

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

In the Matter of:

Krakatoa, Inc.
t/a Chief Ike's Mambo Room

Holder of a
Retailer's Class CT License

at premises
1723 Columbia Road, N.W.
Washington, D.C. 20009

Case No. 12-CMP-00393(a)
License No. ABRA-017940
Order No. 2014-230

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

ALSO PRESENT: Andrew Kline, on behalf of Krakatoa, Inc., t/a Chief Ike's Mambo Room, Respondent

Allan Jirakowic, Vice President, on behalf of the Respondent

Michael Stern, Senior 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

The Alcoholic Beverage Control Board (Board) finds that Krakatoa, Inc., t/a Chief Ike's Mambo Room,, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-711(a) and 25-762(b)(13). As a result, the Respondent must pay a \$1,750.00 fine.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 25, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1723 Columbia Road, N.W., Washington, D.C., on October 12, 2013.

The Notice charged the Respondent with the following violations:

Charge I: The Respondent failed to frame the license under glass and post it conspicuously in the licensed establishment, in violation of D.C. Official Code § 25-711(a) (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The factual basis of Charge I is an allegation that on Friday, July 27, 2012, ABRA investigators observed that the Respondent's ABC license was not conspicuously posted. The investigators requested to see the ABC license, and the ABC Manager removed a large frame which contained the license from behind several rows of bottles located behind the bar. Notice at 2.

Charge II: The Respondent failed to obtain approval from the Board before making a substantial change in operation, in violation of D.C. Official Code § 25-762(b)(13) (2001) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The factual basis of Charge II is an allegation that on Friday, July 27, 2012 at 1:10 a.m., ABRA investigators observed the patrons consuming alcoholic beverages on the Respondent's Sidewalk Café. Both the ABC license and the Settlement Agreement state that the Sidewalk Café shall close at 1:00 a.m. Sunday through Friday, and 2:00 a.m. on Saturday. Notice at 2.

The Show Cause Status Hearing occurred on November 6, 2013. On January 22, 2014, the Board continued the Show Cause Hearing to March 26, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on March 26, 2014.

At the commencement of its case-in-chief, the Respondent moved to dismiss Charge II. The Respondent argued that its permitted hours for the Sidewalk Café on Saturday is 2:00 a.m. and because the patrons were on the Sidewalk Café at 1:10 am on Saturday morning, there was no violation. The Government countered, arguing that the 1:10 a.m. presence of patrons is an extension of the Friday hours of operation, and thus a violation occurred when the patrons remained on the patio past 1:00 a.m., the required closing hour for the Sidewalk Café Sunday through Friday. The Board deferred ruling on the Motion at the time of the hearing. The Board now rejects the Respondent's argument and elaborates further below.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and all documents comprising the Board's official file, makes the following findings:

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated September 25, 2013.
2. The Respondent was charged with the two violations enumerated above. Notice at 2.
3. The Show Cause Hearing in this matter was held March 26, 2014. ABRA Show Cause File Number 12-CMP-00393(a).
4. The Respondent holds a Retailer's Class CT License and is located at 1723 Columbia Road, NW, Washington, D.C. ABRA Licensing File Number 017940. The establishment's authorized Sidewalk Café hours of operation and sales, service and consumption are as follows: Sunday through Friday 4:00 p.m. to 1:00 a.m. and Saturday 6:00 p.m. to 2:00 a.m. ABRA Licensing File Number 017940.
5. The Government presented its case through the testimony of former ABRA Investigator Tyrone Lawson. *Transcript (Tr.)*, 3/26/14 at 7. On Friday, July 27, 2012, Mr. Lawson was detailed to the Adams Morgan neighborhood to monitor ABC licensed establishments. *Tr.*, 3/26/14 at 8. Mr. Lawson monitored activity at the Respondent's establishment due to past instances of the Respondent operating after Board-approved hours. *Tr.*, 3/26/14 at 8. On those previous occasions, Mr. Lawson advised the ABC Manager on duty of the "operating after hours" violation and requested that security personnel clear the patrons from the side walk café. *Tr.*, 3/26/14 at 13. This happened on two separate occasions prior to the July 27, 2014 incident. *Tr.*, 3/26/14 at 13.
6. On the night of July 27, 2014, Mr. Lawson was training another ABRA investigator when they visited the Respondent to conduct a regulatory inspection. *Tr.*, 3/26/14 at 9. When he arrived at the establishment at 1:10 a.m., Mr. Lawson observed several patrons present on the Sidewalk Café consuming alcoholic beverages. *Tr.*, 3/26/14 at 9, 12, 37. He knew the beverages were of an alcoholic nature because he observed beer bottles and mixed cocktails in glassware that is used to serve mixed cocktails. *Tr.*, 3/26/14 at 9-10, 42-43.
7. Mr. Lawson requested to speak to an ABC Manager or the owner. *Tr.*, 3/26/14 at 14. He informed the ABC Manager, Michael Ryan, that ABRA investigators were at the establishment to conduct a regulatory inspection. *Tr.*, 3/26/14 at 14. Mr. Lawson requested to see the ABC Manager's license, the Respondent's ABC license, and a copy of the Respondent's Settlement Agreement. *Tr.*, 3/26/14 at 14.
8. Mr. Lawson noted that the ABC license was in a glass frame on a board that was located behind a row of alcoholic beverage bottles that were sitting on a shelf. *Tr.*, 3/26/14 at 15, 31-33; Government's Exhibit No. 1. The alcoholic beverage bottles obscured the framed license board. *Tr.*, 3/26/14 at 33. Mr. Lawson could not see the license from where he was standing in the bar, nor could he see the license generally from within the bar. *Tr.*, 3/26/14 at 15. Mr. Lawson could not see the ABC license when the Manager placed the

framed board on the bar table. *Tr.*, 3/26/14 at 15. He asked the Manager to display the ABC license and in order to do so, the Manager had to remove other documents tacked to the framed board that was covering the ABC license. *Tr.*, 3/26/14 at 15, 34. Other documents such as the Business License and Certificate of Occupancy obscured the ABC License. *Tr.*, 3/26/14 at 34-35. Mr. Lawson noted that the ABC license was conspicuously posted on a subsequent visit to the establishment. *Tr.*, 3/26/14 at 44.

9. Mr. Lawson looked to the ABC license to determine the approved hours for the Sidewalk Café. *Tr.*, 3/26/14 at 16. He was also familiar with the terms of the Settlement Agreement regarding the approved hours. *Tr.*, 3/26/14 at 16-17. Section 2 of the Settlement Agreement provides that the Sidewalk Café shall close at 1:00 a.m. Sunday through Friday, and shall close at 2:00 a.m. on Saturday. *Tr.*, 3/26/14 at 17. The Settlement Agreement was approved by the Board and the terms of the Agreement attached to the Respondent's license. *Tr.*, 3/26/14 at 18. The Respondent has not sought to increase its hours. *Tr.*, 3/26/14 at 18.

10. Mr. Lawson informed Mr. Ryan that the establishment was operating after approved hours for the Sidewalk Café. *Tr.*, 3/26/14 at 36. He showed Mr. Ryan the provision in the Settlement Agreement that addressed the hours of operation. *Tr.*, 3/26/14 at 36. Mr. Ryan spoke to his security personnel and they started immediately clearing the Sidewalk Café. *Tr.*, 3/26/14 at 37.

11. The Respondent put forward no evidence and reserved its argument for closing.

CONCLUSIONS OF LAW

12. 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. Official Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

13. The Board finds, as to Charge I, that there is sufficient credible evidence to establish that the Respondent failed to post his ABC license conspicuously in the establishment in violation of D.C. Official Code § 25-711(a). Here, the Board credits Mr. Lawson who testified that when he did not observe the ABC license conspicuously posted, he inquired with the ABC Manager as to the status of the license. The ABC Manager was able to retrieve the framed license from behind a row of bottles at the back of the shelf where it had not been visible to the investigator. Furthermore, the Respondent did not refute the Charge nor did he put any contrary evidence into the record.

14. The Board finds, as to Charge II, that there is sufficient credible evidence to establish that the Respondent made a substantial change in operations by operating the Sidewalk Café after its Board-approved hours in violation of D.C. Official Code § 25-762(b)(13). Here again, the Board credits Mr. Lawson who observed patrons consuming alcoholic beverages at 1:10 a.m. The investigator's testimony was clear that on Friday, July 27, 2013, he was assigned to monitor ABC activity in the Adams Morgan neighborhood. On that same shift, he observes the Respondent's patrons located on the

Sidewalk Café at 1:10 a.m. Both the license and the Settlement Agreement provide that the Sidewalk Café must close at 1:00 a.m. Sunday through Friday.

15. Additionally, the Board finds the ABC Manager's conduct noteworthy in that when he was advised that the patrons were on the Sidewalk Café after Board approved hours, the Manager took immediate steps to clear the patrons and their beverages. It is evident by the ABC Manager's behavior that he believed the patrons should not have been occupying the Sidewalk Café after 1:00 a.m. The Board credits Mr. Lawson who testified that this was not the first occasion that he warned the ABC Manager of this same violation.

16. As noted above, the Board denies the Respondent's Motion to dismiss Charge II, and agrees with the Government that common usage dictates that the interpretation of 1:10 a.m. (technically a Saturday morning) can only mean an extension of the Friday hours of operation, sales, service and consumption. The Government's interpretation is a long held, and understood practice by ABRA and the industry. One only needs to look to ABRA's records to understand the Government's interpretation of common usage. Not only does the Respondent's licensing file indicate that the hours of the Sidewalk Café are Sunday through Friday, 4:00 p.m. to 1:00 a.m., but the Respondent's license, which is in the Respondent's possession and can be checked at any time, also provides very clearly what the hours of operation are for *each* of the seven days of the week. Specifically, for the "Sidewalk Café Hours of Operation" listed for Friday, the Respondent's license states Friday: 4:00 p.m. – 1 a.m.

17. Additionally, common sense supports the Government's interpretation. The Respondent's position that the 1:10 a.m. observation should apply to the approved Saturday hours of operation, rather than Friday, is absurd. If the Respondent's interpretation were adopted, it would require that the stated hours on the ABC license list only the authorized hours for a given day of the week, and would start and stop for that specific time period on that specific day. The following day would then commence at 12:01 a.m. and end at the legal hours for that particular Licensee, and then start again when operations commenced later that same day. The Respondent's argument that ABRA's current listing of approved hours is ambiguous is laughable when its own interpretation would create greater confusion for industry and enforcement.

18. The Board takes administrative notice that the Respondent's Case No. 12-CMP-00597 occurred subsequent to this matter. Therefore, the Board will not factor this case for purposes of imposing the penalty in the case at hand. The Board finds that Charge I is the Respondent's first secondary tier violation and the Board impose a fine of \$250.00. Charge II is the Respondent's first primary tier violation and the Board impose a fine of \$1,500.00. *Licensing File No. ABRA-017940*, Investigative History; D.C. Official Code § 25-830.

ORDER

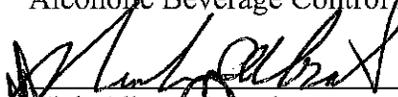
Based on the foregoing findings of fact and conclusions of law, the Board, on this 11th day of June, 2014, finds that the Respondent, Krakatoa, Inc., t/a Chief Ike's Mambo Room, holder of a Retailer's Class CT License, violated D.C. Official Code §§ 25-711(a) and 25-762(b)(13).

The Board hereby **ORDERS** that:

- 1) Charge I: Respondent must pay a fine in the amount of \$250.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$1,500.00.
- 3) In total, the Respondent must pay a fine in the amount of \$ 1,750.00 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.

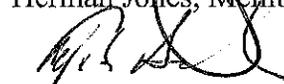
District of Columbia
Alcoholic Beverage Control Board



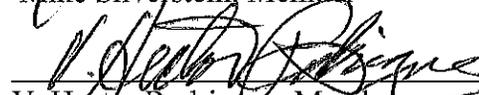
Nick Albert, Member



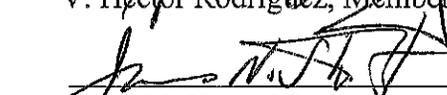
Herman Jones, Member



Mike Silverstein, Member



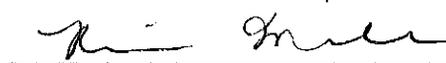
V. Hector Rodriguez, Member



James N. Short, Member

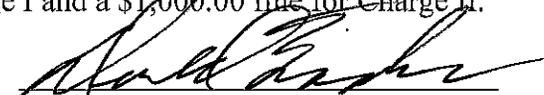
I concur with the majority's decision as to its finding of the Respondent's liability with respect to Charge I, § 25 -711 (a); Posting and Carrying of Licenses.

I dissent from the majority's finding of the Respondent's liability with respect to Charge II, § 25 -762(b) (13). Substantial change in operation must be approved. In my view, operation for only 10 minutes beyond the approved hours does not substantially change the nature of the operation of the licensed establishment.



Ruthanne Miller, Chairperson

I concur with the majority's decision as to its finding of the Respondent's liability, but I disagree with the penalty selected by the majority of the Board. I believe the evidence supports a finding of a \$250.00 fine for Charge I and a \$1,000.00 fine for Charge II.



Donald Brooks, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).