THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
1900 M Restaurant Associates, Inc. t/a Rumors Restaurant	License Number: Case Number:	71717 09-251-00110 09-251-00210 09-251-00005
Holder of a Retailer's Class CN License at premises 1900 M Street, N.W. Washington, D.C. 20036	Order Number:	2011-148

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: 1900 M Restaurant Associates, Inc., t/a Rumors Restaurant (Respondent)

Andrew Kline, on behalf of the Respondent

Walter Adams II, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING RESPONDENT'S MOTION FOR STAY PENDING APPEAL AND AMENDING BOARD ORDER NO. 2011-131

On June 2, 2010, the Alcoholic Beverage Control Board (Board) served Notices of Status Hearing and Show Cause Hearing (Notices), dated May 5, 2010, and May 26, 2010, on 1900 M Restaurant Associates, Inc., t/a Rumors Restaurant (Respondent), at premises 1900 M Street, N.W., Washington, D.C., charging the Respondent with 11 separate violations. In Board Order No. 2011-131, the Board found the Respondent liable for six of

the eleven charges. The Board levied a $9,500 fine and suspended the Respondent's ABC license from March 1, 2010, to March 8, 2010, with 21 further suspension days stayed pending no further violations by the Respondent.

On February 23, 2011, the Respondent filed a Motion for Stay Pending Appeal. The Government does not oppose the Motion. Under D.C. Code § 25-433(d)(3) (2001), "A stay shall be granted only upon good cause, which shall consist of unusual or exceptional circumstances." The Board recognizes that, unlike in the case of a fine, if the Respondent is successful on appeal, the Respondent can never recover the days its license has been suspended. As such, the Board finds good cause and grants the requested stay under § 25-433 pending the resolution of the Respondent's appeal.

In addition, the Respondent's Motion for Stay Pending Appeal correctly observes an error in Board Order No. 2011-131. The Order dismisses Charge III in Case Number 09-251-00210 in paragraph 129 but finds the Respondent liable for the same Charge in paragraph 110 and Order No. 6 on page 33. *Board Order No. 2011-131, para. 110, para. 129, 33.* The Order then levies a $500.00 fine and adds a two day suspension, stayed for one year, pending no further ABC violations, to the Respondent's penalty. *Board Order No. 2011-131, 33.* The Board agreed with the reasoning stated in paragraph 129 and does not intend to find the Respondent liable for Charge III in Case Number 09-251-00210. As such, the Board amends Board Order No. 2011-131 accordingly.

ORDER

Accordingly, it is this 2nd day of March 2011, **ORDERED** that:

1. Board Order No. 2010-131 is **STAYED** until the Respondent's appeal is resolved by the District of Columbia Court of Appeals;

It is **FURTHER ORDERED** that:

2. Board Order No. 2010-131 is **AMENDED** as follows:

    a. The last sentence of paragraph 110 is struck and shall now read:

        i. Finally, in respect to 09-251-00210, the Board finds the Respondent liable for Charge I but dismisses Charge II and Charge III;

    b. Order No. 6 on page 33 is struck;

    c. Order No. 7 on page 33 is amended as follows:

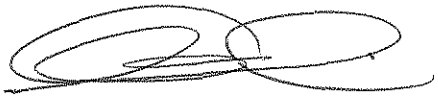
        i. In total, the Respondent shall pay a fine in the amount of $9,000.00 by no later than thirty (30) days from the date of this Order. The Respondent shall receive a suspension of nineteen (19) days, seven (7) days to be served and twelve (12) days stayed for one year,

provided that the Respondent does not commit any ABC violations during that time;

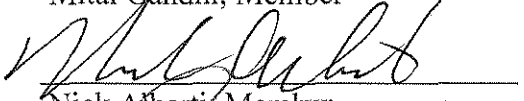
3. All other terms and conditions of Order No. 2010-131 shall remain in full force and effect.

4. Copies of this order shall be sent to both the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board



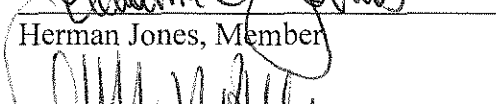
Mital Gandhi, Member



Nick Alberti, Member

Donald Brooks, Member

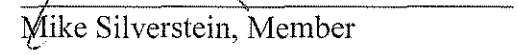
Herman Jones, Member



Calvin Nophlin, Member

We dissent from the position taken by the majority of the Board. The Respondent has failed to demonstrate that there are unusual or exceptional circumstances regarding the penalty levied by the Board. Furthermore, Board Order No. 2011-131 expressly relied on the plain language of D.C. Code § 25-823(5) and the case law regarding D.C. Code § 25-823(2). As such, the result reached by the Board is not novel or surprising. Consequently, we see no reason to delay the penalty imposed by the Board for the Respondent's serious breaches of the ABC law.

Charles Brodsky, Chairperson



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 1250 U Street, N.W., 3rd Floor, 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, 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).