

The matter proceeded to a Show Cause Hearing and both the Government and the Respondent presented evidence through the testimony of witnesses and the submission of documentary evidence. The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, 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 October 1, 2009. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-CMP-00189). The Respondent holds a Retailer's Class A License and is located at 811 7th Street, N.W., Washington D.C.
2. The Show Cause Hearing in this matter was held on December 2, 2009. The Respondent was charged with one violation. Charge I alleges that the Respondent sold an individual container of alcohol containing less than seventy ounces in violation of D.C. Code § 25-345(c). The date of the violation was February 13, 2009. (*See* ABRA Show Cause File Number 09-CMP-00189).
3. The Government presented its case through the testimony of one witness, ABRA Investigator Jabriel Shakoor. *Transcript (Tr.)*, 12/02/09 at 9-10.
4. Investigator Shakoor testified that on February 13, 2009, he entered the Respondent's establishment, approached a mini-sized cooler located to the right of the cash register and withdrew a Bass Ale beer. *Tr.*, 12/02/09 at 10. The beer bottle had a red item tag on it. *Tr.*, 12/02/09 at 10, 14. He took the bottle of beer to the cash register and paid \$2.18 for it. *Tr.*, 12/02/09 at 10-11, 15. The beer was taken to ABRA offices where it was marked and placed in the evidence storage facility. *Tr.*, 12/02/09 at 11. Investigator Shakoor stated that there were other Asian products in the mini cooler and there were also other single Bass Ale beers in the mini-cooler. *Tr.*, 12/02/09 at 12, 16-17.
5. The Respondent called as its witness, the owner, Luiza Chaing. *Tr.*, 9/23/09 at 71. Ms. Chaing testified that a friend told her about a recipe that required the chicken to be marinated in beer. *Tr.*, 12/02/09 at 20-21. The friend brought the single container of Bass Ale to the Respondent's establishment and Ms. Chaing placed it in the refrigerator. *Tr.*, 12/02/09 at 20, 25-26. When Ms. Chaing went to use the beer for the recipe, she discovered it was gone. *Tr.*, 12/02/09 at 21. Ms. Chaing testified that the beer was not for sale, but rather it was placed in the refrigerator to be used for cooking. *Tr.*, 12/02/09 at 21. She does not sell beer at her establishment and the sale was a misunderstanding. *Tr.*, 12/02/09 at 22, 24, 27. She does sell Chinese liquor such as wine. *Tr.*, 12/02/09 at 23, 27. Mrs. Chaing was not at the establishment the time of the sale. *Tr.*, 12/02/09 at 29. An employee of the establishment made the sale. *Tr.*, 12/02/09 at 24, 26. Mrs. Chaing did not instruct her employee not to sell the Bass Ale beer. *Tr.*, 12/02/09 at 26.

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. The Board finds that the Government has proven that the Respondent violated D.C. Code § 25-345(c) by selling an individual container of alcohol containing less than seventy ounces. The Board credits the testimony of Investigator Shakoor that he entered the establishment and successfully purchased a single bottle of Bass Ale beer. The Respondent testified that the sale was accidental and that the beer had been set aside to use for cooking. Unfortunately for the Respondent, that was either not made known to the cashier, or the cashier knew it and sold the single bottle of beer anyway. Regardless, the Board has no doubt that the sale was made and that the product sold was an individual container of alcohol containing fewer than seventy ounces.

8. Based upon the Respondent's admission, the Board finds that the violation of D.C. Code § 25-345(c) as set forth in Charge I, Specification A of the Notice of Show Cause dated October 1, 2009, warrants the suspension of the Respondent's Retailer's Class A license for one day to be stayed for a one-year period absent any further violations and a \$250.00 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 6th day of January, 2010, finds that the Respondent, New Da Hsin Trading, Inc., t/a New Da Hsin Co. Inc., holder of a Retailer's Class A License, located at premises 811 7th Street, N.W., Washington, D.C. 20001 violated D.C. Code § 25-345(c). The Board hereby **ORDERS** that:

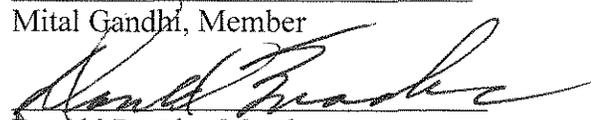
1. The Respondent shall pay civil penalties in the amount of two hundred and fifty dollars (\$250) within 30 (thirty) days from receipt of this Order. Failure to remit the amount in full within the time specified may result in the imposition of additional sanctions; and
2. The Respondent shall incur a suspension of its license for one (1) day with that one (1) day stayed for one (1) year absent further violations.

District of Columbia
Alcoholic Beverage Control Board

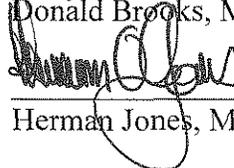


Nick Alberti, Acting Chair

Mital Gandhi, Member



Donald Brooks, Member



Herman Jones, 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.

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 (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).