

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

In the Matter of:)
)
Yaing Fong Corporation, t/a)
North Sea Carryout Restaurant)
)
Holder of a)
Retailer's Class B License)
)
2479 18th Street, N.W.)
Washington, D.C. 20009)

Case Nos.: 17-CC-00077; 17-CC-00077(a)
License No.: 073973
Order No: 2018-618

TO: Bing Kai Chen
President
Yaing Fong Corporation
2479 18th Street, N.W.
Washington, D.C. 20009

Juan Fen Cao
ABC Manager
ABRA License No. 102251

Zhu Yanqing and Ken Zhang

**ORDER TO CEASE AND DESIST, SURRENDER LICENSE, AND CANCEL LICENSE
NO. 073973**

INTRODUCTION

The Alcoholic Beverage Control Board cancels the Retailer's Class B License held by Yaing Fong Corporation, t/a North Sea Carryout Restaurant, (North Sea) based on the withdrawal of its transfer application on October 9, 2018, and notification by the current owner that he has ceased to do business, which merits cancellation pursuant to D.C. Official Code § 25-791(e). The Board also orders the surrender of the license in light of the failure of North Sea to timely pay the annual fee for the license. In light of these facts, the Board hereby orders the parties and their agents, such as Ken Zhang, to cease selling, serving, and distributing alcoholic

beverages, cease permitting the consumption of alcoholic beverages, and surrender the alcohol license to the Board in compliance with D.C. Official Code § 25-791.

FINDINGS OF FACT

The Board bases its decision on the following factual findings:

1. A Retailer's Class B License has been issued to Yaing Fong Corporation, t/a North Sea Carryout Restaurant, (North Sea) at 2479 18th Street, N.W., Washington, D.C. 20009. *Case Report No. 17-CC-00077* at 1 (Jul. 5, 2017). ABRA's records show that the current President of North Sea is Mr. Bing Kai Chen. *Id.* ABRA's records further show that Juan Fen Cao holds an ABC Manager's License, which has been assigned ABRA License No. 102251. *Id.* at 2.
2. On July 5, 2017, ABRA Investigator Felicia Dantzler conducted a sale to minor compliance check at North Sea with ABRA Investigator DeVon Todd and an undercover minor. *Id.* at 1. After the check, Investigator Todd informed the clerk, Hang Chen, that he had witnessed a sale to minor violation. *Id.* During this conversation, Hang Chen identified himself as the owner. *Id.* at 2.
3. At ABRA's headquarters, Investigator Todd reviewed ABRA's records and determined that Mr. Hang Chen is not listed in ABRA's records as an owner of North Sea. *Id.* Investigator Todd returned to the establishment on July 11, 2017. *Id.* At the establishment, Ms. Juan Fen Cao identified herself as a manager and identified Mr. Bing Kai Chen as the owner of North Sea. *Id.* at 2.
4. Over the phone, Mr. Chen told Investigator Todd that he sold the business in 2014 to Ms. Cao. *Id.* at 2-3. Mr. Bing Kai Chen further admitted that he did not submit any paperwork to ABRA notifying the agency of the change. *Id.* at 3.
5. On March 12, 2018, ABRA Investigator Felicia Dantzler reviewed ABRA's records and determined that Mr. Bing Kai Chen is still the owner of record. *Case Report No. 17-CC-00077(a)*, at 1. After reviewing this information, she returned to North Sea. *Id.* At the establishment, she spoke with Ken Zheng. *Id.* at 2. Mr. Zheng indicated that his wife, Zhu Yanqing, owned the establishment. *Id.* He further indicated that they intended to purchase the business from Mr. Bing Kai Chen once they completed the paperwork. *Id.* The Board notes that the current status of Ms. Cao's ownership is not revealed in the reports. There is also no indication in the report that Mr. Bing Kai Chen is currently operating or superintending the business. *See* D.C. Code § 25-301(a)(6) (requirement to superintend the business).
6. On April 11, 2018, the Board held a fact finding hearing to obtain information regarding the status of North Sea's ownership. *Transcript (Tr.)*, April 11, 2018 at 7. At the hearing, Mr. Bing Kai Chen indicated that he transferred North Sea's license and is no longer the owner. *Id.* at 17.

7. In light of these facts, the Board issued a Cease and Desist Order against the license holder and the new owners. *In re Yaing Fong Corporation, t/a North Sea Carryout Restaurant*, Case Nos. 17-CC-00077, 17-CC-00077(a), Board Order No. 2018-122, 4 (D.C.A.B.C.B. Jun. 27, 2018). As part of the Order, the North Sea’s license was seized and placed in safekeeping. *Id.*

8. The Board approved a temporary operating retail permit (TORP) for the new owners on July 25, 2018 under 23 DCMR § 703 to allow for the new owners to operate the business while their application was pending. *In re Yaing Fong Corporation, t/a North Sea Carryout Restaurant*, Application License Nos. 109878, 073973, Board Order No. 2018-463, 2 (D.C.A.B.C.B. Jul. 25, 2018). Nevertheless, it has come to the attention of the Board that the transferee has formally withdrawn the transfer application.

CONCLUSIONS OF LAW

9. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public . . .” D.C. Official Code § 25-829(a).

I. THE WITHDRAWAL OF THE TRANSFER APPLICATION MERITS THE CANCELLATION OF THE TORP.

10. A TORP permits the operation of a licensed establishment by new owners applying for the transfer of the license pending the completion of the transfer process. 23 DCMR § 703.1 (West Supp. 2018). Under § 703.4, the temporary operating retail permit “shall be valid until the applicant’s transfer application is either granted or denied by the Board . . .” 23 DCMR § 703.4 (West Supp. 2018). The Board interprets § 703.4 as leading to the automatic cancellation of the TORP pending the grant or denial of the transfer application. The Board also finds that the automatic cancellation of the TORP is warranted when the underlying transfer application is withdrawn because a TORP is conditioned on the existence and eventual completion of the transfer application. § 703.1 (“awaiting Board approval”). Consequently, because the applicant has withdrawn the application, the action merits the automatic cancellation of the TORP and the surrender of the license. *Supra*, at ¶ 8.

II. THE OPERATION OF NORTH SEA BY AN UNAPPROVED OPERATOR PRESENTS AN IMMEDIATE AND IRREPERABLE HARM TO THE PUBLIC.

11. The Board finds that the continued operation of North Sea by an unapproved operator constitutes an immediate and irreparable harm to the public, which merits the surrender of the license. Based on the automatic cancellation of the TORP, the former transfer applicant no longer has a temporary operating permit, which would authorize the purchaser to operate the establishment while a transfer application was under review.

12. Furthermore, under § 25-791(a), “A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping.” D.C. Code § 25-791(a). In this case,

North Sea's owner of record admitted that he gave North Sea's license to a new owner and executed a transfer. *Supra*, at ¶¶ 4-6. Under these circumstances, North Sea has legally discontinued operations, and the license must be surrendered to the Board for safekeeping in accordance with § 25-791.

13. The facts in this case also justify a finding that the continued use of the license causes irreparable harm to the public, because the continued operation constitutes a continuing nuisance and threatens the safety and welfare of the public. Under § 25-805, all violations of Title 25 are deemed nuisances. D.C. Official Code § 25-805; *see also Com. ex rel. Preate v. Danny's New Adam & Eve Bookstore*, 625 A.2d 119, 122 (1993) (It is well-settled that even a lawful business may be enjoined from operation if it is shown that, under the particular circumstance, its operation constitutes a public nuisance); *Camp v. Warrington*, 227 Ga. 674, 674, (1971) ("where it is made to appear with reasonable certainty that irreparable harm and damage will occur from the operation of an otherwise lawful business amounting to a continuing nuisance, equity will restrain the construction, maintenance or operation of such lawful business."). In this case, permitting the new owners to continue to illegally operate without approval would allow them to maintain and benefit from the operation of a continuing nuisance at the expense of the public.

14. Furthermore, the Board is convinced that the circumvention of the licensing process threatens the health, safety, and welfare of the public. The misuse of alcohol encourages crime, disorder, and other antisocial behavior. The licensing process keeps those who cannot be trusted to superintend a licensed establishment, such as criminals and individuals with a history of repeated violations of the District's alcohol laws, from obtaining a license. Therefore, the new owners cannot be permitted to continue operating the establishment without Board approval.

III. THE OWNERSHIP'S CESSATION OF BUSINESS MERITS THE CANCELLATION OF THE LICENSE UNDER § 25-791(e).

15. Under § 25-791(e), "If a licensee notifies the Board that the licensee has ceased to do business under the license or if the Board cancels the license under this section, the license shall be marked as 'canceled.'" D.C. Official Code § 25-791(e). In this case, the current ownership of North Sea has previously informed the Board that it no longer owns the license. *Supra*, at ¶ 6 Under these circumstances, the ownership has notified the Board that it has ceased business operations, which merits the cancellation under § 25-791(e).

ORDER

Therefore, the Board on this 24th day of October 2018, hereby orders North Sea, Juan Fen Cao, Zhu Yanqing, and Ken Zhang to cease distributing, purchasing, selling, serving, or otherwise permitting the consumption of alcoholic beverages at 2479 18th Street, N.W., Washington, D.C.

IT IS FURTHER ORDERED that the parties shall surrender the license to the Board for safekeeping pursuant to § 25-791. In the alternative, ABRA is simultaneously authorized to seize the license in order to place it in safekeeping.

IT IS FURTHER ORDERED that ABRA License No. 073973 is **CANCELLED**.

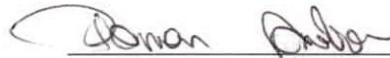
IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance) should it be deemed necessary.

IT IS FURTHER ORDERED that should the license be reinstated, the license shall be suspended until the license pays the required annual fee and any late fees owed to ABRA in accordance with D.C. Official Code § 25-501 and may be subject to revocation.

Please be **ADVISED** that a copy of this Order is being forwarded to the Metropolitan Police Department to ensure compliance. If it is found that anyone is selling, serving, or permitting the consumption of alcoholic beverages without approval from the Board, the individuals and entities involved may be subject to both civil and criminal penalties.

ABRA shall serve notice by certified mail or personal delivery on the parties.

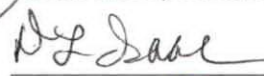
District of Columbia
Alcoholic Beverage Control Board


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Nick Alberti, Member


Mike Silverstein, Member


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Bobby Cato, Member


Rema Wahabzadah, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, 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).