THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
HSR, Inc.	)	
t/a New Dodge Market	)	
	)	
Holder of a	)	Case No.: 15-CMP-00788
Retailer's Class B License	)	License No.: ABRA-099565
	)	Order No.: 2016-601
at premises	)	
3620 14th Street N.W.	)	
Washington, D.C. 20010	)	
	)	

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

ALSO PRESENT: Chrissy Gephardt, 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 HSR, Inc., t/a New Dodge Market, (Respondent), violated District of Columbia (D.C.) Official Code § 25-701(a) on October 20, 2015. As a result, the Respondent must pay a $500.00 fine. In addition, the Respondent shall have its license suspended for one (1) day. The one day suspension will be stayed and will not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on July 11, 2016. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3620 14th Street N.W., Washington, D.C., on July 13, 2016.

The Notice charged the Respondent with the following violations:

Charge I: [On Tuesday, October 20, 2015] [y]ou failed to superintend in person or keep a licensed ABC Manager on duty at all times, in violation of D.C. Official Code § 701.(a)...

Charge II: [On Tuesday, October 20, 2015] [y]ou failed to frame the license under glass and port it conspicuously in the licensed establishment, in violation of D.C. Official Code § 25-711(b)...

ABRA Show Cause File No. 15-CMP-00788, Notice of Status Hearing and Show Cause Hearing, 2-3 (July 11, 2016).

On November 2, 2015, Citation #4564 was issued to the Respondent in the amount of $250.00 for violating D.C. Official Code § 25-701(a) and Warning Citation #4565 was issued for violating D.C. Official Code § 25-711(b).

The Respondent failed to pay Citation #4564.

The Respondent failed to appear at the Show Cause Status Hearing held on September 7, 2016. A Show Cause Hearing was scheduled for October 5, 2016.

The Respondent also failed to appear at the Show Cause Hearing held on October 5, 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 July 11, 2016. *See* ABRA Show Cause File No. 15-CMP-00788. HSR, Inc., t/a New Dodge Market holds a Retailer's Class B License, ABRA License No. ABRA-099565. *See* ABRA Licensing File No. ABRA-099565. The establishment is located at 3620 14th Street N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-099565.

2. The Show Cause Hearing was held on October 5, 2016. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 15-CMP-00788.

3. As a preliminary matter at the Show Cause Hearing, the Government moved to amend Government Exhibit No. 1, the Investigative Report to reflect that the time ABRA Supervisory Investigator John Suero entered the Respondent's establishment was

approximately 10:45 a.m. and not 11:45 a.m. *Tr.*, 10/5/16 at 6. The Board granted the Government's Motion. *Tr.*, 10/5/16 at 6.

II. Testimony of ABRA Supervisory Investigator John Suero

4. The Government presented its case through the testimony of one witness, ABRA Supervisory Investigator John Suero. *Tr.* 10/5/16 at 4-5.

5. SI Suero authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr.* 10/5/16 at 6.

6. On Tuesday, October 20, 2015 at approximately 10:45 a.m., SI Suero visited the Respondent's establishment to conduct a Regulatory Inspection. *Tr.* 10/5/16 at 6-7. SI Suero identified himself to a female employee and asked to speak to the owner or an ABC-licensed Manager. *Tr.* 10/5/16 at 7. The female employee informed SI Suero that she was not an ABC-licensed Manager. *Tr.* 10/5/16 at 7. She further indicated that the ABC-licensed Manager was in Virginia and was en route to the establishment. *Tr.* 10/5/16 at 7.

7. The female employee telephonically contacted an individual who identified himself as the ABC-licensed Manager. *Tr.* 10/5/16 at 8. He informed SI Suero that he was in Virginia and he was running late. *Tr.* 10/5/16 at 8. SI Suero then conducted a regulatory inspection. *Tr.* 10/5/16 at 8. He entered the time, 10:45 a.m., on the form prior to commencing the inspection. *Tr.* 10/5/16 at 11. He then documented on the form, the time of the completion of the regulatory inspection as 11:15 a.m. *Tr.* 10/5/16 at 11.

8. During the regulatory inspection, SI Suero also found that the Respondent had posted an incorrect ABC license. *Tr.* 10/5/16 at 9-10. He issued a warning to the Respondent for this violation. *Tr.* 10/5/16 at 11.

9. SI Suero made a subsequent visit to the Respondent's establishment and during this visit he noted that the correct ABC license was posted. 10/5/16 at 10.

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 D.C. OFFICIAL CODE § 25-701

11. The Board finds the Respondent liable for permitting the licensed establishment to operate on October 20, 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. The Board further relies on the credible testimony of SI Suero who stated that on October 20, 2015 at approximately 10:45 a.m., a female employee of the Respondent's informed him that there was no ABC-licensed Manager or owner on the premises. The Board finds that the establishment was open for business at that time.

14. Additionally, an individual who identified himself as the ABC-licensed Manager, telephonically admitted to SI Suero that he was absent from the premises because he was in Virginia.

15. The Board's official records reflect that the Respondent was given adequate notice of the charges brought against it, and adequate notice of the Show Cause Hearing. The Respondent did not appear at either the Status Hearing or the Show Cause 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 findings of facts are undisputed.

II. THE RESPONDENT VIOLATED D.C. OFFICIAL CODE § 25-711

16. The Board dismisses Charge II, failure to have the correct ABC license posted, because the Respondent was previously warned on November 2, 2015, not to commit that violation.

III. PENALTY

17. The Respondent's Investigative History shows that there are prior secondary tier violations adjudicated after the date of the instant case. Thus, this violation shall be fined as a first secondary tier violation. *Licensing File No. ABRA-099565,* Investigative History. The Board may fine the Respondent between $250.00 and $500.00. *Licensing File No. ABRA-099565*, Investigative History; DCMR § 23-802.

18. In this instance, the Board imposes a higher fine within the range of a first secondary tier violation because the Respondent's failure to appear at the two hearings in this case to address or acknowledge his misconduct shows a complete lack of respect for the Board and a disregard for the most basic of licensure requirements. The Board's official records also reflect that the Respondent failed to appear at the two hearings associated with Case No. 15-CMP-00605, a matter already adjudicated by this Board.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 2nd day of November, 2016, finds that the Respondent, HSR, Inc., t/a New Dodge, located at 3620 14th Street N.W., Washington, D.C., holder of a Retailer's Class B license, violated District of Columbia (D.C.) Official Code § 25-701(a).

The Board hereby **ORDERS** that:

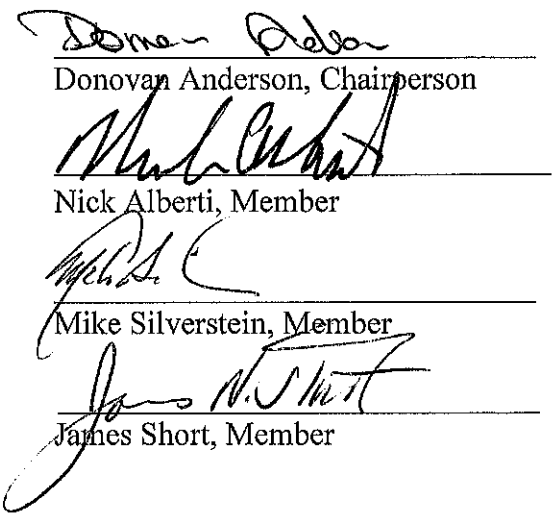
1) Charge I: The Respondent must pay a fine in the amount of $500.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

2) Charge II: Dismissed.

3) The Respondent's license shall also be suspended for one (1) day; which will be stayed for one year, provided that the Respondent does not commit any further ABC violations.

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

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).