

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

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|----------------------------|---|-------------------------|
| In the Matter of: |) | |
| |) | |
| Hwang & Hyun O Kim |) | |
| t/a D & B Deli Carryout |) | |
| |) | |
| Holder of a |) | Case No. 14-CMP-00739 |
| Retailer's Class B License |) | License No. ABRA-026649 |
| |) | Order No. 2015-341 |
| at premises |) | |
| 3412 Georgia Avenue, N.W. |) | |
| Washington, D.C. 20010 |) | |
| |) | |

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

ALSO PRESENT: Chrissy Gephardt, 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 Hwang & Hyun O Kim, t/a D & B Deli Carryout (Respondent), violated District of Columbia (D.C.) Official Code § 25-741(a), on December 2, 2014. As a result, the Respondent must pay a \$500.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on March 4, 2015. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3412 Georgia Avenue, N.W., Washington, D.C., on March 9, 2015.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent allowed its establishment to serve go-cups, in violation of D.C. Official Code § 25-741, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(2) (2012 Repl.).

On December 3, 2014, Citation #4304 was issued to the Respondent in the amount of \$250.00 for violating D.C. Official Code § 25-741(a).

The Respondent did not pay the citation but instead requested a hearing. The Respondent was personally served with a copy of the Notice on March 9, 2015. On April 22, 2015, the Board rescheduled the Show Cause Status Hearing for May 6, 2015. The Respondent failed to appear at the Show Cause Status Hearing held on May 2015.

The Board rescheduled the Show Cause Hearing scheduled for May 20, 2015 to June 17, 2015. The Respondent also failed to appear at the Show Cause Hearing held on June 17, 2015. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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 Board issued a Notice of Status Hearing and Show Cause Hearing, dated March 4, 2015. *See* ABRA Show Cause File No. 14-CMP-00739. Hwang & Hyun O Kim, t/a D & B Deli Carryout, holds a Retailer's Class B License, ABRA License Number ABRA-026649. *See* ABRA Licensing File No. ABRA-026649. The establishment's premises are located at 3412 Georgia Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-026649.

2. The Show Cause Hearing was held on June 17, 2015. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 14-CMP-00739.

II. Testimony of ABRA Investigator Shawn Townsend

3. The Government presented its case through the testimony of one witness, ABRA Investigator Shawn Townsend. *Transcript (Tr.)* 6/17/15 at 5.

4. Investigator Townsend conducted an undercover "go-cups" Compliance Check at the Respondent's establishment on December 2, 2014, at approximately 4:00 p.m. *Tr.* 6/17/15 at 6-7. He purchased a beer from the store clerk. *Tr.* 6/17/15 at 7.

5. At the time of the purchase, Investigator Townsend asked the clerk if could buy a cup to use for the consumption of the beer. *Tr.* 6/17/15 at 7. The clerk checked Investigator Townsend identification and then she provided a styrofoam cup to him. *Tr.* 6/17/15 at 7-8. The clerk charged Investigator Townsend fifty cents (\$.50) for the styrofoam cup. *Tr.* 6/17/15 at 8. *Tr.*, 6/17/15 at 9; Government’s Exhibit 1.

6. Investigator Townsend testified that Investigator Jason Peru issued a citation to the Respondent for the go-cups violation. *Tr.* 6/17/15 at 11. *See* ABRA Show Cause File No. 14-CMP-00739.

7. The Respondent failed to appear at the Show Cause Hearing. The Respondent did not present any testimony or evidence, nor did the Respondent refute 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.

CONCLUSIONS OF LAW

8. 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. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines “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. Official Code § 25-447.

I. THE RESPONDENT VIOLATED § 25-741(a)

9. The Board finds that the Respondent provided a “go-cup” to Investigator Townsend in violation of D.C. Official Code § 25-741(a). D.C. Official Code defines go-cup as 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. D.C. Official Code § 25-101(23).

10. It is undisputed that Investigator Townsend entered into the establishment, purchased a beer, and requested a cup to accompany his beer. The clerk sold the cup to Investigator Townsend for fifty cents (\$.50). Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-741(a).

II. PENALTY

11. A violation of D.C. Official Code § 25-741(a) is a secondary tier under the law. The present violation is the Respondent’s first secondary tier violation and as such, the Board imposes a fine of \$500.00. *Licensing File No. ABRA-026649*, Investigative History; DCMR § 23-802.1.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 15th day of July, 2015, finds that the Respondent, Hwang & Hyun O Kim, t/a D & B Deli Carryout, located at 3412 Georgia Avenue, N.W., Washington, D.C., holder of a Retailer's Class B license, violated D.C. Official Code § 25-741(a).

The Board hereby **ORDERS** that:

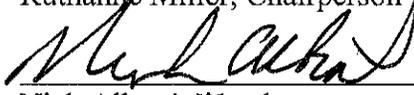
- 1) The Respondent must pay a fine in the amount of \$500.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

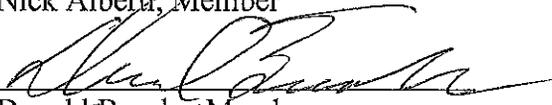
District of Columbia
Alcoholic Beverage Control Board



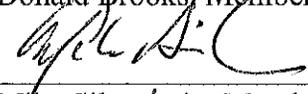
Ruthanne Miller, Chairperson



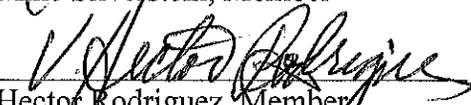
Nick Alberti, Member



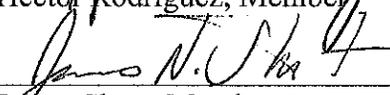
Donald Brooks, Member



Mike Silverstein, Member

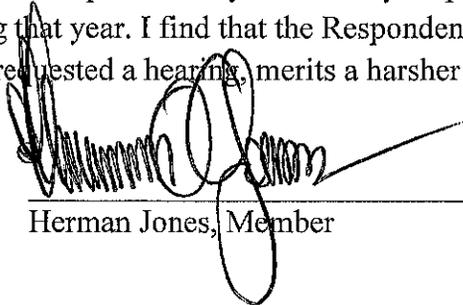


Hector Rodriguez, Member



James Short, 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. I believe the penalty should include a one day suspension of the license; that suspension stayed for one year provided no additional violations are committed during that year. I find that the Respondent's utter disregard to attend the hearings after having requested a hearing, merits a harsher penalty.



Herman Jones, Member

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, 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) (2004).