

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

In the Matter of:)	
)	
Polo D.C., LLC)	License No.: 75703
t/a Rugby Café)	Case Nos.: 11-CMP-00157
)	11-251-00266
)	11-CMP-00322
)	Order No.: 2012-239
Holder of a Retailer's Class CR License)	
at premises)	
1065 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Polo D.C., LLC, t/a Rugby Café, Respondent

Andrew Kline, Non-Lawyer Representative, on behalf of the Respondent

Louise Phillips, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

On December 16, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated December 7, 2011, on Polo D.C., LLC, t/a Rugby Café, (Respondent) at premises 1065 Wisconsin Avenue, N.W., Washington, D.C. The Notice charged the Respondent, with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

- Charge I: You sold, served, or allowed to be served on the licensed premises alcoholic beverages to persons under the age of twenty-one (21) years and permitted the consumption of alcoholic beverages by persons under the age of twenty-one (21) years in violation of D.C. Official Code § 25-781 (a)(1), (b), (c) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2001).
- Charge II: You failed to take steps reasonably necessary to ascertain whether the persons to whom you served alcoholic beverages were of legal drinking age in violation of D.C. Code § 25-873(b) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2001).
- Charge III: You failed to obtain an Entertainment Endorsement from the Board in violation of D.C. Official Code § 25-113a (b) (2001) and DCMR § 23-1000.1 and violated the terms of paragraph (3) of the Voluntary Agreement approved on November 7, 2008[,] in violation of D.C. Official Code § 25-446 (2001), for which the Board may take the proposed action pursuant D.C. Official Code § 25-823 (2001).
- Charge IV: You substantially changed your method of operation without Board approval in violation of D.C. Official Code § 25-762(a) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2001).
- Charge V: You failed to keep and maintain on the premises for a period of three (3) years adequate books and records showing all sales, purchase invoices, and dispositions, in violation of D.C. Official Code § 25-113(j)(3)(A) (2001), 23 DCMR § 1204, and 23 DCMR § 1208, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2001).
- Charge VI: You failed to file with the Board the required quarterly statements reporting for the preceding quarter: gross receipts for the establishment; gross receipts for sales of alcoholic beverages; gross receipts for food sales; total expenses for the purchase of food and alcoholic beverages; and the expenses for purchases of food and alcoholic beverages separately, in violation of D.C. Official Code § 25-113(b)(2)(A) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2001).

ABRA Show Cause File Nos. 11-CMP-00157, 11-251-00266, 11-CMP-00322, Notice of Status Hearing and Show Cause Hearing, 2-4 (Dec. 7, 2011). The Government and the Respondent

appeared before the Alcoholic Beverage Control Board for a Show Cause Status Hearing on February 8, 2012.

The Show Cause Hearing occurred on March 14, 2012. The parties agreed to stipulate to the facts. *Transcript (Tr.)*, March 14, 2012 at 6. As part of the agreement to stipulate to the facts, the Office of Attorney General expanded Charge I to include the offense described in Charge II, and dismissed Charges II, III, and IV. *Tr.*, 3/14/12 at 5-6.

FINDINGS OF FACT

The Board, having considered the evidence, the arguments of the parties, and all documents comprising the Board's official file, and the stipulations of fact agreed upon by the parties, makes the following findings:

I. Underage Drinking Violation

1. The Metropolitan Police Department conducted an underage identification check at the Respondent's establishment on May 7, 2011, at approximately 10:15 p.m. *Case Report No. 11-251-00226*, 1-2. The officers identified three patrons that were consuming Sam Adams beer and under the age of twenty-one. *Id.* at 2. The police identified the patrons as students who attend George Washington University. *Id.* The underage patrons also had a pitcher on their table that was filled with beer and surrounded by six glasses. *Id.* Two of the underage patrons possessed fake identification documents, but they stated that the establishment never asked for their identification. *Id.* The establishment's server, Jami Freyer, further admitted that he only checked the identification of two of the patrons, although there were five patrons at the table. *Id.*

II. Books and Records Violation

2. On June 9, 2011, ABRA Investigator Shakoor visited the Respondent's establishment, and asked to inspect the Respondent's books and records. *Id.* at 2. The Respondent admitted that the files were not in the establishment's premises; rather, the files are maintained at the offices of the establishment's accountant, in the State of New Jersey. *Id.*

3. Investigator Shakoor returned to the establishment on June 14, 2011, in order to conduct another books and records inspection. *Id.* During this inspection, the establishment was able to produce three years of sales information. *Id.* Nevertheless, the establishment only produced alcoholic beverage invoices, register receipts, and guest checks from 2010 and 2011. *Id.*

III. Quarterly Report Violation

4. The records of the Alcoholic Beverage Regulation Administration (ABRA) show that the Respondent failed to file a quarterly report for the quarter beginning on January 1, 2011, and ending on March 31, 2011. *ABRA Case Report No. 11-CMP-00322*, 1.

IV. Remedial Actions

5. Finally, the Respondent testified that it has made changes to its operation in order to address the problems that gave rise to these violations, including, implementing a new protocol to check identification, changing its management and staff, providing its employees with training provided by ABRA and other organizations, and hiring a new bookkeeping service. *Tr.* 3/14/12 at 12-17, 20-22, 26-28.

CONCLUSIONS OF LAW

6. The Board has the authority to 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). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 (West Supp. 2012); 23 DCMR § 800, *et seq.* (West Supp. 2012).

7. We note that the facts stipulated by the parties support the violations alleged in Charges I, V, and VI. Our Findings of Fact in Paragraph 1 demonstrate that the establishment served three minors alcoholic beverages in violation of District of Columbia Official Code § 25-781. Our Findings of Fact in Paragraphs 2 and 3 demonstrate that the Respondent failed to keep and maintain three years of books and records on its licensed premises in violation of District of Columbia Official Code § 25-113(j)(3)(A) and §§ 1204 and 1208 of Title 23 of the District of Columbia Municipal Regulations. Finally, our Findings of Fact in Paragraph 4 demonstrate that the Respondent failed to file a required quarterly report in violation of § 25-113(b)(2)(A).

ORDER

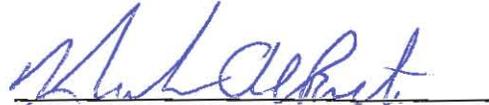
Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 13th day of June 2012, finds that the Respondent, Polo D.C., LLC, t/a Rugby Café, violated §§ 25-781, 25-113(j)(3)(A), 25-113(b)(2)(A) of the District of Columbia Official Code and §§ 1204 and 1208 of Title 23 of the District of Columbia Municipal Regulations. The Board hereby **ORDERS** that

1. Charges II, III, and IV are dismissed;
2. The Respondent is liable for Charge I and shall pay a fine of \$5,000.00 by no later than thirty (30) days from the date of this Order;
3. The Respondent is liable for Charge V and shall pay a fine of \$6,000.00 by no later than thirty (30) days from the date of this Order;
4. The Respondent is liable for Charge VI and shall pay a fine of \$4,000.00 by no later than thirty (30) days from the date of this Order;

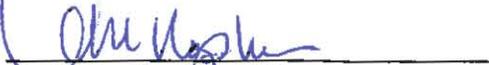
5. The Respondent shall receive a suspension of its license for fifteen (15) days; ten (10) days to be served and five (5) days stayed for one year, provided that the Respondent does not commit any additional ABC violations; and
6. The served suspension days shall run from Thursday, August 16, 2012, through Saturday, August 25, 2012.

The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member



Calvin Nophlin, Member



Mike Silverstein, Member

I concur with the majority's decision, with respect to Respondent's liability, but dissent as to the penalty selected by the majority of the Board. In my view, the Respondent merits a less severe penalty in light of the actions it has taken to remedy the conditions that led to the violations at issue in this case and in light of its subsequent record of compliance.



Ruthanne Miller, Chairperson

We also concur with the majority's decision. Nevertheless, we write separately to express our dissent as to the penalty selected by the majority of the Board. It is our view that the Respondent merits a much harsher penalty, including, but not limited to, more stayed days to ensure the Respondent's future compliance with the law.



Donald Brooks, Member



Herman Jones, 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, Reeves Center, 2000 14th Street, N.W., 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, District of Columbia 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 (April 2004) 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).