2001).

The alleged violation was based upon the Respondent's submission of quarterly food sales reports for four quarters ending December 30, 2009, setting forth gross annual food sales of \$1,346 per occupant and 35% of gross receipts for the fiscal year.

The matter proceeded to a Show Cause Hearing on October 13, 2010, in accordance with D.C. Official Code § 25-601 (2001). At the hearing, the Government presented, and the Respondent stipulated to the admissibility and the authenticity of two exhibits. The Board, having considered the evidence, the arguments of the parties, and the 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 August 18, 2010. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-AUD-00021.) The Respondent holds a Retailer's Class CR License and is located at 1205-1207 U Street, N.W., Washington D.C. (*See* ABRA Licensing File Number 71086.)

2. The Show Cause Hearing in this matter was held on October 13, 2010. The Respondent was charged with one violation enumerated above. (*See* ABRA Show Cause File Number 09-AUD-00021).

3. The Government presented its case through the admission of two exhibits. *Transcript, October 13, 2010* (hereinafter "*Tr.*"), at 5. Government's Exhibit No. 1 is a two-page report prepared by ABRA's auditor report indicating that the Respondent's total food sales were \$185,715.00 and its total gross sales were \$524,707.00. *Tr.*, 10/13/10 at 5. The auditor's report also sets forth the Respondent's total food sales for year 2009 as 35% of gross annual receipts and \$1,346 per occupant. *Tr.*, 10/13/10 at 6. The auditor's report also includes the four quarterly statements filed by the Respondent for the time period under review by ABRA. *Tr.*, 10/13/10 at 6.

4. Government's Exhibit No. 2 is a copy of the Respondent's Certificate of Occupancy which states a total of 138 seats. *Tr.*, 10/13/10 at 6. The Government moved and the Board admitted Government Exhibit No. 1 and No. 2. *Tr.*, 10/13/10 at 6.

5. Kamal Jahanbein, on behalf of the Respondent, stipulated to the admissibility and authenticity of the Government's Exhibits. *Tr.*, 10/13/10 at 5, 7. Mr. Jahanbein presented no witnesses or exhibits and instead offered a statement to the Board requesting leniency in the imposition of a penalty. *Tr.*, 10/13/10 at 8-9. Mr. Jahanbein stated that he has been open since 1976 and he has never had any previous violations. *Tr.*, 10/13/10 at 8. He is open ten and one half months a year. *Tr.*, 10/13/10 at 8. What little profit he makes, he helps to finance 11 schools, two medical clinics, and 250 homes around the world. *Tr.*, 10/13/10 at 8, 9. Mr. Jahanbein also stated that although the establishment has three floors, he is only using 49 seats. *Tr.*, 10/13/10 at 8, 12. He also informed the Board that he is in the process of converting his retailer's license class from a CR to a CT. *Tr.*, 10/13/10 at 9. The Board takes administrative notice that the Respondent has filed an Application to convert its Retailer's Class CR license to a Class CT license. (*See* ABRA Licensing File Number 71086.)

CONCLUSIONS OF LAW

6. 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 D.C.M.R. 800, *et seq.*

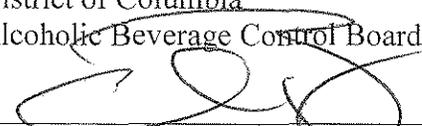
7. With regard to Charge I, the Board must determine whether the Respondent failed to meet the requirement that a holder of a CR license must at least have annual gross food sales of either \$2,000 per occupant or 45% of gross annual receipts, in violation of D.C. Official Code § 25-113(b)(3)(B)(i)(I) and (II) (2001) and 23 DCMR 2101, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2001). Inasmuch as the Respondent has conceded this Charge by stipulating to the Government's exhibits, namely the quarterly food sales reports for four quarters ending December 30, 2009, setting forth gross annual food sales of \$1,346 per occupant and 35% of gross receipts for the fiscal year, the Board finds that the Respondent failed to meet the requirement that a holder of a CR license must at least have annual gross food sales of either \$2,000 per occupant or 45% of gross annual receipts, in violation of D.C. Official Code § 25-113(b)(3)(B)(i)(I) and (II) (2001) and 23 DCMR 2101.

8. Based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-113(b)(3)(B)(i)(I) and (II) (2001) and 23 DCMR 2101, as set forth in Charge I, warrants the imposition of a thousand dollar (\$1,000) fine payable within 30 (thirty) days of receipt of this Order.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 3rd day of November, 2010, finds that the Respondent, MCHP, Inc. t/a The Saloon, Holder of a Retailer's Class CR License, violated D.C. Official Code § 25-113(b)(3)(B)(i)(I) and (II) (2001) and 23 DCMR 2101. The Board hereby **ORDERS** that the Respondent shall pay a fine in the amount of \$1,000.00 payable within thirty (30) days from the date of this Order.

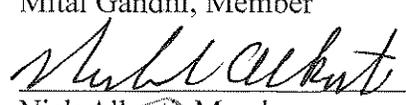
District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



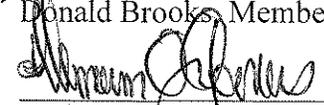
Mital Gandhi, Member



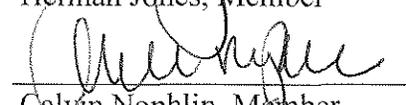
Nick Alberti, Member



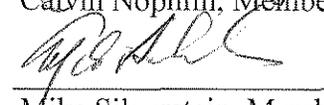
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

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 the 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).