

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

In the Matter of:)
)
Khan's BBQ, Inc.)
t/a Khan's)
)
Holder of a)
Retailer's Class CR License)
)
at premises)
1125 H Street, N.E.)
Washington, D.C. 20002)
)

Case No. 15-CMP-00911
License No. ABRA-084082
Order No. 2016-329

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: James Lee, on behalf of Khan's BBQ, Inc., t/a Khan's, Respondent

Louise Phillips, 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 Khan's BBQ, Inc., t/a Khan's (Respondent), violated District of Columbia (D.C.) Official Code § 25-701 on November 30, 2015. As a result, the Respondent must pay a \$1,000.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on February 3, 2016. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1125 H Street, N.E., Washington, D.C., on February 11, 2016.

The Notice charged the Respondent with the following violation:

Charge I: [On Monday, November 30, 2015] [y]ou failed to have a Board approved manager present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises, in violation of D.C. Official Code § 25-701...

ABRA Show Cause File No., 15-CMP-00911, Notice of Status Hearing and Show Cause Hearing, 2 (February 3, 2016).

On December 3, 2015, Citation #5426 was issued to the Respondent in the amount of \$1,000.00 for violating D.C. Official Code § 25-701.

On December 6, 2015, the Respondent refused to pay the citation and instead, requested a hearing.

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on March 9, 2016, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on April 27, 2016.

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 February 3, 2016. *See* ABRA Show Cause File No. 15-CMP-00911. Khan's BBQ, Inc., t/a Khan's, holds a Retailer's Class CR License, ABRA License No. ABRA-084082. *See* ABRA Licensing File No. ABRA-084082. The establishment's premises is located at 1125 H Street, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-084082. The establishment's approved Monday hours of operation are 7:00 a.m. to 2:00 a.m., and the hours of sales of alcoholic beverages are 10:00 a.m. to 2:00 a.m. *See* ABRA Licensing File No. ABRA-084082.

2. The Show Cause Hearing was held on April 27, 2016. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 15-CMP-00911.

II. Testimony of ABRA Investigator John Suero

3. The Government presented its case through the testimony of one witness, ABRA Investigator John Suero. *Transcript (Tr.)* 4/27/16 at 6-8.

4. Investigator Suero authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr.* 4/27/16 at 17-18. Government's Exhibit 1.

5. On Monday, November 30, 2015 at approximately 11:35 a.m., Investigator Suero visited the Respondent's establishment to conduct a Regulatory Inspection. *Tr.* 4/27/16 at 9. Investigator Suero identified himself to a female employee and asked to speak to the owner or an ABC-licensed Manager. *Tr.* 4/27/16 at 9. Myong Suk Lee, Respondent's employee, informed Investigator Suero that she was not an ABC-licensed manager. *Tr.* 4/27/16 at 9, 13. She further indicated that the owner had left the establishment and that he would return soon. *Tr.* 4/27/16 at 9.

6. Investigator Suero estimated that James Lee, who identified himself as the owner, entered the establishment at approximately 11:45 a.m. *Tr.* 4/27/16 at 14. Investigator Suero advised Mr. Lee that an owner or an ABC licensed manager must be on the premises at all times. *Tr.* 4/27/16 at 14. Investigator Suero testified that Mr. Lee stated that he was absent from the premises because he needed to get supplies for his business. *Tr.* 4/27/16 at 22.

7. On December 3, 2015, Investigator Suero made a second visit to the Respondent's establishment to issue a citation for not having an ABC-licensed Manager on duty on November 30, 2015, the date of the incident. *Tr.* 4/27/16 at 15-16. *See* ABRA Show Cause File No. 15-CMP-00911.

III. Testimony of James Lee

8. James Lee is the owner of the licensed establishment. *Tr.* 4/27/16 at 23. He testified that his establishment opens every day at 12:00 p.m., because customers do not begin to come in until 12:30 p.m. *Tr.* 4/27/16 at 23-25.

9. Mr. Lee indicated that in order to turn the "open" sign on, his employees have to stand on a chair. *Tr.* 4/27/16 at 24. Thus, his employees turn the lights and the "open" sign on at the same time. *Tr.* 4/27/16 at 24. They turn the lights and the "open" sign on at 11:30 a.m. notwithstanding that the establishment does not open for business until 12:00 p.m. *Tr.* 4/27/16 at 24. Mr. Lee believes it is unfair to receive a fine for turning the "open" sign on before 12:00 p.m. *Tr.* 4/27/16 at 25.

10. Mr. Lee stated that during Investigator Suero's visit on November 30, 2015, at approximately 11:35 a.m., the employees were still cleaning the tables and getting ready for business. *Tr.* 4/27/16 at 24. He goes to the market every morning and usually returns to the establishment between 11:30 a.m. and 11:45 a.m. *Tr.* 4/27/16 at 24.

11. Mr. Lee admitted that the establishment's approved Monday hours of operation are 7:00 a.m. to 2:00 a.m., and the hours of alcoholic beverage sales are 10:00 a.m. to 2:00 a.m. *Tr.* 4/27/16 at 26. Mr. Lee stated that he initially served breakfast, but he did not have enough customers. *Tr.* 4/27/16 at 27. He stopped offering breakfast because he was losing money. *Tr.* 4/27/16 at 27. He now offers only lunch and dinner. *Tr.* 4/27/16 at 27.

12. Mr. Lee identified Myong Suk Lee as his sister, and admitted that at the time of Investigator Suero's first visit, she did not have an ABC Manager License and she was not part of the ownership. *Tr.* 4/27/16 at 27. Ms. Lee now has an ABC Manager License. *Tr.* 4/27/16 at 42. Mr. Lee also has an ABC-licensed Manager who is present during the evenings. *Tr.* 4/27/16 at 42.

13. Mr. Lee admitted that the door was open during Investigator Suero's visit on November 30, 2015. *Tr.* 4/27/16 at 33. The door was open because it allows the air to circulate while the employees are cleaning and mopping, and the circulating air helps to dry the floors faster. *Tr.* 4/27/16 at 33.

14. Mr. Lee testified that if customers come into the establishment before 12:00 p.m., he advises them that the establishment is not open for business. *Tr.* 4/27/16 at 34. His customers usually wait on the patio until the establishment is ready to operate. *Tr.* 4/27/16 at 34.

IV. Rebuttal Testimony of ABRA Investigator John Suero

15. On rebuttal, Investigator Suero stated that during his visit on November 30, 2015, he observed a male who appeared to be a patron, walk past him exiting the establishment. *Tr.* 4/27/16 at 49, 53. He was not under the impression that the departing male was an employee or worked at the establishment. *Tr.* 4/27/16 at 54. Investigator Suero also observed a male and a female who did appear to be employees. *Tr.* 4/27/16 at 49.

16. Investigator Suero did not observe any particular cleaning or notice any smell of any cleaning products. *Tr.* 4/27/16 at 49. He did not observe any floor sign warning patrons that the floor was wet. *Tr.* 4/27/16 at 50. He also did not observe any employee wiping down tables, appliances, or the bar tops during this visit. *Tr.* 4/27/16 at 51.

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). 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

18. The Board finds the Respondent liable for permitting the licensed establishment to operate on November 30, 2015, without either the licensee or an ABC-licensed Manager superintending during the hours of operation in violation of D.C. Official Code § 25-701.

19. 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.

20. 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. The testimony demonstrates that on November 30, 2015 at approximately 11:35 a.m., the Respondent's employee, Myong Suk Lee, informed Investigator Suero that there was no ABC-licensed Manager or owner on the premises. The Board finds that the establishment was open for business, and the Respondent testified as much. It was not until ten (10) minutes after Investigator Suero's arrival to the licensed establishment that the owner then arrived.

21. Additionally, the Respondent admitted at the Show Cause hearing that he was absent from the premises because he was at the market buying cleaning supplies. He further admitted that Ms. Lee, who was present, did not have an ABC Manager License or was part of the ownership during Investigator Suero's visit.

II. PENALTY

22. The Respondent's Investigative History shows that this is the Respondent's fourth secondary tier violation. *Licensing File No. ABRA-084082*, Investigative History. Thus, the Board may fine the Respondent between \$1,000.00 and \$2,000.00. *Licensing File No. ABRA-084082*, Investigative History; DCMR § 23-802.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 1st day of June, 2016, finds that the Respondent, Khan's BBQ, Inc., t/a Khan's, located at 1125 H Street, N.E., 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 \$1,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

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

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

I abstain from the Board's decision.

Nick Alberti, Member

Pursuant to D.C. Official Code § 25-433(d)(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, 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).