



Charge I: The Respondent failed to superintend the establishment in person or through an ABC Manager while alcoholic beverages were being sold, served and/or consumed in violation of D.C. Official Code § 25-825(3). The date of this alleged incident was October 4, 2012.

### 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 January 23, 2013. (*See Alcoholic Beverage Regulation Administration Show Cause File Number 12-CMP-00597*). The Respondent holds a Retailer's Class CT License and is located at 1723 Columbia Road, NW, Washington, D.C. 20009.
2. The Show Cause Hearing in this matter was held May 15, 2013. The Respondent was charged with one violation: failure to superintend the establishment in person or through an ABC Manager while alcoholic beverages were being sold, served and/or consumed in violation of D.C. Official Code § 25-825(3).
3. The Government presented its case through the testimony of ABRA Investigator Tyrone Lawson. *Transcript, 5/15/13* at 7. On October 4, 2012, while delivering a Service Form concerning the denial of extended holiday hours for the establishment, Investigator Lawson entered the establishment and asked the bartender for either the owner or an ABC Manager. *Id.* at 9. The bartender informed Investigator Lawson that neither the owner nor the ABC Manager was present. *Id.* Mr. Lawson told the bartender about the requirement for either an owner or an ABC Manager to be present when alcoholic beverages are being sold, served or consumed, whereupon the bartender called the ABC Manager, who informed her that he would be returning in 5 minutes. *Tr.* at 10. The investigator observed several cans of beer being served from the bar and being consumed by patrons. *Tr.* at 12. After waiting for 20 minutes, Investigator Lawson left the establishment to make other deliveries. *Id.* He returned about an hour later and spoke with the ABC Manager, who confirmed that he had not been at the establishment and stated that another ABC Manager was supposed to have been present. *Tr.* at 13.
4. The next witness was Robert Belmonte, who identified himself as General Manager of the establishment. *Transcript* at 4. Mr. Belmonte stated that it was a slow night at the establishment and that he had left to purchase food at a nearby establishment. *Tr.* at 25. He stated that he received a cellphone call from the Bartender that an ABRA investigator was at the establishment and that he needed to return. *Id.* Mr. Belmonte stated that the investigator was driving away when he arrived back at the establishment. *Tr.* at 26. He testified that he waited for the investigator to return and that the investigator did return about a half hour later. *Id.* The investigator explained the violation to Mr. Belmonte. *Id.* He stated that Investigator Lawson did not issue a citation that evening but that another investigator entered the establishment the next day and presented the citation to the ABC

Manager. *Tr.* at 27. Mr. Belmonte admitted that an ABC Manager had not been present at the establishment when Investigator Lawson first entered the establishment. *Tr.* at 28. Furthermore, Mr. Belmonte admitted that he knew that an ABC Manager was required to be present when alcoholic beverages are being sold. *Tr.* at 34. He stated that the only reason why the licensee had requested a hearing was to question why a citation was issued a day later when it was his understanding from Investigator Lawson that a citation would not be issued. *Tr.* at 44. Mr. Belmonte stated that in the 18 years that he has been there as general manager, neither he nor the owner, Mr. Allan Jirikowic, has had a violation on their hands. *Tr.* at 29.

### CONCLUSIONS OF LAW

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.*

The Board finds, as to Charge I that there is sufficient credible evidence to establish that the Respondent failed to have an ABC Manager present at the time that alcoholic beverages were being sold, served or consumed at the establishment in violation of D.C. Official Code § 25-823(3). Respondent admitted to and did not dispute the violation in its testimony before the Board. Accordingly, there is no issue with regard to the violation having occurred at the establishment.

The Government asked that the Board impose a fine of \$500 for the violation. The Board finds that the violation warrants a penalty in the amount of \$250. Respondent's investigative history set forth in ABRA's official records substantiates Respondent's claim that the establishment has not been found liable for any ABRA violation during the establishment's long history of operation. That record reflects a history of compliance and good faith that the Board may factor into its penalty consideration.

The statutory provision at issue here was incorporated into District law for an important reason: to ensure that someone who is familiar with District law regarding the sale, service and consumption of alcoholic beverages is on the premises at all times when these activities are occurring. It does not matter whether the responsible person is next door or miles away; that person is not on the premises when required to be there. While this is treated as a secondary violation of ABRA's statute, it is nonetheless a serious violation of an important provision to which all establishments are bound when issued an ABRA license.

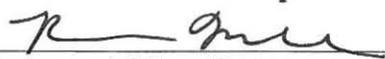
## ORDER

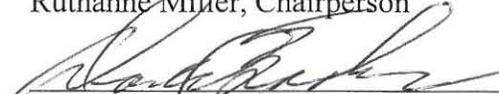
Based on the foregoing findings of fact and conclusions of law, the Board, on this 17th day of July, 2013, finds that the Respondent, Krakatoa, Inc., t/a Chief Ike's Mambo Room, holder of a Retailer's Class CT License, violated D.C. Official Code § 25-823(3). The Board hereby **ORDERS** that:

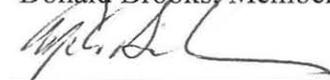
1. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$250 for the conceded violation of D.C. Official Code § 25-823(3).

The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Government and to the Respondent.

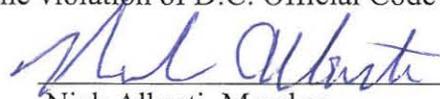
District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

  
Donald Brooks, Member

  
Mike Silverstein, Member

I concur with the Board's decision as to Respondent's liability. However, I believe that, in this instance, the penalty is insufficient for the violation of D.C. Official Code § 25-823(3).

  
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).