

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

In the Matter of:)	
)	
Joel Mireless Castillo)	Case No.: 15-CMP-00827
t/a Dulcinea Bar and Grill)	License No: 88870
)	Order No: 2016-430
Holder of a)	
Retailer's Class CR License)	
)	
at premises)	
2618 Georgia Avenue, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: Joel Mireless Castillo, t/a Dulcinea Bar and Grill, Respondent

Joel Mireless, on behalf of the Respondent

Maureen Zaniel, Senior 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds Joel Mireless Castillo, t/a Dulcinea Bar and Grill, (hereinafter "Respondent" or "Dulcinea Bar and Grill") in violation of one count of violating § 25-723(b) on November 19, 2015. Dulcinea shall pay a \$5,000 fine for the offense.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on February 24, 2016. *ABRA Show Cause File No., 15-CMP-00827, Notice of Status Hearing and Show Cause Hearing, 2* (Feb. 24, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2618 Georgia Avenue, N.W., Washington, D.C., on February 28, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00827, Service Form*. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violation:

Charge I: [On November 19, 2015,] [y]our permitted the sale or service of alcoholic beverage outside of your Board approved hours, in violation of D.C. Official Code § 25-723(b) . . .

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on March 23, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 11, 2016.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. Dulcinea Bar and Grill holds a Retailer's Class CR License at 2618 Georgia Avenue, N.W., Washington, D.C. *ABRA License No. 88870*. The establishment's legal hours of sales, service, and consumption of alcoholic beverages run from 11:00 a.m. to 10:00 p.m. on Thursday. *Case Report No. 15-CMP-00827, Exhibit No. 3.*
2. ABRA Investigator Dorshae Demby and ABRA Investigator Delonte Edgerton visited Dulcinea on Thursday, November 19, 2015, to perform a regulatory inspection. *Transcript (Tr.)*, May 11, 2016 at 7-9. They arrived at the establishment at around 10:55 p.m. *Case Report No. 15-CMP-00827, 1.*
3. Dulcinea's front door was locked but Investigator Demby could see through the glass windows. *Tr.*, 5/11/16 at 10. Through the windows, he observed multiple males inside the premises consuming beer from cans and one male holding a glass containing an alcoholic

beverage. *Id.* at 10-11, 13. He then observed the males begin throwing out the cans into a trash can. *Id.* at 11.

4. The investigators knocked on the glass and displayed their badges through the window. *Id.* at 10-11. The owner came to the entrance and unlocked the door. *Id.* at 11. Upon entering the premises, Investigator Demby looked into the trash can used by the male patrons. *Id.* The trash can only contained the cans thrown out the men, which Investigator Demby identified as cans of Miller Lite Beer. *Id.* The owner indicated that everyone inside the establishment were either family members or employees. *Id.* at 12.

CONCLUSIONS OF LAW

5. 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 (D.C.) Official Code pursuant to D.C. Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). 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.

II. Standard of Proof

6. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

III. Offense

7. Section 25-723(b) states, “the licensee under a[n] on-premise retailer’s license or a temporary license may sell or serve alcoholic beverages . . . except between . . . 2:00 a.m. and 8:00 a.m., Monday through Friday . . .” or any other time designated by the Board. D.C. Official Code §§ 25-723(b), 25-724. In this case, Investigator Demby observed individuals drinking beer approximately an hour after the end of Dulcinea’s hours of sale, service, and consumption. *Supra*, at ¶¶ 2-3. Under these circumstances, it is reasonable to conclude that the establishment served alcohol after its Board approved hours. Moreover, there is no exception that allows licensees to permit employees or family members to consume alcohol after its approved hours. For these reasons, the Board sustains the charge brought by the government.

IV. Penalty

8. A violation of § 25-723(b) is considered a primary tier violation. 23 DCMR § 800 (West Supp. 2016). The violation in this case is deemed Dulcinea’s third primary tier violation in a three year period. *Investigative History*, Dulcinea Bar and Grill (May 10, 2016). The fine range

for this type of offense is between \$4,000 to \$6,000. 23 DCMR § 800.1(c) (West Supp. 2016). The Board imposes a \$5,000 fine because the owner appears to have misunderstood his obligation to end consumption on premises, which as a license holder, he should have known.

ORDER

Therefore, the Board, on this 6th day of July 2016, finds that Joel Mireless Castillo, t/a Dulcinea Bar and Grill, guilty of violating § 25-723(b). The Board imposes the following penalty on Dulcinea Bar and Grill:

- (1) For the violation described in Charge I, Dulcinea Bar and Grill shall pay a fine of \$5,000.

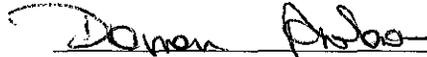
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed a primary tier violation.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

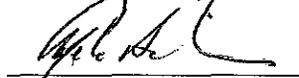
District of Columbia
Alcoholic Beverage Control Board



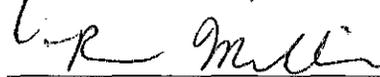
Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 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 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).