

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

In the Matter of:

Flora Restaurant and Lounge, Inc.
t/a Ghion Restaurant and Lounge

Holder of a
Retailer's Class CT License

at premises
2010 9th Street, N.W.
Washington, D.C. 20001

Case No. 13-CMP-00473
License No. ABRA-086205
Order No. 2014-510

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

ALSO PRESENT: Aster Assefa, on behalf of Flora Restaurant and Lounge, Inc., t/a
Ghion Restaurant and Lounge, Respondent

Michael Stern, 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

The Alcoholic Beverage Control Board (Board) finds that Flora Restaurant and Lounge, Inc., t/a Ghion Restaurant and Lounge (Respondent), violated District of Columbia (D.C.) Official Code on September 7, 2013. As a result, the Respondent must pay a \$4,000.00 fine for two of the primary tier offenses, and will receive a warning for the two secondary tier offenses.

Procedural Background

This matter arises from the Notice of Status Hearing and Show Cause Hearing

(Notice) executed by the Board on February 5, 2014. ABRA Show Cause File No. 13-CMP-00473, Notice of Status Hearing and Show Cause Hearing, 2-3 (February 5, 2014) [Notice]. The Notice charges the Respondent with five violations, which if proven true, would justify the imposition of a fine, suspension, and possible revocation of the Respondent's license.

Specifically, the Notice charges Ghion Restaurant with the following violations:

- Charge I: [Ghion] sold or served alcoholic beverages after 3:00 a.m. on a Saturday in violation of District of Columbia (D.C.) Official Code § 25-723(b) [on September 7, 2013] . . .
- Charge II: [Ghion] made a substantial change in the operation of the establishment without prior Board approval in violation of D.C. Official Code § 25-762(b)(13) [on September 7, 2013] . . .
- Charge III: [Ghion] failed or refused to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises, or otherwise interfered with an investigation in violation of D.C. Official Code §25-823(5) [on September 7, 2013] . . .
- Charge IV: [Ghion] failed to frame its license under glass and conspicuously post the license in violation of D.C. Official Code §25-711(a) [on September 7, 2013] . . .
- Charge V: [Ghion] failed to post in a conspicuous place on the front window or door of the licensee's premises, the correct name or names of the licensee or licenses and the class and number of the license in plain and legible lettering not less than one inch nor more than 1.25 inches in height in violation of D.C. Official Code §25-711(b) [on September 7, 2013] . . .

Notice, 2-3 (February 5, 2014).

The Office of the Attorney General for the District of Columbia (OAG) and the Respondent appeared at the Show Cause Status Hearing on March 19, 2014. *Transcript (Tr.)*, March 19, 2014 at 2. The Show Cause hearing originally scheduled for July 23, 2014, was continued to secure the services of an Amharic interpreter for the Respondent. *Transcript (Tr.)*, July 23, 2014 at 11. The parties proceeded to a Show Cause Hearing on November 5, 2014. Astair Zekiros served as the interpreter for purposes of the hearing. *Transcript (Tr.)* November 5, 2014 at 23.

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. Ghion Restaurant holds a Retailer's Class CT License, ABRA License Number 86205. See ABRA Licensing File No. ABRA-086205. The establishment's premises are located at 2010 9th Street, N.W., Washington, D.C. See ABRA Licensing File No. ABRA-086205.
2. The Respondent's licensed hours of operation, sales and service of alcoholic beverages are 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. The Respondent does not have a Settlement Agreement. See ABRA Licensing File No. ABRA-086205.

II. Testimony of ABRA Investigator Earl Jones

3. On September 7, 2013, ABRA Investigator Earl Jones received information that the Respondent was operating after legal hours. *Tr.* 11/5/14 at 14, 48-49. He also received a tip that the Respondent was allowing customers to enter through the rear door after hours. *Tr.* 11/5/14 at 15. He and two other ABRA investigators, Jason Peru and Mark Brashears, were dispatched by their supervisor to investigate the tips. *Tr.* 11/5/14 at 15.
4. Upon arriving at the scene, slightly before 4:00 a.m., Investigator Jones proceeded to the front door and observed three females walking throughout the first floor level of the establishment. *Tr.* 11/5/14 at 16, 43, 51. The front door was locked, so Investigator Jones knocked on the large glass pane and showed his identification and ABRA badge to the three women. *Tr.* 11/5/14 at 16-17, 27, 43, 63. The three women looked at Investigator Jones through the glass door as Investigators Peru and Brashears walked up behind Investigator Jones. *Tr.* 11/5/14 at 16, 43, 52.
5. Two of the females hid under a table and the third female crouched behind the door that Investigator Jones was trying to enter. *Tr.* 11/5/14 at 16, 43, 54. Despite their efforts to hide, all three females remained visible to Investigator Jones. *Tr.* 11/5/14 at 16. Investigator Jones then started knocking on the glass pane, demanding that the women open the door. *Tr.* 11/5/14 at 16, 33, 53. He informed them that he could see them while repeatedly asking them to open the door. *Tr.* 11/5/14 at 52-54. The female who was crouched below the door jumped up and ran up the stairwell to the second floor. *Tr.* 11/5/14 at 17, 45, 54.
6. Investigator Jones instructed Investigators Peru and Brashears to run around to the back of the establishment where it abuts the alleyway. *Tr.* 11/5/14 at 17, 45. Investigator Jones believed that any patron inside the establishment would try to exit out of the back. *Tr.* 11/5/14 at 17, 27. The investigators hurried as quickly as possible before the rear door could be closed on them. *Tr.* 11/5/14 at 27-28. It took the three investigators about five minutes to run around the establishment to get to the back. *Tr.* 11/5/14 at 56. Investigator Jones joined Investigators Peru and Brashears where they witnessed 10 to 15 people exiting the second floor landing, and then walking down the alley, away from the establishment. *Tr.* 11/5/14 at 18, 45-46, 57.

7. The people exiting the establishment were in a casual, easy-going mood, and were dressed as patrons and not as employees. *Tr.* 11/5/14 at 59. Several of the women were wearing high heels and nice dresses. *Tr.* 11/5/14 at 59-60. There were several couples within the group of patrons, and none of them appeared to be employees, cooks or security personnel. *Tr.* 11/5/14 at 73.

8. The investigators then ran up the exterior stairwell to the second floor landing where individuals inside the establishment were trying to close the door on them. *Tr.* 11/5/14 at 18, 26, 57. Investigator Jones knocked and he was eventually admitted into the establishment. *Tr.* 11/5/14 at 18, 28. Once inside, Investigator Jones encountered the owner, Ms. Assefa on the first floor and informed her that she was committing a violation by operating after hours. *Tr.* 11/5/14 at 19, 61. Ms. Assfa denied that there was anyone in the establishment. *Tr.* 11/5/14 at 68.

9. The three investigators looked around the interior to ascertain if there were any patrons or any evidence of alcohol sales, service or consumption of alcoholic beverage consumption. *Tr.* 11/5/14 at 19. Nothing was observed. *Tr.* 11/5/14 at 19, 28, 30-32, 61. The investigators then conducted a regulatory inspection and noticed that the Respondent's ABC license was not conspicuously displayed for public view. *Tr.* 11/5/14 at 19, 28, 37, 72.

10. The establishment also lacked its window lettering regarding its retailer class and license number. *Tr.* 11/5/14 at 20-21, 72. Investigator Jones checked all windows and doors to determine whether the required window lettering was posted and if it was the correct height. *Tr.* 11/5/14 at 69, 72.

11. Investigator Jones inquired about the ABC license at which time Ms. Assefa removed the license from a plastic sleeve that was located in a binder. *Tr.* 11/5/14 at 20, 37. Investigator Jones ascertained from the license that the hours of operation were 11:00 a.m. to 3:00 a.m. on Fridays. *Tr.* 11/5/14 at 21. He observed the patrons exiting the rear of the establishment around 4:00 a.m. *Tr.* 11/5/14 at 21, 39.

12. Investigator Jones does not know whether patrons were still drinking at the time he knocked on the front door, who then may have discarded their drinks before he could enter the rear door. *Tr.* 11/5/14 at 31, 40. Several minutes passed while he was trying to communicate to the three hiding females to gain access to the establishment through the front door. *Tr.* 11/5/14 at 31.

13. Ms. Assefa explained to Investigator Jones that the three females weren't initially helpful because one is deaf and they were afraid. *Tr.* 11/5/14 at 32, 41-42. The three females did not appear scared or startled to Investigator Jones. *Tr.* 11/5/14 at 33-34. Their efforts to hide were slow and deliberate. *Tr.* 11/5/14 at 33.

14. Investigator Jones was later informed by the owner that the three females initially observed on the first floor were employees. *Tr.* 11/5/14 at 44, 55. Ms. Assefa pointed out the two individuals who were hiding under the table to Investigator Jones. *Tr.* 11/5/14 at 55. He recognized the third individual who initially crouched below the front door as one of the 10 to 15 patrons walking down the back alley. *Tr.* 11/5/14 at 55. Investigator Jones

observed that her attire was different from the other two women and he believed that she was a patron and not an employee. *Tr.* 11/5/14 at 55.

III. Testimony of ABRA Investigator Jason Peru

15. ABRA Investigator Jason Peru testified on behalf of the OAG. *Tr.* 11/5/14 at 76. On September 7, 2013, he conducted a regulatory inspection at the Respondent's establishment at approximately 4:00 a.m. *Tr.* 11/5/14 at 76, 78. He recalled a bar located on the second floor of the establishment. *Tr.* 11/5/14 at 77, 79. There was also lounge seating, and tables and chairs. *Tr.* 11/5/14 at 79. He did not observe any bottles or drinks on the tables. *Tr.* 11/5/14 at 77. There was a bartender behind the bar cleaning up, rinsing glasses and putting them away. *Tr.* 11/5/14 at 77, 79-80.

IV. Aster Assefa, on Behalf of the Respondent

16. The owner, Aster Assefa declined to put any testimony or evidence into the record. *Tr.* 11/5/14 at 77, 79-80.

CONCLUSIONS OF LAW

17. 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).

18. 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. CHARGE I – SERVING AND SELLING ALCOHOLIC BEVERAGES

19. The Board does not find that the Government sustained Charge I regarding the Respondent's serving or selling alcoholic beverages after 3:00 a.m. Both Investigator Jones and Peru testified that when they entered the second floor of the establishment, patrons had cleared out and that no bottles or drinks were observed. *Supra*, at ¶ 9, 15. Therefore, the Board dismisses Charge I.

II. CHARGE II – SUBSTANTIAL CHANGE WITHOUT BOARD APPROVAL

20. The Board finds that the Respondent engaged in an unlawful substantial change by operating after hours without the approval of the Board. Under § 25-762(b)(13), it is a primary tier violation for a licensee to "[e]xtend the hours of operation." without the permission of the Board. D.C. Official Code § 25-762(b)(13); (West Supp. 2013).

21. Here, on September 7, 2013, at approximately 4:16 a.m., Investigators Jones and Peru witnessed three individuals on the first floor of the establishment, and observed 10-15 individuals exiting out the back of the establishment. The observation of the patrons was

more than an hour beyond the establishment's legal closing hours. Supra, at ¶ 4, 6 and 15. Therefore, the Board sustains Charge II.

III. CHARGE III – INTERFERING WITH AN ABRA INVESTIGATION

22. The Board finds that the Respondent interfered with an investigation and unduly delayed the entry of three ABRA investigators present to conduct that investigation. Under § 25-823(5), it is a primary tier violation for a licensee to [r]efuse to allow an ABRA investigator to enter or inspect without delay . . . or otherwise interfere with an investigation. D.C. Official Code § 25-823(5); (West Supp. 2013).

23. The record contains convincing evidence that the Respondent interfered with an ABRA investigation. Here, on September 7, 2014, Investigators Jones, Peru and Brashears attempted to enter the establishment through the front door after they had reasonable cause to believe that the Respondent exceeded its licensed hours of operation. The investigators were denied entry through the front door by the three individuals who were observed hiding under a table and below the door. The investigators were also unduly delayed entry through the rear door when individuals on the inside attempted to close the door and thwart their entry. Once inside, the owner provided misleading information as to the identity of the three women from the first floor. Supra, at ¶ 4-5, 8, 14. Therefore, the Board finds the Respondent interfered with an investigation and thus, sustains Charge III.

IV. CHARGES IV AND V - FAILURE TO POST LICENSE AND WINDOW LETTERING

24. The Board determines that the Respondent failed to carry or post licenses in a conspicuous place and failed to post a Board-approved window lettering, in violation of D.C. Official Code §§ 25-711(a) and 25-711(b).

25. Section 25-711 states, "A person receiving a license to manufacture, sell, or permit the consumption of alcoholic beverages shall frame the license under glass and post it conspicuously in the licensed establishment..." D.C. Official Code § 25-711(a). The law further states "The licensee under a retail license or a club license, shall post, in a conspicuous place on the front window or front door of the licensee's premises, the correct name or names of the licensee or licensees and the class and number of the license in plain and legible lettering not less than one inch nor more than 1.25 inches in height." D.C. Official Code § 25-711(b). Failure to post or carry licenses in accordance with the provisions of Section 25-711 shall be a secondary tier violation. DCMR § 23-800.

26. As a result of the other ABRA violations discovered on September 7, 2013, the investigators conducted a regulatory inspection while on the premises. Investigator Earl Jones observed that there was no Board-approved window lettering on any of the exterior windows or front door. Supra, at ¶ 2. The investigator also observed that the establishment did not have its ABC License prominently displayed. Supra, at ¶ 10, 11. Thus, the Board sustains Charges IV and V.

V. PENALTY

27. The Respondent's investigative history shows that it has no prior violations. *License No. ABRA-086205; Investigative History*. The Board notes that Charge II and Charge III are the Respondent's first primary tier violation. *Licensing File No. ABRA-086205; Investigative History*. Thus, these violations shall be fined as a first primary tier violation and the Board may impose a fine in the range of \$1,000.00 and \$2,000.00. *Licensing File No. ABRA-090311; Investigative History; DCMR § 23-801*. In addition, Charge IV and V are secondary tier violations and are entitled to a mandatory warning under ABRA's penalty schedule. DCMR § 23-800. As such, the Board shall levy an appropriate penalty.

ORDER

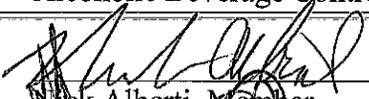
Based on the foregoing findings of fact and conclusions of law, the Board, on this 10th day of December, 2014, finds that the Respondent, Flora Restaurant and Lounge, Inc., t/a Ghion Restaurant and Lounge, located at 2010 9th Street, N.W., Washington, D.C., holder of a Retailer's Class CT license, violated D.C. Official Code §§§§§ 25-723(b), 25-762(b)(13), 25-823(5), 25-711(a), 25-711(b).

The Board hereby **ORDERS** that:

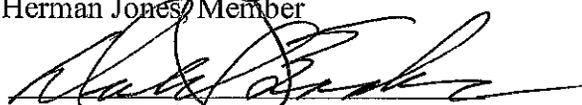
- 1) Charge I: Dismissed.
- 2) Charge II: Respondent must pay a fine in the amount of \$2,000.00. The Respondent will also receive a suspension of its license for two days.
- 3) Charge III: Respondent must pay a fine in the amount of \$2,000.00. The Respondent will also receive a suspension of its license for two days.
- 4) Charge IV: Respondent is warned to frame its license and post it conspicuously.
- 5) Charge V: Respondent is warned to post its window lettering.
- 6) In total, the Respondent must pay a fine in the amount of \$4,000.00 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.
- 7) In total, the Respondent's four (4) suspension days shall be stayed for one (1) year unless the Board finds that the Respondent committed a violation within one (1) year from the date of this Order.

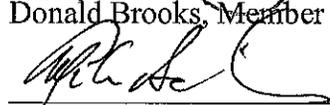
Copies of this Order shall be sent to the Respondent and the Government.

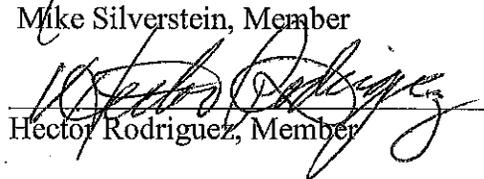
District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Member

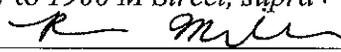

Herman Jones, Member


Donald Brooks, Member


Mike Silverstein, Member


Hector Rodriguez, Member

I concur with the majority's decision as to its finding of the Respondent's liability and with the fine penalty selected by the majority of the Board. I dissent from the majority of the Board with regard to the imposition of suspension days in light of the lack of evidence of any "consistent pattern of violations demonstrating a flagrant disregard for the public safety and welfare" that would justify suspension. *See 1900 M Rest. Ass'ns., Inc.* 56 A3d 486 at 492 (DC, 2012) In fact, Licensee's investigative history shows no violations. While the majority stays the suspension days for one year pending no further violations, such suspensions could be triggered by an administrative violation within the year, which in my view, would result in suspensions contrary to *1900 M Street, supra* .


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, 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).

