

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

In the Matter of:

Eun & Peter, Inc.
t/a Uncle Lee's Seafood

Holder of a
Retailer's Class A License

at premises
1102 Eastern Avenue, N.E.
Washington, D.C. 20019

Case No. 13-CMP-00287
License No. ABRA-085918
Order No. 2014-111

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

ALSO PRESENT: Peter H. Jung, on behalf of Eun & Peter, Inc., t/a Uncle Lee's
Seafood, Respondent

Maureen Zaniel, Senior Assistant Attorney General
Office of the Attorney General for the District of Columbia

Janea Raines, Pro-Bono Attorney
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 Eun & Peter, Inc., t/a Uncle Lee's Seafood, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-765, 25-711(b) and 25-712, and Title 23 of the District of Columbia Municipal Regulations (DCMR) § 1204.1. As a result, the Respondent must pay a \$2,900.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 9, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1102 Eastern Avenue, N.E., Washington, D.C., on October 11, 2013.

The Notice charged the Respondent with the following violations:

- Charge I: The Respondent displayed advertisements relating to the price of alcoholic beverages on more than 25% of the window space of the licensed establishment, in violation of D.C. Official Code § 25-765, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).
- Charge II: The Respondent failed to post the required lettering on the window or front door, in violation of D.C. Official Code § 25-711(b), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).
- Charge III: The Respondent failed to post the required warning signs regarding dangers of alcohol consumption during pregnancy, in violation of D.C. Official Code § 25-712, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).
- Charge IV: The Respondent failed to maintain sales receipts in the establishment, in violation of DCMR § 23-1204.1, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On June 28, 2013, Citation #7566 was issued to the Respondent in the amount of \$1,600.00 for violating D.C. Official Code §§ 25-25-711(b), 25-712, 25-765, and DCMR § 23-1204.1.

On July 10, 2013, the Respondent refused to pay the citation and instead requested a hearing.

The Show Cause Status Hearing occurred on November 13, 2013. On January 29, 2014, the Board continued the Show Cause Hearing to February 5, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on February 5, 2014.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a Retailer's Class A License, License No. ABRA-085918. See ABRA Licensing File No. ABRA-085918. The establishment's premises are located at 1102 Eastern Avenue, N.E., Washington, D.C. See ABRA Licensing File ABRA-085918.
2. The Show Cause Hearing was held on February 5, 2014. See ABRA Show Cause File No. 13-CMP-00287. The Notice charges the Respondent with the four violations enumerated above. See ABRA Show Cause File No. 13-CMP-00287.
3. The Government presented its case through the testimony of one witness, former ABRA Investigator Derek Brooks. *Transcript (Tr.)*, 2/5/14 at 9. Mr. Brooks was assigned to investigate an anonymous complaint at the Respondent's establishment. *Tr.*, 2/5/14 at 9. On June 26, 2013, Mr. Brooks conducted a regulatory inspection in response to the complaint. *Tr.*, 2/5/14 at 12.
4. Prior to entering the Respondent's establishment, Mr. Brooks observed that the Respondent had displayed advertisements relating to the price of alcoholic beverages on more than 25% of the window space of the licensed establishment. *Tr.*, 2/5/14 at 13-17. See Government Exhibits 2 and 3, Investigative Report No.13-CMP-00287.
5. During Mr. Brook's regulatory inspection, he observed that the Respondent did not have a sign posted that warned the public of the dangers of alcohol consumption during pregnancy. *Tr.*, 2/5/14 at 18. He also found that the Respondent did not have window lettering posted, did not maintain sales receipts in the establishment, and had displayed advertisements on more than 25% of the window space. *Tr.*, 2/5/14 at 24-25.
6. Mr. Brooks also observed that the Respondent's clerks were not providing receipts to the customers at the time alcoholic beverages purchases were made. *Tr.*, 2/5/14 at 18-19.
7. Mr. Brooks testified that Peter H. Jung, son of the owner, was able to produce the last three years of the invoices of alcoholic beverages, but he was unable to produce sales receipts. *Tr.*, 2/5/14 at 19. Mr. Jung informed Mr. Brooks that the "machine" had been broken for several months. *Tr.*, 2/5/14 at 19. Mr. Jung also stated that he could not produce receipts from the one operable cash register because it did not have tape. *Tr.*, 2/5/14 at 19.
8. Mr. Brooks advised Mr. Jung that the law requires the Respondent to maintain upon its licensed premises for a period of three years, records of the invoices and delivery slips of the purchases, sales, and deliveries of all alcoholic beverages, except beer. *Tr.*, 2/5/14 at 20-21. Mr. Brooks also advised Mr. Jung to remove the advertisements displayed on the window space that exceeded the 25% allowed by the law and regulations. *Tr.*, 2/5/14 at 21.
9. During the regulatory inspection, Mr. Brooks provided Mr. Jung with temporary window lettering and a pregnancy warning sign, neither of which were posted at the time. *Tr.*, 2/5/14 at 21.
10. On June 28, 2013, Mr. Brooks made a second visit to the Respondent's establishment. *Tr.*, 2/5/14 at 22. Mr. Brooks issued Citation #7566 to the Respondent in the amount of \$1,600.00 for the four violations discovered during the regulatory inspection. *Tr.*, 2/5/14 at 22. See ABRA Show Cause File No. 113-CMP-00287. During this second

visit, Mr. Brooks observed that the pregnancy warning sign and the window lettering were posted. *Tr.*, 2/5/14 at 23. Mr. Brooks also observed that that the Respondent was still displaying advertisements related to the price of alcoholic beverages on more than 25% of the window space of the licensed establishment. *Tr.*, 2/5/14 at 23. Mr. Brooks once again advised Mr. Jung about the violation regarding the window space advertising. *Tr.*, 2/5/14 at 23-24.

11. Mr. Jung testified on behalf of the Respondent at the Show Cause Hearing. *Tr.*, 2/5/14 at 2. The Respondent does not generate cash register receipts because the cash register does not work and it has no ink. *Tr.*, 2/5/14 at 33. The Respondent maintains sales information by recording the sales transactions in writing at the end of the day. *Tr.*, 2/5/14 at 33, 54. Specifically, the sales tracking system consists of counting the cash and the credit card receipts, and then cross-checking these amounts against the inventory sheets and the cost of the products. *Tr.*, 2/5/14 at 78. Mr. Jung indicated that that is the process that small businesses use to keep their books. *Tr.*, 2/5/14 at 78.

12. Mr. Jung claimed that all the books for the business are kept at their residence because the books contain confidential information. *Tr.*, 2/5/14 at 33, 54-55. Mr. Jung believes that he is required to produce the invoices for ABRA investigators, but not the books because they contain confidential information. *Tr.*, 2/5/14 at 34.

13. Mr. Jung testified that the establishment's window has four columns and he posted advertisements only on one column which is less than the 25% allowed. *Tr.*, 2/5/14 at 34. He did not remove the excess advertising requested by Mr. Brooks because he did not believe that it was a violation. *Tr.*, 2/5/14 at 79-80. The four columns referenced by Mr. Jung included the Respondent's restaurant windows. *Tr.*, 2/5/14 at 85. The restaurant does not have an ABC license and is located next door to the licensed establishment. *Tr.*, 2/5/14 at 84-85. See Respondent Exhibit 3.

14. Mr. Jung admitted that the pregnancy warning sign was not posted. *Tr.*, 2/5/14 at 34. He acknowledged that Mr. Brooks provided him with the warning sign which he immediately posted. *Tr.*, 2/5/14 at 34. He posted the ABC license which was visible to the public through the bulletproof glass. *Tr.*, 2/5/14 at 35.¹

15. Mr. Jung stated that the window lettering was posted for two years, but it fell down the day of Mr. Brooks' visit. *Tr.*, 2/5/14 at 52. He admitted that the window lettering was not posted when Mr. Brooks visited the establishment. *Tr.*, 2/5/14 at 52.

16. Mr. Jung stated that the alleged violations are the Respondent's first violations and that the citation was erroneously issued for second violations. *Tr.*, 2/5/14 at 35.

¹ Throughout his testimony, Mr. Jung mistakenly believed that he was cited for not having the ABC-license conspicuously posted. The Notice however lists the violation for not having the required lettering posted on the window or the front door. *Tr.*, 2/5/14 at 51-52; Notice at 2.

CONCLUSIONS OF LAW

17. 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. Code § 25-830 (West Supp. 2013); 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine “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. 2013).

18. The Board finds that the Respondent is guilty on all four charges; specifically that the Respondent displayed advertisements relating to the price of alcoholic beverages on more than 25% of the window space of licensed establishment, failed to post the required lettering on the window or front door, failed to post the required warning signs regarding dangers of alcohol consumption during pregnancy, and failed to maintain sales receipts in the establishment in violation of §§ 25-765, 25-711(b), 25-712, and 23 DCMR § 1204.1.

19. With regard to Charge I, the Board finds that the Respondent displayed advertisements relating to the price of alcoholic beverages on more than 25% of the window space of licensed establishment. Mr. Brooks visited the licensed establishment on June 26, 2013, and personally observed the violation. He advised Mr. Jung about the violation. Mr. Brooks made a second visit on June 28, 2013, and the advertisements were still displayed. Mr. Jung admitted that he did not remove the excess advertisements because he did not believe that displaying them was a violation, notwithstanding Mr. Brooks’ verbal warning given to the Respondent at the time of the regulatory inspection.

20. With regard to Charge II, the Board finds that the Respondent did not have the ABRA license information posted on the front door or exterior window. Here again, the Board credits Mr. Brooks who personally observed, on June 26, 2013, that the Respondent did not have posted window lettering. Moreover, Mr. Jung admitted that the window lettering was not posted.

21. With regard to Charge III, the Board finds that the Respondent did not have posted, in a conspicuous place, a warning sign regarding the dangers of alcohol consumption during pregnancy. The absence of the pregnancy sign was observed by Mr. Brooks, and again, Mr. Jung admitted the violation. Mr. Jung further admitted that he immediately posted the sign after Mr. Brooks provided him with the sign at the time of the regulatory inspection, which was confirmed by Mr. Brooks at his second visit to the establishment.

22. With regard to Charge IV, the Board finds that the Respondent did not maintain sales receipts in the establishment. Section 25-113(b)(3)(B)(i) states, “Licensees must maintain documentation, including but not limited to, books and records, showing all sales, purchase invoices, and disposition indicating sales information for food and alcoholic beverages which would allow an audit to be conducted to substantiate the quarterly statements filed by the establishment.” D.C. Code § 25-830(i) (West Supp. 2013).

23. The Board credits the testimony of Mr. Brooks who did not observe the Respondent’s clerks producing receipts for any monetary transactions. Furthermore, Mr.

Jung was unable to produce sales receipts when requested to do so. The Board notes that Mr. Jung's admitted business practices and broken registers aren't conducive to maintaining the sales information required by law. It is a violation for the Respondent to fail to maintain those records. Therefore, the Board sustains the charge and finds that the Respondent committed a violation of § 25-823(1).

24. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-765, as set forth in Charge I, § 25-711(b), as set forth in Charge II, § 25-712, as set forth in Charge III, and DCMR § 23-1204.1, as set forth in Charge IV, of the Notice to Show Cause, dated October 9, 2013, warrants the imposition of a fine set forth below.

25. The Board takes administrative notice that Charge I, Charge II, and Charge III are second secondary tier violations and Charge IV is the first primary tier violation for the Respondent.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of April, 2014, finds that the Respondent, Eun & Peter, Inc., t/a Uncle Lee's Seafood, located at 1102 Eastern Avenue, N.E., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code §§ 25-765, 25-711(b) and 25-712, and 23 DCMR § 1204.1.

The Board hereby **ORDERS** that:

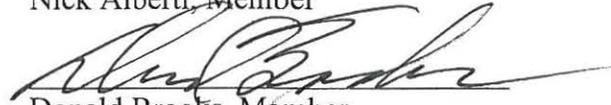
- 1) Charge I: Respondent must pay a fine in the amount of \$650.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$650.00.
- 3) Charge III: Respondent must pay a fine in the amount of \$100.00.
- 4) Charge IV: Respondent must pay a fine in the amount of \$1,500.00.
- 5) In total, the Respondent must pay a fine in the amount of \$ 2,900.00 by no later than sixty (60) 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



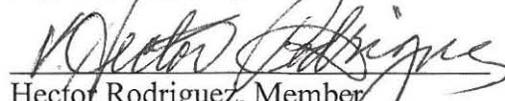
Nick Alberti, Member



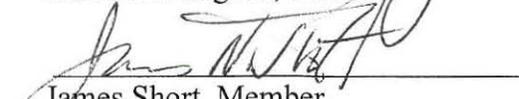
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

We concur with the majority's decision as to its finding of the Respondent's liability, but we dissent as to the penalty selected by the majority of the Board.



Ruthanne Miller, Chairperson

Herman Jones, 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).