

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

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<b>In the Matter of:</b>	)	
	)	
Lucas & Associates, Inc.	)	
t/a Best-in Liquors	)	
	)	
Holder of a	)	Case No. 13-CMP-00225
Retailer's Class A License	)	License No. ABRA-011823
	)	Order No. 2014-046
at premises	)	
1450 P Street, N.W.	)	
Washington, D.C. 20005	)	

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Amare Lucas, on behalf of Lucas & Associates, Inc., t/a Best-in Liquors, Respondent

Walter Adams II, Assistant Attorney General  
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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The Alcoholic Beverage Control Board (Board) finds that Lucas & Associates, Inc., t/a Best-in Liquors, (Respondent), violated District of Columbia (D.C.) Official Code § 25-741 on April 12, 2013. The Board does not believe that a fine is warranted in this matter. Rather, the Respondent is warned against committing this violation in the future.

On September 21, 2013, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 18, 2013, on the Respondent charging the Respondent with the following violations:

Charge I: The Respondent provided “go-cups” to a customer, in violation of D.C. Official Code § 25-741 (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On April 26, 2013, Citation #8312 was issued to the Respondent in the amount of \$250.00 for the violation incurred on April 12, 2013, D.C. Official Code § 25-741.

On April 26, 2012, the Respondent refused to pay the citation and instead, requested a hearing. The Board held a Show Cause Status Hearing on October 23, 2013. There was no settlement of the matter and it proceeded to a Show Cause Hearing on January 8, 2014.

The Board held a Show Cause Hearing on January 8, 2014.

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:

#### FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated September 18, 2013. *See* Alcoholic Beverage Regulation Administration Show Cause File No. 13-CMP-00225. The Respondent holds a Retailer’s Class A License and is located at 1450 P Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-011823.
2. The Show Cause Hearing was held on January 8, 2014. *See* ABRA Show Cause File No. 13-CMP-00225. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 13-CMP-00225.
3. The Government presented its case through the testimony of one witness, former ABRA Investigator Brian Molloy. *Transcript (Tr.)*, 1/8/14 at 9-10.
4. On April 12, 2013, while conducting undercover investigations, Investigator Molloy entered the Respondent’s establishment. *Tr.* 1/8/14 at 12. Investigator Molloy went to the cooler and took a bottle of Cook’s Brut Champagne. *Tr.* 1/8/14 at 12. Investigator Molloy approached the cashier and requested a cup to go with the champagne. *Tr.* 1/8/14 at 12-13. The cashier informed Investigator Molloy that he could not have a cup, but he could buy a package of cups. *Tr.* 1/8/14 at 13. Investigator Molloy told the cashier that he only needed one cup to drink the champagne. *Tr.* 1/8/14 at 13. The cashier offered to sell Investigator Molloy three cups for \$1.00. *Tr.* 1/8/14 at 13. The cashier removed the three cups from a large package of cups. *Tr.* 1/8/14 at 13. The cashier sold the three cups for \$1.00, and the bottle of Cook’s Brut Champagne for \$9.86 to Investigator Molloy. *Tr.* 1/8/14 at 13.
5. Investigator Molloy filled out an Evidence Transmittal Form and turned the alcoholic beverage and the go-cups over to Johnnie Jackson, Chief of Enforcement. *Tr.*

1/8/14 at 13-14. Chief Jackson locked it in ABRA's evidence locker. *Tr.* 1/8/14 at 13-14; *see* Government's Exhibit No. 1, 2 and 3.

6. Investigator Molloy testified that Investigator Jason Peru issued a citation to the Respondent for the go-cups violation. *Tr.* 1/8/14 at 14. *See* ABRA Show Cause File No. 13-CMP-00225. It is the practice of ABRA investigators to cite a go-cups violation when the establishment offers one or several cups, but no more than five cups, which do not come in a standardized package, and the cup(s) are provided at no charge or a nominal charge, such as a dollar. *Tr.* 1/8/14 at 21-22.

7. Amare Lucas testified on behalf of the Respondent. *Tr.* 1/8/14 at 28. Mr. Lucas claimed that he never has sold a single cup. *Tr.* 1/8/14 at 29. Mr. Lucas asserted that he instructs his employees not to sell a single cup. *Tr.* 1/8/14 at 30. Mr. Lucas admitted that they sell packages of three cups. *Tr.* 1/8/14 at 30. Mr. Lucas argued that the law and regulations do not forbid him from selling packages of three cups. *Tr.* 1/8/14 at 30.

8. Mr. Lucas admitted that they take cups from pre-packed packages of 30 or 250 cups and arrange packages of three cups in a plastic bag and sell them to customers for \$1.00. *Tr.* 1/8/14 at 30-31, 34. Mr. Lucas maintains that the law and regulations ban the sale of a single cup, but not the sale of packages of three or more cups. *Tr.* 1/8/14 at 31. He does not sell packages with fewer than three cups. *Tr.* 1/8/14 at 34.

9. Mr. Lucas admitted that he was not present during Investigator Molloy's visit on April 12, 2013. *Tr.* 1/8/14 at 32. Mr. Lucas also stated that his testimony was based on the information that his employee relayed to him. *Tr.* 1/8/14 at 33.

10. Mr. Lucas submitted into evidence a W.A.Y. Cool certificate for not selling tobacco to a minor, a certificate awarded on September 19, 2013, and on March 7, 2012, for receiving a 100 percent compliance rating for ABRA's Enforcement of Underage Drinking Program. *Tr.* 1/8/14 at 41. *See* Respondent's Exhibits 1, 2 and 3. The Government did not object to the submission of the Respondent's Exhibits and the Board admitted the Exhibits.

## CONCLUSIONS OF LAW

13. 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.*

14. 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).

15. Go-cup is defined in Section 25-101 (23) as follows: “ “Go-cup “ means a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment.”

15. With regard to Charge I, the Board finds that the Respondent provided “go-cups” to a customer, in violation of D.C. Official Code § 25-741. The Board makes this finding based upon the testimony of former Investigator Molloy and the admission of the Respondent that he breaks pre-packaged large quantities of cups in order to sell three cups to customers for a \$1.00. The Board holds that the Respondent’s practice of selling three cups for a nominal fee of \$1.00 is a violation of D.C. Official Code § 25-741, which prohibits the sale of go-cups.

16. A violation of D.C. Official Code § 25-741 is considered a secondary tier violation. The Board takes administrative notice that the Respondent has not committed any previous violations within three years. In light of Respondent’s reasonable belief that the law and regulations banned him from selling a single cup, but not from selling three cups or more to customers, the Board does not believe that a fine is warranted in this matter. Rather, the Respondent is warned against committing this violation in the future.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 5<sup>th</sup> day of February, 2014, finds that the Respondent, Lucas & Associates, Inc., t/a Best-in Liquors, located at 1450 P Street, N.W., Washington, D.C., holder of a Retailer’s Class A license, violated D.C. Official Code § 25-741.

The Board hereby **ORDERS** that:

- 1) For the violation described in Charge I, the Respondent is **WARNED** against committing this violation in the future,.

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

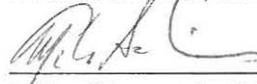
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairman

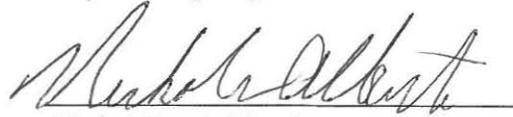


Donald Brooks, Member



Mike Silverstein, Member

I concur with the majority of the Board's decision regarding the establishment's liability. Nevertheless, I dissent as to the penalty selected by the majority.



Nick Alberti, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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 under 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).