

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

In the Matter of:

Mandarin Palace, Inc.
t/a Tian Tian Fang

Holder of a
Retailer's Class CR License

at premises
5540 Connecticut Avenue, N.W.
Washington, D.C. 20015

Case No. 14-CMP-00090
License No. ABRA-012671
Order No. 2014-449

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

ALSO PRESENT: Ted Liu, on behalf of Mandarin Palace, Inc., t/a Tian Tian Fang,
Respondent

Michael Stern, Senior 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

The Alcoholic Beverage Control Board (Board) finds that Mandarin Palace, Inc., t/a Tian Tian Fang, (Respondent), violated Title 23 of the District of Columbia Municipal Regulations (DCMR) § 1208, on March 5, 2014. As a result, the Respondent must pay a \$2,000.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 25, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 5540 Connecticut Avenue, N.W., Washington, D.C., on June 27, 2014.

Specifically, the Notice in Case No. 14-CMP-00090 charged the Respondent with the following violation:

Charge I: [On Wednesday, March 5, 2014,] the Respondent failed to maintain books and records of invoices, receipts, and importation permits on site for a period of three years, in violation of 23 DCMR § 1208, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 (1) (2012 Repl.).

ABRA Show Cause File No. 14-CMP-00090, Notice of Status Hearing and Show Cause Hearing, at 2 (June 25, 2014).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on July 30, 2014. The parties argued their respective cases at the Show Cause Hearing held September 24, 2014.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated June 25, 2014. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 14-CMP-00090. The Respondent holds a Retailer's Class CR license and is located at 5540 Connecticut Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-012671.
2. The Show Cause Hearing was held on September 24, 2014. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 14-CMP-00090.

I. Testimony of ABRA Investigator Dorshea Demby

3. On March 5, 2013, Investigator Demby, accompanied by his supervisor, Supervisory Investigator Craig Stewart, visited the Respondent's establishment to conduct a regulatory inspection. Tr. 09/24/14 at 11, 29. The investigators identified themselves to Ted Liu, the owner of the establishment. Tr. 09/24/14 at 12. As part of the inspection, Investigator Demby requested to inspect the alcohol license, the Certificate of Occupancy, guest checks, and the Respondent's books and records. Tr. 09/24/14 at 12, 19-20, 27-28.
4. Investigator Demby asked Mr. Liu to produce three years of invoices for alcoholic beverage purchases. Tr. 09/24/14 at 12, 20. Mr. Liu informed the investigators that his wife had removed the invoices from the premises and taken them to their home. Tr. 09/24/14 at 12, 17. Mr. Liu was able to produce a total of nine invoices covering the span of three years, only one of which was for alcoholic beverage purchases made in 2012. Tr. 09/24/14 at 13, 15, 24. The remaining eight invoices were for the years 2013 and 2014. Tr. 09/24/14 at 25. There were no importation permits attached to the invoices for alcoholic beverage purchases made outside of the District of Columbia. Tr. 09/24/14 at 13, 18-19, 23-24, 28.

5. Investigator Demby also requested copies of guest checks for the three year period. Tr. 09/24/14 at 17, 21. Mr. Liu informed him that he does not keep guest checks. Tr. 09/24/14 at 17, 21.

II. Testimony of Ted Liu

6. Ted Liu testified on behalf of the Respondent. Tr. 09/24/14 at 31. On March 14, 2014, three ABRA investigators entered the establishment at closing time, between 9:00 p.m. and 9:30 p.m.. Tr. 09/24/14 at 31. He turned over his license and invoices to the investigators for inspection. Tr. 09/24/14 at 31-32, 67.

7. Investigator Demby questioned why there was only one invoice for 2012. Tr. 09/24/14 at 32, 62-63, 70. Mr. Liu explained that when he opened for business in August 2010, he initially bought about \$2,000 to \$3,000 worth of spirits, but not beer and wine, to stock his bar. Tr. 09/24/14 at 33, 40, 49, 107. Because the establishment is a Chinese restaurant, he does not sell a lot of alcohol in the form of spirits. Tr. 09/24/14 at 32, 38. He sells about \$3,000.00 of alcohol a month, \$300.00 of which is spirits. Tr. 09/24/14 at 38, 41, 56. He buys beer and wine about six to seven times a year. Tr. 09/24/14 at 41. The spirits inventory on site during the March 2014 regulatory inspection dated back to the 2010 purchase so there was no invoice for it. Tr. 09/24/14 at 33, 109.

8. The investigator then requested to see Mr. Liu's books and records. Tr. 09/24/14 at 33-34, 65, 72. Mr. Liu produced his check book and sales tax return, and explained that his wife had taken the guest receipts home to post the sales figures. Tr. 09/24/14 at 34, 37, 45-46, 49-55, 66. The office in the restaurant is small so his wife reconciles the books at home. Tr. 09/24/14 at 37. Other than the two months of records that his wife removed from the premises, Mr. Liu claimed that he had copies of records for the balance of the three years required to be maintained. Tr. 09/24/14 at 50, 54, 59-60.

9. Mr. Liu then produced alcoholic beverage invoices for two purchases of Russian wine from Virginia. Tr. 09/24/14 at 35. The wine was not popular with customers so five bottles remain in his inventory. Tr. 09/24/14 at 35. He cancelled future purchase orders of the Russian wine. Tr. 09/24/14 at 35. The rest of Mr. Liu's inventory was purchased from Washington, D.C. wholesalers. Tr. 09/24/14 at 36, 41-42. Mr. Liu did not have the importation permits for the purchases made outside of Washington, D.C. Tr. 09/24/14 at 36, 45. He did not know he was required to have an importation permit for each invoice that reflected out of state purchases. Tr. 09/24/14 at 138, 148.

10. Mr. Liu testified that the investigators did not request copies of his guest checks. Tr. 09/24/14 at 37, 54, 71. He keeps his guest checks in a box at the establishment. Tr. 09/24/14 at 71. The only items examined by the investigators were the beer and wine invoices and the ABC license. Tr. 09/24/14 at 39. After he informed the investigators that his wife took two months of records off-site, the investigators stopped their inspection of other records. Tr. 09/24/14 at 39, 46, 55, 67.

11. Mr. Liu had only one invoice for spirits which was from Washington Wholesale dated 2012. Tr. 09/24/14 at 41-43, 58, 111. He had eight to ten invoices from Premium Wholesale for beer and wine purchases. Tr. 09/24/14 at 41-43. At the hearing, Mr. Liu produced six invoices for 2011 and eight for 2012. Tr. 09/24/14 at 69-70; Respondent's

Exhibit No. 1. Three of the invoices were for the purchase of spirits in 2013. Tr. 09/24/14 at 92-93. Mr. Liu did not produce any guest checks at the hearing for the years 2011, 2012, and 2013. Tr. 09/24/14 at 119-120. He only produced guest checks for one quarter of 2014, which represented sales transacted after the regulatory inspection on March 5, 2014. Tr. 09/24/14 at 120.

12. Mr. Liu's Quarterly Statement for first quarter 2013 reflected alcohol sales of \$7,002; second quarter reflected alcohol sales of \$7,700.86; third quarter reflected alcohol sales of \$5,700.42, and fourth quarter reflected alcohol sales of \$7,369.00. Tr. 09/24/14 at 56-57. He orders beer and wine every two months, or six times a year. Tr. 09/24/14 at 57. Mr. Liu admitted that purchases made six times a year would result in at least 12 invoices for 2012 and 2013. Tr. 09/24/14 at 58.

III. Testimony of ABRA Supervisory Investigator Craig Stewart

13. Supervisory Investigator (SI) Craig Stewart was called by the Government as a rebuttal witness. Tr. 09/24/14 at 122. On March 5, 2014, SI Stewart was training two new ABRA investigators on how to conduct a regulatory inspection. Tr. 09/24/14 at 123. New ABRA investigators are generally trained in the field under the supervision of another more seasoned ABRA investigator. Tr. 09/24/14 at 124.

14. SI Stewart testified that he prefers to train his own subordinates so that he knows they are properly trained. Tr. 09/24/14 at 124. He ensures that his trainees use the terms "guest checks", "register receipts", and "alcohol invoices" so that licensees understand what is being requested for inspection. Tr. 09/24/14 at 126.

15. SI Stewart observed Inv. Demby conduct the regulatory inspection with Mr. Liu. Tr. 09/24/14 at 125. Mr. Liu did not have three years of alcohol invoices, guest checks or register receipts. Tr. 09/24/14 at 126. SI Stewart recalled that there was one invoice from one year and several invoices from two years. Tr. 09/24/14 at 126.

16. SI Stewart makes a point of not interfering when a trainee investigator is conducting a regulatory inspection, but in this instance he stepped in to question Mr. Liu on the limited production of records. Tr. 09/24/14 at 127. Mr. Liu informed SI Stewart that his wife took the records to their home. Tr. 09/24/14 at 127. SI Stewart informed Mr. Liu that records cannot be removed from the premises without Board approval. Tr. 09/24/14 at 127-128. SI Stewart then questioned Mr. Liu as to why there were only nine invoices when the establishment sells alcohol daily. Tr. 09/24/14 at 128.

17. The invoice that Mr. Liu produced for SI Stewart was undated, there was no named licensed wholesaler, and there was no attached importation permit. Tr. 09/24/14 at 129-131, 141; Government Exhibit No. 2A and 2B. The document piqued SI Stewart's interest so he requested to see additional documents for inspection. Tr. 09/24/14 at 129. Mr. Liu told SI Stewart that he did not have any other documents, to include guest checks, nor does he keep them. Tr. 09/24/14 at 129-130. Mr. Liu did not produce any importation permits. Tr. 09/24/14 at 146-147.

18. Part of the regulatory inspection training is to have the investigator request a random sampling of records within the three year period being examined. Tr. 09/24/14 at

134, 149. Investigator Demby requested samples from 2012. Tr. 09/24/14 at 135. When Mr. Liu could not produce documents from 2012, Investigator Demby requested documents from 2011. Tr. 09/24/14 at 135. Mr. Liu produced a minimal number of documents from 2011 and 2013. Tr. 09/24/14 at 135.

19. When Mr. Liu told SI Stewart that he did not sell a lot of alcohol, SI Stewart reviewed the one invoice which listed 100 bottles of wine and noted that there was no importation permit for any of the purchases. Tr. 09/24/14 at 145-146. SI Stewart questioned why an establishment that didn't sell a lot of alcohol had 100 bottles listed in a single invoice purchase. Tr. 09/24/14 at 146-147.

CONCLUSIONS OF LAW

20. 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)(2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Official Code § 25-830 and 23 D.C.M.R. 800, et seq.

21. 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).

22. The Board finds that the Government has demonstrated by substantial evidence that the Respondent failed to maintain its books and records. Under 23 D.C.M.R. 1208, the books and records required to be maintained by a licensee shall be open to inspection by ABRA. These books and records include original and duplicate invoices which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages. Additionally, regulations require the licensee to maintain all books and records on the licensed premises for a period of three years. 23 D.C.M.R. 1208.3

23. The record is clear from Investigator Demby's testimony and more strongly buttressed by SI Stewart's testimony, that during the regulatory inspection, the Respondent could not, or did not produce the requested records. Despite the conflicting testimony presented by the Respondent regarding what records were available to ABRA at the time of the regulatory inspection, the Board finds the testimony of the two ABRA investigators more credible. Notwithstanding the absence of the two months of records in the possession of the Respondent's wife at their home, the Board finds that the Respondent failed to comply with the requirement to maintain three years of records on premises for inspection when requested.

24. ABRA relies on the production of these documents in order to determine whether a licensed Class CR establishment is in compliance with the statutory requirements for a restaurant, e.g., the establishment is operating primarily as a food service establishment by showing that at least 45% of its gross receipts is from the sale of food and that it is meeting the minimum food sales requirements for a restaurant. D.C. Official Code § 25-101(43).

Without this information, ABRA cannot confirm that a restaurant is actually operating in accordance with its license. Therefore, it is incumbent upon the Respondent to ensure that it cooperates and fully complies with the inspection of books and records by ABRA investigators.

25. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C.M.R 1208, as set forth in Charge I of the Notice to Show Cause, dated June 25, 2014, warrants the imposition of a fine set forth below. The Board takes administrative notice that Charge I is the Respondent's first primary tier violation. Thus, the Board may fine the Respondent between \$1,000.00 and \$2,000.00. *Licensing File No. ABRA-012671*, Investigative History; 23 DCMR § 801.

ORDER

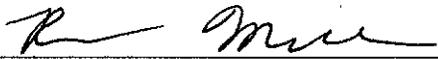
Based on the foregoing findings of fact and conclusions of law, the Board, on this 19th day of November, 2014, finds that the Respondent, Mandarin Palace, Inc., t/a Tian Tian Fang located at 5540 Connecticut Avenue, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated Title 23 DCMR § 1208.3.

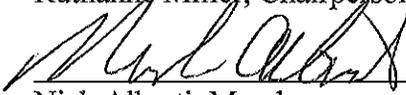
The Board hereby **ORDERS** that:

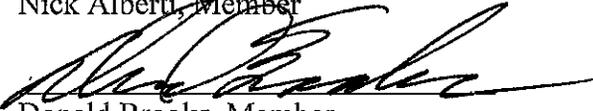
- 1) Respondent must pay a fine in the amount of \$2,000 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

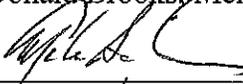
Copies of this Order shall be sent to the Respondent and the Government.

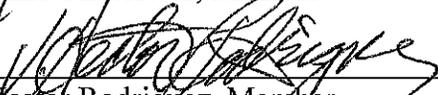
District of Columbia
Alcoholic Beverage Control Board

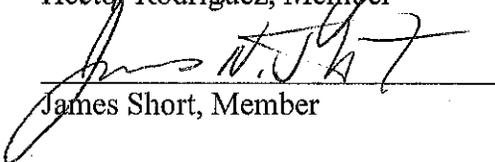

Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to D.C. Official Code § 25-433, 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 D.C. Official Code § 25-433, 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).