THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Murray C. Warren, Inc.	)	
t/a Raven Grill	)	
	)	Case No. 10-CMP-00592
Holder of a Retailer's Class CT License	)	License No. ABRA-005864
at premises	)	Order No. 2011-179
3125 Mount Pleasant Street, N.W.	)	
Washington, D.C. 20010	)	
	)	

BEFORE: Charles Brodsky, Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Andrew Kline, on behalf of the Respondent

Amy Caspari, 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

On January 12, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice) dated January 5, 2011 on Murray C. Warren, Inc., t/a Raven Grill (Respondent), at premises 3125 Mount Pleasant Street N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee allowed customers to consume alcoholic beverages beyond 3:00 a.m., in violation of 23 D.C.M.R. 705.9, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 (2001).

The Board held a Show Cause Status Hearing on February 16, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on March 9, 2011. The

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

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated January 5, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00592. The Respondent holds a Retailer's Class CT license and is located at 3125 Mount Pleasant Street N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-005864.

2. The Show Cause Hearing was held on March 9, 2011. *See* ABRA Show Cause File No. 10-CMP-00592. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 10-CMP-00592.

3. The Government presented its case through one witness, ABRA Investigator Vincent Parker. *Transcript (Tr.)* 03/09/11 at 9. Investigator Parker conducts regulatory inspections and investigations at ABC licensed establishments in Washington, D.C. *Tr.* 03/09/11 at 10. He has been an investigator for three years. *Tr.* 03/09/11 at 10. He stated that he visited the Raven Grill on Saturday, September 11, 2010 at approximately 3:20 a.m. *Tr.* 03/09/11 at 11. Investigator Paker testified that he was in the neighborhood investigating a citizen's complaint regarding an after-hours allegation at another establishment in Mount Pleasant. *Tr.* 03/09/11 at 11. While in the area, he walked the block to investigate other ABC licensed establishments. *Tr.* 03/09/11 at 10.

4. Investigator Parker testified that when he arrived at Raven Grill, he peered through the blinds and looked inside the establishment. *Tr.* 03/09/11 at 12. He stated that he witnessed two persons behind the bar and what he believed were five patrons standing along the front of the bar. *Tr.* 03/09/11 at 13, 21-22. Investigator Parker witnessed cups in the patrons' hands and cups on the bar in front of the patrons. *Tr.* 03/09/11 at 14. Investigator Parker said that he concluded that the five persons were patrons due to the way they were standing, talking and socializing with one another; otherwise he assumed that if they were employees, they would be moving about and working. *Tr.* 03/09/11 at 13, 28-29, 34, 38-40.

5. Investigator Parker stated that he then knocked on the Respondent's door for a period of time. *Tr.* 03/09/11 at 14. He testified that someone looked at him through the curtain and Investigator Parker then displayed his ABRA badge. *Tr.* 03/09/11 at 14. Investigator Parker stated that as the door was being opened for him, he could hear plastic cups falling on the ground. *Tr.* 03/09/11 at 15. He testified that when he walked into the bar area, none of the people he had witnessed earlier through the window had their red cups. *Tr.* 03/09/11 at 15, 34, 39. He stated that there were red cups on the floor, but he did not notice any liquid or spills. *Tr.* 03/09/11 at 19.

6. Investigator Parker then spoke to the ABC licensed manager, Gretchen Georgiadis. *Tr.* 03/09/11 at 16. Ms. Georgiadis informed Investigator Parker that the people inside the bar at that hour were employees of the establishment and they were enjoying a shift drink. *Tr.* 03/09/11 at 16, 36. Investigator Parker believed that a shift drink was an alcoholic

beverage. *Tr.* 03/09/11 at 37-38. He relied on Ms. Georgiadis' admission that the persons were enjoying a shift drink to mean that they were drinking alcoholic beverages. *Tr.* 03/09/11 at 37-38.

7. Investigator Parker then asked Ms. Georgiadis for the titles and job descriptions of the persons inside the bar. *Tr.* 03/09/11 at 16, 20, 24. She explained that there was a bartender, a bar back, a security person and two additional people helping with the closing. *Tr.* 03/09/11 at 16-17. Investigator Parker stated that when he initially looked through the window prior to his entry, it did not appear that the additional people were assisting with the closing. *Tr.* 03/09/11 at 17.

8. Investigator Parker advised Ms. Georgiadis that he had determined after reviewing the license that there was an after-hours violation. *Tr.* 03/09/11 at 18, 32. He admitted that he did not examine or smell the red cups to determine what kind of liquid the cups held. *Tr.* 03/09/11 at 19, 37.

9. At the conclusion of the government's case in chief, the Respondent moved to dismiss the charge. *Tr.* 03/09/11 at 43. The Respondent argued that the Government had not met the burden of proving by a preponderance of the evidence that the establishment either served or permitted the consumption of alcohol after the legal hours. *Tr.* 03/09/11 at 43. The Respondent argued that in fact, there was no evidence that alcohol was even being consumed. *Tr.* 03/09/11 at 43.

10. The Government opposed the motion to dismiss and argued that a reasonable person could believe that a shift drink was an alcoholic beverage. *Tr.* 03/09/11 at 44. The Board denied the motion to dismiss by a four (4) to one (1) vote, and proceeded with the hearing. *Tr.* 03/09/11 at 47.

11. The Respondent called David Paulson as its first witness. *Tr.* 03/09/11 at 48. Mr. Paulson has been employed part-time at the Raven Grill as a security person for over a year. *Tr.* 03/09/11 at 48, 56. He works the front door checking IDs and ensuring that people are not intoxicated. *Tr.* 03/09/11 at 48. He also handles unruly patrons and makes an effort to address noise issues as patrons depart into the neighborhood. *Tr.* 03/09/11 at 48. Mr. Paulson stated that he was working at the establishment on the night of the incident. *Tr.* 03/09/11 at 49. He testified that when Investigator Parker arrived, the employees were performing closing and cleaning duties. *Tr.* 03/09/11 at 49, 50. He stated that he heard a knock and that when Investigator Parker displayed his badge, he opened the door and let Investigator Parker in. *Tr.* 03/09/11 at 49.

12. Mr. Paulson testified that he had a red plastic cup of soda water and a thermos of coffee on the bar at closing time. *Tr.* 03/09/11 at 50-51. Mr. Paulson stated that there were six employees present and they included Gretchen and Dina the bartenders; George Jones, the bar back; Tony, who stocks shelves and helps with security, and then a friend of Gretchen's who was assisting with the closing. *Tr.* 03/09/11 at 51. Mr. Paulson stated that he never left his spot next to the bar while Investigator Parker was on the premises, nor did he attempt to dispose of his red plastic cup. *Tr.* 03/09/11 at 52.

13. Mr. Paulson stated that the Respondent keeps red plastic cups near a water pitcher for use by the bar's patrons. *Tr.* 03/09/11 at 53. Mr. Paulson explained that his shift drink

is the soda water and lime he had in his red cup, which he consumes throughout the night, not just at the end of the shift. *Tr.* 03/09/11 at 53, 58-59. Mr. Paulson does not drink alcoholic beverages and has not had a drink for 23 years. *Tr.* 03/09/11 at 54. He testified that the Respondent made it clear to the employees that a shift drink cannot consist of alcoholic beverages after closing. *Tr.* 03/09/11 at 60. He also stated that all of the employees leave the establishment together at the end of the night after closing. *Tr.* 03/09/11 at 58.

14. The Respondent called its next witness, Gretchen Georgiadis. *Tr.* 03/09/11 at 61. She is employed at the Raven Grill as the General Manager and has served in that capacity for the last six months. *Tr.* 03/09/11 at 62. She testified that she has been in the restaurant business for 22 years. *Tr.* 03/09/11 at 62.

15. Ms. Georgiadis recalled the night of Investigator Parker's visit to the establishment. *Tr.* 03/09/11 at 63. She stated that there was only one person of the six present who was not an employee. *Tr.* 03/09/11 at 63. This non-employee person is a friend of Ms. Georgiadis who was assisting with the closing and who had not consumed alcoholic beverages during the operating hours of the business. *Tr.* 03/09/11 at 63.

16. Ms. Georgiadis also described the other persons who were present as a bartender, a bar back, one security personnel and her fiancé, who was assisting with the stocking of alcoholic beverages. *Tr.* 03/09/11 at 64. Ms. Georgiadis stated that her fiancé is not on permanent staff but that he fills in when needed around the establishment. *Tr.* 03/09/11 at 65. Ms. Georgiadis further stated that the employees leave the establishment together as a group after closing for safety reasons. *Tr.* 03/09/11 at 65.

17. Ms. Georgiadis stated that her closing responsibilities include counting the money and handling the paperwork while the other employees clean the bar, restock the bar and alcohol inventory, wipe down the tables, stack the chairs and turn off all appliances and lights. *Tr.* 03/09/11 at 66. She stated that on the night of the incident, she had just finished the paperwork when Mr. Paulson opened the door to let Investigator Parker in. *Tr.* 03/09/11 at 67. She testified that there may have been some socializing while cleaning up but that activity did not include the consumption of alcoholic beverages. *Tr.* 03/09/11 at 67.

18. Ms. Georgiadis explained that the red plastic cups are used for two purposes, both related to safety reasons. *Tr.* 03/09/11 at 68. One purpose is for patrons to have access to ice water throughout the evening and the other is to avoid the use of glassware near the shelf or ice bin where the water is located. *Tr.* 03/09/11 at 68. Ms. Georgiadis stated that she has made it clear to her employees that they cannot consume alcoholic beverages in the establishment, especially after legal hours. *Tr.* 03/09/11 at 68-69.

19. Ms. Georgiadis testified that no one was consuming alcoholic beverages after 3:00 a.m. that day. *Tr.* 03/09/11 at 69. She stated that the red plastic cups were used by the employees who were finishing their shift drinks while cleaning up and closing down the bar. *Tr.* 03/09/11 at 74. Ms. Georgiadis testified that she was consuming ice water and Mr. Paulson was consuming soda water with lime. *Tr.* 03/09/11 at 74. Ms. Georgiadis was not aware that anyone was consuming anything else. *Tr.* 03/09/11 at 75.

20. Ms. Georgiadis testified that in addition to serving as the General Manager, she also works as one of two bartenders for the Respondent. *Tr.* 03/09/11 at 69. Ms. Georgiadis stated that the other bartender on duty that night was Dina Toma. *Tr.* 03/09/11 at 70. She explained that if anyone was drinking after hours, either she or Dina would have been the one to serve the alcoholic beverage. *Tr.* 03/09/11 at 70. Ms. Georgiadis testified that she did not pour any alcoholic beverages for her staff and under no circumstances would the other employees have gone behind the bar to pour themselves a drink. *Tr.* 03/09/11 at 70, 77, 79.

21. At the time of Investigator Parker's visit, Ms. Georgiadis was not behind the bar, but rather was located in a back booth counting the Respondent's proceeds. *Tr.* 03/09/11 at 71. She testified that she can see the entire bar from the booth and if anybody was behind the bar after hours, it would have been either Dina or George, cleaning and restocking. *Tr.* 03/09/11 at 71. She further stated that if any of her staff had poured themselves an alcoholic beverage while she was counting money in the back booth, she would have seen it. *Tr.* 03/09/11 at 80. Ms. Georgiadis indicated that the Respondent's policy is to encourage the departure of all patrons by 2:55 a.m. in order to be fully empty and locked to the public by 3:00 a.m. *Tr.* 03/09/11 at 83-84.

22. Ms. Georgiadis questioned her staff after Investigator Parker left to ascertain whether any of them had been drinking alcoholic beverages after hours. *Tr.* 03/09/11 at 87. She stated that the employees confirmed that they had not. *Tr.* 03/09/11 at 88.

CONCLUSIONS OF LAW

23. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2009). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. 800, *et. seq.*

24. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a "reasonable mind[] might accept as adequate to support the conclusion" and there must be a "rational connection between facts found and the choice made." 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008)

25. With regard to Charge I set forth in the Notice to Show Cause dated January 5, 2011, the Board must determine whether the Respondent allowed customers to consume alcoholic beverages beyond the legally permitted hours of 3:00 a.m. in violation of 23 D.C.M.R. 705.9. In this case, based upon the testimony of witnesses, the practice of the establishment, and notwithstanding the Board's earlier denial of the Respondent's Motion to Dismiss, the Board finds that there is insufficient evidence to establish that the Respondent allowed customers to consume alcoholic beverages after legally permitted hours.

26. The testimony of Investigator Parker established that he witnessed the presence of people inside the establishment after 3:00 a.m.; some holding red plastic cups in their

hands and others with red plastic cups in front of them on the bar. He also testified that once inside the establishment, he noted that the red cups were on the floor. Investigator Parker further testified that because of the stance, demeanor and socializing nature of the people inside, he assumed they were patrons of the bar. He also assumed that the beverages in the red plastic cups were alcoholic beverages.

27. The testimony of the Respondent's witnesses however, demonstrates that only they and not customers, were present inside the establishment during Investigator Parker's inspection. The General Manager, Ms. Georgiadis described the title and job function of the various employees who were present. Ms. Georgiadis indicated that it is the bar's policy that employees not drink after hours and she was emphatic that no one was imbibing alcoholic beverages after hours that night. Ms. Georgiadis did not hide the fact that there were employees consuming beverages out of red plastic cups after hours. However, she described them as "shift drinks", and indicated that the shift drinks were not alcoholic in nature.

28. Moreover, there is no evidence in the record to suggest that Investigator Parker actually determined that the beverages in the red plastic cups were alcoholic. Indeed, he admitted that he did not examine or smell the cups. Nor did he observe any liquid or fluid on the ground near the discarded cups.

29. On the other hand, Ms. Georgiadis testified that her staff is well aware that consumption of alcoholic beverages after-hours is prohibited and she made a point to question staff of any improprieties after Investigator Parker had completed his investigation. The Board finds the testimony of the Respondent's witnesses credible.

30. Based upon the above testimony and the evidence in the record, the Board finds that the Respondent did not violate 23 D.C.M.R. 705.9 as set forth in Charge I of the Notice to Show Cause dated January 5, 2011.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 27th day of April 2011, finds that:

1. Charge I as set forth in the Notice to Show Cause, dated January 5, 2011, alleging that the Respondent, Murray C. Warren, Inc., t/a Raven Grill, at 3125 Mount Pleasant Street N.W., Washington, D.C., holder of a Retailer's Class CT license, allowed customers to consume alcoholic beverages after legally permitted hours should be and is hereby **DISMISSED**.

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

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

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).