THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
KHP Corporation t/a Lee's Liquor		
Holder of a Retailer's Class A License	Case No. License No. Order No.	12-CMP-00698 ABRA-026650 2013-500
at premises 2339 Pennsylvania Avenue, S.E. Washington, D.C. 20020		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Kyu Park, on behalf of KHP Corporation, t/a Lee's Liquor, 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 KHP Corporation, t/a Lee's Liquor, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-711 and 25-741(a) and 25-446-(e) on October 18, 2012. As a result, the Respondent must pay a $2,000.00 fine.

On June 19, 2013, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated June 12, 2013, on the Respondent charging the Respondent with the following violations:

Charge I: The Respondent sold go-cups to patrons, in violation of D.C. Official Code § 25-741(a), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge II: The Respondent violated its Settlement Agreement, provisions 2H and 3, as approved by the Board on October 4, 2006, by selling paper or plastic individual cups, and providing dark color plastic bags with the sale of single containers of any type of alcoholic beverages, in violation of D.C. Official Code § 25-446(e) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On January 19, 2013, the Board requested a Staff Settlement on this matter. On February 14, 2013, the Respondent chose not to settle this case and requested a hearing instead.

The matter came before the Board for a Show Cause Status Hearing on August 7, 2013. At the time of the hearing, the Government submitted to the Board, a proposed Offer in Compromise (OIC) of a $750.00 fine. The Board rejected the OIC and scheduled a Show Cause Hearing for October 2, 2013.

The Board held a Show Cause Hearing on October 2, 2013.

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

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated June 12, 2013. *See* Alcoholic Beverage Regulation Administration Show Cause File No. 12-CMP-00698. The Respondent holds a Retailer's Class A License and is located at 2339 Pennsylvania Ave., SE, Washington, D.C. *See* ABRA Licensing File No. ABRA-026650.

2. The Show Cause Hearing in this matter was held October 2, 2013. The Respondent was charged with two violations: 1) providing go-cups to patrons in violation of D.C. Official Code § 25-741(a); and 2) failure to comply with the Settlement Agreement in violation of D.C. Official Code § 25-446(e).

3. The Government presented its case through the testimony of ABRA Investigator Kofi Apraku. *Transcript, 10/2/13* at 7. On October 18, 2012, while conducting an undercover single sales alcohol enforcement in Ward 7, Investigator Apraku entered the Respondent's establishment. *Tr. 10/2/13* at 8. Investigator Apraku approached the cashier and requested a 100 ml bottle of James Beam bourbon. *Tr. 10/2/13* at 13. After he made the purchase of bourbon, Investigator Apraku requested a cup. *Tr. 10/2/13* at 13. The cashier placed the bourbon and the cup in a black plastic bag and Investigator Apraku

exited the establishment. *Tr. 10/2/13* at 13. Investigator Apraku paid for the bourbon, but was not required to pay for the cup. *Tr.* at 14, 24.

4. Investigator Apraku filled out an Evidence Transmittal Form and turned the alcoholic beverage, go-cup and black plastic bag over to Johnnie Jackson, Chief of Enforcement, who locked it in ABRA's evidence locker. *Tr. 10/2/13* at 14. Additionally, Investigator Apraku took photographic pictures of the evidence. *Tr. 10/2/13* at 15; *see* Government's Exhibit No. 1.

5. Investigator Apraku reviewed the terms of the Respondent's Settlement Agreement and determined that the Respondent did not comply with Section 3 which requires that the Licensee provide its alcoholic beverages in clear, transparent, see-through, or white plastic bags. *Tr. 10/2/13* at 18. Additionally in the same section, the Settlement Agreement provides that the Licensee will not provide brown paper bags or dark color plastic bags with the sale of a single container of any type of alcoholic beverage. *Tr. 10/2/13* at 18.

6. The next witness was Kyu Park , who identified himself as the owner of the establishment, and who has been operating the business for 13 years. *Tr. 10/2/13* at 31, 34. Mr. Park testified that he was not denying that he committed the violations. *Tr. 10/2/13* at 32. He stated that he and his wife run the business, and that operating the store can be very intensive. *Tr. 10/2/13* at 32. He admitted that he did not carefully read the Settlement Agreement and that it was a lack of due diligence on his part that he is not familiar with its terms. *Tr. 10/2/13* at 32. Mr. Park stated that he did not know that providing a go-cup with the alcohol purchase was a violation of the law. He asked the Board for a leniency when imposing the fine.

CONCLUSIONS OF LAW

7. 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)(2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Official Code § 25-830 and 23 D.C.M.R. 800, *et seq*.

8. 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).

Charge I: Provided Go-Cups to Patrons

9. The Board finds, as to Charge I, that there is sufficient credible evidence to establish that the Respondent provided go-cups in violation of D.C. Official Code § 25-741(a). Investigator Apraku testified that upon the purchase of his alcoholic beverage, he requested and received a cup from the Respondent's cashier on the day of the incident. At the hearing, the Respondent did not dispute the violation in its testimony before the Board.

Accordingly, there is no issue with regard to the violation having occurred at the establishment.

Charge II: Failure to Comply with the Terms of the Settlement Agreement

10. With regard to Charge II, the Board finds that the Respondent failed to comply with Sections 3 of its Settlement Agreement by providing dark color plastic bags with the sale of singles containers of any type of alcoholic beverages. The Board relies on the credible testimony of Investigator Apraku to substantiate this charge. Investigator Apraku received his purchase of bourbon in a black plastic bag from the cashier who provided the cup. At the hearing, the Respondent did not dispute the violation in its testimony before the Board. Accordingly, there is no issue with regard to the violation having occurred at the establishment.

Penalty

11. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-741(a), as set forth in Charge I, and D.C. Official Code § 25-446(e), as set forth in Charge II, of the Notice to Show Cause, dated June 12, 2013, warrants the imposition of a fine. The Board takes administrative notice that Charge I and Charge II are the Respondent's fourth secondary tier violations within four years. As such, the Board will impose the fine as set forth below, pursuant to 23 DCMR § 802.1(D).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 13th day of November, 2013, finds that the Respondent, KHP Corporation, t/a Lee's Liquors, holder of a Retailer's Class A License, violated D.C. Official Code § 25-741(a) and § 25-446(e). Accordingly, the Board imposes the following penalty on the licensee:

(1) For the violation described in Charge I, the Respondent shall pay a fine of $1,000.00.

(2) For the violation described in Charge II, the Respondent shall pay a fine of $1,000.00.

(3) In total, the Respondent shall pay a fine in the amount of $2,000.00 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

Ruthanne Miller, Chairman

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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 under 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).