

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

In the Matter of:)

Connexion Group, LLC)
t/a 1230 DC)

Holder of a)
Retailer's Class CR License)

at premises)
1230 9th Street, N.W.)
Washington, D.C. 20005)

Case No.: 18-CMP-00203
License No.: ABRA-100537
Order No.: 2019-111

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Jessica Gunzel, Assistant Attorneys 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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Connexion Group, LLC, t/a 1230 DC, (hereinafter "Respondent" or "1230 DC") violated D.C. Official Code §§ 25-113a(c) and 25-823(a)(7) when on Saturday, August 18, 2018, it illegally operated a summer garden on its rooftop without Board approval and violated its Board approved hours of operation by operating past 2:00 a.m. In light of these offenses, the Board issues a \$3,000 fine.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on November 28, 2018. *ABRA Show Cause File No. 18-CMP-00203*, Notice of Status Hearing and Show Cause Hearing, 2-3 (Nov. 28, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1230 9th Street, N.W., Washington, D.C., on November 30, 2018. *ABRA Show Cause File No. 18-CMP-00203*, Service Form. The Notice charges the Respondent with two (2) violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violations:

- Charge I: [On Saturday, August 18, 2018,] [y]ou operated a summer garden without the proper endorsement, in violation of D.C. Official Code § 25-113a(c) and 23 DCMR § 1004.1...
- Charge II: [On Saturday, August 18, 2018,] [y]ou failed to comply with the terms of your license by operating outside the approved hours of sales and entertainment, in violation of D.C. Official Code § 25-823(a)(7) and 23 DCMR § 1001.8...

Notice of Status Hearing and Show Cause Hearing, 2-3.

The Government and the Respondent appeared at the Show Cause Status Hearing on January 9, 2019, where there was no settlement of the matter.

The Respondent failed to appear at the Show Cause Hearing on February 13, 2019, and the Government proceeded ex parte in accordance with D.C. Official Code § 25-447.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. The Respondent, 1230 DC, holds a Retailer's Class CR License at 1230 9th Street, N.W., Washington, D.C. *ABRA License No. 100537*. Its hours of operation, sales and service are: Sunday through Thursday 11:00 a.m. to 1:00 a.m. and Friday and Saturday 11:00 a.m. through 2:00 a.m. *See ABRA Licensing File No. ABRA-100537.*
2. On Saturday, August 18, 2018, while driving by 9th Street, N.W., at approximately 2:30 a.m., ABRA Investigator Kevin Puente, Supervisory Investigator Mark Brashears, and an inspector with the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) observed that the Respondent's establishment was operating a summer garden and was operating past its approved hours. *Transcript (Tr.)*, February 13, 2019 at 8.

3. They arrived at the front door of the Respondent's establishment and identified themselves as ABRA investigators to a security guard. *Id.* at 8, 10. They then asked to speak to the ABC Manager or the owner. *Id.* at 8.

4. The investigators entered the premises and went to the second floor where they observed approximately ten (10) patrons on the Respondent's rooftop deck located off the second floor. *Id.* at 8-9. They further observed that some of the patrons were seated and consuming alcoholic beverages. *Id.*

5. Anthony Rodriguez approached Investigator Puente and identified himself as the ABC Licensed Manager. *Id.* Mr. Rodriguez produced the establishment's ABC license. *Id.* at 9-10. The ABC license sets forth the establishment's hours of operation and sales which end at 2:00 a.m. *Id.* at 10. The ABC license did not list an endorsement for an approved summer garden. *Id.*

6. At 2:30 a.m., Investigator Puente observed a bartender behind the bar still serving alcoholic beverages. *Id.* He also observed a DJ playing music, making announcements on a microphone, and patrons dancing. *Id.* at 11.

7. Investigator Puente advised Mr. Rodriguez that the establishment was operating and serving alcoholic beverages past the establishment's approved hours. *Id.* Mr. Rodriguez instructed the bartender to stop serving alcoholic beverages. *Id.* at 10.

8. Later, when Investigator Puente learned that Mr. Attakpah, the owner, was present, he asked to speak with him. *Id.* at 10-11. Investigator Puente informed Mr. Attakpah of the potential violations. *Id.* Only after Investigator Puente advised Mr. Attakpah at 2:45 a.m. that he would call MPD for assistance, did Mr. Attakpah instruct the DJ to stop playing music and to turn on the lights. *Id.* at 12.

CONCLUSIONS OF LAW

9. 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 (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1).

I. Standard of Proof

10. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2019). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

II. The Respondent Operated a Summer Garden without Approval in Violation of § 25-113a(c)

11. Under § 25-113a(c), an on-premise retail licensee shall obtain an endorsement on its license before the licensee operates an outdoor summer garden. D.C. Code § 25-113a(c); 23

DCMR § 1004.1 (West Supp. 2019). In this case, on August 18, 2018, ABRA investigators observed patrons drinking on the Respondent's second floor rooftop deck; yet, the Respondent does not have an approved summer garden endorsement on its license. *Supra*, at ¶ 4. Under these circumstances, the Board sustains Charge I.

III. The Respondent Exceeded its Hours of Operation and Sale in Violation of § 25-823(a)(7).

12. Under § 25-823(a)(7), a licensee must "follow the terms of its license." D.C. Official Code § 25-823(a)(7). In this case, on August 18, 2018, ABRA investigators observed patrons inside the premises consuming alcohol and dancing at 2:45 a.m., which exceeds the approved hours of operation listed on the Respondent's license. *Supra*, at ¶ 6. Under these circumstances, the Board sustains Charge II.

IV. Penalty

13. ABRA's records indicate that the current violations represent first level primary tier violations. The fine range for a first time primary tier offense falls between \$1,000 and \$2,000. 23 DCMR § 801 (West Supp. 2019).

ORDER

Therefore, the Board, on this 13th day of March 2019, finds Connexion Group, LLC, t/a 1230 DC, guilty of violating D.C. Official Code §§ 25-113a(c) and 25-823(a)(7). The Board imposes a total fine of \$3,000, which shall be distributed among the charges as follows:

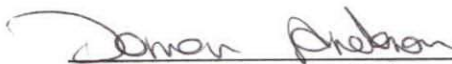
- (1) For the violation described in Charge I, 1230 DC shall pay a fine of \$2,000.
- (2) For the violation described in Charge II, 1230 DC shall pay a fine of \$1,000.

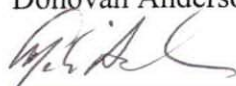
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.


IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed two (2) primary tier violations.

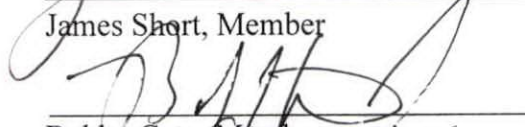
The ABRA shall deliver copies of this Order to the Government and the Respondent.


District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Mike Silverstein, Member


James Short, Member


Bobby Cato, Member


Rema Wahabzadah, Member

I agree in part with and dissent in part from the decision of the Board. I agree with the Board's finding that the licensee is guilty of both charges. I agree with the decision to levy a maximum fine of \$2,000 for Charge I, operating a summer garden without the proper endorsement in violation of D.C. Official Code § 250113a(c) and 23 DCMR § 1004.1. I dissent from the decision of the Board to levy a minimum fine of \$1,000 for Charge II, failure to comply with the terms of the license by operating outside the approved hours of sale in violation of D.C. Official Code § 25-723(b).

I recommend a fine \$2,000 for Charge II. In addition, I recommend the imposition of two (2) suspension days stayed for a period of one (1) year. The imposition of suspension days is warranted given that the violation outlined in Charge II has occurred twice within just a four-month period and the Respondent has offered no defense for either infraction.

The Board should always strive for consistency with regards to its decisions. Unfortunately, the decision of the Board in the present case is inconsistent with its January 2019 decision regarding Case 18-CMP-00142. On January 30, 2019, the Board ordered this licensee to pay a fine of \$1,500 the charge of failure to comply with the terms of the license by operating outside the approved hours of sale in violation of D.C. Official Code § 25-723(b), see Board Order 2019-045. Just five weeks after issuing its decision in Case 18-CMP-00142, the Board has decided to levy a lower fine of \$1,000 for an identical charge in the present case. In both cases the Respondent failed to appear before the Board for the Show Cause hearing.

The Board's decision to levy a fine of \$1,500 for a violation of D.C. Official Code § 25 723(b) in Case 18-CMP-00142 was appropriate. Because the present case is a second violation of that code provision and the pertinent facts of the violation are so similar to those in Case 18-CMP-00142, a fine of \$2,000 is warranted in the present case.


Nick Alberti, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, NW, 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, 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, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).