



Board heard oral arguments on the Respondent's Motion to Dismiss and the Government's Opposition thereto.

The Respondent argued that the case should be dismissed, because the underlying charge was false and illegitimate, inasmuch as an ABC-licensed manager was on duty on the night of the regulatory inspection. The Government opposed the Motion to Dismiss, noting that the arguments raised by the Respondent were issues of factual dispute, thus creating the very need to have the matter settled by the Board. The Board agreed with the Government and voted four (4) to zero (0) to deny the Respondent's Motion to Dismiss.

The Board proceeded with the Show Cause Hearing pursuant to D.C. Official Code § 25-447(e). The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and the documents comprising the Board's files, makes the following:

### FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing to the Respondent, dated July 29, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-CMP-00032. The Respondent holds a Retailer's Class CT license and is located at 3427 Connecticut Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-019007.
2. The Show Cause Hearing was held on September 21, 2011. *See* ABRA Show Cause File No. 11-CMP-00032. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 11-CMP-00032.
3. Counsel for the Government presented its case-in-chief with two witnesses, consisting of an ABRA Investigator and an ABRA Licensing Specialist.
4. ABRA Investigator Jabriel Shakoor conducts compliance inspections and investigates ABC-licensed establishments in the District of Columbia. *Transcript, September 21, 2011* (hereinafter "*Tr.*"), at 19. He was at the Respondent's establishment on December 23, 2010, to conduct a regulatory inspection. *Tr.* at 20, 26, 30-31, 45, 52. After displaying his ABRA credentials, he requested to speak with either the owner or an ABC-licensed manager. *Tr.* at 20, 45-47. Investigator Shakoor made contact with Stuart Behrens, who identified himself as an ABC-licensed manager. *Tr.* at 20, 46.
5. Investigator Shakoor asked to see Mr. Behrens' ABC Manager's License, and when Mr. Behrens presented it, Investigator Shakoor noted that the license had an expiration date of 2207. *Tr.* at 22, 46. Although Mr. Behrens insisted that the ABC Manager's License was not expired, Investigator Shakoor informed Mr. Behrens that his ABC Manager's License was not valid, due to the expiration date of 2207. *Tr.* at 22, 47, 49.
6. Investigator Shakoor explained that ABRA issued ABC Manager's Licenses are only valid for two years. *Tr.* at 22-23. Investigator Shakoor noted that Mr. Behrens's card was of a style that ABRA has not used in three to four years. *Tr.* at 22. The license also contained a signature from a former ABRA Director, who had departed ABRA three years

earlier. *Tr.* at 22. Investigator Shakoor testified that ABC Manager's Licenses provide the expiration date, and not the date of issuance, on the face of the card. *Tr.* at 50.

7. Investigator Shakoor opined that Mr. Behrens's ABC Manager's License should include an expiration date of 2007. *Tr.* at 23. He testified that Mr. Behrens insisted that his ABC Manager's License was current and valid until 2207. *Tr.* at 23. Investigator Shakoor stated that according to ABRA records, Mr. Behrens's ABC Manager's License was issued on June 25, 2005 and had expired, after a pro-rated term, on January 15, 2007. *Tr.* at 24.

8. Investigator Shakoor testified that Mr. Behrens argued that if the date of 2207 was a typographical error, then it was the Government's mistake. *Tr.* at 25. Mr. Behrens argued that because the Government was responsible for issuing the license, it was valid regardless of the typographical error. *Tr.* at 47. He explained to Investigator Shakoor that other ABRA investigators had reviewed the license at previous inspections, and they did not inform him that the license was invalid. *Tr.* at 25. Investigator Shakoor responded by stating that the failure of other ABRA investigators to properly perform their job responsibilities did not make Mr. Behrens's ABC Manager's License valid. *Tr.* at 25-26.

9. Investigator Shakoor stated that some ABC violations are eligible for a warning, rather than a citation. *Tr.* at 38. The issuance of a warning is within the discretion of an investigator depending on the type of violation. *Tr.* at 38-41. Investigator Shakoor did not think this incident merited a warning, because Mr. Behrens was argumentative, and he insisted that his license was valid until 2207. *Tr.* at 38, 47-48. Investigator Shakoor testified that he would have considered issuing a warning if Mr. Behrens had been cooperative, acknowledged the expired date, and indicated that he was going to renew the license as soon as possible. *Tr.* at 50, 54. Investigator Shakoor encouraged Mr. Behrens to renew his ABC Manager's License as soon as possible. *Tr.* at 48.

10. The Government called Zaquita Curley, ABRA Licensing Specialist, as its next witness. *Tr.* at 55. She has worked at ABRA since 2005. *Tr.* at 56. She testified that applicants for an ABC Manager's License must complete a four page application. *Tr.* at 56. The application contains a page of instructions that sets forth the cost of the license and the length of the license's term. *Tr.* at 58. The second page is the application itself and the third and fourth pages are authorizations and a Clean Hands declaration. *Tr.* at 58. Ms. Curley testified that any applicant who reads the instruction sheet would know that an ABC Manager's License is valid for two years. *Tr.* at 59.

11. Ms. Curley testified that once the application is completed and processed, it is entered into ABRA's computer system and a bill is generated. *Tr.* at 60. Once the applicant pays the bill, a receipt is generated and both the receipt and the new ABC Manager's License are delivered to the applicant. *Tr.* at 60. She stated that both the license and the receipt contain the licenses expiration date. *Tr.* at 60, 64.

12. Ms. Curley testified that it would be impractical for ABRA to send renewal notices for expired ABC Manager's Licenses, because those licenses expire on a daily basis. *Tr.* at 61. She stated that renewal notices are sent to establishments to renew their retail licenses, because all of the establishments renew on the same date depending on their retail license

class. *Tr.* at 63. She stated that retail licenses also contain an expiration date on the face of the license. *Tr.* at 63.

13. Ms. Curley stated that the expiration date is automatically calculated and stamped on the license the same day the license is issued. *Tr.* at 64, 67. The expiration date is manually entered by an ABRA employee. *Tr.* at 67. She stated that between 2005 and 2007, ABRA's practice was to pro-rate the license bill so that all licenses would expire on the applicant's birth date. *Tr.* at 68. That method is no longer in practice and all licenses now expire two years from the date the application is processed, and the license is issued. *Tr.* at 68-69.

14. The Respondent called Mr. Behrens as its witness. *Tr.* at 75. Mr. Behrens is the General Manager and has worked at the establishment for five years. *Tr.* at 75, 95. Prior to that employment, he worked at a sports bar in Arlington, VA. *Tr.* at 76. Mr. Behrens stated that when he was promoted to General Manager four and ½ years ago, he obtained an ABC Manager's License. *Tr.* at 76-77. He admitted that the license was good for two years. *Tr.* at 76.

15. Mr. Behrens says that he takes his responsibilities seriously, and he views ABC violations as a reflection upon himself. *Tr.* at 79. He indicated that he was the only employee working on the night of the incident. *Tr.* at 80-81. He said that two or three other ABRA investigators visited his establishment, none of whom had issued a citation to him for an expired ABC Manager's License. *Tr.* at 81-82, 97. He stated that if the license was valid enough to pass inspection with one investigator, it should pass inspection with all investigators. *Tr.* at 97.

16. Mr. Behrens stated that he obtained a new ABC Manager's License two days after the incident. *Tr.* at 82-83. He noted that his new license expires on May 20, 2012, less than two years from the date of renewal. *Tr.* at 83. Mr. Behrens still holds the belief that his 2207 license has not expired. *Tr.* at 84. Mr. Behrens admitted that he disagreed with Investigator Shakoor on the night of the incident, and he gave the investigator his opinion that he didn't believe that he held an expired license. *Tr.* at 86, 96.

17. Mr. Behrens testified that if he had a driver's license that had an expiration date of 200 years in the future, he would consider it to be valid and he would display it to a police officer or a Transportation Security Officer at the local airport. *Tr.* at 88-89.

18. Mr. Behrens testified that he received his initial ABC Manager's License at ABRA's business offices when he submitted his application and clean hands form. *Tr.* at 92. He stated that he received a receipt at the time he received his license, but he did not keep it. *Tr.* at 92. He acknowledged that he read the ABC Manager's License application before he completed it. *Tr.* at 92-94.

## CONCLUSIONS OF LAW

19. 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) (2009). 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 DCMR. 800, *et. seq.*

20. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a “reasonable mind[] might accept as adequate to support the conclusion” and there must be a “rational connection between facts found and the choice made.” 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008)

21. With regard to Charge I set forth in the Notice to Show Cause, dated July 29, 2011, the Board must determine that the licensee allowed the consumption of alcoholic beverages to patrons without a designated ABC manager or owner on the premises. In this case, based upon the law and the testimony, the Board finds that there is sufficient evidence to establish that the Respondent failed to have an owner or ABC-licensed manager on the premises while alcoholic beverages were being consumed.

22. The Board relies on the credible testimony of Investigator Shakoor and Licensing Specialist Zaquita Curtly, who established that the ABC Manger’s License held by Mr. Behrens had expired, and thus, no longer valid.

23. Specifically, Investigator Shakoor testified that when Mr. Behrens identified himself as an ABC-licensed manager, he demonstrated that by producing an ABC Manager’s License with an expiration date of 2207. It was evident to Investigator Shakoor that the license could not have an expiration date of 200 years in the future. The Board believes that commons sense dictates that it should have been evident to Mr. Behrens as well.

24. Licensing Specialist, Zaquita Curley, testified that the application for the ABC Manager’s License informs the applicant that the license is only valid for two years. Additionally, the receipt that records payment received by ABRA for the Manager’s License contains the expiration date. Thus, even if Mr. Behrens relied completely on the erroneous expiration date on the face of his license as his defense, he cannot ignore that two other sources of information in his possession informed him otherwise. After all, he acknowledged that he had received a receipt, which contains the expiration date, and that he had read the application, which informs applicants that a Manager’s License is valid for two years.

25. Ironically, the Board finds the testimony of the Respondent’s witness, Mr. Behrens, to be more helpful to proving the Government’s case rather than supporting the Respondent’s position. Mr. Behrens admitted that he knew his ABC Manager’s License was good for two years. If he knew that the license was good for two years, and he obtained it when he was promoted to General Manager five years ago, he cannot now rely on a typographical error to argue that the license he holds is still valid.

26. The Respondent has proffered that the Board should not find the Respondent liable, because the typographical error on the ABC Manager's License was made by ABRA staff and as such, the Respondent has a right to rely on that expiration date, no matter how unreasonable. The Board disagrees.

27. Based upon the above testimony and the evidence in the record, the Board finds that the Respondent did violate D.C. Official Code §§ 25-701(a) and 25-823(3), as set forth in Charge I of the Notice to Show Cause, dated July 29, 2011.

28. In light of the above, pursuant to D.C. Official Code § 25-830(c)(1) (2001), the Board is obligated to impose a penalty of no less than \$750.00, because this violation was the Respondent's third secondary tier violation within four years.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 19<sup>th</sup> day of October 2011, finds that the Respondent, Atomic Billiards Corporation, t/a Atomic Billiards, located at 3427 Connecticut Avenue, N.W., Washington, D.C., holder of a Retailer's Class CT license, violated D.C. Official Code §§ 25-701(a) and 25-823(3).

The Board hereby **ORDERS** that:

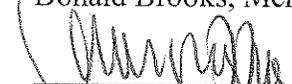
- 1) The Respondent shall pay a fine in the amount of \$750.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

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

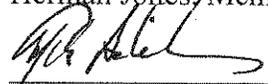
District of Columbia  
Alcoholic Beverage Control Board

  
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Herman Jones, Member

  
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Mike Silverstein, 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, 2000 14<sup>th</sup> 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 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).