

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

In the Matter of:)	
)	
Mama Chuy DC, Inc.)	
t/a Mama Chuy DC)	
)	
Holder of a)	Case No. 15-CMP-00417
Retailer's Class CR License)	License No. ABRA-086892
)	Order No. 2016-143
at premises)	
2620 Georgia Avenue, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: Walter Adams, 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 Mama Chuy DC, Inc., t/a Mama Chuy DC (Respondent), violated District of Columbia (D.C.) Official Code § 25-701 on June 26, 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 December 2, 2015. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2620 Georgia Avenue, N.W., Washington, D.C., on December 9, 2015.

The Notice charged the Respondent with the following violation:

Charge I: [On Friday, June 26, 2015] [y]ou failed to have an owner or Board approved manager on site during the sale, service or consumption of an alcoholic beverage, in violation of D.C. Official Code § 25-701...

ABRA Show Cause File No., 15-CMP-00417, Notice of Status Hearing and Show Cause Hearing, 2 (December 2, 2015).

On July 9, 2015, Citation #4417 was issued to the Respondent for violating D.C. Official Code § 25-701.

On August 5, 2015, the Respondent refused to pay the citation and instead, requested a hearing.

On January 20, 2016, the Board held a Show Cause Status Hearing. There was no settlement of the matter and it proceeded to a Show Cause Hearing on March 2, 2016.

The Respondent failed to appear at the Show Cause Hearing held on March 2, 2016. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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 December 2, 2015. See ABRA Show Cause File No. 15-CMP-00417.

2. Mama Chuy DC, Inc., t/a Mama Chuy DC, holds a Retailer's Class CR License, ABRA License No. ABRA-086892. See ABRA Licensing File No. ABRA-086892. The establishment's premises is located at 2620 Georgia Avenue, N.W., Washington, D.C. See ABRA Licensing File No. ABRA-086892. The establishment's authorized hours of operation are Sunday through Thursday 9:00 a.m. to 2:00 a.m., and Friday and Saturday 9:00 a.m. to 3:00 a.m.; and the hours of sales of alcoholic beverages are Sunday through Thursday 10:00 a.m. to 2:00 a.m., and Friday and Saturday 10:00 a.m. to 3:00 a.m. See ABRA Licensing File No. ABRA-086892.

3. The Show Cause Hearing was held on March 2, 2016. The Notice charges the Respondent with a single violation enumerated above. See ABRA Show Cause File No. 15-CMP-00417.

II. Testimony of ABRA Investigator John Suero

4. The Government presented its case through the testimony of one witness, ABRA Investigator John Suero. *Transcript (Tr.) 3/2/16 at 5-6.*
5. Investigator Suero authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr. 3/2/16 at 8.* Government's Exhibit 1.
6. On June 26, 2015 at approximately 10:23 p.m., Investigator Suero visited the Respondent's establishment to conduct a Regulatory Inspection. *Tr. 3/2/16 at 9-10.* Investigator Suero identified himself to two female employees and asked to speak to the owner or an ABC-licensed Manager. *Tr. 3/2/16 at 9.* The employees informed Investigator Suero that the owner left the licensed premises and neither of them had an ABC license. *Tr. 3/2/16 at 9.*
7. Investigator Suero advised one of the employees that the establishment was in violation for operating without having an ABC-licensed manager or an owner present. *Tr. 3/2/16 at 10.*
8. On July 9, 2015, Investigator Suero 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 June 26, 2015. *Tr. 3/2/16 at 10.* See ABRA Show Cause File No. 15-CMP-00417.
9. The Board finds that the Respondent was given adequate notice of the charges brought against it, and adequate notice of the Show Cause Hearing before the Board. The Respondent did not appear at the hearing and did not file any testimony or exhibits refuting the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General or ABRA to request a continuance of the hearing. As such, the finding of facts are undisputed.

CONCLUSIONS OF LAW

10. 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

11. The Board finds the Respondent liable for permitting the licensed establishment to operate on June 26, 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.

12. 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.

13. 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. It is unrefuted that on June 26, 2015 at approximately 10:23 p.m., two of the Respondent's employees admitted to Investigator Suero that there was no ABC-licensed manager or owner on the premises. The Respondent was open and operating during Investigator Suero's visit.

II. PENALTY

14. The Respondent's Investigative History shows that this is the Respondent's third secondary tier violation within three years. *Licensing File No. ABRA-086892* Investigative History. Thus, the Board may fine the Respondent between \$750.00 and \$1,000.00. *Licensing File No. ABRA-086892*, Investigative History; DCMR § 23-802.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 6th day of April, 2016, finds that the Respondent, Mama Chuy DC, Inc., t/a Mama Chuy DC, located at 2620 Georgia Avenue, N.W., 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) from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

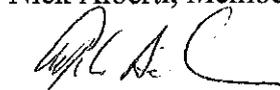
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



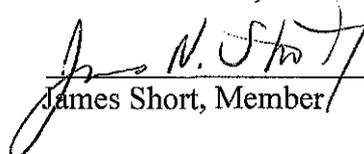
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, 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).