

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

In the Matter of:)	
)	
SAS Convenience, Inc.)	License No.: ABRA-74500
t/a Shop Express)	Case No.: 12-CMP-00587
)	Order No.: 2013-329
Holder of a Retailer's Class B License)	
at premises)	
3900 Benning Road N.E.)	
Washington, D.C. 20019)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member

ALSO PRESENT: SAS Convenience, Inc. t/a Shop Express, Respondent

Anil Gupta, on behalf of the Respondent

Fernando Rivero, 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**

INTRODUCTION

We find the Respondent, Lin's Entertainment, LLC, t/a Columbia Wine & Spirits, guilty of selling go-cups in violation of D.C. Official Code § 25-741. As a result, the Board imposes a fine of \$250.00.

Procedural Background

On February 7, 2013, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated January 20, 2012, on SAS Convenience, Inc. t/a Shop Express (Respondent), at premises 3900 Benning Road, N.E., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Respondent provided a go-cup with the sale of an alcoholic beverage in violation of D.C. Official Code § 25-741 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6). The date of this incident is September 13, 2012.

The Alcoholic Beverage Control Board (Board) held a Show Cause Status Hearing on March 13, 2013. There was no settlement of the matter and the case proceeded to a Show Cause Hearing on April 17, 2013. At the conclusion of the Show Cause Hearing, the Board held a closed meeting pursuant to §405 (b)(13) of the Open Meetings Act. The Board, having considered the evidence contained in the record, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Respondent holds a Retailer's Class B License, ABRA License Number 74500, and is located at 3900 Benning Road N.E., Washington D.C. See ABRA Licensing File No. 74500.
2. On September 13, 2012, ABRA Investigator Brian Owens entered the Respondent's licensed establishment in an undercover capacity at approximately 1:20 p.m.. *Transcript (Tr.)*, April 17, 2013 at 9. The undercover nature of his investigation was related to a single sales and go-cup initiative conducted by ABRA's Enforcement Division. *Tr.* at 9.
3. Investigator Owens went to the rear of the establishment where he retrieved a bottle of MD 20-20 Peaches-n-Cream from the rear wall cooler. *Tr.* at 9-10. Once he had the alcoholic beverage, Investigator Owens retrieved an empty cup from the coffee/slushee station which sits adjacent to the cooler. *Tr.* at 9-10, 18. He approached the sales counter where he showed the MD 20-20 and the cup to a Hispanic female sales clerk, and then rendered payment. *Tr.* at 9, 11, 19-20. He set the empty cup in front of the bottle so that it was visible to the sales clerk. *Tr.* at 20-21. Investigator Owens left the establishment after completing his transaction. *Tr.* at 11. He did not put any liquid in the cup prior to his departure. *Tr.* at 39.

4. The coffee/slushee station also contained coffee related items such as sugar and stir straws. *Tr.* at 19. There were two slushee machines and other different types of cups. *Tr.* at 19, 22.

5. The alcoholic beverage and the cup were bound together by Investigator Owens with a rubber band. *Tr.* at 11. Investigator Owens tagged and marked the alcoholic beverage and the cup with the trade name of the licensed establishment, the license number, and the date of the sale. *Tr.* at 12-13. Upon his return to ABRA, Investigator Owens completed a transmittal form and placed the alcoholic beverage and the cup in ABRA's evidence locker. *Tr.* at 13-14. The Respondent was notified of the violation the following day. *Tr.* at 15

6. Anil Gupta, on behalf of the Respondent, testified that the Styrofoam cups located on the coffee/slushee station are intended for coffee. *Tr.* at 26. Mr. Gupta believes that the sales clerk assumed Investigator Owens wanted a cup of coffee. *Tr.* at 26-27, 33. Slurpee cups are different from coffee cups and they are kept behind the sales counter. *Tr.* at 30-31. A customer has to pay prior to receiving the cup for the slurpee. *Tr.* at 30. Customers, however, may serve themselves with the coffee. *Tr.* at 29, 31. Likewise, customers may help themselves to beer purchases, but they must ask an employee for assistance with spirits purchases. *Tr.* at 32. Mr. Gupta does not sell go-cups. *Tr.* at 27.

CONCLUSIONS OF LAW

7. 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. D.C. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2012). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if it 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. Code § 25-447 (West Supp. 2012).

8. The Board finds that the Respondent violated §25-741 by providing a go-cup with the sale of alcoholic beverages on August 4, 2011. The Board relies on the credible testimony of Investigator Owens to support the charge. It is undisputed that Investigator Owens took a single empty cup with him at the time he purchased the alcoholic beverage. The testimony provided by Mr. Gupta that his sales clerk had assumed that the investigator had purchased the cup for coffee, while plausible, is not sufficient to overcome the violation. As such, the Board finds that the Government has sustained the charge.

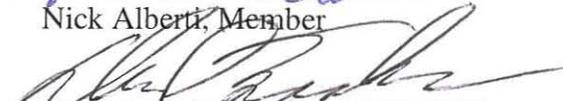
ORDER

Therefore, the Board, on this 10th day of July 2013, finds that the Respondent, SAS Convenience, Inc., t/a Shop Express, violated D.C. Official Code § 25-741. Because this is the Respondent's first secondary tier violation within four years, the Board hereby **ORDERS** that the Respondent shall pay a fine of \$250.00. The ABRA shall deliver copies of this Order to the Government and the Respondent.

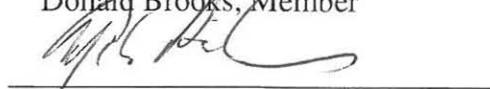
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member

I concur with the decision of the majority of the Board as to liability, but I dissent as to the penalty. I believe that a Warning is warranted in this matter.



Ruthanne Miller, 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).