

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

In the Matter of:)	
)	
NHV Corporation)	Case No.: 21-CIT-00213
t/a Haydee’s Restaurant)	License No.: ABRA-24663
)	Order No.: 2022-031
Holder of a)	
Retailer’s Class CT License)	
)	
at premises)	
3102 Mount Pleasant Street, N.W.)	
Washington, D.C. 20010)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: NHV Corporation, t/a Haydee’s Restaurant, Respondent

William Cowden, Counsel, on behalf of the Respondent

Antoine Williams, 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 NHV Corporation, t/a Haydee’s Restaurant, (hereinafter “Respondent” or “Haydee’s Restaurant”) violated 23 DCMR § 810.2 on March 17, 2021, by permitting the sale, service, or consumption of alcohol on the premises after permitted hours.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 2, 2021. *ABRA Show Cause File No. 21-CIT-00213*, Notice of Status Hearing and Show Cause Hearing, 2 (Aug. 2, 2021). 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 March 17, 2021,] [y]ou allowed the consumption of alcoholic beverages after 10:00 p.m., in violation of 23 DCMR § 810.2 (Jan. 13 2021)

Notice of Status Hearing and Show Cause Hearing, at 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on September 29, 2021. The parties proceeded to a Show Cause Hearing and argued their respective cases on October 27, 2021, and October 28, 2021. After the hearing, the parties also filed proposed findings of fact and conclusions of law.

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. Haydee's Restaurant holds a Retailer's Class CT License at 3102 Mount Pleasant Street, N.W., Washington, D.C. *ABRA License No. 24663*. On March 17, 2021, due to the spread of coronavirus disease 2019 (COVID 19) throughout the District of Columbia and the United States, there were various emergency orders and rules enacted to combat the spread of the disease, including rules restricting the hours related to the sale, service, and consumption of alcohol at hospitality businesses.

2. On March 17, 2021, ABRA Investigator Tavril Prout entered the Respondent's establishment at 10:56 p.m. *Transcript (Tr.)*, October 27, 2021 at 23. Upon entering, he observed one female and one male patron with alcoholic beverages in front of them. *Id.* A photo taken by the Investigator shows the patrons sitting at a booth with two yellowish drinks in wide rimmed glasses with salt on the edge. *Government Exhibit No. 1* (Photo). A second photo shows an empty plate and a pitcher on the table. *Government Exhibit No. 2*. The second photo further shows that the pitcher and the drink possessed by the female patron have a low level of liquid in their respective containers. *Id.*; *see also Tr.*, 10/27/21 at 65. Investigator Prout indicated that the photos were taken at the time he entered the premises. *Tr.*, 10/27/21 at 25.

3. After observing the patrons, the investigator discussed the matter with the owner, Nimia Venegas, who was present. *Id.* at 24. He requested a copy of the receipt provided to the patrons

he observed. *Id.* at 26. The receipt indicated that it was issued at 9:32 p.m. on March 17, 2021 and totaled \$76.58. *Government Exhibit 3*. The receipt listed the name, address, and contact information of the establishment and indicated that the guests were seated at “Table J25.” *Id.* The receipt further indicated that the patrons were charged \$31.99 for “1 PITC MARG FIESTA.” *Id.* During their conversation, the owner indicated that she did not want to remove the alcohol because she believed the patrons would become angry. *Tr.*, 10/27/21 at 26. She further indicated that the patrons had been present in the establishment since 9:30 p.m. *Id.* at 48.

4. A photograph submitted by the Respondent, dated March 17, 2021, and listing a time at 10:54 p.m., shows the female patron at the table with a large bag on the table. *Respondent Exhibit No. 4*. The same photo shows the same margarita pitcher and the same drinks seen in the photos taken by the investigator on the table. *Compare Respondent Exhibit No. 4 with Government Exhibit Nos. 1, 2*. The Respondent’s photo also shows that the male patron was not at the booth around 10:54 p.m., but eventually made his way to the table to sit with the woman. *Id.* A comparison of another photograph taken by the Respondent with the investigator’s photo shows that the margarita was not initially in front of the female patron at 10:54 p.m. but was then moved in front of the female patron by the time the investigator took his photos at 10:56 p.m. *Compare Respondent Exhibit Nos. 4, 5 with Government Exhibit Nos. 1, 2* (see the location of the margarita glasses in the various photos).

5. The Board does not find the testimony of the owner credible regarding her observations, her awareness of patrons inside the premises, and any hearsay statements made by the patrons. As noted by the District of Columbia Court of Appeals in *Charles P. Young Co.*, “Credibility determinations are exclusively within the domain of the fact-finder . . .” *Charles P. Young Co. v. Dist. of Columbia Dept. of Employment Services*, 681 A.2d 451, 457 (D.C. 1996). During her testimony, the owner claimed that the woman, margaritas, and establishment shown in the Government’s photographs were not the same as those shown in the Respondent’s photographs. *Tr.*, 10/28/21 at 26-27.¹ Yet, a comparison of the Government’s and Respondent’s photographs, even though they show different angles, show that the female and male patrons are wearing the same outfits and hairstyles in each side’s photos, that the items on the table are the same, and the premises shown by the photos have similar décor (e.g., wood paneling, hanging blue lights). *Compare Government Exhibits Nos. 1-2 with Respondent Exhibit Nos. 4-6*. The Board also finds the owner’s testimony asserting that the margaritas were different lacked candor, honesty, and credibility based on a comparison of the drinks in both sides’ photos. *Id.* Finally, the ownership’s denial that the premises seen in the Government’s photographs is not her premises where décor in both photos match and are consistent further renders her testimony unreliable, not credible, and lacking in candor. *Id.*; *Tr.*, 10/28/21 at 27-28. Consequently, the owner is not a reliable witness and the Board cannot credit her observations when there is no other independent corroboration in the record regarding what the owner saw, heard, or knew.

¹ The owner testified as follows when asked to compare the Government’s and Respondent’s photos:

MS. VANEGAS: No, according to me, it doesn't look like they're neither the same people nor the same margaritas, and it's also very dark.

Tr., 10/28/21 at 27; *see also Tr.* 10/28/21 at 28 (lines 15 through 19), 29-30 (denying that the government picture shows a true and accurate picture of her establishment).

CONCLUSIONS OF LAW

6. 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

7. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). 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).

8. Under ABRA’s regulations, in effect at the time of the incident, the Respondent was obligated to comply with the following:

810.2 After the expiration of the prohibition of on-premises sales, service and consumption indoors under § 810.1, an ABC-licensed establishment may resume on-premises alcohol sales, service and consumption indoors if the establishment:

(b) Ceases indoor on-premises alcohol sales, service, and consumption at 10:00 p.m. each day, and ceases operations at 12:00 Midnight each day, unless otherwise restricted by settlement agreement;

23 DCMR § 810.2, (b) (West Supp. 2022) (citing emergency order effective January 13, 2021, until March 21, 2021). In addition to a prohibition on the sale or consumption of alcohol after 10:00 p.m., it is sufficient under the regulation that consumers be permitted to possess an open container of alcohol on the premises after permitted hours.² This interpretation is reasonable based on the reference to “alcohol . . . service” in the regulation. As noted in Black’s Law Dictionary, the term “service” means “Labor performed in the interest or under the direction of others; . . . the performance of some useful act or series of acts for the benefit of another[, usually] for a fee[.]” Black’s Law Dictionary (11th ed. 2019) (SERVICE). The term service may also refer to “an intangible commodity in the form of human effort, such as labor, skill, or advice.” *Id.* Thus, in the context of an on-premise establishment, the term “alcohol . . . service” includes providing goods or services related to the possession of an open container by a patron, including providing space, not just the act of selling, distribution, or consumption.

² This interpretation is consistent with District law that makes it illegal for people to possess open containers of alcohol on a licensed premise after permitted hours:

- (a) . . . no person in the District shall drink an alcoholic beverage or *possess in an open container an alcoholic beverage* in or upon any of the following places: Any place to which the public is invited for which a license to sell alcoholic beverages has been issued under this title *at a time when the sale of alcoholic beverages on the premises is prohibited by this title or by the regulations promulgated under this title*

D.C. Code § 25-1001(a), (a)(5) (emphasis added).

9. The Board is persuaded that the Respondent engaged in the service of alcohol after 10:00 p.m. for several reasons. First, the record shows that two patrons were served a pitcher of margaritas, which constitutes an alcoholic beverage. *Supra*, at ¶¶ 2-3. The Board may infer that the drink contained in the pitcher and glasses on the two patrons' table was alcoholic based on the appearance of the drinks and the way they were served, the high price of the drinks, and the name of the drink on the receipt, which is a well-known alcoholic mixed drink. *Supra*, at ¶¶ 2-4.

10. Second, the Board finds that the Respondent engaged in the service of alcohol after 10:00 p.m. where the two patrons were provided a pitcher of margaritas at 9:32 p.m. and were permitted to keep the pitcher and glasses with liquid from the pitcher inside the premises up until and past 10:54 p.m. *Supra*, at ¶¶ 3-4. The Respondent may be further found to have engaged in alcohol service because the establishment provided a table, glassware, and access to the interior of the premises while the patrons possessed open containers of alcoholic beverages provided by the Respondent. *Supra*, at ¶ 2. Finally, the owner refused to remove the drinks from the patrons when confronted by the investigator. *Supra*, at ¶ 3. Consequently, the Board sustains Charge I where the Respondent engaged in various actions in support of and necessary to the two patrons' continued alcohol possession at the premises after the Respondent's permitted hours.

11. In reaching this decision, the Board considered various defenses raised by the Respondent. First, the Board disagrees with the Respondent that Charge I may only be sustained if the Investigator observed the consumption of alcoholic beverages for the reasons stated above. *Petitioner's Proposed Findings of Fact and Conclusions of Law*, 6, 11. Even if this were the case, the consumption of alcohol by the patrons would be reasonably inferred by the Board based on the amount of time the patrons had an open container in their possession, the continued possession of alcoholic beverages by the patrons after permitted hours, and the movement of the glass by the female patron, which shows an intent to continue drinking, even if the actual act of consumption was not observed by the investigator. *Supra*, at ¶¶ 2, 4.

12. The Board further disagrees that there is a "knowledge" scienter requirement attached to the offense. *Id.* at 5 (see Conclusion of Law, §§ 6, 14) where this matter dealt with a violation of § 810.2—a separate regulation—not the Mayor's Order. Nevertheless, even if a showing of "knowledge" was required, the Board would infer knowledge based on the initial service of alcohol to the patrons and the failure to clear the table before the end of permitted hours, and separately, the owner's refusal to remove the drink once confronted by the investigator. *Supra*, at ¶ 3. Specifically, once told, the owner had the required knowledge of the offense but decided to favor her customer's opinion and allowing the patrons to keep their drinks over the requirements of the law. See D.C. Code § 25-1001(a)(5). For these reasons, the Board sustains Charge I.

II. Penalty

13. The Board imposes a penalty of \$1,000 for the offense and five (5) stayed suspension days. D.C. Code § 25-823(f).

ORDER

Therefore, the Board, on this 26th day of January 2022, finds NHV Corporation, t/a Haydee's Restaurant, guilty of violating 23 DCMR § 810.2. The Board imposes the following penalty on Haydee's Restaurant:

- (1) For the violation described in Charge I, Haydee's Restaurant shall pay a fine of \$1,000. The Respondent shall also receive five (5) stayed suspension days, which shall go into effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.

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 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

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43c66e6f0d5f0e4e730c0381d0c38

Donovan Anderson, Chairperson

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James Short, Member

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Jeni Hansen, Member

Edward S. Grandis, 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).