THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
McCormick & Schmick Restaurant Corp. t/a McCormick & Schmick Seafood	Case No.:	14-CC-00094
	License No:	26432
	Order No:	2015-295
Holder of a Retailer's Class CR License		
at premises 1642 K Street, N.W. Washington, D.C. 20002		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: McCormick & Schmick Restaurant Corp., t/a McCormick & Schmick Seafood, Respondent

Stephen O'Brien, Counsel, of the law firm Mallios and O'Brien, on behalf of the Respondent

Fernando Rivero, 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

INTRODUCTION

In this case, there is no disagreement that McCormick & Schmick Restaurant Corp., t/a McCormick & Schmick Seafood, (hereinafter "Respondent" or "McCormick") violated District of Columbia (D.C.) § 25-781 by selling alcohol to two minors on June 16, 2015. Instead, the parties disagree over the appropriate penalty for the violation of § 25-781, because they disagree over the number of violations that the licensee has committed within the relevant time period. *Transcript* (*Tr.*) Apr. 8, 2015 at 3, 7-9, 11-13, 21, 26-27; D.C. Official Code § 25-781(f). Thus, the Board must determine the appropriate method of counting prior violations under § 25-781, as well as Title 25 of the D.C. Official Code (Title 25).

To date, the Alcoholic Beverage Control Board (Board) counts violations by relying on a "combination approach"; whereby, the Board first identifies the date the licensee commits the offense (e.g, "date of the offense" or "date of occurrence"), and then determines a licensee's prior violation history by counting any violation whose adjudication date (i.e., "date of conviction" or "date of adjudication") falls within the requisite time period required by the statute. After reflecting on the arguments of the parties in this matter, the Board affirms the use of the combination approach, because (1) the Board's interpretation is reasonable in light of the ambiguity created by the language in Title 25's civil penalty schedule statutes, (2) the combination approach has been consistently applied since 2009, and (3) the Board's interpretation is consistent with the statutory purpose.

In light of this determination, the Board treats the current violation as a second offense; therefore, McCormick shall pay a $5,000 fine. The license shall also receive a ten day suspension as required by law. The licensee shall only serve four suspension days and six of the suspension days shall be stayed so long McCormick provides alcohol awareness training from a certified provider to all of its current employees.

It should be noted that while the issue in the case limited to an interpretation of §25-781, the Board's reasoning equally applies to all penalties applied in accordance with § 25-830, which are structured similarly and use similar language such like "found" and "violation." Therefore, this Order may be read as an interpretation of both D.C. Official Code §§ 25-781 and 25-830

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on February 4, 2015. *ABRA Show Cause File No., 14-CC-00094*, Notice of Status Hearing and Show Cause Hearing, 2 (Feb. 4, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises Street Address, Washington, D.C., on February 13, 2015, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 14-CC-00094*, Service Form. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice stated the following:

Charge I: You permitted the sale of an alcoholic beverage to a person under the age of [21] . . . in violation of D.C. Official Code § 25-781(a) . . .

On Monday, June 16, 2014, the licensed establishment was the subject of a compliance check. An [ABRA] . . . Investigator entered the establishment in an undercover capacity at approximately 7:50 p.m. The two minors who were working with the Investigator also entered the establishment and ordered 2 bottles of Corona beer from the bar. The bartender, Damon Thompson, who requested and viewed their identification, served the beers to the minors. The minors' identification clearly stated they were under the age of 21. The Investigator observed the minors at all times. The minors then paid for the beers and exited the establishment.

Notice of Status Hearing and Show Cause Hearing, 2 (unbolded)

Both the Government and Respondent appeared at the Show Cause Status Hearing on March 18, 2015. The parties proceeded to a Show Cause Hearing and argued their respective cases on April 8, 2015.

The parties stipulated to the violation of D.C. Official Code § 25-781(a) at the beginning of the Show Cause Hearing; therefore, there is no dispute that the Respondent sold alcohol to two minors on June 16, 2014. *Tr.*, 4/8/15 at 3-5; *Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (West Supp. 2015). Consequently, the only issue that remains is determining the appropriate penalty to levy on the Respondent.

FINDINGS OF FACT

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

I. Background

1. McCormick & Schmick Seafood holds a Retailer's Class CR License at 1642 K Street, N.W., Washington, D.C. *ABRA License No.* 26432, ABRA Application.

2. The Board takes administrative notice of the pertinent portions of McCormick's investigative history, which shows the following:

> 6/16/14: Case #14-CC-00094, Sale to minor. 8/13/14: The Board referred to staff for settlement. 2/12/15: The Board scheduled a Status Hearing for 3/18/15 and a Show Cause Hearing for 4/8/15. 4/8/15: The Board held a closed meeting under §405(b)(13) of the Open Meetings Act and will issue an Order within 90 days.

5/18/12: Case #12-CC-00072, Sale to minor. *(Primary)* 7/25/12: The Board referred to staff for settlement. 8/10/12: $3,000 fine paid and a 5 day suspension all days stayed for 1 year.

5/19/11: Case #12-CC-00011, Sale to minor. 3/7/12: The Board requested a warning letter to be sent.

ABRA Investigative History, McCormick & Schmick Seafood Restaurant, ABRA License No. 26432 (Apr. 15, 2015). The first paragraph of the investigative history indicates that the current offense occurred on June 16, 2014. *Id.* The second paragraph indicates that the prior sale to minor offense occurred on May 18, 2012, and that the Respondent paid the fine on August 10, 2012. *Id.* The third paragraph indicates that the Board sent a sale to minor warning letter to McCormick on March 7, 2012. *Id.*

LEGAL BACKGROUND

3. The counting of violations is described in multiple portions of Title 25. The Board concludes that these provisions provide for a uniform and consistent means of determining the number of prior violations committed by a licensee unless otherwise expressly provided in the language of the statute.[1] The Board notes that a uniform counting system reduces the complexity of the law, and makes determining the number of violations clear and simple for both the agency and the public. Under Title 25, the counting of prior violations most often occurs when determining an appropriate penalty for a violation of the alcohol laws.

4. Title 25 of the District of Columbia (D.C.) (Title 25) creates a graduated penalty system that increases the severity of the penalty based on the number of past violations committed by the licensee. D.C. Official Code § 25-830(c), (d).

5. Relevant to this case, the special sale to minor law penalty schedule related to D.C. Official Code §§ 25-781 (Sale to minors or intoxicated persons prohibited) and 25-783 (Restrictions on minor's entrance into licensed premises) provides for increasing penalties based "[u]pon finding that a licensee has violated . . . this section in the preceding 2 years." D.C. Official Code §§ 25-781(f), 25-781(c).[2] The statutes then provide for increasing penalties based

[1] In some portions of Title 25, the determination on how to count prior violations has been provided in the express language of the statute. *See e.g.*, D.C. Official Code § 25-785(c)(2) (In a statute that applies to individuals, not licensees, the statute indicates that a "second offense *committed* within 2 years of any such previous offense") (emphasis added), D.C. Official Code § 25-301(a)(3)-(4) (mandating the Board to examine convictions to determine qualifications for licensure). Further, the ten year look back period for the character and fitness review appears to allow the Board to look at both incidents that were committed within the ten year period and offenses that occurred earlier, but have their conviction dates falling within the look back period. D.C. Official Code § 25-301(a-1) (". . . the Board shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws . . . .")

[2] The two year requirement was in effect at the time this violation was committed. The Board notes that current law now provides for a four year look-back period for these type of offenses. *Omnibus Alcoholic Beverage Regulation Amendment Act of 2014*, 2014 District of Columbia Laws 20-270, § 2(a)(8) (Act 20-609, effective May 2, 2015).

on the number of prior violations committed during the look-back period. *Id.* Specifically, the statutes use the following phraseology: "*Upon the X (ordinal number)*[3] *violation . . . .*" *Id.*

6. In most other cases, the Board relies on the general schedule of civil penalties that applies to all other offenses. The pertinent statutory authority is found in §§ 25-823(c) and 25-823(d). The graduated penalty system for primary tier violations is created by the following statutory language,

> (c)(1) For primary tier violations, the penalties shall be no less than the following:
> (A) For the *first violation*, no less than $1,000;
> (B) For the *second violation within 2 years*, no less than $2,000; and
> (C) For the *third violation within 3 years*, no less than $4,000;

D.C. Official Code § 25-823(c)(1) (emphasis added); *see also* 23 DCMR §§ 801, 803 (West Supp. 2015). Under § 25-823(c)(3), the license must be subject to a $30,000 fine or revoked when "*found* in violation of a primary tier offense for the 4th time within 4 years." D.C. Official Code § 25-823(c)(3) (emphasis added). Under § 25-823(c)(4), the license must be revoked when "*found* in violation of a primary tier offense for the 5th time within 4 years . . . ." D.C. Official Code § 25-823(c)(4) (emphasis added).

7. The graduated penalty system for secondary tier violations is created by the following statutory language,

> (d)(1) For secondary tier violations, the penalties shall be no less than the following:
> (A) For the first violation, no less than $250.
> (B) For the *second violation within 2 years*, no less than $500.
> (C) For the *third violation within 3 years*, no less than $750.
> (2) A licensee *found in violation of a secondary tier violation for the fourth time within 4 years* shall be penalized according to a first primary tier violation. *Every subsequent secondary tier offense within 5 years of the first violation* shall be fined according to the schedule for primary tier violations.

D.C. Official Code § 25-823(d)(1)-(2) (emphasis added); *see also* 23 DCMR §§ 802, 804 (West Supp. 2015).[4]

8. None of the statutes highlighted above expressly describe the day the look-back period begins or how to count prior violations. The Board's current practice and precedent involves a "combination approach"; whereby, the Board ". . . determine[s] the appropriate penalty by

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[3] An ordinal numbers refers to numbers that express degree, quality, or position (e.g., first, second, third, etc.).

[4] Unlike other penalty statutes that appear in Title 25, § 25-785 (Delivery, offer, or otherwise making available to persons under 21; penalties) the language of the statute makes it apparent that it relies on an incident date only approach. D.C. Official Code § 25-785(c)(2) ("A person who violates any provision of this section shall: . . . [u]pon conviction for the second offense *committed within 2 years from the date of any such previous offense*, be fined not more than $2,500, or imprisoned up to 180 days, or both.") (emphasis added).

counting the number of [violations] committed by the Respondent by looking to the date of the incident in the current matter, and then determining the number of violations the licensee has committed within the requisite time period. *In re LCRL, Inc., t/a The Islander Caribbean Restaurant & Lounge*, Case No. 12-CMP-00407, Board Order No. 2013-184, ¶ 8 (D.C.A.B.C.B. May 15, 2013) *citing In re Vertigo, Inc., t/a Sultra Lounge/Viet-Thai,* Case Number 12-CMP-00105, Board Order No. 2013-114, ¶ 21 (D.C.A.B.C.B. May 8, 2013) *and In re Asefu Alemayehu, t/a Yegna*, Case No. 11-CMP-00321, Board Order No. 2013-049, 4 (D.C.A.B.C.B. Feb. 27, 2013) (quotation marks removed). Once the time period is established, the Board determines the number of violations by looking to any dates of conviction that fall within the relevant time period. *Id.* The Board also stated in prior decisions that it considers the date a licensee pays the fine as the date of conviction for the purposes of counting cases resolved through citations or staff settlements. *Id.*

ARGUMENTS OF THE PARTIES

9. The parties in this case focused on the issue of how § 25-781 requires the Board to count prior violations of the statute.

10. Based on the use of the term "violated" and "violation," the Respondent argues that the plain language of § 25-781(f) requires the Board to deem the date of violation to be the "date of occurrence." *Tr.*, 4/8/15 at 26. McCormick further argues that it is unreasonable for the Board to split the meaning of the term "violated" and "violation" in § 25-781. *Id.* at 27. Adopting the approach taken by McCormick, the Board should deem the present violation a first offense, because, if the date of occurrence is used as the start date of the counting period and only the date of occurrence is used to count offenses, then the prior offense occurred outside the two year range set by § 25-781(f). *Id.*

11. In response, the Government defends the Board's current practice of counting prior violations, and argues that the violation should be treated as the Respondent's second primary tier violation within a two year period. *Tr.*, 4/8/15 at 7. The Government contends that the Board should deem the May 18 violation to have occurred on the date of adjudication, not the date of the incident itself, which in this case would be August 20, 2014, based on the date of the signed consent form. *Id.* at 8, 21. The Government argues that the Board should consider the phrase "[i]n the preceding two years" as supportive of its current practice. *Id.* at 11-12. The Government further argues that the Board can expect the District of Columbia Court of Appeals to defer to its interpretation. *Id.* at 13. As a matter of policy, the Government suggests that this method of counting violations is appropriate, because until the matter is adjudicated, it is merely an alleged violation. *Id.* Furthermore, relying on the date of adjudication ensures that a licensee has notice of the violation. *Id.* at 9.

CONCLUSIONS OF LAW

12. The Board agrees with the Government and deems the penalty a second offense.

I. SECTION § 25-781(f) IS AMBIGUOUS AND THE BOARD'S INTERPRETATION SHOULD BE AFFIRMED BECAUSE IT IS REAONABLE.

13. An agency's interpretation of a statute is governed by the two-part *Chevron* test. *Pannell-Pringle v. D.C. Dep't of Employment Servs.*, 806 A.2d 209, 211 (D.C. 2002) *citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). The threshold question under *Chevron* is whether the statute is clear. *Id. citing Columbia Realty Venture v. District of Columbia Rental Housing Comm'n,* 590 A.2d 1043, 1046 (D.C.1991). If so, then the plain language of the statute governs its interpretation. *Id.* If not, the agency must simply provide a "reasonable" interpretation of the ambiguous statute to have its interpretation upheld. *Id. citing Chevron*, 467 U.S. at 842-43.

a. The use of the terms "finding" and "violated" in the same provision creates ambiguity that requires interpretation.

14. It has been said that in interpreting a statute, the words used by the statute should be given their ordinary and common meaning. *District of Columbia v. Cato Institute*, 829 A.2d 237, 240 (D.C. 2003). Nevertheless, the Board may look beyond the ". . . ordinary meaning of the words of a statute [when] . . . there are persuasive reasons for doing so." *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196, 211 (D.C. 1984) (quotation marks removed)

15. In § 25-781(f), the pertinent language states, "[u]pon *finding* that a licensee has *violated* . . . this section . . . ." § 25-781(f). The statute then describes the penalty based on whether current violation is a first, second, third, or fourth violation within the prescribed time period. § 25-781(f)(1)-(4). According to Black's Law Dictionary, to "find" means "[t]o determine a fact in dispute by verdict or decision." *Black's Law Dictionary* (10th ed. 2014) (Find). Black's Law Dictionary defines the term "violation" as "[a]n infraction or breach of the law; a transgression" or "[t]he act of breaking or dishonoring the law; the contravention of a right or duty." *Id.* (Violation).[5]

16. In this case, there is a tension between the use of the word "finding" and "violated" in § 25-781. In this case, the term "finding" refers to a verdict or decision, which can be inferred to refer to the date of conviction. On the other hand, the term "violated" refers to the act of breaching the law, which can be inferred to refer to the date of occurrence. Contrary to McCormick's argument, the plain language of § 25-781 does not provide a clear or unambiguous result, because a reasonable person could rely on the conviction date based on the word "finding" or the date of occurrence based on the word "violated."

b. The combination approach is a reasonable interpretation of § 25-781.

17. In light of this ambiguity, the Board is left with a universe of four possible means of interpreting § 25-781(f). One could start the look back period on either the date of conviction or the date the violation occurred. Furthermore, one could consider violations occurring within the

[5] *See also Webster's II New College Dictionary* (1995) (violation) ("An act of violating. . . .").

look back period by looking to the conviction date related to prior violations or their dates of occurrence.

18. This leaves for possible approaches of counting violations, defined first by the start of the look back period and second by how violations are counted:

(1) a conviction date to conviction date approach;

(2) a conviction date to incident date approach;

(3) an incident date to incident date approach ("incident date only"); and

(4) an incident date to conviction date approach ("combination approach").

1. The Board rejects any approach that begins the look back period based on the date of conviction is not in the public interest and contrary to the legislative purpose.

19. At the outset, the Board rejects any approach that begins the look back period on the date of conviction. Other courts have found such an approach vulnerable to "manipulation by the defendant," because, "a defense attorney could thwart the intent of the statute by securing a continuance, or a series of continuances, to take an impending conviction outside the [time] period provided in the statute." *Hardison v. Boyd*, 329 S.E.2d 198, 200 (G.A. App. 1985).[6] Therefore, any system of counting that begins the look back period on the date of conviction is in appropriate, because it undermines Title 25's graduated penalty system.

2. The Board rejects the incident date to incident date approach because it is unfair.

20. In affirming the current approach, the Board considered the pros and cons of adopting an incident only approach.

21. The Board rejects an incident only approach, because it risks unfairness to the licensee. An essential element of a system of progressive discipline is that it provides an incentive for a licensee to comport itself according to ABRA law going forward from the point at which it has been made fully aware an infraction was committed. When an alleged fraction occurs the licensee is noticed at several points. The initial notice occurs when an investigator alerts the establishment that it is in violation of ABRA law either through a verbal notification or issuance of a citation. Subsequent to being alerted by an investigator a licensee may be notified in two ways; the offer of a staff settlement, or through notice of show cause. A last and final notice of

[6] The court in *Hardison* found in a favor of an incident date only approach, but the statutes in those cases used different language (i.e., "offense") than the statute at issue here (i.e., "finding" and "violated"). *Hardison v. Boyd*, 329 S.E.2d 198, 200 (G.A. App. 1985) (The statute at issue stated, of an *offense occurring* on or after January 1, 1976").

an infraction comes when an alleged infraction is adjudicated—the point at which a penalty is assigned if the licensee is found guilty of the infraction. This may occur when a citation is paid, or a staff settlement is accepted, or an OIC is accepted or an order is issued at the conclusion of a show cause hearing.

22. Only at the time of this last and final notice—the day of conviction—can the Board reasonably conclude that a licensee is fully aware that is it guilty of committing an infraction. It is only from this point forward that the Board can reasonably expect the licensee alter its behavior to comport with ABRA law. Before an incident is adjudicated, the licensee may believe itself innocent of an infraction or may not understand the impact of its actions. The licensee may fail to understand the need to modify its behavior in order to comport with ABRA law.

23. In turn, under the incident date only approach a licensee may be subject to a higher fine for violations committed before they are they are aware of the consequences of failing to comport with the law. Under this approach a licensee is subject to an increased fine for a second violation when it has not received a formal notice that it is charged with a previous offense. Even when a formal notice is given prior to a second offense, the licensee may believe it is innocent of having committed the first offense and thus does not perceive a need to alter its behavior to comport with the law.

24. Further, when a licensee has multiple pending offenses of the same type, the Board cannot control the order in which those cases are adjudicated. It may happen, as is often the case, that a given violation is adjudicated before other pending offenses with earlier incident dates. When the offense with the latter incident date is adjudicated first, the number of violations that govern the penalty is smaller than would be the case if it was adjudicated in the order in which it occurred. The result is a reduced fine. This outcome can result through the actions of the Office of the Attorney General's office or through the deliberate actions of the licensee.

25. An incident date only approach also gives licensees the opportunity to purposely manipulate the outcome of the counting so that it result is fewer prior violations and a lesser fine. To understand how a licensee can affect the proposed counting method to achieve a lesser fine, consider the following example. Licensee A has two pending primary violation, no prior violations and is found guilty of both violations. The Show Cause Status Hearing for the second violation (the violation with the later incident date) is held before the first violation (the violation with the earlier incident date) is adjudicated. This may occur either by chance or through the actions of the licensee to delay adjudication of the first violation. Licensee A chooses to accept an Offer in Comprise for the second offences. As a result, both the first and the second offense are fined as a 1st primary violation – the fine range for each is $1,000 to $2,000. Alternatively, if no opportunity arises to adjudicate the second offenses prior to the first offense, the second offense will be fined as a second primary offense under the proposed counting method – the fine range for the first offense is $1,000 to $2,000 while the fine range for a second primary offense is $2,000 to $4,000. Therefore, those licensees who successfully cause pending offences to be adjudicated out of order, (either by chance or purposely) will receive lesser fines than those who are unable to achieve such an outcome, which is unfair.

3. The Board affirms its use of the combination approach because it is the fairest system.

26. Having rejected the three out of four possible counting system, the Board is left with the combination approach. The Board finds a system that starts the look back period on the date of the offense, but counts violations based on the date of conviction the fairest system. Under the combination approach, a prior violation does not count against a licensee until it has notice of a violation through a conviction. Instead, it subjects a licensee to a higher penalty only when the licensee is fully aware of prior violations, violations for which it had notice of guilt, as of the date of the conviction. As a result, the combination approach avoids the "notice" issues inherent in a counting system relying on incident dates only. Therefore, the Board is entitled to rely on the combination approach as a reasonable interpretation of § 25-781.

c. The combination approach has been consistently applied since 2009.

27. The graduated penalty system impacts all non-first time violations; therefore, any change made to the system will impact a major portion of ABRA's enforcement cases. The current system has been in effect since 2009. Consequently, dispensing with such an impactful interpretation would be premature and unwise without public input provided by the rulemaking process. *Superior Beverages, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 567 A.2d 1319, 1326 (D.C. 1989) ("Since the [Board], unlike the court, [has] the ability to make new law prospectively through the exercise of its rule-making powers, it has less reason to rely upon *ad hoc* adjudication to formulate new standards of conduct within the framework of the [D.C. Alcoholic Beverage Control] Act.")

d. The combination approach is consistent with the statutory purpose.

28. Finally, when engaging in statutory interpretation, it has been said that it an agency's interpretation should not be inconsistent with the statutory purpose. *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 383 (D.C. 2012). In drafting § 25-781, it is clear that the legislature intended the Board to administer a system of progressive discipline where the severity of the penalty increases based on the number of prior violations. *See* § 25-830(c), (d). The combination approach does not contradict this legislative goal; instead, it merely provides the procedures for determining when a licensee moves to the next level of discipline. Therefore, the Board's interpretation is consistent with the legislature's intent of creating a graduated penalty system. Therefore, the Board affirms its use of the combination approach.

II. THE VIOLATION IS DEEMED A SECOND OFFENSE.

29. In light of the Board's affirmance of the combination approach, the Board deems the current offense a second offense under § 25-781. The incident in the current case occurred on June 6, 2014. *Supra*, at ¶ 2. The conviction date of the Respondent's prior offense was August 8, 2012. *Id.* Thus, the current offense is the Respondent's second offense within a two year period.

ORDER

Therefore, the Board, on this 5th day of August 2015, finds that McCormick & Schmick Restaurant Corp., t/a McCormick & Schmick Seafood, guilty of violating § 25-781(a). The Board imposes the following penalty on McCormick & Schmick Seafood:

(1) Charge I shall be treated as a second offense based on the Respondent's history of prior violations. For the violation described in Charge I, McCormick & Schmick Seafood shall pay a $5,000 fine. The licensee shall also receive a ten (10) day suspension as required by law.

(2) The licensee shall only serve four (4) suspension days and six (6) of the suspension days shall be stayed so long McCormick provides alcohol awareness training from a certified provider to all of its current employees within 30 days from the date of this Order. The Board's reasoning and Order are provided below.

(3) The suspension shall begin on September 3, 2015. The last day of suspension shall be September 6, 2015 if the training condition is completed. If not, the last day of the suspension shall occur on September 12, 2015.

IT IS FURTHER ORDERED that the training requirement shall not be deemed satisfied until the Respondent submits a list of employees and signed training certificates issued by the alcohol awareness training provider.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violation found by the Board in this Order shall be deemed a primary tier violation.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Hector Rodriguez, Member

James Short, Member

Pursuant to 23 DCMR § 1719.1, 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, Reeves Center, 2000 14th Street, NW, 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, 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 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).