

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

In the Matter of:)		
)		
H&Y Chun Corporation)	Case No.:	15-CC-00005
t/a Michigan Liquors)	License No:	23640
)	Order No:	2015-387
Holder of a)		
Retailer's Class A License)		
)		
at premises)		
3934 12th Street, N.E.)		
Washington, D.C. 20017)		

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

ALSO PRESENT: H&Y Chun Corporation, t/a Michigan Liquors, 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

The Alcoholic Beverage Control Board (Board) finds H&Y Chun Corporation, t/a Michigan Liquors, (hereinafter "Respondent" or "Michigan Liquors") in violation of four counts of violating District of Columbia (D.C.) Official Code § 25-781(a) and two counts of violating D.C. Official Code § 25-783(b) on December 11, 2014. Michigan Liquors shall pay a \$10,000 fine within sixty days from the date of this Order. The Respondent's license shall also be suspended for ten days, which shall start on September 20, 2015 and end at midnight on September 29, 2015. The Respondent shall receive twenty stayed suspension days, which shall

go into effect if Michigan Liquors commits another violation within one year from the date of this Order.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on April 29, 2015. *ABRA Show Cause File No., 15-CC-00005*, Notice of Status Hearing and Show Cause Hearing, 2 (Apr. 29, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3934 12th Street, N.E., Washington, D.C., on May 5, 2015, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CC-00005*, Service Form. The Notice charges the Respondent with multiple violations, 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 charges the Respondent with the following violation:

Charge I: [On December 11, 2014,] [y]ou permitted the sale of alcoholic beverage to [Candyce Greenwell,] a person under the age of [21,] . . . in violation of D.C. Official Code § 25-781(a)

Charge II: [On December 11, 2014,] [y]ou permitted the sale of alcoholic beverage to [Monica Hanley,] a person under the age of [21,] . . . in violation of D.C. Official Code § 25-781(a)

~~**Charge III:** [On December 11, 2014,] [y]ou permitted the sale of alcoholic beverage to [Cameron Linville,] a person under the age of [21,] . . . in violation of D.C. Official Code § 25-781(a)~~

Charge IV: [On December 11, 2014,] [y]ou permitted the sale of alcoholic beverage to [Sean Adams,] a person under the age of [21,] . . . in violation of D.C. Official Code § 25-781(a)

Charge V: [On December 11, 2014,] [y]ou failed to take steps reasonably necessary to ascertain whether [Candyce Greenwell] to whom you [sold, delivered, or served] an alcoholic beverage [was] of legal drinking age, in violation of D.C. Official Code § 25-783(b)

Charge VI: [On December 11, 2014,] [y]ou failed to take steps reasonably necessary to ascertain whether [Monica Hanley] to whom you [sold, delivered, or served] . . . an alcoholic beverage [was] of legal drinking age, in violation of D.C. Official Code § 25-783(b)

Charge VII: [On December 11, 2014,] [y]ou failed to take steps reasonably necessary to ascertain whether [Cameron Linville] to whom you [sold, delivered, or served] . . . an alcoholic beverage [was] of legal drinking age, in violation of D.C. Official Code § 25-783(b)

Charge VIII: You permitted your establishment to be used for an unlawful purpose, in violation of D.C. Official Code § 25-823(2) [based on a method of operation that relies on intentional sales of alcoholic beverages to minors]

Notice of Status Hearing and Show Cause Hearing, 2-4.

Both the Government and Respondent appeared at the Show Cause Status Hearing on June 10, 2015. The parties proceeded to a Show Cause Hearing and argued their respective cases on July 15, 2015.

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. Michigan Liquors holds a Retailer's Class A License at 3934 12th Street, N.E., Washington, D.C. *ABRA License No. 23640*, CAP Summary.

II. ABRA Investigator Kofi Apraku

2. ~~Alcoholic Beverage Regulation Administration (ABRA) Investigator Kofi Apraku~~ conducted a compliance check at Michigan Liquors' establishment on December 11, 2014. *Transcript (Tr.)*, July 15, 2015 at 12-13. He was accompanied by ABRA Investigator Illeana Corrales. *Id.* at 13.

3. The investigative team arrived at the establishment at 6:50 p.m. in a government vehicle and parked across the street. *Id.* at 13-14. At 6:51 p.m., they observed three patrons—two males and one female—enter the establishment. *Id.* at 14, 16. The investigators left their vehicle and observed their actions from outside through the establishment's window. *Id.* at 14-15. Investigator Apraku observed the three patrons select alcoholic beverages and bring them to the store's owner for purchase. *Id.* at 15, 43. He then observed the patrons pay for their purchases and leave. *Id.* at 15.

4. After the patrons left, the investigators ordered the patrons to show their identifications and confiscated the alcoholic beverages in their possession. *Id.* at 16, 18. One male patron showed the investigators a North Carolina identification that indicated that he was only 20 years of age, and was later discovered to be a Catholic University (CUA) student. *Id.* at 17, 46. The male patron, identified as Cameron Linville, had a 24 ounce can of Budweiser in his possession. *Exhibit No. 1, 2*. The two female patrons—identified as Candyce Greenwell and Monica Hanley—did not show identification, but admitted that they attended CUA and were only 20 years old. *Tr.*, 7/15/15 at 17. Ms. Greenwell had a can of Four Loko and a bottle of Smirnoff Fluffed Marshmallow Vodka in her possession, while Ms. Hanley had a six pack of Bud Light

beer in her possession, which are all alcoholic beverages. *Exhibit No. 1, 2*. One of the minors indicated that Michigan Liquors had a reputation at CUA for selling alcohol to minors. *Tr.*, 7/15/15 at 18. The investigators then let the minors leave the scene. *Id.* at 19.

5. After the patrons left, Investigator Apraku observed another individual leave the establishment with a six pack of Angry Orchard—an alcoholic beverage. *Id.* at 19; *Exhibit No. 1, 2*. The investigators ordered the fourth individual to show his identification and he identified himself as Sean Adams. *Id.* at 19; *Exhibit No. 1, 2*. The individuals displayed a fake Illinois State Driver’s License. *Tr.*, 7/15/15 at 19. The minor indicated that he attended CUA and was 18 years old. *Id.* The investigators then confiscated the alcoholic beverage. *Id.* at 23.

6. At the end of the interview with the fourth minor, Investigator Apraku observed that an employee of the store had stepped outside the establishment and observed the team questioning minors outside the establishment. *Id.* at 23. At this point in time, the investigative team decided to get into their vehicle and drive to the back of the store. *Id.* There, they observed the establishment’s employee and owner closing the store by turning off the lights, pulling the store’s metal grate down, and then hurrying towards a vehicle. *Id.* at 23-24.

7. After observing the owner and employee attempt to flee the scene, Investigator Apraku left his vehicle and yelled at the individuals to “stop and wait.” *Id.* at 25. The owner told Investigator Apraku that he was leaving because his wife was sick and in the emergency room. *Id.* Investigator Apraku then explained that the investigative team had observed the establishment sell alcohol to minors. *Id.* The owner then asked how long the investigation would take. *Id.* Investigator Apraku responded that the investigation would conclude in fifteen minutes. *Id.*

8. The owner returned to the store and reopened the establishment. *Id.* at 26. While Investigator Apraku was providing paperwork to the owner, he observed patrons enter the establishment and purchase alcohol. *Id.*

9. As patrons were making purchases, Investigator Corrales asked the employee if he was checking identifications. *Id.* at 27. The employee responded, “I’m checking every ID, don’t be such an asshole.” *Id.* at 27.

10. The investigators then left the establishment to process the paperwork related to their investigation. *Id.* at 29-30.

CONCLUSIONS OF LAW

11. 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 (D.C.) 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. 2015). 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 BOARD CREDITS THE STATEMENTS OF THE PATRONS INDICATING THAT THEY ARE UNDERAGE.

12. In *Johana's Restaurant*, the Board credited hearsay testimony from a minor admitting that she was under the age of twenty-one, even though she did not have identification in her possession. *In re Johana's Inc., t/a Johana's Restaurant*, Case No. 14-CMP-00250, Board Order No. 2015-246 (D.C.A.B.C.B. May 6, 2015). There, the Board noted that "it is against the law for a minor to possess alcohol . . . [; therefore,] it would be strange for someone twenty-one years of age or older to lie about a basic fact like their age." *Id.*; D.C. Official Code § 25-1002(e).

13. Here, the minors admitted to the investigators that they were under the age of 21. *Supra*, at ¶¶ 4-5. As in *Johana's Restaurant*, the Board finds it strange for anyone to admit that they were underage in violation of the law, if they were in fact of legal age. Therefore, the Board deems the patrons' admissions in this case as credible evidence of their minority age status.

II. THE BOARD FINDS THE RESPONDENT GUILTY ON FOUR COUNTS OF VIOLATING § 25-781.

14. The Board finds the Respondent guilty of four separate counts of violating D.C. Official Code § 25-781(a). Under § 25-781(a), "[t]he sale or delivery of alcoholic beverages to the following persons is prohibited: . . . [a] person under 21 years of age, either for the person's own use or for the use of any other person" D.C. Official Code § 25-781(a)-(a)(1). Here, Investigator Apraku observed four minors leave the store with alcoholic beverages, which is sufficient to demonstrate the illegal sale of alcohol to minors by the establishment. *Supra*, at ¶¶ 4-5, 13. Therefore, the Board finds the Respondent guilty on Counts I through IV.

III. THE BOARD FINDS THE RESPONDENT GUILTY ON TWO COUNTS OF VIOLATING § 25-783(b).

15. The Board also finds that the Respondent unreasonably failed to request identification from underage patrons Candyce Greenwell and Monica Hanley. Under § 25-783(b), "[a] licensee or his agent or employee shall take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age." D.C. Official Code § 25-783(b). Section 25-783(a) requires licensees to refuse to sell or deliver alcohol to a patron that cannot present identification upon request. D.C. Official Code § 25-783(a). Finally, in *DC Shenanigans*, the Board found that the failure to request identification before the completion of the sale of alcohol is unreasonable. *In re Twin T's LLC, t/a DC Shenanigans*, Case Nos. 12-CC-000057, 12-CC-00051, Board Order No. 2013-181, ¶ 17 (D.C.A.B.C.B. May 22, 2013).

16. In this case, Ms. Greenwell and Ms. Hanley both lacked identification on their person. *Supra*, at ¶ 4. It can be inferred from the record that the owner failed to request identification from these patrons. Specifically, had the owner been exercising due diligence and requested identification, he would have known to refuse the sale of alcohol to these two patrons based on their inability to present a valid identification in accordance with § 25-783(a). Consequently, as

in *DC Shenanigans*, the Board deems the sale of alcohol to Ms. Greenwell and Ms. Hanley without requesting identification unreasonable in violation of § 25-783(b). As such, the Board finds the Respondent guilty on Counts V and VI.

IV. THE BOARD FINDS THE RESPONDENT NOT GUILTY OF VIOLATING §25-783(b) IN REGARDS TO CHARGE VII.

17. The Board does not find the Respondent guilty as to Charge VII, which accused the Respondent of violating § 25-783(b) based on the sale of alcohol to Mr. Linville. As noted in the record, Mr. Linville had his real identification in his possession at the time he was stopped by the investigators; therefore, the Board lacks sufficient evidence to conclude that the establishment unreasonably failed to request identification. *Supra*, at ¶ 4. Consequently, Charge VII is dismissed.

V. THE BOARD FINDS THE RESPONDENT NOT GUILTY OF VIOLATING § 25-823 IN REGARD TO CHARGE VIII.

18. The Board finds the Respondent not guilty as to Charge VIII, which accused the Respondent of violating D.C. Official Code § 25-823(2). In this case, the charge is duplicative of the sale to minor offenses identified above. Further, it is sufficiently questionable whether the evidence supports the conclusion that there was a continuous course of conduct or a pattern of regular behavior of selling to minors—a required element of the charge—when the underage sales occurred almost simultaneously and no record of prior sales was established. *Supra*, at ¶¶ 3-5; *1900 M Rest. Associations, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 56 A.3d 486, 493 (D.C. 2012). Therefore, the Board finds in favor of the Respondent as to Charge VIII.

VI. PENALTY

19. Based on the Respondent's lack of prior violations, the violations of §§ 25-781 and 25-783 in this case are penalized as first time violations. *Exhibit No. 1, 3* (Investigative History); D.C. Official Code §§ 25-781(f)(1), 25-783(c)(1).

ORDER

Therefore, the Board, on this 12th day of August 2015, finds that H&Y Chun Corporation, t/a Michigan Liquors, guilty of multiple counts of violating §§ 25-781 and 25-783. In total, the Respondent shall pay a \$10,000 fine and receive a ten (10) day suspension and twenty (20) stayed suspension days. The penalty shall be imposed as follows:

- (1) For the violation described in Charge I, Michigan Liquors shall be fined \$2,000. The Respondent shall receive five (5) stayed suspension days, which shall go into effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.
- (2) For the violation described in Charge II, Michigan Liquors shall be fined \$2,000. The Respondent shall receive five (5) stayed suspension days, which shall go into effect if the

Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.

- (3) For the violation described in Charge III, Michigan Liquors shall be fined \$2,000. The Respondent shall receive a five (5) day suspension of its license for this offense.
- (4) For the violation described in Charge IV, Michigan Liquors shall be fined \$2,000. The Respondent shall receive a five (5) day suspension of its license for this offense.
- (5) For the violation described in Charge V, Michigan Liquors shall be fined \$1,000. The Respondent shall receive five (5) stayed suspension days, which shall go into effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.
- (6) For the violation described in Charge VI, Michigan Liquors shall be fined \$1,000. The Respondent shall receive five (5) stayed suspension days, which shall go into effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.

IT IS FURTHER ORDERED that the ten day suspension of the Respondent's license shall start on September 20, 2015, and end at midnight on September 29, 2015.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within sixty (60) 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 violations found by the Board in this Order shall be recorded in the Respondent's investigative history as primary tier violations.

IT IS FURTHER ORDERED that Charges VII and VIII are **DISMISSED**.

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.

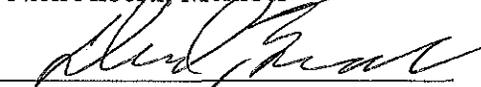
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



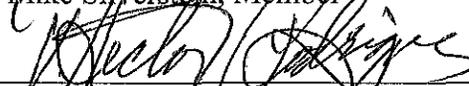
Nick Alberti, Member



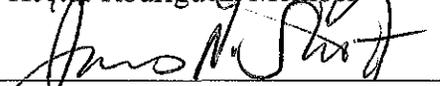
Donald Brooks, Member



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).