

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

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<b>In the Matter of:</b>	)	
	)	
Justin's Cafe, LLC	)	Case No: 13-CMP-00481
t/a Justin's Café	)	
	)	License No.: 83690
Holder of a	)	Order No.: 2014-346
Retailer's Class CR License	)	
	)	
at premises	)	
1831 Benning Road, NE	)	
Washington, D.C. 20002	)	

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**BEFORE:** Ruthanne Miller, Chairperson  
Donald Brooks, Member  
Herman Jones, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Justin's Cafe, LLC, t/a Justin's Cafe, Respondent  
  
Justin Ross, Owner, on behalf of the Respondent  
  
Christine Gephardt, Assistant Attorney General,  
on behalf of 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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**INTRODUCTION**

This case arises from a Notice of Status Hearing and Show Cause Hearing that the Alcoholic Beverage Control Board executed on July 23, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1025 1st Street, SE on February 11, 2014. The hearing was originally scheduled for May 14, 2014. On May 5, 2014, the Board continued the hearing until July 23, 2014. The Notice charged

the Respondent with a number of violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

Specifically, the Notice charged the Respondent with the following violations:

- Charge I: [On Friday, September 2013,] at approximately 1:35 a.m., the Respondent made a substantial change in the operation of the establishment by extending the hours of operation without prior Board approval, in violation of D.C. Official Code § 25-762 (b)(13) . . . .
- Charge II: [On Friday, September 2013,] the Respondent failed to post its ABRA license information on the front door or exterior window in violation of D.C. Official Code § 25-711....
- Charge III: [On Friday, September 2013,] the Respondent failed to make a copy of its Settlement Agreement immediately accessible upon request by an ABRA official in violation of D.C. Official Code § 25-711(a)....

*ABRA Show Cause File No.*, 13-CMP-00481, Notice of Status Hearing and Show Cause Hearing, 2 (February 5, 2014).

The factual basis of the Charges listed above is an allegation that on Friday, September 20, 2013, at approximately 1:35 a.m., an ABRA Investigator visited the establishment. Upon arriving, he observed six patrons sitting on the sidewalk café, with at least two of them drinking beer.

The Investigator then entered the establishment and asked to speak with an ABC Manager. While inside of the establishment, the Investigator requested to see a copy of its Settlement Agreement. However, the manager was unable to produce the document upon request. Also, the Investigator noted that the establishment's temporary window lettering was torn from the window.

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on March 19, 2014 for Case No. 13-CMP-00481. The OAG and Respondent then appeared at the Show Cause Hearing for these matters on July 23, 2014 and argued their respective cases.

### **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 Respondent holds a Retailer's Class CR License, License No. ABRA 83690. *See*

*ABRA Licensing File No. ABRA-83690*. The establishment's premises are located at 1025 1st Street, SE Washington, D.C. *See id.* The hours of operation are Sunday 11:30 a.m. – 10 p.m.; Monday through Thursday, 11:30 a.m. – 1 a.m.; Friday and Saturday 11:30 a.m. – 2 a.m. *See id.* The hours of sales, service and consumption are Sunday 11:30 a.m.- 10 p.m.; Monday through Thursday 11:30 a.m.- 1 a.m.; Friday and Saturday 11:30 a.m. – 2 a.m. *See id.*; *See also* Government Exhibit 2.

2. On May 12, 2010, the Board approved a Settlement Agreement (formerly “Voluntary Agreement”) between the Respondent and ANC 6D. *Justin’s Café, LLC t/a Justin’s Cafe*, Board Order No. 2010-340 (D.C.A.B.C.B. May 12, 2010). The parties later amended the Settlement Agreement to include conditions regarding the use of the sidewalk cafe. *Justin’s Café, LLC t/a Justin’s Cafe*, Board Order No. 2011-095 (D.C.A.B.C.B. January 26, 2011).

## II. THE TESTIMONY OF FORMER ABRA INVESTIGATOR DEREK BROOKS

3. Former ABRA Investigator Derek Brooks testified on behalf of the Government. *Transcript (Tr.)*, 07/23/14 at 8-25. Investigator Brooks worked as an Investigator for ABRA from April 8, 2013 until January 15, 2014. *Id.* at 9.

4. On September 20, 2013, Investigator Brooks arrived to the establishment at approximately 1:35 p.m. to monitor the establishment. *Id.* at 10. After pulling in front of the establishment while inside his vehicle, he observed activity in the sidewalk café for about ten minutes. *Id.* at 12-14. He observed approximately six individuals sitting in the sidewalk café. *Id.* at 13. Two of these individuals were consuming beer and there were a couple of beer bottles present as well. *Id.*

5. Investigator Brooks then proceeded to enter the establishment. *Id.* at 15. Once inside, Investigator Brooks saw two people sitting at the bar drinking beer. *Id.*

6. Shortly after his arrival, a young man approached Investigator Brooks to see if he needed assistance with anything. *Id.* at 15-16. Investigator Brooks introduced himself and then requested to speak with the owner or ABC manager. *Id.* at 16. The young man then introduced Investigator Brooks to Alana Arsan, the ABC Manager on duty. *Id.* Investigator Brooks informed Ms. Arsan that he was going to conduct a regulatory inspection since he determined that the establishment's sidewalk café operations were not in compliance with its ABC-license. *Id.* at 17. At this time, people started to break down the sidewalk café and do their best to conceal the beers in plain view. *Id.* The people then began to stack the chairs and move the tables. *Id.* Ms. Arslan then started to eject the people sitting at the bar drinking from the establishment.

7. Investigator Brooks proceeded to conduct a regulatory inspection of the establishment. *Id.* at

18. An inspection of the establishment's ABC-license revealed that it has a settlement agreement. *Id.* Investigator Brooks then requested to view the settlement agreement. *Id.* Ms. Arsan did not know where it was and could not find it. *Id.*

8. While conducting the inspection, Investigator Brooks looked for the required window lettering on the front door and all of the front windows. *Id.* at 19. Investigator Brooks was not able to locate the window lettering on any of these locations.

### **III. THE TESTIMONY OF ALANA ARSLAN**

9. Alana Arslan testified on behalf of the Respondent. *Tr.*, 07/23/14 at 27-41. Ms. Arslan is the ABC manager of the establishment. *Id.* at 4.

10. Ms. Arslan admitted that on the evening that Investigator Brooks conducted his regulatory inspection of the establishment, she lost track of time. *Id.* at 27. She knows that there were a few employees and patrons that were on the premises after hours that should not have been. *Id.* at 27.

11. Ms. Arslan recalls seeing the temporary lettering on the door of the establishment previously. *Id.* at 27. She testified that at the time of Investigator Brooks' visit, the lettering had been ripped down. *Id.* at 28. She was not aware that, per ABRA regulations, it needed to be visible. *Id.*

12. Ms. Arslan recounts that she did not know where the settlement agreement was at the time that Investigator Brooks requested it. *Id.*

### **IV. THE TESTIMONY OF JUSTIN ROSS**

13. Justin Ross testified on behalf of the Respondent. *Tr.*, 07/23/14 at 43-59. Mr. Ross is the owner of the establishment. *Id.* at 4, 44. Mr. Ross was not present on the evening of September 20, 2013. *Id.* at 43.

14. Mr. Ross believes that the temporary lettering that was previously visible in the establishment window was ripped down. *Id.* at 43. Mr. Ross thinks that when this occurred, neither he, nor Ms. Arslan, noticed that it happened. *Id.*

15. On the evening of September 20, 2013, the settlement agreement was behind the safe, the location where it is typically stored inside of the establishment. *Id.* Mr. Ross admits that he failed to communicate this to Ms. Arslan. *Id.*

### **CONCLUSIONS OF LAW**

16. The Board takes administrative notice that Charge I is the Respondent's third primary tier violation within two years, Charge II is the Respondent's sixth secondary tier violation within two years and Charge III is the Respondent's sixth secondary tier violation within two years. *Licensing File No. ABRA-083690*, Investigative History. Thus, the Board may fine the Respondent between \$4,000.00 and \$6,000.00 for all Charges. *Licensing File No. ABRA-083690*, Investigative History; 23 DCMR §§ 801 and 802.

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. Code § 25-830 (West Supp. 2014); 23 DCMR § 800, *et seq.* (West Supp. 2014). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine “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. Code § 25-447 (West Supp. 2014).

**I. THE RESPONDENT VIOLATED §25-762 (b)(13) WHEN IT MADE A SUBSTANTIAL CHANGE IN OPERATION BY EXTENDING THE HOURS OF OPERATION WITHOUT PRIOR BOARD APPROVAL**

18. The Board finds that on September 20, 2013, the Respondent violated §25-762 (b) (13) when it extended the hours of operation of the establishment without having first received final approval from the Board. Under §25-762 (a), “Before a licensee may make a change... which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license... shall obtain the approval of the Board.” D.C. Official Code §25-762 (a). In addition, under §25-762 (b) (13), among the list of changes that are considered to be substantial are “extend[ing] the hours of operation. D.C. Official Code §25-762 (b) (13).

19. In the present matter, the Board finds that there is sufficient evidence in the record to support this charge. It is clear, as outlined in the establishment’s ABC license, that the establishment’s hours of operation on Thursday nights end at 1:00 a.m. Supra, at ¶ 1.

20. Additionally, the Board credits the testimony of Investigator Brooks regarding his arrival to the establishment at approximately 1:35 a.m., thirty-five minutes after the establishment’s hours of operation should have ceased. Supra, at ¶ 2. Not only did Investigator Brooks observe patrons on the sidewalk café while he was outside, he also saw people consuming alcohol at the bar on the interior of the establishment once inside. Supra, at ¶ 4, 5. Moreover, once inside the establishment, it is clear that people began to break down the tables and chairs as well as exit the establishment. Supra, at ¶ 6.

21. Further, the Board acknowledges the testimony of Ms. Arslan, who admitted that there were a few employees and patrons present after the establishment’s hours of operation were to have ended. Supra, at ¶ 10.

22. For the foregoing reasons, the Board finds that the Respondent extended the hours of operation without prior Board approval in violation of §25-762 (b) (13). Therefore, as a matter of law, the Board finds the Respondent guilty of Charge I.

**II. THE RESPONDENT VIOLATED §25-711 WHEN IT FAILED TO POST ITS ABRA LICENSE INFORMATION ON THE FRONT DOOR OR EXTERIOR WINDOW**

23. The Board finds that on September 20, 2013, the Respondent violated §25-711 when it failed to post its ABRA license information on the front door or exterior window of the establishment. Under §25-711, “a person receiving a license to 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.

24. In the instant case, Investigator Brooks was not able to locate the required lettering on the front door or the front windows of the establishment. Supra, at ¶ 3. The Board also considers the testimony of Ms. Arslan who recalled once seeing the lettering on the door of the establishment, but during the evening of September 20, 2013, it appeared to her have been ripped down. Supra, at ¶ 11. Further, the Board concedes to Mr. Ross’ belief that the window lettering had been ripped down without he or Ms. Arslan noticing that this occurred. Supra, at ¶ 14.

25. Based upon the evidence presented, the Board finds that the Respondent violated § 25-711 when the required ABRA license information was not available on the front door or the front windows of the establishment. Accordingly, as a matter of law, the Board finds the Respondent guilty of Charge II.

**III. THE RESPONDENT VIOLATED §25-711 WHEN IT FAILED TO MAKE  
A COPY OF ITS SETTLEMENT AGREEMENT IMMEDIATELY  
ACCESSIBLE TO AN ABRA OFFICAL UPON REQUEST**

26. The Board finds that on September 20, 2013, the Respondent violated § 25-711 when it failed to make a copy of its settlement agreement available upon the request of an ABRA official. In addition to the §25-711 provision cited above, it also requires that “If a settlement agreement is a part of the license...the licensee shall make a copy of the settlement agreement immediately accessible to any...official of ABRA...upon request.” D.C. Official Code § 25-711.

27. The Board finds ample evidence in the record to sustain this charge. The Board credits Investigator Brooks’ testimony that after commencing his regulatory inspection of the establishment, he requested to see its settlement agreement. Supra, at ¶ 3. Because Ms. Arslan could not locate it and did not know where it was, the settlement agreement was not produced upon Investigator Brooks’ request. Supra, at ¶ 3.

28. The Board notes that while Mr. Ross knows that the settlement agreement is kept behind the safe, this was not communicated to the ABC manager on duty on the evening of the inspection. Supra, at ¶ 15. Nevertheless, as the establishment’s owner, it is Mr. Ross’ duty to superintend the premises and ensure that his establishment operates in compliance with ABRA regulations whether he is present.

29. Accordingly, the Board finds that the Respondent violated §25-711 when it failed to produce the establishment’s settlement agreement upon the request of an ABRA official. Therefore, as a matter of law, the Board finds the Respondent guilty of Charge III.

## ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 24th day of September, 2014, finds that the Justin's Cafe, LLC t/a Justin's Cafe violated D.C. Official Code § § 25-762 (b) (13) and 25-711.

The Respondent must pay a total fine of \$12,000 within sixty (60) days from the date of this Order. The breakdown of the Respondent's penalty is as follows:

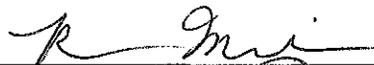
(1) The Respondent

- a. shall pay a \$4,000.00 fine for the violation described in Charge I.
- b. shall pay a \$4,000.00 fine for the violation described in Charge II.
- c. shall pay a \$4,000.00 fine for the violation described in Charge III.

**IT IS FURTHER ORDERED** that the Respondent must pay the fines imposed by the Board within sixty (60) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia  
Alcoholic Beverage Control Board



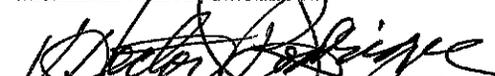
Ruthanne Miller, Chair



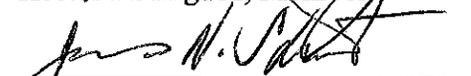
Donald Brooks, Member



Herman Jones, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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 23 DCMR § 1719.1 (April 2004) 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).