

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

In the Matter of:)	
)	
RI Associates)	
t/a Holiday Inn Central)	
Holder of a Retailer's Class CH License)	Case No. 13-CMP-00228
)	License No. ABRA-016066
)	Order No. 2014-089
at premises)	
1501 Rhode Island Avenue, N.W.)	
Washington, D.C. 20005)	

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

ALSO PRESENT: Marshall Wickramaratne, on behalf of RI Associates, t/a Holiday Inn Central, 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 RI Associates, t/a Holiday Inn Central (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-713 and 25-712(a). As a result, the Respondent must pay a \$600.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 23, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1501 Rhode Island Avenue, N.W., Washington, D.C., on October 25, 2013.

The Notice charged the Respondent with the following violations:

- Charge I: The Respondent failed to post the current legal drinking age and notice of the requirement to produce valid identification displaying proof of age, in violation of D.C. Official Code § 25-713, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).
- Charge II: The Respondent failed to post the required warning signs regarding the dangers of alcohol consumption during pregnancy, in violation of D.C. Official Code § 25-712(a), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On May 18, 2013, Citation #7559 was issued to the Respondent in the amount of \$350.00 for violating D.C. Official Code §§ 25-713 and 25-712.

On June 7, 2013, the Respondent refused to pay the citation and instead, requested a hearing. The Show Cause Status Hearing occurred on December 4, 2013. There was no settlement of the matter and it proceeded to a Show Cause Hearing on February 12, 2014.

The Government and the Respondent appeared at the Show Cause Hearing for this matter on February 12, 2014.

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

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing to the Respondent, dated October 23, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 13-CMP-00228. The Respondent holds a Retailer's Class CH license and is located at 1501 Rhode Island Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-016066.
2. The Show Cause Hearing was held on February 12, 2014. *See* ABRA Show Cause File No. 13-CMP-00228. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 13-CMP-00228.
3. The Government presented its case through the testimony of two witnesses, ABRA Investigators Derek Brooks and Earl Jones. *Transcript (Tr.)*, 2/12/14 at 6-7 and 75.
4. On May 4, 2013, Investigators Brooks and Jones conducted a regulatory inspection at the licensed establishment. *Tr.*, 2/12/14 at 7.
5. Investigator Brooks observed that the Respondent did not have a sign posted warning the public of the dangers of alcohol consumption during pregnancy. *Tr.*, 2/12/14 at 8. Nor did the Respondent have the required legal drinking age sign posted. *Tr.*, 2/12/14

at 8. The licensed establishment was closed at the time of the inspection but it appeared to the investigators to be operational. *Tr.*, 2/12/14 at 8.

6. Investigators Brooks and Jones advised the Respondent's clerk, who had no knowledge of the warning and legal drinking age signs requirement, that failure to post a pregnancy warning sign and a legal drinking age sign was a violation of the law. *Tr.*, 2/12/14 at 9.

7. Investigators Brooks and Jones made a second visit to the Respondent's establishment a couple of days later following their first visit on May, 4, 2014¹. *Tr.*, 2/12/14 at 9.

8. At the time of his second visit to the licensed establishment, Investigator Brooks observed that the establishment was operating. *Tr.*, 2/12/14 at 10. He did not observe any ongoing construction or renovation work. *Tr.*, 2/12/14 at 12. Investigator Brooks did not observe the posting of a sign warning the public about the dangers of alcohol consumption during pregnancy. *Tr.*, 2/12/14 at 10. Likewise, he did not observe any posted sign regarding the legal drinking age. *Tr.*, 2/12/14 at 10. Investigators Brooks and Jones provided Mr. Marshall Wickramaratne, the ABC-licensed manager, with the required signs. *Tr.*, 2/12/14 at 16.

9. On May 15, 2013, Investigator Brooks issued Citation #7553 to the Respondent in the amount of \$600.00 for the two alleged violations. *Tr.*, 2/12/14 at 11-12. *See* Respondent's Exhibit 2. Investigator Brooks testified that his investigative report does not reflect this visit because the citation was issued with the incorrect amount. *Tr.*, 2/12/14 at 12.

10. Investigator Brooks made an additional visit to the Respondent's establishment to issue the corrected citation. *Tr.*, 2/12/14 at 12. On May 18, 2013, Investigator Brooks issued Citation #7559 to the Respondent in the amount of \$350.00 for the two alleged violations. *See* ABRA Show Cause File No. 13-CMP-00228. During this visit, Investigator Brooks observed that the warning and legal drinking age signs were posted. *Tr.*, 2/12/14 at 16.

11. At the Show Cause Hearing, Mr. Wickramaratne testified on behalf of the Respondent. 2/12/14 at 19. He stated that on May 4, 2013 at approximately 2:45 a.m., the front desk auditor, who was present during Investigators Brooks and Jones' visit, informed him that ABRA investigators were conducting an inspection. *Tr.*, 2/12/14 at 19-20. It is Mr. Wickramaratne's belief that regulatory inspections should be conducted during an establishment's hours of operation. *Tr.*, 2/12/14 at 20.

12. Mr. Wickramaratne stated that on May 6, 2013, Investigators Brooks and Jones informed him that failure to post a pregnancy warning sign and a legal drinking age sign was a violation. *Tr.*, 2/12/14 at 20. Mr. Wickramaratne informed the investigators that the licensed establishment was undergoing construction and that the signs were probably

¹ Throughout his testimony, Investigator misstates the date of his second visit to the Respondent's establishment. The Board takes administrative notice that the ABRA investigator returned to the establishment for the second time on May 6, 2013.

removed by the construction workers. *Tr.*, 2/12/14 at 20-21. The investigators did not issue a citation at this visit. *Tr.*, 2/12/14 at 21. The investigators provided him with the warning and legal drinking signs which he posted immediately. *Tr.*, 2/12/14 at 21.

13. Mr. Wickramaratne stated that on May 15, 2013, Investigator Brooks issued a citation to the Respondent in the amount of \$600.00. *Tr.*, 2/12/14 at 21. Mr. Wickramaratne indicated that he informed Investigator Brooks that the alleged violations were their first violations and that the amount was incorrect. *Tr.*, 2/12/14 at 22.

14. Mr. Wickramaratne testified that on May 18, 2013, Investigator Brooks again visited the licensed establishment, and provided the shift manager on duty with a new citation in the amount of \$350.00. *Tr.*, 2/12/14 at 24. Mr. Wickramaratne indicated that Investigator Brooks stated that the previous citation was issued in the incorrect amount. *Tr.*, 2/12/14 at 24.

15. Mr. Wickramaratne stated that the licensed establishment's construction period was from February 2 through June 17, 2013. *Tr.*, 2/12/14 at 26. Mr. Wickramaratne asserted that during the construction that the workers would leave the licensed establishment clean, dust-free, and ready to open for business when they left for the day. *Tr.*, 2/12/14 at 27.

16. Mr. Wickramaratne admitted that on May 4, 2013, he was informed about the signs violation. *Tr.*, 2/12/14 at 33. He also admitted that the licensed establishment was open on Sunday, May 5, 2013. *Tr.*, 2/12/14 at 33-34. Mr. Wickramaratne stated that on Sunday morning he instructed the ABC-licensed manager to post the signs. *Tr.*, 2/12/14 at 37. The sign posted by the ABC-licensed manager was a sign that she obtained from an alcohol training program and not the ABRA warning and legal drinking age signs. *Tr.*, 2/12/14 at 37-39.

17. Mr. Wickramaratne admitted that during the construction the warning signs were regularly removed and replaced by the workers. *Tr.*, 2/12/14 at 59. Mr. Wickramaratne stated that the manager on duty was responsible for ensuring that the signs were posted. *Tr.*, 2/12/14 at 59. Mr. Wickramaratne stated that he located the ABRA signs that were removed during the construction after Investigator Brooks' visit on May 6, 2013. *Tr.*, 2/12/14 at 61-62. Mr. Wickramaratne admitted that the licensed establishment was operating during the construction. *Tr.*, 2/12/14 at 72.

18. The Government called Investigator Jones as a rebuttal witness. *Tr.*, 2/12/14 at 73-74. Investigator Jones stated that on May 4, 2013, he and Investigator Brooks visited the Respondent's establishment at approximately 2:45 a.m. to conduct a regulatory inspection. *Tr.*, 2/12/14 at 75-76. Although the licensed establishment was closed, Investigators Jones and Brooks conducted the inspection because the Respondent was authorized to operate on Saturdays until 3:00 a.m. *Tr.*, 2/12/14 at 76.

19. On Monday, May 6, 2013, Investigators Jones and Brooks made a second visit to the Respondent's establishment and observed that neither a pregnancy warning sign, nor a legal drinking age sign were posted. *Tr.*, 2/12/14 at 77. Investigators Jones and Brooks advised Mr. Wickramaratne that failure to post a pregnancy warning sign and a legal drinking age sign was a violation. *Tr.*, 2/12/14 at 77. Investigators Jones and Brooks provided Mr. Wickramaratne with the signs. *Tr.*, 2/12/14 at 77.

CONCLUSIONS OF LAW

20. 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) (2009). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

21. 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).

22. With regard to Charge I, the Board finds that the Respondent did not have posted a legal drinking age sign. The Board makes this finding based on the credible testimony of Investigators Brooks and Jones and the Respondent. During Investigators Brooks and Jones visits to the licensed establishment on May 4 and May 6, 2013, neither investigator observed that the legal drinking age sign was posted as required by D.C. Official Code § 25-713. The Board finds credible Mr. Wickramaratne’s admission that on May 4 and May 5, 2013, the licensed establishment was operating and the signs were not posted. Mr. Wickramaratne further admitted that on Monday, May 6, 2013, Investigators Brooks and Jones provided him with warning and legal drinking age signs which he posted immediately.

23. Similarly, with regard to Charge II, the Board finds that the Respondent did not have posted a warning sign regarding the dangers of alcohol consumption during pregnancy as required by D.C. Official Code § 25-713. The Board makes this finding again based on the credible testimony of Investigators Brooks and Jones. During Investigators Brooks and Jones visits to the licensed establishment on May 4 and May 6, 2013, the warning sign was not posted. Here too, Mr. Wickramaratne admitted that the warning sign was not posted.

24. Therefore, based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-713, as set forth in Charge I, and § 25-712(a), as set forth in Charge II, of the Notice to Show Cause, dated October 23, 2013, warrants the imposition of a fine set forth below.

25. The Board takes administrative notice that Charge I and Charge II are the first secondary tier violations for the Respondent.

ORDER

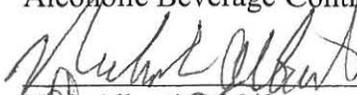
Based on the foregoing findings of fact and conclusions of law, the Board, on this 26th day of March, 2014, finds that the Respondent, RI Associates, t/a Holiday Inn Central, located at 1501 Rhode Island Avenue, N.W., Washington, D.C., holder of a Retailer's Class CH license, violated D.C. Official Code §§ 25-713 and 25-712(a).

The Board hereby **ORDERS** that:

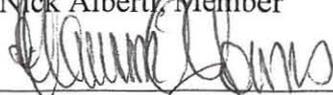
- 1) Charge I: Respondent must pay a fine in the amount of \$500.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$100.00.
- 3) In total, the Respondent must pay a fine in the amount of \$600.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

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

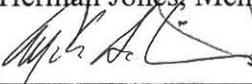
District of Columbia
Alcoholic Beverage Control Board



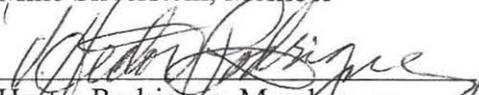
Nick Alberti, Member



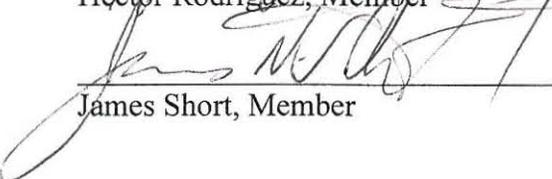
Herman Jones, Member



Mike Silverstein, Member

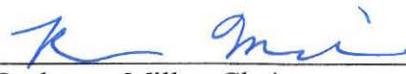


Hector Rodriguez, Member

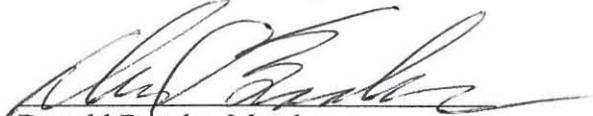


James Short, Member

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

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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).