

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

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| In the Matter of: |) | | |
| |) | | |
| Xaing Fong Corporation |) | Case No.: | 17-CC-00077 |
| t/a North Sea Carry-out Restaurant |) | License No.: | 73973 |
| |) | Order No.: | 2018-444 |
| Holder of a |) | | |
| Retailer's Class B License |) | | |
| |) | | |
| at premises |) | | |
| 2479 18th Street, N.W. |) | | |
| Washington, D.C. 20009 |) | | |

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

ALSO PRESENT: Louise Phillips, 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 Xaing Fong Corporation, t/a North Sea Carry-out Restaurant, (hereinafter "Respondent" or "North Sea") illegally sold alcohol to a minor and failed to have a licensed manager present as required by law on July 5, 2017. In addition, the record shows that North Sea illegally transferred the license without the approval of the Board. In light of these violations, the Board imposes a total fine of \$5,000 and suspends the license for five days. The Board further orders the license to immediately be placed in safekeeping and cease operations pending the approval of a temporary operating retail permit or transfer application.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on April 24, 2018. *ABRA Show Cause File No. 17-CC-00077*, Notice of Status Hearing and Show Cause Hearing, 2 (Apr. 24, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2479 18th Street, N.W., Washington, D.C., on April 30, 2018. *ABRA Show Cause File No. 17-CC-00077*, Service Form. 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 July 5, 2017,] [y]ou or another person at the licensed establishment sold, delivered, or in any other manner dispensed alcoholic beverages to a person under 21 years of age in violation of D.C. Official Code § 25-781
- Charge II:** [On July 5, 2017,] [y]ou did not refuse to sell, serve, or deliver an alcoholic beverage to a person who, upon request of the licensee, failed to produce a valid identification document, in violation of D.C. Official Code § 25-783(a) . . .
- Charge III:** [On July 5, 2017,] [y]ou failed to superintend in person or keep a licensed ABC Manager on duty at all times in violation of D.C. Official Code § 25-701 . . . and 23 DCMR § 707.1 . . .
- Charge IV:** You failed to adhere to the filing requirements set out in D.C. Official Code § 25-405 . . .

Notice of Status Hearing and Show Cause Hearing, 2-5.

The Respondent did not appear at the Show Cause Status Hearing on May 23, 2018. The Respondent also did not appear at the Show Cause Hearing on June 20, 2018 despite being served with notice. As a result, the Government prosecuted the case 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:

1. North Sea holds a Retailer's Class B License at 2479 18th Street, N.W., Washington, D.C. *ABRA License No. 73973*. On July 5, 2017, ABRA Investigator Felicia Dantzler conducted an undercover investigation with a 17-year old female undercover minor under the legal drinking age to determine if the establishment would sell alcohol to a minor. *Transcript*

(*Tr.*), June 20, 2018 at 18-19, 22. The minor had their true identification in their possession. *Id.* at 19. The investigator and the undercover minor went inside and went up to North Sea's counter. *Id.* At the counter, the minor ordered a six pack of beer from a male clerk. *Id.* at 19. The clerk retrieved the beer and asked for identification. *Id.* at 20. The clerk examined the identification, returned the identification, bagged the beer, and accepted payment from the undercover minor. *Id.* The undercover minor then left the establishment. *Id.*

2. After the undercover sale to minor investigation, ABRA Investigator DaVon Todd entered the premises to report the violation to North Sea. *Id.* at 24. The investigator spoke with Hang Chen, who identified himself as the owner. *Id.* at 25-26.

3. Upon returning to ABRA's headquarters, Investigator Todd checked ABRA's records related to North Sea's license. According to ABRA's records, Hang Chen was not listed as an owner of North Sea's license and did not have a Manager's license; instead, ABRA's records show that Bingkai Chen remains the owner. *Id.* at 30-31; *Case Report No. 17-CC-00077*, at 2. Investigator Todd returned to North Sea on June 11, 2017. *Tr.*, 6/20/18 at 32. Hang Chen was present and stated again that he was the owner of the establishment. *Id.*

4. On July 12, 2017, Investigator Todd called Bingkai Chen. *Id.* at 33. Over the phone, Mr. Chen admitted that he was no longer the owner and that another, Juan Fen Cao, was the owner. *Id.*

CONCLUSIONS OF LAW

5. 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). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Code § 25-447.

I. Standard of Proof

6. 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. The Government Proved the Violation Described by Charge I.

7. On July 5, 2017, North Sea sold an alcoholic beverage to a minor in violation of § 25-781(a)(1). Under § 25-781, "The sale or delivery of alcoholic beverages to the following persons is prohibited: . . . 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)(1). In this case, Investigator Dantzler observed

Hang Chen sell the 17 year old a pack of beer. *Supra*, at ¶ 1. Under these circumstances, the Government has substantiated Charge I.

III. The Government Failed to Prove Charge II.

8. Under § 25-783(a), “A licensee shall refuse to sell, serve, or deliver an alcoholic beverage to any person who, upon request of the licensee, fails to produce a valid identification document.” D.C. Code § 25-783(a). In this case, North Sea’s clerk requested identification; therefore, there is insufficient evidence to sustain Charge II. *Supra*, at ¶ 1.

IV. The Government Proved the Violation Described by Charge III.

9. Under § 707.1, “In the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises.” 23 DCMR § 707.1 As discovered by Investigator Todd, no licensed manager was present on July 5, 2017, when North Sea sold alcohol to a minor. *Supra*, at ¶¶ 1, 3. In light of these facts, the Government has substantiated Charge III.

V. The Government Proved the Violation Described by Charge IV.

10. Under § 25-405, no licensee shall consummate the transfer of their license before obtaining the formal approval of the Board. D.C. Code § 25-405(a)-(b). In this case, the owner of record, Bingkai Chen, admitted to transferring the ownership of the establishment, and no record in the possession of ABRA indicates that the Board approves this transfer to new owners. *Supra*, at ¶¶ 1-4. Under these circumstances, the Board finds sufficient cause to sustain Charge IV.

VI. Penalty

11. In this case, Charge I and IV represent primary tier violations, while Charge III represents a secondary tier violation. 23 DCMR § 800 (West Supp. 2018). Based on North Sea’s history of violations, the primary offenses are fined as first time offenses. 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). Other first level primary tier offenses may be fined between \$1,000 and \$2,000. 23 DCMR § 801.1(a). Based on North Sea’s history, the present secondary offense represents a fourth secondary tier violation, which has a fine range of \$1,000 to \$2,000. 23 DCMR § 802.1(D) (West Supp. 2018). The Board mandates the maximum fine and suspension for the sale to minor violation, and will not stay the suspension based on the current recorded ownership’s failure to superintend the establishment. All other offenses will be assessed the minimum fine.

12. The Board further orders the license to be placed in safekeeping pending the approval by the Board of a temporary operating retail permit or transfer application. Under § 25-791, any “license which is discontinued for any reason shall be surrendered by the licensee” D.C. Code § 25-791(a). In this case, the Respondent’s owner of record admitted that he no longer owns the license and the record shows that an unapproved third party controls the license. *Supra*, at ¶ 4. Under these circumstances, the business cannot continue operations.

ORDER

Therefore, the Board, on this 18th day of July 2018, finds that Xaing Fong Corporation, t/a North Sea Carry-out Restaurant, guilty of the offenses described in Charges I (§ 25-781), III (23 DCMR § 707.1), and IV (§ 25-405). The Board imposes the following penalty on North Sea Carry-out Restaurant:

- (1) For the violation described in Charge I, North Sea Carry-out Restaurant shall pay a fine of \$3,000 and serve a five day suspension.
- (2) Charge II is **DISMISSED**;
- (3) For the violation described in Charge III, North Sea shall pay a fine of \$1,000.
- (4) For the violation described in Charge IV, North Sea shall pay a fine of \$1,000.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code §§ 25-447(f) and 25-791, that North Sea's license shall be placed in **SAFEKEEPING**. ABRA shall not release the license until the Board approves an appropriate transfer application or temporary operating retail permit.

IT IS FURTHER ORDERED that the suspension related to Charge I shall begin one week after the license is removed from safekeeping.

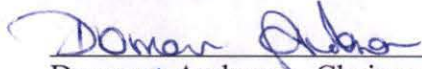
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

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

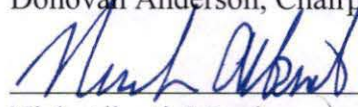
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

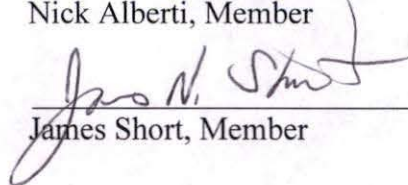
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

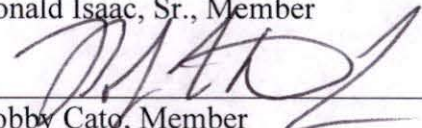


Nick Alberti, Member

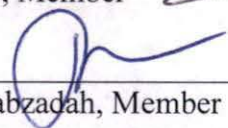


James Short, Member

Donald Isaac, Sr., Member



Bobby Cato, Member



Rema Wahabzadah, 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).