

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

In the Matter of:)
)
)
Big Chair Cafe, LLC)
t/a Big Chair Coffee & Grill)
Holder of a)
Retailer's Class CR License)
)
at premises)
2122 Martin Luther King Jr. Ave, SE)
Washington, D.C. 20020)

Case No.: 13-CMP-00337
License No.: ABRA-085903
Order No.: 2015-113

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

ALSO PRESENT: Walter Adams, II, 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

This case arises from a Notice of Status Hearing and Show Cause Hearing that the Alcoholic Beverage Control Board executed on December 10, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2122 Martin Luther King Jr. Ave, SE. on December 17, 2014.

The Notice charged the Respondent with two violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

Specifically, the Notice charged the Respondent with the following violations:

- Charge I: [On Wednesday, June 26, 2013,] the Respondent made a substantial change in the operations of the establishment without first getting Board approval in violation of D.C. Official Code § 25-762 (b) (8)
- Charge II: [On Wednesday, June 26, 2013,] the Respondent provided entertainment without first getting an entertainment endorsement in violation of 23 DCMR § 1000.1

ABRA Show Cause File No., 13-CMP-00337, Notice of Status Hearing and Show Cause Hearing, 2-3 (December 10, 2014).

The Office of the Attorney General (OAG) appeared at the Show Cause Status Hearing on January 21, 2015. The OAG then appeared at the Show Cause Hearing for this matter on March 4, 2015. The Respondent failed to appear at both Hearings. At the Show Cause Hearing, the Board conducted the proceeding ex-parte as permitted under 23 DCMR § 1604.3. At the March 4, 2015 Show Cause Hearing, the OAG argued its case before the Board.

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 Respondent holds a Retailer’s Class CR License, ABRA License No. 76260. *ABRA Licensing File No. ABRA-85903*. The establishment’s premises are located at 2122 Martin Luther King Jr. Avenue, S.E., Washington, D.C. *Id.* The hours of operation are Sunday through Saturday, 7:00 a.m. to 2:00 a.m. *Id.* The hours of sales, service and consumption are Sunday through Saturday 12:00 p.m. – 2:00 a.m. *Id.*
2. The Respondent’s Retailer’s Class CR License, ABRA License No. 76260, does not have an entertainment endorsement. *Id.*

II. THE TESTIMONY OF FORMER ABRA INVESTIGATOR DEREK BROOKS

3. Former ABRA Investigator Derek Brooks testified on behalf of the Government. *Transcript (Tr.)*, 03/04/15 at 4-14. Investigator Brooks worked as an investigator for ABRA during the time period of the alleged violation. *Id.* at 5.
4. On or about June 26, 2013, Mr. Brooks reported to the Respondent’s establishment in an undercover capacity to investigate the allegations made by a Metropolitan Police Department (“MPD”) police officer. *Id.* at 7. The police officer reported that the Respondent offered entertainment within the establishment and sold alcohol to minors. *Id.* at 8.
5. Once inside of the establishment, Mr. Brooks observed a karaoke

machine being used by a male patron who sang into a microphone. *Id.* at 9. He also observed that the male patron also read words on a screen while singing to music. *Id.*

6. Mr. Brooks asked the establishment's bartender about this patron. *Id.* The bartender responded that it was Wednesday, which was karaoke night. *Id.* at 9. The bartender further advised that on Friday of that week there would be a band performing at the establishment. *Id.*

7. Mr. Brooks reviewed the establishment's official licensing records which showed that the establishment did not have an entertainment endorsement for its license. *Id.*

8. Investigator Brooks returned to the establishment at about 12:00 a.m. on Sunday, June 30, 2013 to conduct a regulatory inspection. *Id.* at 10. At this time, he observed a disc jockey ("DJ") playing music in the front area of the establishment. *Id.*; Government Exhibit 2.

9. The Board finds that the Respondent was given adequate notice of the charges brought against it, and adequate notice of the Show Cause Hearing before the Board. The Respondent did not appear at the hearing and did not file any testimony or exhibits refuting the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance of the hearing. As such, the finding of facts are undisputed.

CONCLUSIONS OF LAW

10. 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. Code § 25-830 ; 23 DCMR § 800, *et seq.* (West Supp. 2015). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "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. Code § 25-447.

I. THE RESPONDENT VIOLATED § 25-762(b)(8) WHEN IT SUBSTANTIALLY CHANGED ITS OPERATION BY OFFERING KARAOKE AND A LIVE DJ WITHOUT PRIOR BOARD APPROVAL

11. The Board finds that on June 26, 2013 and June 30, 2013, the Respondent violated § 25 762 (b)(8) when it offered karaoke and a DJ as entertainment for its patrons without receiving final approval from the Board. Under § 25-762(b)(8), "before a licensee may make a change in the interior or exterior... which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board..." D.C. Official Code § 25-762(b)(8). Further, providing music or entertainment if none was provided previously is considered a substantial change which first requires Board approval. D.C. Official Code § 25-762(b)(8). Under § 25-101(21A),

entertainment is defined as live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term “entertainment” shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

12. In the instant case, the Board finds that there is sufficient evidence in the record to support this charge. The Respondent does not have an entertainment endorsement for its Retailer’s CR license. *Supra*, at ¶¶ 2,7. Furthermore, the law provides that karaoke or a DJ constitute entertainment. D.C. Official Code § 25-101(21A). As a result, the Respondent should not have been offering these forms of entertainment when Investigator Brooks visited the establishment on June 26, 2013 and June 30, 2013. *Supra*, at ¶¶ 4-6, 8; Government Exhibit 2. Moreover, although former Investigator Brooks only visited the establishment on two occasions, one of the Respondent’s employees admitted that there is additional entertainment offered at the establishment throughout the week. *Supra*, at ¶ 6.

13. For the foregoing reasons, the Board finds the Respondent guilty of substantially changing its operation without prior Board approval in violation of § 25-762(b)(8).

II. THE BOARD FINDS THAT IT WOULD DOUBLE CHARGE THE RESPONDENT FOR THE SAME VIOLATION IF IT ALSO FOUND THE RESPONDENT GUILTY OF CHARGE II.

14. The Board dismisses Charge II under the doctrine of merger. The Government charged the Respondent with violating 23 DCMR § 1000.1. 23 DCMR § 1000.1 states that no licensee...may have entertainment, dancing, or charge a cover charge without obtaining an entertainment endorsement.

15. The Board relies on its application of the U.S. Supreme Court’s *Blockburger* test which is to be applied in instances where the same act constitutes a violation of two distinct statutory provisions. *Blockburger v. U.S.*, 284 U.S. 299, 303 (1932). More specifically, this test is applied to determine whether each statutory provision requires proof of a fact which the other does not. *Id.* In the instant case, the OAG brings forth the Charge II violation based on the same set of facts alleged in Charge I. Furthermore, 23 DCMR § 1000.1 does not require an additional proof of fact than those required by § 25-762(b)(8). For these reasons, the Board dismisses this Charge.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 8th day of April, 2015, finds that Big Chair Café, LLC t/a Big Chair Coffee & Grill violated D.C. Official Code § 25-762(b)(8). The Board also finds that the Respondent is not liable for violating 23 DCMR § 1000.1.

The Board hereby **ORDERS** that:

- (1) The Respondent shall pay a \$1000.00 fine for the violation described in Charge I.

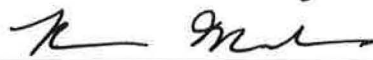
(2) Charge II is dismissed.

IT IS FURTHER ORDERED that the Respondent must pay the fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

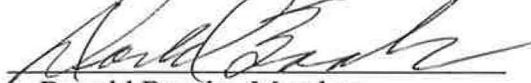
IT IS FURTHER ORDERED that this violation shall be deemed the Respondent's third secondary tier violation.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



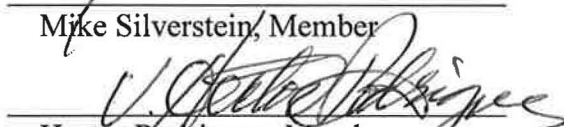
Ruthanne Miller, Chairperson



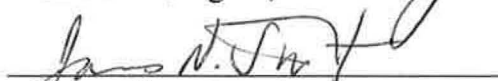
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member

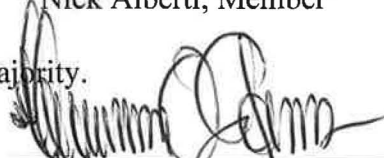


James Short, Member

I concur with the majority regarding the Respondent's liability for Charge I. However, I dissent as to the penalty selected by the majority. I believe that the Respondent should have received a 2 day suspension, both days stayed, in addition to the \$1000.00 fine.

Nick Alberti, Member

I dissent as to the decision reached by the majority.



Herman Jones, Member

Pursuant to 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, 2000 14th Street, NW, 400S, Washington, D.C. 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).