

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 4, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1771 U Street, N.W., Washington, D.C., on June 13, 2014.

Specifically, the Notice in Case Number 14-CMP-00070, charges the Respondent with the following violation:

Charge I: The Respondent made a substantial change in the operation of the establishment without Board approval in violation of D.C. Official Code § 25-762(b)(13) (2001) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The factual basis of the charge is an allegation that on Monday, November 11, 2014 at approximately 2:15 a.m., an investigator from the Alcoholic Beverage Administration responded to the establishment. At the investigator's arrival, he noticed 20 to 30 patrons inside the establishment drinking alcoholic beverages. After discussions with the owner and a review of the establishment's license, he determined that the establishment's hours of operation ended at 2:00 a.m. on Sunday and Monday.

The Show Cause Status Hearing occurred on July 9, 2014. On October 15, 2014, the Board continued the Show Cause Hearing to November 19, 2014, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on November 19, 2014.

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:

I. BACKGROUND

1. The Respondent holds a Retailer's Class CR License and is located at 1771 U Street, NW, Washington, D.C. ABRA Licensing File Number ABRA-074433. The establishment's authorized hours of operation and sales, service and consumption are as follows: Sunday through Thursday 12:00 p.m. to 2:00 a.m. and Friday and Saturday 12:00 p.m. to 3:00 a.m. ABRA Licensing File Number ABRA-074433.
2. The Respondent also has a Settlement Agreement dated July 5, 2006 and approved by the Board on July 19, 2006. ABRA Licensing File Number ABRA-074433.
3. The establishment's Settlement Agreement states in relevant part,
 1. Hours. The hours of operation will be:
Sunday through Thursday: 12:00 p.m. to 2:00 a.m.

Friday and Saturday:

12:00 p.m. to 3:00 a.m.

Last call for alcohol will be ½ hour before closing. No alcohol will be served within 15 minutes prior to closing on any day. ABRA Licensing File Number ABRA-074433.

II. TESTIMONY OF ABRA INVESTIGATOR EARL JONES

4. The Government presented its case through the testimony of ABRA Investigator Earl Jones. *Transcript (Tr.)*, 11/19/14 at 6. On Monday, November 11, 2013, Investigator Jones was detailed to the Adams Morgan neighborhood to monitor ABC licensed establishments for after-hours activities. *Tr.*, 11/19/14 at 7. ABRA had increased monitoring in several neighborhoods due to the extended holiday hour program for the Veteran's Day Weekend. *Tr.*, 11/19/14 at 7.
5. Investigator Jones and two other ABRA investigators were enroute to Adams Morgan when he noticed a crowd of patrons standing inside the Respondent's front door. *Tr.*, 11/19/14 at 8. It was 2:15 a.m. when he entered the establishment. *Tr.*, 11/19/14 at 17, 22. He identified himself as an ABRA investigator and requested to speak to an ABC licensed manager or the owner. *Tr.*, 11/19/14 at 8, 18-19.
6. When Investigator Jones first entered the establishment, he noticed that the lights were off. *Tr.*, 11/19/14 at 15-16. Additionally, he observed about 20 to 30 patrons sitting around, drinking alcoholic beverages and smoking hookah. *Tr.*, 11/19/14 at 9, 16. It appeared to him that a "full scale party was going on at the time." *Tr.*, 11/19/14 at 9, 11, 17.
7. Investigator Jones observed beers on the table and cups with liquid in them which appeared to be alcohol. *Tr.*, 11/19/14 at 9. The beers were labeled as alcoholic beverages. *Tr.*, 11/19/14 at 9, 16.
8. Investigator Jones then spoke to Mr. Messifini who identified himself as the owner of the establishment. *Tr.*, 11/19/14 at 10. Investigator Jones asked Mr. Messifini if he had been granted the extended holiday hour privilege to which Mr. Messifini replied "yes". *Tr.*, 11/19/14 at 10. Investigator Jones then reviewed the license at which time Mr. Messifini informed him that he had not been granted the extended holiday hour. *Tr.*, 11/19/14 at 10. Investigator Jones noted that the Respondent's license stated closing hours on Sundays at 2:00 a.m. *Tr.*, 11/19/14 at 10-11, 17.
9. Investigator Jones informed the owner that the operational hours ended at 2:00 a.m., and that he was in violation of the law as a result of operating at 2:15 a.m. *Tr.*, 11/19/14 at 19. Investigator Jones further informed the owner that at no point should the patrons be inside the establishment after closing hours. *Tr.*, 11/19/14 at 20. The owner indicated that he thought there was a 15 minute "grace period" to close down the establishment. *Tr.*, 11/19/14 at 19-20, 26.
10. The owner did not begin shutting down the restaurant until Investigator Jones informed him that he was in violation of the law. *Tr.*, 11/19/14 at 20-21, 23. Investigator Jones did not observe the owner making any effort to shut down the establishment prior to their review of the license, or during the alleged "grace period". *Tr.*, 11/19/14 at 22-23. At

2:15 a.m., there was still plenty of displayed alcoholic beverages, patrons consuming alcoholic beverages and smoking hookah. *Tr.*, 11/19/14 at 23. Additionally, the Respondent's Open sign was lighted. *Tr.*, 11/19/14 at 25.

III. TESTIMONY OF YONAS ASMERON

11. Mr. Asmeron testified on behalf of the Respondent. *Tr.*, 11/19/14 at 33. He has been in business at that location since 2006. *Tr.*, 11/19/14 at 43.

12. Mr. Asmeron remembered that the night of the incident was a holiday weekend, and he was working the door and the bar. *Tr.*, 11/19/14 at 33. He cooperated with the ABRA investigators and showed them his license. *Tr.*, 11/19/14 at 34.

13. Mr. Asmeron admitted that there were patrons inside his establishment at the time of the investigators' visit. *Tr.*, 11/19/14 at 36. The lights were on and the music was off. *Tr.*, 11/19/14 at 45, 50. He did not serve alcohol after 2:00 a.m. and none of the patrons was consuming alcohol. *Tr.*, 11/19/14 at 34, 36-37, 40-41, 45. He did not charge his patrons after 2:00 a.m. and he was in the processing of removing the patrons from the establishment. *Tr.*, 11/19/14 at 34, 46.

14. On occasion he lets people stay after closing to use the restroom or to wait for a ride home when they've had too much to drink or it is too cold outside. *Tr.*, 11/19/14 at 35-37, 47. Mr. Asmeron testified that some of his patrons had not paid their bar tab by 2:00 a.m., and others may have been waiting for their change. *Tr.*, 11/19/14 at 37-38, 40. Mr. Asmeron believes that people may have lingered because it was a holiday weekend. *Tr.*, 11/19/14 at 42. He may also have been confused by the extended hours made available to licensees that weekend, though he admitted that he did not apply for the privilege. *Tr.*, 11/19/14 at 45, 48. He also believed that his hours automatically extended for one hour on holiday weekends. *Tr.*, 11/19/14 at 50-51.

15. Mr. Asmeron is aware that he has a Settlement Agreement with the Advisory Neighborhood Commission. *Tr.*, 11/19/14 at 38-39. He acknowledged that the Settlement Agreement requires that he is to start shutting down the restaurant one half hour before closing time, and that last call is 15 minutes prior to closing time. *Tr.*, 11/19/14 at 38-40. He also acknowledged that the Settlement Agreement also sets forth the hours of operations for Sunday through Thursday, to 2:00 a.m. *Tr.*, 11/19/14 at 39.

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)(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.*

17. The Board finds, as to Charge I, that there is sufficient credible evidence to establish that the Respondent made a substantial change in operations by operating after Board-approved hours in violation of D.C. Official Code § 25-762(b)(13). The Board

credits Investigator Jones who observed patrons inside the establishment at 2:15 a.m. Even if the Board is to believe the Respondent regarding his confusion or belief that he had 15 minutes after closing to shut down, nothing in the record indicates that he was making the effort to do so. On the contrary, Investigator Jones observed a restaurant in full operation, with a crowd of 20 to 30 patrons consuming alcoholic beverages and smoking hookah. Additionally, the Respondent's testimony is undermined by his acknowledgment that the terms of his ABC license and the Settlement Agreement provide that the restaurant must close at 2:00 a.m. on Sunday.

18. The Board takes administrative notice that Charge I is the Respondent's first primary tier violation. *Licensing File No. ABRA-074433, Investigative History*. Thus, the Board may fine the Respondent between \$1,000.00 and \$2,000.00. *Licensing File No. ABRA-074433, Investigative History; DCMR § 23-801*.

ORDER

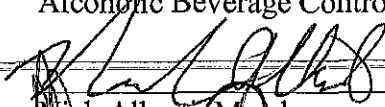
Based on the foregoing findings of fact and conclusions of law, the Board, on this 10th day of December, 2014, finds that the Respondent, Dahlak Restaurant, Inc., t/a Dahlak Restaurant, holder of a Retailer's Class CR License, violated D.C. Official Code § 25-262(b)(13).

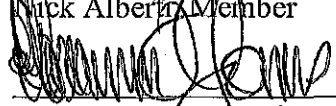
The Board hereby **ORDERS** that:

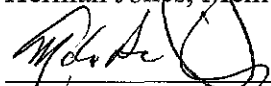
- 1) Respondent must pay a fine in the amount of \$2,000 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.


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

District of Columbia
Alcoholic Beverage Control Board



Nick Albert, Member

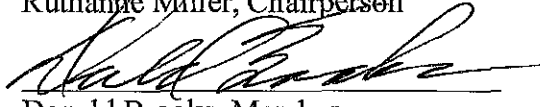

Herman Jones, Member

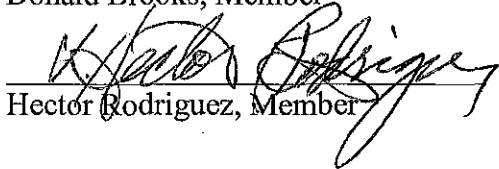

Mike Silverstein, Member


James Short, Member

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


Ruthanne Miller, Chairperson


Donald Brooks, Member


Hector Rodriguez, 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).