

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

In the Matter of:)	
New Da Hsin Trading, Inc.)	Case No.: 16-CMP-00361
t/a New Da Hsin Trading, Inc.)	License No: 23501
Holder of a)	Order No: 2016-513
Retailer's Class A License)	
at premises)	
811 7th Street, N.W.)	
Washington, D.C. 20001)	
)	

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

ALSO PRESENT: New Da Hsin Trading, Inc., t/a New Da Hsin Trading, Inc., Respondent

Richard Chiang, Owner, on behalf of the 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that New Da Hsin Trading, Inc., (Respondent) failed to have a licensed manager present while the business was in operation on April 5, 2016 in violation of 23 DCMR § 707.1 (West Supp. 2016). Based on the violation, the Respondent shall pay a fine of \$250.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 16, 2016. *ABRA Show Cause File No., 16-CMP-00361*, Notice of Status Hearing and Show Cause Hearing, 2 (Jun. 22, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 811 7th Street, N.W., Washington, D.C., by certified mail along with the Investigative Report related to this matter. *ABRA Show Cause File No., 16-CMP-00361*, 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 charges the Respondent with the following violation:

Charge I: [On April 5, 2016,] [y]our failed to be present and . . . you failed to have a Board approved manager present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served or consumed on the licensed premises in violation of D.C. Official Code § 25-701 and 23 DCMR § 707

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on July 27, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on August 10, 2016.

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. The Respondent holds a Retailer's Class A License at 811 7th Street, N.W., Washington, D.C. *ABRA License No. 23501*. The Respondent is owned by Richard Chiang. *Transcript (Tr.)*, Aug. 10, 2016 at 8. On April 5, 2016, an ABRA investigator visited the Respondent's establishment around noon, but the owner was not present, even though the store's hours of sale, service, and consumption go from 10:00 a.m. to 7:00 a.m. *Id.* at 9. The owner admitted that the manager left in charge of the establishment when the investigator arrived had an expired license. *Id.* at 10. Mr. Chiang admitted that he was at the establishment on the date of the investigator's visit, but left to take care of a matter about a block away from the store. *Id.* at 15-16.

CONCLUSIONS OF LAW

2. 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

D.C. Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). 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.

II. Standard of Proof

3. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

III. The Respondent failed to have a licensed manager present on April 5, 2016 in violation of the law.

4. Section 707.1 provides that in the absence of a licensee, a Board approved manager shall be present at the licensed premises during its hours of sale. D.C. Official Code § 25-701(a), 23 DCMR § 707.1 (West Supp. 2016). In this case, the Respondent admits that neither a licensed manager nor the owner were present during its sale hours on April 5, 2016. *Supra*, at ¶ 1. Based on these facts, the Board sustains Charge I.

IV. Penalty

5. The fine range for a first time secondary tier offense ranges between \$250 and \$500. 23 DCMR § 802 (West Supp. 2016).

ORDER

Therefore, the Board, on this 21st day of September 2016, finds the Respondent guilty of violating § 707.1. The Board imposes the following penalty on the Respondent:

(1) For the violation described in Charge I, the Respondent shall pay a \$250 fine.

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.

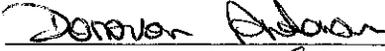
IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed a secondary tier violation.

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



Donovan Anderson, Chairperson

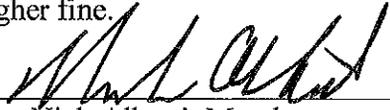


Mike Silverstein, Member

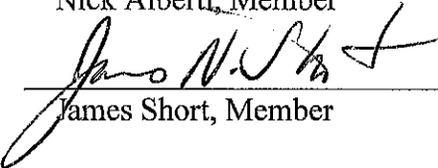


Ruthanne Miller, Member

I concur with the determination of the majority as to the liability of the Respondent. Nevertheless, I dissent as to the penalty selected by the majority. Based on the nature of the offense, I believe the Respondent merits a higher fine.



Nick Alberti, 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, 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).