

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

In the Matter of:)
)
)

Prospect Dining, LLC)
t/a Chinese Disco)

Case No.: 17-CC-00066
License No.: 78058
Order No.: 2018-428

Holder of a)
Retailer's Class CR License)
)

at premises)
3251 Prospect Street, N.W.)
Washington, D.C. 20007)
)

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
James Short, Member
Donald Isaac, Sr., Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Prospect Dining, LLC, t/a Chinese Disco, Respondent

Walter Adams, 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) finds that Prospect Dining, LLC, t/a Chinese Disco, (hereinafter "Respondent" or "Chinese Disco") violated D.C. Official Code § 25-781. The Respondent shall pay a \$3,000 fine and serve a five day suspension in accordance with the Order below.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on February 22, 2018. *ABRA Show Cause File No. 17-CC-00066*, Notice of Status Hearing and Show Cause Hearing, 1 (Feb. 22, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3251 Prospect Street, N.W., Washington, D.C., on February 23, 2018. *ABRA Show Cause File No. 17-CC-00066*, Service Form. The Notice charges the Respondent with one violation, 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 violation:

Charge I: [On May 14, 2017,] [y]ou sold and permitted the consumption of alcoholic beverages to persons under 21 years of age in violation of D.C. Code §[§] 25-781(a)(1) . . . [and] 27-781(b)(1) . . .

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

Only the Government appeared at the Show Cause Status Hearing on March 28, 2018. The case proceeded to a Show Cause Hearing on June 20, 2018; however, the Respondent did not appear. The Government proceeded ex parte.

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. Chinese Disco holds a Retailer's Class CR License at 3251 Prospect Street, N.W., Washington, D.C. *ABRA License No. 78058*.
2. ABRA Investigator Kevin Puente participated in an underage compliance check program on May 14, 2017. *Transcript (Tr.)*, June 12, 2018 at 12. On that day, he met with Metropolitan Police Department Detectives David Carter and Scott Emmons. *Id.* As part of the program, they visited Chinese Disco based on complaints received about the establishment. *Id.* at 13, 33, 46. Upon arriving, the investigative team entered the establishment to conduct identification checks. *Id.* at 13.
3. Inside, the investigative team saw a young looking female patron consuming an alcoholic beverage. *Id.* at 14-15. The team approached her and requested identification. *Id.* at 15. The female patron indicated that her identification was with the bartender, but the bartender staff denied it and indicated that the bar does not hold identification cards. *Id.* at 16, 34, 45. The bar staff further indicated that they never check identification at the bar because identifications are

checked at the door. *Id.* at 45. During her conversation with Detective Carter, the female patron admitted that the drink in her hand was a vodka cranberry. *Id.* at 15. She also admitted that she was 20 years old and showed her valid Georgia driver's license, which confirmed her age. *Id.* at 16, 34, 44. According to the female patron, she used someone else's identification to gain entry into the establishment. *Id.* at 37

CONCLUSIONS OF LAW

4. 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. Official Code § 25-823(a)(1).

I. Standard of Proof

5. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2018). 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. Chinese Disco Permitted Two Minors to Consume Alcohol Inside the Establishment on October 1, 2017 in Violation of § 25-781(b).

6. The Board sustains Charge I because the Government demonstrated through substantial evidence that Chinese Disco allowed a minor to consume alcohol on the premises in violation of § 25-781(b).

7. Section 25-781(b)(1) states that "A retail licensee shall not permit at the licensed establishment the consumption of an alcoholic beverage by any . . . person under 21 years of age." D.C. Code § 25-781(b), (b)(1). The term "permit," among other definitions, means "to allow" or "to give opportunity for." PERMIT, BLACK'S LAW DICTIONARY (10TH ED. 2014). Previously, the Board has indicated that "the mere fact that a licensee clears a minor to drink by allowing him or her inside and the minor consume[s] alcohol, whether provided by the establishment or not, [may] be sufficient to find a violation of § 25-781(b). *In re Prospect Dining, LLC, t/a Chinese Disco*, Case No. 17-CMP-00020, Board Order No. 2018-172, ¶ 35 (D.C.A.B.C.B. May 2, 2018).

8. In this case, Chinese Disco staff permitted an underage female patron to enter the establishment with someone else's identification. *Supra*, at ¶ 3. After checking her identification at the door, the female patron was then permitted to procure and consume an alcoholic beverage. *Id.* Moreover, Chinese Disco could have prevented the entry of the minor had its staff properly scrutinized the female patron's identification. *Id.* Based on these facts, there is sufficient evidence to sustain Charge I.

III. Penalty

9. In this case, the offense represents a primary tier violation. 23 DCMR § 800 (West Supp. 2018). Based on the date of adjudication of Chinese Disco's prior offenses, the violation in this case is fined as a first time offense, even though it is not a first time offense. A first level violation of § 25-781 has a fine range of between \$2,000 and \$3,000 and permits the imposition of suspension of five days that may be stayed at the discretion of the Board. D.C. Code § 25-781(f)(1). The Board mandates the maximum fine and shall not stay the suspension based on Chinese Disco's prior history of violations.

ORDER

Therefore, the Board, on this 11th day of July 2018, finds that Prospect Dining, LLC, t/a Chinese Disco, guilty of violating § 25-781. The Board imposes the following penalty on Chinese Disco:

- (1) For the violation described in Charge I, Chinese Disco shall pay a fine of \$3,000. The licensee shall also serve a suspension of five days.

IT IS FURTHER ORDERED that the suspension related to Charge I shall begin at 12:01 a.m. on Friday, October 5, 2018, and end at midnight on October 9, 2018.

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 violation found by the Board in this Order shall be deemed a primary tier violation.

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

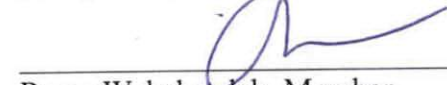


James Short, Member



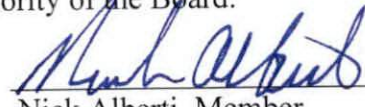
Donald Isaac, Sr., Member

Bobby Cato, Member



Rema Wahabzadah, Member

I abstain from the decision reached by the majority of the Board.



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).