

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

In the Matter of:

Soo & Chan, Inc.
t/a Georgia Avenue Food Barn

Holder of a
Retailer's Class A License

at premises
6205 Georgia Avenue, N.W.
Washington, D.C. 20011

Case No. 13-CMP-00525
License No. ABRA-071950
Order No. 2014-438

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

ALSO PRESENT: Sean Kim, on behalf of Soo & Chan, Inc., t/a Georgia Avenue Food Barn, Respondent

Walter Adams II, 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 Soo & Chan, Inc., t/a Georgia Avenue Food Barn (Respondent), violated District of Columbia (D.C.) Official Code § 25-741 on September 13, 2013. As a result, the Respondent must pay a \$750.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on February 12, 2014. The Alcoholic Beverage

Regulation Administration (ABRA) served the Notice on the Respondent, located at 6205 Georgia Avenue, N.W., Washington, D.C., on February 21, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent provided “go-cups” to a customer, in violation of D.C. Official Code § 25-741 (2012 Repl.), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2012 Repl.).

On September 25, 2013, Citation #8370 was issued to the Respondent in the amount of \$500.00 for the violation incurred on September 13, 2013, D.C. Official Code § 25-741.

On September 27, 2013, the Respondent refused to pay the citation and instead, requested a hearing.

The Respondent was personally served with a copy of the Notice on February 21, 2014. The Respondent failed to appear at the Show Cause Status Hearing held on March 26, 2014. The Board scheduled a Show Cause Hearing for May 28, 2014.

On May 28, 2014, the Show Cause Hearing was rescheduled for June 18, 2014, and it was rescheduled again for October 8, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on October 8, 2014.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated February 12, 2014. *See* Alcoholic Beverage Regulation Administration Show Cause File No. 13-CMP-00525. The Respondent holds a Retailer’s Class A License and is located at 6205 Georgia Ave, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-071950.
2. The Show Cause Hearing was held on October 8, 2014. *See* ABRA Show Cause File No. 13-CMP-00525. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 13-CMP-00525.
3. The Government presented its case through the testimony of one witness, ABRA Investigator John Suero. *Transcript (Tr.)*, 10/8/14 at 9.
4. On September 13, 2013, while conducting undercover investigations, Investigator Suero entered the Respondent’s establishment. *Tr.* 10/8/14 at 11. Investigator Suero went to the cooler and took out a double pack of 24 ounce Miller Lite beer. *Tr.* 10/8/14 at 12, 17. Investigator Suero approached the counter and asked the cashier if he had any cups. *Tr.* 10/8/14 at 12. Investigator Suero stated to the cashier that he needed the cups so that he could drink outside with his friends. *Tr.* 10/8/14 at 12, 22, 27.

5. The cashier pulled out a pack of three small plastic cups from beneath the counter. *Tr.* 10/8/14 at 12, 27. The cashier sold the three plastic cups for \$.25 to Investigator Suero. *Tr.* 10/8/14 at 13, 18. The three cups were wrapped in plastic, with an opening at one end. *Tr.* 10/8/14 at 23-24. They were not in a manufacturer's package or sleeve, nor were they tied or secured in any way. *Tr.* 10/8/14 at 19, 24.

6. Investigator Suero filled out an Evidence Transmittal Form and secured the alcoholic beverage and the go-cups in ABRA's evidence cabinet. *Tr.* 10/8/14 at 13, 17. He then checked the Respondent's investigative history and discovered that the Respondent had sold go-cups in March 2013. *Tr.* 10/8/14 at 13, 26; *see* Government's Exhibit No. 1, 2 and 3.

7. Sean Kim testified on behalf of the Respondent. *Tr.* 10/8/14 at 28. He admitted that he received a citation on March 26, 2013 for selling a cup of ice. *Tr.* 10/8/14 at 30, 38. He asked the ABRA investigator at the time to explain the violation. *Tr.* 10/8/14 at 31-32. Mr. Kim testified that he was told by the investigator that he cannot give away single cups. *Tr.* 10/8/14 at 30, 39, 44-45. He believed that if he sold the cups and sold more than one at a time, he was not violating the law. *Tr.* 10/8/14 at 32.

8. Mr. Kim stated that customers often request a single cup and he does not provide them. *Tr.* 10/8/14 at 32. He admitted that he arranges packages of three cups in a plastic bag and sell them to customers. *Tr.* 10/8/14 at 33. He no longer sells the three cup packages. *Tr.* 10/8/14 at 34. He sells 20 cups for \$1.00, which is a better value for his customers. *Tr.* 10/8/14 at 34-35, 37. The 20 cups are contained in a manufacturer's package. *Tr.* 10/8/14 at 37. Mr. Kim testified that the cups are still kept under the counter because it is more convenient for his customers and handy for the cashier. *Tr.* 10/8/14 at 35.

9. Mr. Kim could not recall if he was at the establishment on the day of Investigator Suero's visit on September 13, 2013. *Tr.* 10/8/14 at 32. He has family members who work at the store, and four employees who work the counter. *Tr.* 10/8/14 at 36.

CONCLUSIONS OF LAW

10. 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.*

11. 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).

12. With regard to Charge I, the Board finds that the Respondent provided “go-cups” to a customer, in violation of D.C. Official Code § 25-741. The Board makes this finding based upon the testimony of Investigator Suero and the admission by the Respondent that he regularly sells packages of three cups to his customers. The Board finds that the Respondent’s practice of selling three cups for a nominal fee of \$.25 is a violation of D.C. Official Code § 25-741, which prohibits the sale of go-cups.

13. A violation of D.C. Official Code § 25-741 is considered a secondary tier violation. The Board takes administrative notice that the Respondent has committed this same offense within the last year. In light of Respondent’s repeated offense and unwillingness to learn from his mistakes, the Board believes that a fine is warranted in this matter.

ORDER

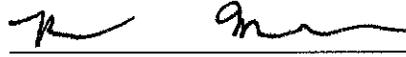
Based on the foregoing findings of fact and conclusions of law, the Board, on this 5th day of November, 2014, finds that the Respondent, Soo and Chan, Inc., t/a Georgia Avenue Food Barn, located at 6205 Georgia Avenue, N.W., Washington, D.C., holder of a Retailer’s Class A license, violated D.C. Official Code § 25-741.

The Board hereby **ORDERS** that:

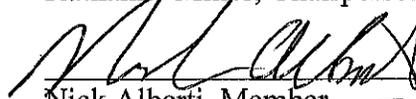
- (1) The Respondent must pay a fine in the amount of \$750.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

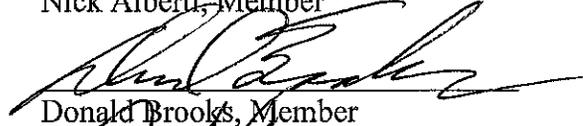
District of Columbia
Alcoholic Beverage Control Board



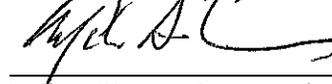
Ruthanne Miller, Chairperson



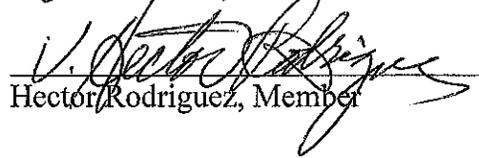
Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member

James Short, Member

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).