

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

In the Matter of:)		
)		
Neighborhood Restaurant Group, XV LLC)	Case Nos.:	15-CMP-00059
t/a Red Apron Butchery/The Partisan)	License No:	90742
)	Order No:	2015-471
Holder of a)		
Retailer's Class CR License)		
)		
at premises)		
709 D Street, N.W.)		
Washington, D.C. 20004)		

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

ALSO PRESENT: Neighborhood Restaurant Group, XV LLC, t/a Red Apron Butchery/The Partisan, Respondent

Stephanie Babin, Designated Representative, on behalf of the Respondent

Christine 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds Neighborhood Restaurant Group, XV LLC, t/a Red Apron Butchery/The Partisan, (hereinafter "Respondent" or "Red Apron") in

violation of District of Columbia Official Code § 25-726. Specifically, the Board finds that Red Apron failed to take reasonable measures to prevent the accumulation of trash and litter in the alley neighboring its establishment in violation of § 25-726(a) on December 18, 2014.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 13, 2015. *ABRA Show Cause File No., 15-CMP-00059*, Notice of Status Hearing and Show Cause Hearing, 2 (May 13, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises Street Address, Washington, D.C., on May 1, 2015, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00059*, 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 December 18, 2014,] [y]ou failed[to] take reasonable measures to ensure that litter was properly disposed of in the immediate environs of the establishment, including adjacent alleys or other public property immediately adjacent to the establishment in violation of D.C. Official Code § 25-726**

Notice of Status Hearing and Show Cause Hearing, 2.

The parties proceeded to a Show Cause Hearing and argued their respective cases on September 9, 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. Red Apron holds a Retailer’s Class CR License at 709 D Street, N.W., Washington, D.C. *ABRA License No. 90742*. In addition to “Red Apron Butchery,” the establishment uses the “The Partisan” as a second trade name. *Id.*

II. ABRA Investigator Earl Jones

2. ABRA Investigator Earl Jones visited Red Apron on December 18, 2014, at around 11:15 p.m. *Transcript (Tr.)*, September 9, 2015 at 6 (15-CMP-00059). As part of his duties that night, he was inspecting the area for trash and litter issues. *Id.* at 6-7. Investigator Jones had

previously observed trash and litter in the alley during an investigation in October 2014. *Id.* at 19, 34.

3. Upon arriving at the establishment, Investigator Jones observed the alley neighboring Red Apron. *Id.* at 7; *Government Exhibit No. 1*. He first observed rodents running from the alleyway. *Id.* He then saw green trash receptacles with trash pushing open the lid and overflowing. *Id.* at 7, 24; *Government Exhibit No. 2*. The picture further shows trash by the wheel of the dumpster. *Id.* He knew that the receptacles belonged to the establishment based on a prior conversation on October 22, 2014, where Red Apron's general manager Peter Koll identified the establishment's dumpsters. *Tr.*, 9/9/15 at 9-10. Furthermore, Mr. Koll identified the dumpster as Red Apron's during a conversation with the investigator. *Id.* at 12.

4. Mr. Koll indicated that the establishment had attempted to remedy the situation in the alley by changing dumpsters and discussing the issue of other establishment's using their dumpster with neighboring businesses. *Id.* at 11; *see also* 45.

5. Investigator Jones indicated that he issued citations to other establishments related to the condition of the alley on December 18, 2014 as well. *Id.* at 17.

III. Peter Koll

6. Peter Koll indicated that all of the establishments dumpsters were labeled with the name of the establishment on December 18, 2014. *Id.* at 39, 57. Mr. Koll indicated that the alley was messy with litter before the business was open. *Id.* at 49-50.

7. Mr. Koll indicated that it would be feasible to lock the trash container in the future. *Id.* at 65.

CONCLUSIONS OF LAW

8. 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. 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. RED APRON VIOLATED § 25-726 ON DECEMBER 18, 2014.

9. The Board finds that on December 18, 2014, Red Apron violated § 25-726(a) on October 22, 2014.

10. Under § 25-726(a), "[t]he licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property

used by the licensee to conduct its business, are kept free of litter.” D.C. Official Code § 25-726(a). It is commonly understood that litter means a “[a] disorderly accumulation of objects [and] . . . carelessly discarded trash.” *Webster’s II New College Dictionary*, 640 (2001) (litter).

11. Under 21 DCMR § 707.11, “[w]aste container lids shall be kept closed at all times other than when the container is being filled or emptied The area where the waste [container] is stored shall be kept free of spilled waste at all times.” 21 DCMR § 707.11 (West Supp. 2015).

12. During the hearing, it was undisputed that the alley neighbored Red Apron, and the establishment used the alley to store its trash receptacles. *Supra*, at ¶¶ 3-4. Furthermore, the Board credits the testimony of the investigator that Mr. Koll identified the dumpster observed by Mr. Jones as Red Apron’s dumpster. *Supra*, at ¶ 3. On December 18, 2014, Investigator Jones entered the alley, observed Red Apron’s dumpster overflowing with trash, and took a picture showing litter on the ground near the dumpster’s wheel. *Id.* It is unreasonable for a licensee to maintain its trash receptacles in a manner contrary to law; especially, when the law in this case discourages litter by requiring container lids to be closed, which ensures that trash remains in the container and protected from vermin. As a result, Red Apron was obligated to keep the lids to its trash containers closed when not in use in compliance with § 707.11, instead of unreasonably allowing the lid to be open on December 18, 2014. Therefore, based on these facts, the Government has demonstrated a violation of § 25-762(a) on December 18, 2014.

II. THE MERE FACT THAT TRASH AND LITTER IS CREATED BY A THIRD PARTY DOES NOT PROVIDE A DEFENSE UNDER § 25-726(a).

13. The Board does not agree with Red Apron’s argument that it should not be held accountable for the litter and trash found in the alley, because the trash belonged to others. The Board has never held that § 25-726 only applies to trash or litter deposited by the license holder or their agents. In fact, in the 2011 *Capitol Food Mart* protest, the Board considered trash and litter issues. *In re MZI Trading, LLC, t/a Capitol Food Mart*, Board Order No. 2011-448, ¶¶ 15, 21 (D.C.A.B.C.B. Oct. 19, 2011). Specifically, the Board found an adverse impact, where, among other issues, it was shown that individuals with no direct connection to the license holder were depositing beer cans on private property, the street, and a public playground. *In re MZI Trading, LLC, t/a Capitol Food Mart*, Board Order No. 2011-448, at ¶¶ 12, 15, 21-22.¹ Based on this precedent and the language of § 25-726(a), the only relevant issue is the presence of trash and litter and the establishment’s measures to keep the area around the establishment clean. Therefore, the mere fact that the cause of the trash or litter at issue is a third party, does not prevent the Board from finding a licensee in violation of § 25-726(a).

ORDER

Therefore, the Board, on this 28th day of October 2015, finds that Neighborhood Restaurant Group, XV LLC, t/a Red Apron Butchery, guilty of the offense described in Charge I. The Board imposes the following penalty on Red Apron Butchery:

¹ These facts would also be relevant under the overconcentration criteria, which allows for the consideration of the impact of third party establishments on the neighborhood when considering an application for a new license. D.C. Official Code §§ 25-101(35A), 25-314(a)(4).

(1) For the violation described in Charge I, Red Apron Butchery shall pay a fine of \$500.

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 second level secondary tier offense.

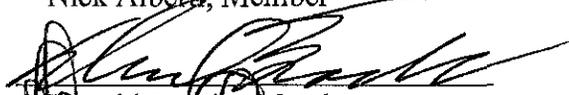
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

District of Columbia
Alcoholic Beverage Control Board



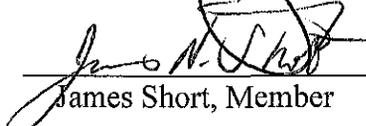
Nick Alberti, Member



Donald Brooks, Member

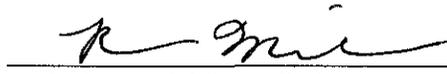


Herman Jones, Member



James Short, Member

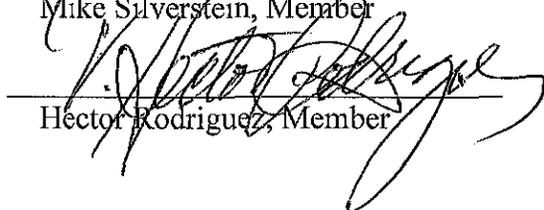
We concur as to the determination of liability, but dissent as to the penalty imposed by the Board. In our view, the Respondent merits a lesser penalty for the offense.



Ruthanne Miller, Chairperson



Mike Silverstein, Member



Hector Rodriguez, 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).