

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

In the Matter of:)	
)	
Garay Corporation)	
t/a Corina's Restaurant)	
)	Case No. 12-251-00206
Holder of a Retailer's)	License No. ABRA-079873
Class CR License)	Order No. 2013-277
)	
at premises)	
831 Kennedy Street, N.W.)	
Washington, D.C. 20011)	

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

ALSO PRESENT: Sylvia Garay, on behalf of Garay Corporation, t/a Corina's
Restaurant, Respondent

Amy Schmidt, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Alcoholic Beverage Control Board (Board) finds that Garay Corporation, t/a Corina's Restaurant, (Respondent), violated District of Columbia (D.C.) Official Code § 25-723 on June 9, 2012. The Respondent must pay a \$1,500.00 fine. In addition, the Respondent shall have its license suspended for one (1) stayed day, which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order.

On November 1, 2012, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated October 31, 2012, on the Respondent charging the Respondent with the following violation:

Charge I: The Licensee permitted the sale and consumption of alcoholic beverages after ABC approved hours on-premises, in violation of D.C. Official Code § 25-723 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Board held a Show Cause Status Hearing on December 5, 2012. There was no settlement of the matter and the Board scheduled a Show Cause Hearing for February 27, 2013. The Board's record reflects that after a series of continuances the Show Cause Hearing was held on April 10, 2013.

The Board having considered the evidence, the testimony of the witnesses, the arguments of parties, 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 31, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-251-00206. The Respondent holds a Retailer's Class CR license and is located at 831 Kennedy Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-079873. The establishment's authorized hours of operation on the day of the violation were 9:00 a.m. to 3:00 a.m. and the hours of sales, service, and consumption were 10:00 a.m. to 2:00 a.m., during the weekend. *See* ABRA Licensing File No. ABRA-079873.
2. The Show Cause Hearing was held on April 10, 2013. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-251-00206.
3. On April 10, 2013, at the Show Cause Hearing, Sindy Rodriguez, on behalf of the Respondent, requested a continuance of the hearing (Motion), so that the Respondent could obtain legal representation. *Transcript (Tr.)*, 4/10/13 at 4. The Respondent expressed concern that she had no knowledge of other violations pending against the establishment. *Tr.*, 4/10/13 at 4. The Government did not object to the request for continuance. The Board denied the Respondent's Motion due to the fact that the other pending violations were not a part of the case at hand, and proceeded with the hearing. *Tr.*, 4/10/13 at 16.
4. The Government presented its case through the testimony of one witness, Metropolitan Police Department (MPD) Officer Paul Hrebenak. *Tr.*, 4/10/13 at 18.
5. Officer Hrebenak testified that on June 9, 2012, at approximately 2:30 a.m., he observed at the establishment, two tables occupied with approximately ten people who were consuming alcoholic beverages, specifically from Corona and Heineken beer bottles.

Tr., 4/10/13 at 19. The MPD 251 Incident Report documents that Officer Hrebenak observed the Respondent selling alcoholic beverages at approximately 2:37 a.m., on June 9, 2012. *Tr.*, 4/10/13 at 20. *See* ABRA Show Cause File No. 12-251-00206.

6. At the time of his visit, Officer Hrebenak asked Sylvia Garay, owner of the licensed establishment, to review the ABC-license in order to confirm the establishment's hours of operation and sales. *Tr.*, 4/10/13 at 22. Officer Hrebenak confirmed that the Respondent was authorized to sell alcoholic beverages until 2:00 a.m. on June 9, 2012. *Tr.*, 4/10/13 at 22.

7. On June 9, 2012 at approximately 2:37 a.m., Officer Hrebenak also observed that there were been patrons who were handed credit card receipts and drinks, and paying for their bills. *Tr.*, 4/10/13 at 22.

8. Officer Hrebenak informed Ms. Garay that the establishment's hours of sales end at 2:00 a.m., and that he would contact an ABRA investigator. *Tr.*, 4/10/13 at 27.

9. During the time that payment transactions were being performed, Officer Hrebenak observed Ms. Garay handing a plastic container to a patron. The container held yellow liquid that had the odor of an alcoholic beverage. *Tr.*, 4/10/13 at 29-30. However, Officer Hrebenak could not confirm the contents of the plastic cup. *Tr.*, 4/10/13 at 30.

10. At the Show Cause Hearing, Ms. Garay produced a written statement. *Tr.*, 4/10/13 at 39. Ms. Rodriguez read Ms. Garay's written statement into record. *Tr.*, 4/10/13 at 41-43. *See* ABRA Show Cause File No. 12-251-00206. Ms. Garay stated in her written statement that she did not serve alcoholic beverages after 1:50 a.m. on June 9, 2012. *Tr.*, 4/10/13 at 41. Ms. Garay indicated that Officer Hrebenak's report was in error regarding the time of the ABRA investigator's arrival to her establishment. 4/10/13 at 42.

11. According to the ABRA Investigator's report, the ABRA investigator arrived at the premises at 2:40 a.m., three minutes after Officer Hrebenak observed the alleged violation. *Tr.*, 4/10/13 at 41. Ms. Garay indicated that Officer Hrebenak's report states that at 3:02 a.m., Officer Hrebenak was still waiting for the ABRA investigator's arrival. *Tr.*, 4/10/13 at 42. Ms. Garay recalled that Officer Hrebenak and ABRA Investigator Donnell Butler visited her establishment on June 9, 2012, but that no alcoholic beverages were being consumed or served during their visit. *Tr.*, 4/10/13 at 43.

12. Ms. Garay alleged that Officer Hrebenak arrived at her establishment at 1:50 a.m. *Tr.*, 4/10/13 at 51. When Officer Hrebenak patrols in the Respondent's area, he always parks his car in the alley and lets her know that it is time to close her establishment. *Tr.*, 4/10/13 at 51-52. Ms. Garay stated that she stops serving alcoholic beverages at 1:45 a.m. *Tr.*, 4/10/13 at 53.

13. Ms. Garay alleged that the yellow liquid content in the plastic container that Officer Hrebenak observed her serving on June 9, 2012, was Red Bull. *Tr.*, 4/10/13 at 53. Ms. Garay stated that the customers were paying their bills after 2:00 a.m. *Tr.*, 4/10/13 at 53-54. Ms. Garay indicated that on June 9, 2012, she served the last alcoholic beverage at approximately 1:50 a.m. *Tr.*, 4/10/13 at 54.

14. Ms. Garay submitted her written statement into evidence. *Tr.*, 4/10/13 at 60. *See* Respondent's Exhibit 1. The Government did not object to the submission of the Respondent's Exhibit and the Board admitted the Exhibit. *Tr.*, 4/10/13 at 60.

15. At the conclusion of the Show Cause Hearing, the Respondent informed the Board of her intention to submit proposed Findings of Fact and Conclusions of Law. *Tr.*, 4/10/13 at 60. ABRA's record reflects that a copy of the April 10, 2013 transcript was provided to the Respondent and the Government on April 24, 2013. *See* ABRA Show Cause File No. 12-251-00206. Neither the Respondent nor the Government filed proposed Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

16. 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. Code § 25-830 and 23 DCMR § 800, *et. seq.*

17. 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).

18. With regard to Charge I, the Board finds that the Respondent sold alcoholic beverages beyond its Board-approved hours. Specifically, the Board finds that the Respondent was selling alcoholic beverages after 2:00 a.m. The Board makes this finding based on the testimony of MPD Officer Hrebenak, a government official, who testified that he observed ten people consuming beer at approximately 2:37 a.m. Officer Hrebenak's credible testimony is supported by the MPD 251 Incident Report. This finding is also supported by the Investigator's Report that corroborates that the Investigator arrived at the establishment at 2:40 a.m., three minutes after Officer Hrebenak observed the violation.

19. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-723, as set forth in Charge I of the Notice to Show Cause, dated October 31, 2012, warrants the imposition of a fine and the suspension set forth below.

20. The Board takes administrative notice that Charge I is a first primary tier violation for the Respondent. Thus, this violation warrants a graduated fine under D.C. Official Code § 25-830.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 19th day of June, 2013, finds that the Respondent, Garay Corporation, t/a Corina's Restaurant, located at 831 Kennedy Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-723.

The Board hereby **ORDERS** that:

- 1) The Respondent shall pay a fine in the amount of \$1,500.00 by no later than sixty (60) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions. The Respondent's license shall also be suspended for one day; which stayed for one year, provided that the Respondent does not commit any further ABC violations.

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


District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member

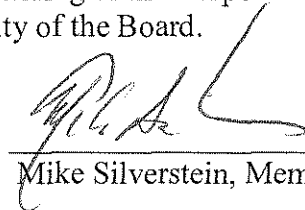


Donald Brooks, Member



Herman Jones, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I dissent as to the penalty selected by the majority of the Board.



Mike Silverstein, Member

I dissent as to the majority's finding of the Respondent's liability and accordingly to the penalty selected by the majority.

Ruthanne Miller, Chairperson

Pursuant to D.C. Official Code § 25-433, 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, 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 D.C. Official Code § 25-433, 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).