

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

In the Matter of:)	
Shredder, LLC)	Case No.: 18-CMP-00053
t/a Abigail Room)	License No.: ABRA-107468
Holder of a)	Order No.: 2019-073
Retailer's Class CN License)	
at premises)	
1730 M Street, N.W.)	
Washington, D.C. 20036)	

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

ALSO PRESENT: Shredder, LLC, t/a Abigail Room, Respondent

Kijun Sung, Counsel, on behalf of the Respondent

Christopher Sousa, 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) issues Shredder, LLC, t/a Abigail Room, (hereinafter "Respondent" or "Abigail Room") two warnings related to compliance with D.C. Code §§ 25-781(a)(1) and 25-783(b) on April 29, 2019. The Board further reminds the Respondent that under the underage drinking laws of the District of Columbia, not checking a

patron's identification, regardless of the reason, and serving them alcohol, is always at one's own risk.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on July 10, 2018. *ABRA Show Cause File No. 18-CMP-00053*, Notice of Status Hearing and Show Cause Hearing, 2 (Jul. 10, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1730 M Street, N.W., Washington, D.C., by certified mail. *ABRA Show Cause File No. 18-CMP-00053*, Certified Mail Receipt. The Notice charges the Respondent with multiple 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 April 29, 2018,] [y]ou sold alcoholic beverages to persons under 21 years of age in violation of D.C. Code § 25-781(a)(1)

Charge II: [On April 29, 2018,] [y]ou, your agent, or your employee did not take steps reasonably necessary to ascertain whether the persons to whom you sold, served, or delivered alcoholic beverages to were of legal drinking age, in violation of D.C. Code § 25-783(b)

Notice of Status Hearing and Show Cause Hearing, 2-4.

Both the Government and Respondent appeared at the Show Cause Status Hearing on October 3, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on November 28, 2018. The Board also considered the Proposed Findings of Fact and Conclusions of Law filed by the parties.

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:

I. Background

1. Abigail Room holds a Retailer's Class CN License at 1730 M Street, N.W., Washington, D.C. *ABRA License No. 107468*. Prior to April 28, 2018, The George Washington University filed a complaint with ABRA about an incident where some students at the university may have engaged in underage drinking at the establishment during an event held there by the students. *Transcript (Tr.)*, November 28, 2018 at 14. At this specific establishment, ABRA's records further show no prior violations, warnings, citations, or enforcement proceedings related to violations of the sale to minor laws of the District of Columbia.

II. ABRA Investigator Kevin Puente

2. ABRA Investigator Kevin Puente, Supervisory Investigator Jason Pero, Metropolitan Police Department (MPD) Detective David Carter, MPD Detective Scott Emmons, and MPD Sergeant Terry Thorne were conducting identification checks and monitoring for underage drinking at various restaurants and bars on the evening of April 28, 2018, going to the early morning of April 29, 2018. *Id.* In light of the complaint filed by The George Washington University, the investigative team decided to visit Abigail Room. *Id.* at 14.

3. On April 29, 2018, the investigative team arrived at Abigail Room at 1:00 a.m. *Id.* at 15. Outside the establishment, the team saw a line outside the establishment. *Id.* Investigator Puente observed a security staff member and manager Alexander Sibikovic outside the establishment as well. *Id.* at 15-16.

4. Despite employees being present, patrons were just walking into Abigail Room without having their identifications checked. *Id.* at 15. In response, Investigator Puente pulled out his phone and began recording the admission line. *Id.* at 16. As the investigator filmed the scene, he saw a number of patrons allowed in without having their identifications checked. *Id.* at 18. After less than a minute, Investigator Puente observed Mr. Sibikovic observe him and Abigail Room staff began checking patron identifications. *Id.* at 18, 93. Investigator Puente, Supervisory Investigator Peru, and Sgt. Thorne then entered the premises to conduct identification checks. *Id.* at 19.

5. Once inside, the three officials walked to the back of the establishment and observed two young looking patrons drinking what appeared to be alcoholic beverages. *Id.* The officials identified themselves and asked for their ages. *Id.* The female patron (Patron 1) indicated that she was 26 years old and presented an Illinois driver's license. *Id.* She then presented a George Washington University Identification Card at the request of Investigator Puente. *Id.* When Investigator Puente indicated that he would contact the university to verify her age, she admitted that she was 18 years old. *Id.* In turn, the male patron (Patron 2) indicated that he was 22 years old and presented a foreign identification issued by the Republic of Columbia. *Id.* at 22, 84. When Investigator Puente requested to see his student identification, the male admitted that was 18 years old. *Id.* at 23-24. Furthermore, he then provided his identification issued by Oregon showing that he was born in July 1999. *Id.* at 24. Investigator Puente further noticed that the male pictured in the Oregon and Columbia identification did not look like the same person. *Id.* at 98. Both patrons informed Investigator Puente that they were consuming Tequila Sunrises, a well-known cocktail. *Id.* at 24-25.

6. According to the 2018 I.D. Checking Guide, the Illinois identification observed by Investigator Puente is a prior version of the state's driver's license. *Id.* at 75. There is no indication that the identification had the required micro-printing, holograms, or laser perforation. *Id.* at 76-77. As a result, the Illinois identification observed by Investigator Puente lacked a number of the required features of a genuine Illinois identification. *Id.* at 78.

7. Investigator Puente then walked to the establishment's VIP area. *Id.* at 26. The investigator saw another female patron (Patron 3) drinking something that appeared to be an

alcoholic beverage. *Id.* The investigator then identified himself and asked her what she was drinking. *Id.* The female patron indicated that she was drinking champagne. *Id.* The investigator then asked that she come outside. *Id.* at 27. While walking outside together, he saw the female patron take something out of her purse and put it inside of her skirt. *Id.*

8. Outside, Investigator Puente, Sgt. Thorne, and Detective Emmons began to question the female patron (Patron 3). *Id.* The patron admitted that she was 18 years old but would not produce an identification card. *Id.* at 27-28.

9. Detective Carter later informed Investigator Puente that he had found two additional patrons (Patrons 4 and 5) consuming alcohol inside the premises. *Id.* at 28-29. The detective indicated that he witnessed the bartender serve the two patrons an alcoholic beverage and watched the patrons consume it. *Id.* at 30. Furthermore, the patrons' identifications confirmed that they were born in 1999 and the two patrons admitted that they were 18 when questioned by the detective. *Id.* at 29-30. One individual produced a fraudulent Maine identification and a real identification from New Jersey, while the other individual presented a fraudulent Florida identification and a real identification from Texas. *Id.* at 29.

10. According to the 2018 I.D. Checking Guide, the Florida identification had a holographic image, it lacked the required "transparent circle" and a "variable FD on the holder's birth date." *Id.* at 80. Therefore, the Florida identification found by the investigative team lacked required features of a genuine Florida identification. *Id.* at 79-80.

11. In the end, the investigative team was present at the establishment for only 45 minutes and found at least five minors that had been served alcohol. *Id.* at 31.

III. Christian Silva

12. Christian Silva works as a bartender at Abigail Room. *Id.* at 103-04. Mr. Silva was working at the establishment when the investigative team visited. *Id.* He indicated that he does not check identification at the establishment because the security at the door is supposed to do it. *Id.* at 105. On the night of the incident, only patrons 21 years of age or older were supposed to be present. *Id.* at 105-06. Furthermore, Mr. Silva indicated that he assumes that anyone let into the establishment during a 21 and over event is 21 and would serve them alcohol. *Id.* at 116-17.

13. Mr. Silva believes he briefly interacted with the two MPD officers on the night of the incident. *Id.* at 107. Specifically, an officer flagged him down at the bar and asked him to produce his identification. *Id.* at 107. In response, Mr. Silva went to get his identification. *Id.* at 108. When he returned, the officer had two drinks with him and informed him that he had served underage patrons. *Id.* Nevertheless, Mr. Silva did not see the officer's interaction with the underage patrons or the patrons in question. *Id.* at 108-09.

IV. David Chung

14. David Chung is one of the owners of Abigail Room. *Id.* at 120. Mr. Chung showed video footage of the establishment's doorman checking identifications around 1:02 a.m. on the

date of the incident. *Id.* at 128-29. Mr. Chung admitted that security check identifications when “it [is] necessary to check IDs” and may not check identifications in situations where staff know a patron. *Id.* at 131. Nevertheless, Mr. Chung did not disclose the identity of any of the patrons observed by Investigator Puente who did not have their identifications checked that may have been known by staff.

CONCLUSIONS OF LAW

15. 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).

V. Standard of Proof

16. 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).

VI. The Board Issues a Warning for Charges I and II.

17. The Board issues a warning for Charges I and II.

18. Under § 25-830(e)(1),

Except for an egregious violation as may be later defined by ABC rulemaking, no licensee shall be found to be in violation of a first-time violation of § 25-781 (sales to minors), unless the licensee has been given a written warning, or received a citation, for the violation, or had an enforcement proceeding before the Board, during the 4 years preceding the violation.

D.C. Code § 25-830(e).

19. The prohibition on the sale or delivery of alcoholic beverages to a minor is found at D.C. Official Code §§ 25-781(a)(1) and 25-781(b)(1). Section 25-781(a)(1), prohibits the “sale or delivery of alcoholic beverages . . .” to “A person under 21 years of age, either for the person’s own use or for the use of any other person . . .” D.C. Code § 25-781(a), (a)(1). Under § 807.1, the Board may forgo a warning for a first time offense, whenever the violation is “egregious.” 23 DCMR § 807.1 (West Supp. 2019). According to § 807.1, in pertinent part, a violation of § 807.1 is egregious whenever the license holder “intentionally” sells alcohol to a minor or where it is shown that there is a “pattern of prior alcoholic beverage sales or service to minors.” § 807.1.

20. In this case, Charge I represents Abigail Room's first alleged violation of § 25-781(a)(1), which requires the Government to show that the violation in this case was legally egregious in accordance with § 25-830(e)(1). *Supra*, at ¶ 1. Nevertheless, even if it were proven that the establishment did not check the identifications of the underage patrons at issue in this case, under the current record before the Board, it is just as likely that Abigail Room was reckless or negligent in its identification checking practices. Under these circumstances, the Government cannot satisfy the requirement that any alleged sale to the patrons was intentional.

21. Furthermore, in regards to the showing of a pattern, the Government was not able to show that any of the patrons caught by Investigator Puente had obtained their alcohol directly from the establishment. *Supra*, at ¶¶ 5, 7. In their case, the Board cannot rule out that the patrons obtained their alcohol from a third party, such as a friend, and not the establishment. Moreover, in the case of the patrons discovered by the officers, the Board cannot find a pattern of prior underage drinking sales when the patrons were served at the same time. *Supra*, at ¶ 9. As a result, there is insufficient evidence to make the threshold finding that the violation described by Charge I represents an egregious violation.

22. In light of the Board's finding regarding Charge I, a warning for the alleged violation of § 25-781(a)(1) is also appropriate and consistent with the treatment of other licensees.¹ Therefore, the Board will issue a warning to Abigail Room related to Charge II.

23. The Board notes that it is empowered to issue warnings under § 25-830(e)(1), § 807.1, and the civil penalty schedule found at 23 DCMR § 800.² Moreover, the issuance of a warning rests solely within the discretion of the Board and may not be contested. D.C. Code § 25-830(e)(1); D.C. Code § 2-509 (only applies to "contested cases."); *see also Holistic Candles & Consumers Ass'n v. Food & Drug Admin.*, 664 F.3d 940, 946 (D.C. Cir. 2012) (saying that the issuance of a "warning letter[]" by the Food and Drug Administration does "not constitute final agency action" or create rights under the federal Administrative Procedure Act.") In this case, five minors were found or reported to be found in the establishment consuming alcoholic beverages, at least two minors were reported to have purchased alcohol directly from the establishment, and the establishment was observed failing to check identifications at the same event. *Supra*, at ¶¶ 5, 7, 9. Under these circumstances, the events described in the charges issued by the Government, and the facts elucidated at trial, merit the issuance of a warning to Abigail Room for both offenses.

ORDER

Therefore, the Board, on this 13th day of February 2019, issues a **WARNING** for Charge I and a **WARNING** for Charge II.

¹ Under § 25-783(b), "a licensee or his agent or employee shall take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age." D.C. Code § 25-783(b).

² The Board notes that this hearing and the Order issued in this matter also qualify as "enforcement proceedings" under D.C. Code § 25-830(e)(1). As a result, at this time, whether the present proceedings constitute a "warning" or an "enforcement proceeding," for the next four years from the date of this Order, there is no need for the Government to make a showing of egregiousness in prosecutions brought under D.C. Code § 25-781.

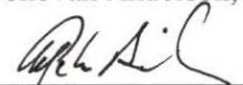
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

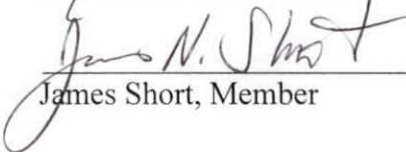
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

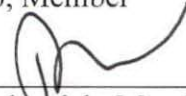


Mike Silverstein, Member



James Short, Member

Bobby Cato, Member



Rema Wahabzadah, Member

I dissent from the position taken by the majority of the Board regarding liability because I believe there is sufficient evidence in the record to find in favor of the Government on both charges.

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).