

Official Code § 25-701 (2012), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge II: On March 26, 2012, the Respondent failed to have a Board-approved Manager superintend the licensed establishment in the absence of the licensee, in violation of 23 DCMR § 707 and D.C. Official Code § 25-701 (2012), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On March 26, 2012, Citation #7948 was issued to the Respondent in the amount of \$250.00 for the violation incurred on March 24, 2012, D.C. Official Code § 25-701.

On March 26, 2012, the Respondent refused to pay the citation and instead, requested a hearing. The Board held a Show Cause Status Hearing on October 16, 2013. There was no settlement of the matter and it proceeded to a Show Cause Hearing on December 11, 2013.

The Respondent failed to appear at the Show Cause Hearing held on December 11, 2013. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing to the Respondent, dated August 23, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00144. The Respondent holds a Retailer's Class A license and is located at 3614 Georgia Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-088221. The establishment's authorized hours of operation are 9:00 a.m. to 12:00 a.m. *See* ABRA Licensing File No. ABRA-088221. Yun Yi is the President of Lion Gate, Inc., t/a Lion's Fine Wine & Spirits. *See* ABRA Licensing File No. ABRA-088221.
2. The Show Cause Hearing was held on December 11, 2013. *See* ABRA Show Cause File No. 12-CMP-00144. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 12-CMP-00144.
3. The Government presented its case through the testimony of one witness, former ABRA Investigator Tyrone Lawson. *Transcript (Tr.)*, 12/11/13 at 4-5.
4. On March 24, 2012, at approximately 9:00 p.m., Investigator Lawson visited the establishment to deliver a license renewal reminder letter to Mr. Yun Yi, owner of Lion's Fine Wine and Spirits. *Tr.*, 12/11/13 at 6. Investigator Lawson identified himself and asked to speak to Mr. Yi or an ABC-licensed Manager. *Tr.*, 12/11/13 at 6. Ryan Cho, the Respondent's employee, informed Investigator Lawson that neither an ABC-licensed Manager nor the owner was present on the premises. *Tr.* 12/11/13 at 6-7.

5. Investigator Lawson advised Mr. Cho of the legal requirement to have an ABC-licensed Manager or owner present. *Tr.* 12/11/13 at 8. Investigator Lawson also advised Mr. Cho regarding the process on how to obtain an ABC Manager's license. *Tr.* 12/11/13 at 8.

6. On March 26, 2012, at approximately 12:45 p.m., Investigator Lawson made a second visit to the Respondent's establishment to issue a citation to the Respondent for not having an ABC-licensed Manager on duty on March 24, 2012. *Tr.*, 12/11/13 at 8. *See* ABRA Show Cause File No. 12-CMP-00144. During this second visit to the Respondent's establishment, Pedro Medoza, Respondent's employee, informed Investigator Lawson that neither an ABC-licensed Manager nor Mr. Yi was on the premises. *Tr.* 12/11/13 at 9.

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) (2009). 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 DCMR. § 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).

9. The Board finds the Respondent liable for permitting the licensed establishment to operate on two separate occasions without either the licensee or an ABC-licensed Manager superintending during the hours of operations.

10. 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.

11. The unrefuted testimony of Mr. Lawson indicates that on March 24, 2012 at 9:00 p.m., and again on March 26, 2012, at 12:45 p.m., Mr. Lawson conversed with the Respondent's employees who stated that neither Mr. Yi, the licensee, nor an ABC-licensed Manager was present. The Respondent was operating during both of Mr. Lawson's visits.

12. Therefore, based upon the above, the Board finds that the Respondent's violations of D.C. Official Code § 25-701 and 23 DCMR § 707, as set forth in Charge I and Charge II, of the Notice to Show Cause, dated August 23, 2013, warrants the imposition of a fine. The Board takes administrative notice that Charge I and Charge II are first secondary tier violations for the Respondent. However, because the violation for Charge II was incurred

two days after the violation listed in Charge I, for the very same offense, the Board imposes a higher fine for Charge II.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 29th day of January, 2014, finds that the Respondent, Lion Gate, Inc., t/a Lion's Fine Wine & Spirits, located at 3614 Georgia Avenue, N.W., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code § 25-701 and 23 DCMR § 707.

The Board hereby **ORDERS** that:

- 1) Charge I: Respondent must pay a fine in the amount of \$250.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$500.00.
- 3) In total, the Respondent must pay a fine in the amount of \$750.00 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.

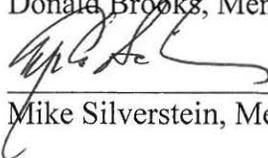
Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Mike Silverstein, 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 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).