

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

In the Matter of:

TBM Holdings, LLC
t/a TruOrleans

Holder of a Retailer's Class CR License

at premises
400 H Street, N.E.
Washington, D.C. 20002

Case No. 12-CMP-00056
License No. ABRA-086210
Order No. 2013-034

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Michael A. Stern, Senior Assistant Attorney General
Office of Attorney General, District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On June 14, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated June 6, 2012, on TBM Holdings, LLC, t/a TruOrleans (Respondent), at premises 400 H Street, N.E., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent violated its Voluntary Agreement by permitting the establishment to operate while an outside promoter charged a cover at the entrance to an event or party, in violation of D.C. Official Code § 25-823(6) (2001).

Charge II: The Respondent charged a cover fee for entry into its establishment without having obtained an entertainment endorsement for its license, in violation of 23 DCMR § 1002, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On January 16, 2013, at the Show Cause Hearing, the Government amended Charge II to read as follows: "The Respondent charged a cover fee for entry into its establishment without having obtained an entertainment endorsement, which allows the Respondent to charge a cover fee." *Transcript (Tr.)*, 1/16/13 at 8-9.

The Respondent was personally served with a copy of the Notice on June 14, 2012. A Show Cause Status Hearing was held on August 1, 2012, and there was no settlement of the matter. The matter proceeded to a Show Cause Hearing on January 16, 2013. The Respondent failed to appear at the Show Cause Hearing, and the Board proceeded to a hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated June 6, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00056. The Respondent holds a Retailer's Class CR license and is located at 400 H Street, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-086210.
2. The Show Cause Hearing in this matter was held on January 16, 2013. The Notice to Show Cause charged the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 12-CMP-00056.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Earl Jones. *Tr.*, 1/16/13 at 11. Investigator Jones is familiar with the Respondent's establishment, which he visited on January 12, 2012, to investigate an anonymous noise complaint received through Metropolitan Police Department (MPD). *Tr.* 1/16/13 at 13. Following his visit, Investigator Jones completed an investigative report. *See* Government's Exhibit 1.
4. Investigator Jones testified that during his visit to the Respondent's establishment on January 12, 2012, he observed a gentleman dressed in black accepting money from individuals who were trying to enter the establishment. *Tr.* 1/16/13 at 13.
5. Investigator Jones testified that Mr. Interdonato, who identified himself as the Respondent's Assistant General Manager, stated that the establishment was hosting a party for American University students, and a promoter was charging a cover charge. *Tr.* 1/16/13 at 14. Investigator Jones testified that Mr. Interdonato stated that the promoter was not an employee of the Respondent. *Tr.* 1/16/13 at 14. Investigator Jones testified that Mr.

Interdonato also stated that the money collected from the cover charge was not for the establishment; but rather the money was intended for the promoters. *Tr.* 1/16/13 at 15. Investigator Jones testified that the cover charge was \$5.00 per person. *Tr.* 1/16/13 at 15.

6. Investigator Jones testified that he reviewed the Respondent's Voluntary Agreement, which provides that the Respondent is not allowed to use outside promoters to generate profit for such promoters. *Tr.* 1/16/13 at 15-16; *see* Government Exhibit No. 1.

7. Investigator Jones further testified that the Respondent has an Entertainment Endorsement and Sidewalk Café, but not a Cover Charge Endorsement. *Tr.* 1/16/13 at 17. Additionally, the Board takes administrative notice from its own official records, that the Respondent is not authorized to charge a cover. *See* ABRA Licensing File No. ABRA-086210.

8. The Respondent failed to appear at the Show Cause Hearing held on January 16, 2013. The Respondent did not present any testimony or evidence, nor did he refute the evidence submitted by the Government. The Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance.

CONCLUSIONS OF LAW

9. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2009). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

10. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a "reasonable mind might accept as adequate to support the conclusion" and there must be a "rational connection between facts found and the choice made." 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008).

11. With regard to Charge I, the Board finds that the Respondent violated Section 1 of its Voluntary Agreement by permitting the establishment to operate while an outside promoter charged a cover at the entrance to generate profit for such promoters. The Board makes this finding based on the testimony of Investigator Jones and the documentary evidence admitted as Government's Exhibit 1. Investigator Jones testified that during his visit to the Respondent's establishment, on January 12, 2012, he discovered that there was an outside promoter charging a cover charge to the individuals who were entering the establishment. Additionally, Investigator Jones testified that the Respondent's employee stated that the profit collected from the cover charge was for the promoters.

12. With regard to Charge II, which the Government amended at the hearing, the Board finds that the Respondent charged a cover fee for entry into its establishment without

having a Cover Charge Endorsement, which allows the Respondent to charge a cover fee. The Board makes this finding based on the testimony of Investigator Jones. Investigator Jones testified that during his visit to the Respondent's establishment, on January 12, 2012, he observed that a \$5.00 fee was charged to the individuals who were entering the establishment.

13. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-823(6), as set forth in Charge I, and § 23 DCMR § 1002, as set forth in Charge II, of the Notice to Show Cause, dated June 6, 2012, warrants the imposition of a fine and the suspension further set forth below.

14. The Board takes administrative notice that the Respondent's Case Nos. 12-CMP-00451 and 12-CMP-00486 occurred subsequent to this matter. Therefore, the Board will not factor these cases for purpose of imposing the penalty in the case at hand. The Board finds that these violations in the current matter are the first secondary tier violations and it imposes a \$500.00 fine for each violation and two suspension days, both days stayed for one year.

ORDER

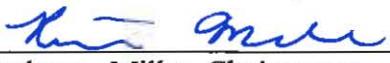
Based on the foregoing findings of fact and conclusions of law, the Board, on this 6th day of February, 2013, finds that the Respondent, TBM Holdings, LLC, t/a TruOrleans, located at 400 H Street, N.E., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-823(6) and 23 DCMR § 1002.

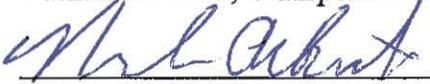
The Board hereby **ORDERS** that:

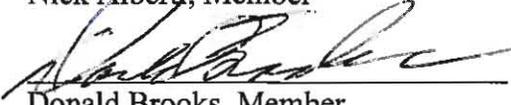
1. Charge I: Respondent shall pay a fine in the amount of \$500.00 and shall incur a suspension of its license for one (1) day; with one (1) day stayed for one (1) year absent future violations.
2. Charge II: Respondent shall pay a fine in the amount of \$500.00 and shall incur a suspension of its license for one (1) day; with one (1) day stayed for one (1) year absent future violations.
3. In total, the Respondent shall pay a fine in the amount of \$1,000 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.
4. In total, the Respondent's shall receive a suspension of its license for two (2) days; both days stayed for one year, provided that the Respondent does not commit any further ABC violations.

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

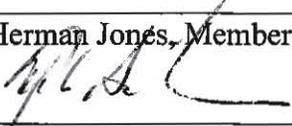
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Albert, Member


Donald Brooks, Member

Herman Jones, Member


Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).