

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

In the Matter of:)	
)	
Café Europa)	Case No.: 19-CMP-00061
t/a LeDesales)	License No.: ABRA-60754
)	Order No.: 2020-030
Holder of a)	
Retailer's Class CR License)	
)	
at premises)	
1725 De Sales Street, N.W.)	
Washington, D.C. 20036)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: Café Europa, t/a LeDesales, Respondent

Jason Facci, 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 Café Europa, t/a LeDesales, (hereinafter "Respondent" or "LeDesales") violated D.C. Official Code § 25-701 and 23 DCMR § 707.1 by failing to have an owner or licensed manager present during its Board-approved hours of sale, service, and consumption of alcoholic beverages. The Respondent shall pay a fine of \$3,000.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 28, 2019. *ABRA Show Cause File No. 19-CMP-00061*, Notice of Status Hearing and Show Cause Hearing, 2 (Aug. 28, 2019). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1725 De Sales Street, N.W., Washington, D.C., on August 29, 2019. *ABRA Show Cause File No. 19-CMP-00061*, 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 April 3, 2019,] [y]ou failed to superintend in person or keep a licensed ABC Manager on duty at all times in violation of D.C. Code § 25-701 and 23 DCMR § 707.1

Notice of Status Hearing and Show Cause Hearing, 2.

The Respondent failed to appear at the Show Cause Status Hearing on October 2, 2019. The Respondent also failed to appear at the Show Cause Hearing on December 11, 2019, which the Board heard ex parte in accordance with D.C. Official Code § 25-447(e).

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. LeDesales holds a Retailer's Class CR License at 1725 De Sales Street, N.W., Washington, D.C. *ABRA License No. 60754*. The Respondent's license indicates that its hours of sale, service, and consumption of alcoholic beverages run from 11:00 a.m. to 1:30 a.m. on Wednesdays. *Id.* ABRA Investigator George Garcia visited the Respondent's establishment on Wednesday, April 3, 2019, at around 1:19 p.m. *Transcript (Tr.)*, December 11, 2019, at 8, 11. Upon entering the establishment, he asked to speak with an owner or licensed manager. *Id.* at 7. A female bartender identified herself as the manager but told the investigator that she had forgotten her license. *Id.* at 8. Nevertheless, upon calling another investigator to review ABRA's records, it was confirmed that the female bartender did not actually possess a manager's license issued by ABRA.

CONCLUSIONS OF LAW

2. 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

3. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2020). 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. Violation

4. On April 3, 2019, no owner or licensed manager was present during the Respondent’s Board-approved hours of sale, service, or consumption of alcoholic beverages. It is a requirement that license holders have an owner or individual holding a Board-approved manager’s license present at the establishment during the establishment’s hours of sale, service, and consumption. D.C. Code § 25-701; 23 DCMR § 707.1 (West Supp. 2020). The record shows that the person managing the Respondent’s business on April 3, 2019, did not hold a manager’s license and it was not shown that any owner was present. *Supra*, at ¶ 1. Therefore, the Board sustains Charge I.

III. Penalty

5. The present violation constitutes a secondary tier violation. 23 DCMR § 800 (West Supp. 2020). The Board’s records show that the present violation constitutes the Respondent’s fifth secondary tier violation. A fifth secondary tier violation allows the Board to impose a fine of between \$2,000 and \$4,000. 23 DCMR §§ 801.1(b); 802.1(D) (West Supp. 2020).

ORDER

Therefore, the Board, on this 15th day of January 2020, finds Café Europa, t/a LeDesales, guilty of violating D.C. Official Code § 25-701 and 23 DCMR § 707.1. The Board imposes the following penalty on LeDesales:

(1) For the violation described in Charge I, LeDesales shall pay a fine of \$3,000.

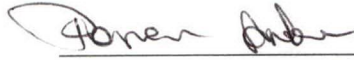
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed a secondary tier violation.

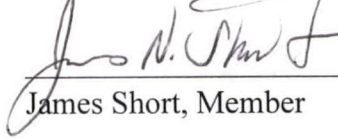
IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

Rema Wahabzadah, Member



Rafi Aliya Crockett, 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).