

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

In the Matter of:)	
)	
1010 V, LLC)	Case No.: 14-CC-00186
t/a Josephine)	License No: 76906
)	Order No: 2015-417
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
1010 Vermont 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: 1010 V, LLC, t/a Josephine, Respondent

Makan Shirafkan, Counsel, on behalf of the Respondent

Amy Schmidt, 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 that the Government failed to establish through substantial evidence that 1010 V, LLC, t/a Josephine, (hereinafter "Respondent" or "Josephine") violated District of Columbia (D.C.) Official Code § 25-781(a) by

failing to demonstrate that the establishment sold or delivered an alcoholic beverage to an underage patron on July 31, 2014. Therefore, the charge filed against Josephine is dismissed.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on March 18, 2015. *ABRA Show Cause File No., 14-CC-00186*, Notice of Status Hearing and Show Cause Hearing, 2 (Mar. 18, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises Street Address, Washington, D.C., on December 4, 2014, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 14-CC-00186*, 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 July 31, 2014,] [y]ou permitted the sale of an alcoholic beverage to a person under 21 years of age at the licensed establishment in violation of D.C. Official Code § 25-781

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on May 27, 2015. The parties proceeded to a Show Cause Hearing and argued their respective cases on August 5, 2015.

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. Josephine holds a Retailer's Class CT License at 1010 Vermont Avenue, N.W., Washington, D.C. *ABRA License No. 76906*.

II. ABRA Investigator Abyie Ghenene

2. On July 31, 2014, Alcoholic Beverage Regulation Administration (ABRA) Investigator Abyie Ghenene, ABRA Investigator Kofi Apraku, and ABRA Investigator Ileana Corrales were monitoring the neighborhood near Josephine. *Transcript (Tr.)*, August 5, 2014 at 10-12. During the course of their monitoring, they noticed that Josephine had a "younger looking crowd" in front of the establishment. *Id.* at 11. Based on this information, the investigative team decided to conduct identification checks at the establishment. *Id.* at 11.

3. As part of the identification check process, the team entered the establishment. *Id.* at 12. While inside the establishment, Investigator Ghenene observed a female patron holding a beer bottle with a wristband on her wrist; yet, she appeared to be under the age of twenty-one. *Id.* at 12, 15. Investigator Ghenene observed the wristband on the female patron and saw that it was tightly affixed to her wrist as if it had been placed there. *Id.* at 13. He did not otherwise observe whether the wristband was held together by an adhesive or other object. *Id.* at 45. The team identified themselves to the female patron in the presence of a representative from the establishment. *Id.* at 13.

4. Investigator Ghenene asked the patron her age, and she initially stated that she was twenty one. *Id.* at 14. Nevertheless, she produced a passport that showed her birthdate to be January 20, 1994, which meant that she was only twenty years of age. *Id.* While being questioned, Investigator Ghenene testified that the female patron stated that the establishment initially checked her identification and security marked her hand with an “X.” *Id.* at 15. Investigator Ghenene further testified that she told him that she was instructed to wash the “X” off her hand and return for a wristband. *Id.* at 16, 58. The female patron did not identify or indicate who told her to wash off the “X.” *Id.* at 41-42. Josephine’s representative confirmed that the female patron had her identification checked and had an “X” marked on her hand. *Id.* The investigators did not encounter any other minors engaged in underage drinking during their investigation. *Id.* at 65, 74.

5. Investigator Ghenene could not discount the possibility that the female patron received the beer in her hand from another patron. *Id.* at 52-53.

III. Siamak Saadatian

6. Siamak Saadatian serves as Josephine’s general manager. *Id.* at 77. He was working at the establishment on July 31, 2014. *Id.* During the investigation, Mr. Saadatian accompanied the investigative teams inside the establishment. *Id.* at 78.

7. Mr. Saadatian observed the investigative team interview the female patron. *Id.* at 81. He noted that the female patron initially denied having identification, but eventually presented her passport after repeated questioning. *Id.* The patron further admitted that she washed off the mark placed on her hand by the establishment. *Id.*

8. Mr. Saadatian noted that Josephine uses plastic wristbands that are hard to take off. *Id.* at 81, 83. Yet, he recalled that the female patron was able to remove the wristband fairly quickly and throw it in the trash. *Id.* at 82.

CONCLUSIONS OF LAW

9. 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. 2015). 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.

10. The Board’s regulations require that “. . . Findings of Fact and Conclusions of Law shall be supported by and in accordance with reliable, probative, and substantial evidence.” 23 DCMR § 1718.3 (West Supp. 2015). Substantial evidence has been defined as “. . . such relevant evidence as reasonable minds might accept as adequate to support the conclusion . . . [or] a demonstration in the findings of a “rational connection between facts found and the choice made.” *Kopff v. D.C. Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1387 (D.C. 1977) (citation and quotation marks removed).

11. The Board finds insufficient evidence to convict Josephine under Charge I. Under § 25-781(a), “[t]he *sale* or *delivery* of alcoholic beverages to the following persons is prohibited . . . [a] person under 21 years of age, either for the person's own use or for the use of any other person. D.C. Official Code § 25-781(a) (emphasis added).

12. In this case, there is insufficient evidence to demonstrate that Josephine sold or delivered an alcoholic beverage to a female patron on July 31, 2014.

a. The hearsay statements of the female patron regarding the source of her wristband lack sufficient credibility.

13. The Board does not credit the female patron’s hearsay testimony that an agent of the establishment or a third party told her to wash off the mark on her hand and return for a wristband. *Supra*, at ¶ 4. In administrative hearings, “duly admitted and reliable hearsay may constitute substantial evidence.” *Compton v. District of Columbia Bd. Psychology*, 858 A.2d 470, 476 (D.C. 2004). “The weight . . . given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility.” *Id.* at 477. When weighing hearsay evidence, the court has advised that administrative agencies should carefully scrutinize hearsay evidence that lacks “extrinsic corroboration.” *James v. D.C. Dep’t of Employment Servs.*, 632 A.2d 395, 398 (D.C. 1993).

14. In prior cases, the Board has been willing to credit hearsay testimony related to age, because age is a basic fact and oftentimes amounts to an admission of an illegal act on the part of the minor. *See, e.g., In re Johana’s Inc., t/a Johana’s Restaurant*, Case No. 14-CMP-00250, Board Order No. 2015-246 (D.C.A.B.C.B. May 6, 2015).

15. Unlike a mere statement of age, the statement at issue here, amounts to an accusation that an unidentified agent of Josephine intentionally attempted to circumvent the law against underage drinking. *Supra*, at ¶ 4. While the Board does not disbelieve Investigator Ghenene’s testimony regarding the statements of the female patron, the investigator has no independent knowledge with which to verify the truth of the statement. The Board is further persuaded that accepting the statement is inappropriate because there is no corroboration of the statement in the record, and the minor was not subject to cross-examination. As such, the Board rejects relying on the female patron’s statements regarding the source of her wristband.

b. The Board is not persuaded that Josephine sold or delivered a beer to the female patron.

16. Moreover, the Government has not sufficiently refuted all of the reasonable alternative ways that the patron could have obtained a wristband or the beer inside the establishment without resulting in a violation of § 25-781(a). *Supra*, at ¶¶ 4-5. Specifically, the Board cannot discount the possibility that another patron bought a beer for the female patron or that another patron provided her with their wristband without the knowledge of the establishment, which if true, would not constitute a sale or delivery of alcohol by the establishment in violation of § 25-781(a). Consequently, because the evidence provided by the Government fails to discredit these reasonable alternative explanations for how the patron obtained a wristband and a beer, the Board lacks sufficient evidence to convict Josephine of the violation alleged in Charge I.

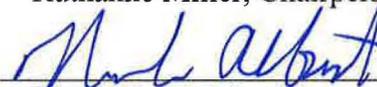
ORDER

Therefore, the Board, on this 24th day of September 2015, finds that 1010 V, LLC, t/a Josephine, **NOT GUILTY** of violating D.C. Official Code § 25-781(a). The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



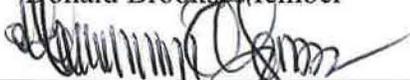
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1, 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).