

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

In the Matter of:

J & J Holdings, LLC
t/a Pho 88 Noodles and Grill

Holder of a
Retailer's Class DR License

at premises
608 H Street, NW
Washington, D.C. 20001

Case No.: 18-CMP-00035
License No.: ABRA-101629
Order No.: 2018-509

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

PARTIES: Guozhen Sun, on behalf of J & J Holdings, LLC, t/a Pho 88 Noodles and Grill, Respondent

Amy Schmidt, 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 J & J Holdings, LLC, t/a Pho 88 Noodles and Grill (Respondent), violated District of Columbia (D.C.) Official Code § 25-119. The Board finds that a fine is not warranted in this matter. Rather, the Respondent is warned against committing this violation in the future.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 22, 2018. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 608 H Street, NW, Washington, D.C. 20001, on May 23, 2018.

The Notice charged the Respondent with the following violations:

Charge I: You violated the terms of your license because you purchased alcoholic beverages from an off premises retailer during times when a wholesaler is open, in violation of D.C. Official Code § 25-113(a)(5)...

Charge II: You failed to obtain an importation permit for alcohol purchases made outside of Washington, D.C. for your establishment, in violation of D.C. Official Code § 25-119...

ABRA Show Cause File No., 18-CMP-00035, Notice of Status Hearing and Show Cause Hearing, 2-3 (May 22, 2018).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on June 20, 2018, where there was no settlement of the matter. A Show Cause Hearing was scheduled for July 25, 2018.

As a preliminary matter, the Board granted the Government's Motion to dismiss Charge I and the parties proceeded to a Show Cause Hearing on the remaining charge.

The parties argued their respective cases at the Show Cause Hearing held on July 25, 2018.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

I. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated May 22, 2018. *See* ABRA Show Cause File No. 18-CMP-00035. J & J Holdings, LLC, t/a Pho 88 Noodles and Grill holds a Retailer's Class DR License, License No. ABRA-101629. *See* ABRA Licensing File No. ABRA-101629. The establishment's premises is located at 608 H Street, NW, Washington, D.C. *See* ABRA Licensing File No. ABRA-101629.

2. The Show Cause Hearing was held on July 25, 2018. The Notice charges the Respondent with two violations enumerated above. *See* ABRA Show Cause File No. 18-CMP-00035. Charge I was dismissed by the Government at the commencement of the hearing.

II. Stipulation to Facts

3. The Government and the Respondent stipulated to the admissibility, sufficiency and accuracy of the evidence contained in ABRA's investigative report and the Notice to Show Cause. *Transcript (Tr.) 7/25/18* at 3. *See* ABRA Show Cause File No. 18-CMP-00035.

Specifically, the stipulated facts as set forth in the Notice are:

- (a) On January 31, 2018, ABRA Investigator Nicole Langway visited the establishment to conduct a regulatory inspection.
- (b) During the inspection, Investigator Langway examined alcohol beverage invoices indicating that the Respondent purchased alcohol from Wilkinson Wine Center located in Falls Church, Virginia without obtaining an importation permit.

III. Arguments as to Penalty

4. The Government recommends that because the violation is a primary tier violation, the Board should fine the Respondent \$1,500 to be paid within thirty (30) days from the date of the Order. *Id.* at 5.

5. The Respondent does not dispute the facts in Investigator Langway's report, and states that she had no intention of violating the law. *Id.* at 8.

6. The Respondent further testified that at the time that her ABC license was issued, her chef, who has more than 30 years experience in the restaurant business, referred her to Wilkinson Wine Center located in Virginia in order to purchase alcohol. *Id.* at 7-8, 13. She did not know that the law required her to obtain import permits from ABRA until January 31, 2018, when Investigator Langway informed her about it. *Id.*

7. Additionally, the Respondent stated that despite several previous visits to the establishment by other ABRA investigators, she was never informed about the import permit requirements. *Id.* at 8, 11. Upon learning from Investigator Langway about the import permit violation, the Respondent took immediate steps and contacted a D.C. licensed wholesaler from whom she now makes her alcohol purchases. *Id.* at 9-10. She is no longer in violation of the law. *Id.*

8. The Respondent argues that because she never intended to violate the law and because this is her first violation, she is entitled to a warning. *Id.* at 10-11, 15.

CONCLUSIONS OF LAW

9. 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 Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). 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. Official Code § 25-447.

I. THE RESPONDENT VIOLATED § 25-119

10. The Board finds that the Respondent failed to obtain an importation permit for alcohol purchases made outside of Washington, D.C. for its establishment in violation of D.C. Official Code § 25-119.

11. The Respondent admitted to the violation by stipulating to the facts. The stipulated facts are received into evidence in lieu of further proof and testimony. Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-119.

II. PENALTY

12. The ABRA Civil Penalty Schedule, set forth at 23 DCMR 800, provides the Board with discretion to issue a warning with respect to specific violations, including violation of § 25-119, when circumstances warrant. The Board has authority to fine, suspend or revoke a license if the licensee violates any of the provisions of District laws and regulations governing the sale of alcoholic beverages. A violation of D.C. Official Code § 25-119 is considered a primary tier violation.

13. The Board considered several factors when weighing the appropriate penalty. With the exception of the case at hand, the Respondent has a record of compliance with ABC laws and regulations. The Respondent’s Investigative History shows that the Respondent has had no violations since the establishment’s opening and no further violations since Investigator Langway’s visit to the establishment in January 2018. Licensing File No. ABRA-101629, Investigative History.

14. Additionally, in light of the Respondent’s lack of awareness regarding the import permit requirements and her immediate correction of the violation when she was made aware, the Board does not believe that a fine is warranted in this matter. As such, the Board issues a Warning to the Respondent and strongly advises it to not commit this violation in the future.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of September, 2018, finds that the Respondent, J & J Holdings, LLC, t/a Pho 88 Noodles and Grill, located at 608 H Street, NW, Washington, D.C., holder of a Retailer's Class DR license, violated D.C. Official Code § 25-119.


The Board hereby **ORDERS** that:

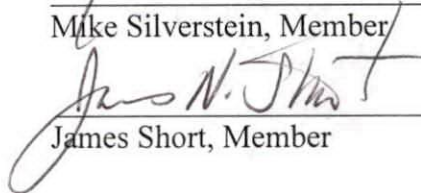
- 1) For Charge I – Dismissed.
- 2) For Charge II – The Respondent is **WARNED** against committing this violation in the future, and orders the Respondent to comply with the laws and regulations that govern ABC licensees.

Copies of this Order shall be sent to the Respondent and the Government.


District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Mike Silverstein, Member


James Short, Member

Donald Isaac, Sr., Member


Bobby Cato, Member

I dissent from the Board's decision because I believe all ABC licensees should be held accountable in their obligation to know the law.


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, 2000 14th Street, N.W., Suite 400S, Washington, DC 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 (2008) 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).