

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

<b>In the Matter of:</b>	)	
	)	
Po' Boy, LLC	)	
t/a Johnny's Half Shell	)	
	)	
Holder of a	)	Case No. 14-CMP-00776
Retailer's Class CR License	)	License No. ABRA-074573
	)	Order No. 2015-403
at premises	)	
400 North Capitol Street, N.W.	)	
Washington, D.C. 20001	)	

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

**ALSO PRESENT:** Fernando Rivero, Assistant Attorney General  
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

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The Alcoholic Beverage Control Board (Board) finds that Po' Boy, LLC, t/a Johnny's Half Shell (Respondent), violated District of Columbia (D.C.) Official Code § 25-701, on December 15, 2014. As a result, the Respondent must pay a \$500.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on May 27, 2015. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 400 North Capitol Street, N.W., Washington, D.C., on June 11, 2015.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to keep a licensed ABC manager on duty at all times, in violation of D.C. Official Code § 25-701 (2012 Repl.), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2012 Repl.).

On December 17, 2014, Citation #4309 was issued to the Respondent in the amount of \$250.00 for violating D.C. Official Code § 25-701.

The Respondent did not pay the citation by the due date. On March 3, 2015, a Notice of Delinquency was sent to the Respondent and yet payment was still not submitted by the Respondent.

On July 8, 2015, the Board held a Show Cause Status Hearing. There was no settlement of the matter and it proceeded to a Show Cause Hearing on August 5, 2015.

The Respondent failed to appear at the Show Cause Hearing held on August 5, 2015. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

## 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. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated May 27, 2015. *See* ABRA Show Cause File No. 14-CMP-00776. Po' Boy, LLC, t/a Johnny's Half Shell, holds a Retailer's Class CR License, ABRA License No. ABRA-074573. *See* ABRA Licensing File No. ABRA-074573. The establishment's premises are located at 400 North Capitol Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-074573.

2. The Show Cause Hearing was held on August 5, 2015. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 14-CMP-00776.

### II. Testimony of ABRA Investigator Shawn Townsend

3. The Government presented its case through the testimony of one witness, ABRA Investigator Shawn Townsend. *Transcript (Tr.)* 8/5/15 at 6-7.

4. Investigator Townsend authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr.*, 8/5/15 at 9-10; Government's Exhibit 1.

5. The Investigative Report No. 14-CMP-00776 provides that Investigator Townsend entered the establishment on December 15, 2015, identified himself to a male employee and asked to speak to the owner or an ABC-licensed Manager. Government's Exhibit 1 at 1. Michael Clark responded to Inv. Townsend and informed the investigator that his ABC Manager's license had expired and that the owner of the establishment was not present. Government's Exhibit 1 at 1. Investigator Townsend then conducted a regulatory inspection and no other violations were found.

6. The Respondent failed to appear at the Show Cause Hearing. The Respondent did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance of the hearing.

## **CONCLUSIONS OF LAW**

7. 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). 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. THE RESPONDENT VIOLATED § 25-701**

8. The Board finds the Respondent liable for permitting the licensed establishment to operate on December 15, 2014, without either the licensee or an ABC-licensed Manager superintending during the hours of operation in violation of D.C. Official Code § 25-701.

9. ABRA's regulations are clear that either the licensee or an ABC-licensed Manager must be present while the establishment is operating. Title 23 of the DCMR § 707.1 provides that in the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises.

10. The Board finds that the facts set forth in the Investigative Report support the charge and support a finding of liability as to the Respondent. It is unrefuted that on December 15, 2015 at approximately 2:10 p.m., the manager on duty, Michael Clark, admitted to Investigator Townsend that his ABC licensed had expired and that the owner, John Fulchino, was not present on the premises. The Respondent was open and operating during Investigator Townsend's visit.

### **II. PENALTY**

11. A violation of D.C. Official Code § 25-701 is a secondary tier under the law. The violation in the instant case is the Respondent's first secondary tier violation within two

years and as such, the Board imposes a fine of \$500.00. *Licensing File No. ABRA-074573*, Investigative History; DCMR § 23-802.1.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of September, 2015, finds that the Respondent, Po' Boy, LLC, t/a Johnny's Half Shell, located at 400 North Capitol Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-701.

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$500.00 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.

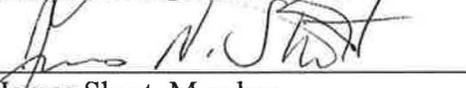
District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

  
Donald Brooks, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I dissent as to the penalty selected by the majority of the Board. I do not believe that a fine is warranted in this matter. Rather, the Respondent should be warned.

  
Nick Alberti, 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 14<sup>th</sup> 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).