

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

In the Matter of:

Acacia Skylan, Inc.
t/a Acacia Wellness Bistro

Holder of a
Retailer's Class CR License

at premises
4340 Connecticut Avenue, N.W.
Washington, D.C. 20008

Case No. 13-CMP-00501
License No. ABRA-080916
Order No. 2014-243

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Thomas Mack, Designated Representative, Acacia Skylan, Inc., t/a Acacia Wellness Bistro, Respondent

Christine Gephardt, 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

The Alcoholic Beverage Control Board (Board) finds that Acacia Skylan, Inc., t/a Acacia Wellness Bistro (Respondent), violated District of Columbia (D.C.) Official Code § 25-711. As a result, the Respondent must pay a \$750.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 8, 2014. The Alcoholic Beverage Regulation

Administration (ABRA) served the Notice on the Respondent, located at 4340 Connecticut Avenue, N.W., Washington, D.C., on January 17, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to post its ABRA license information in a conspicuously place in the licensed establishment, in violation of D.C. Official Code § 25-711 (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On October 1, 2013, Citation #7681 was issued to the Respondent in the amount of \$250.00 for violating D.C. Official Code § 25-711.¹

On October 15, 2013, the Respondent refused to pay the citation and instead, requested a hearing. The Show Cause Status Hearing occurred on March 12, 2014. There was no settlement of the matter and a Show Cause Hearing was scheduled for May 14, 2014.

The Government and Thomas Mack, the Respondent's Designated Representative, appeared at the Show Cause Hearing for this matter on May 14, 2014. At the Show Cause Hearing, the Parties stipulated to facts contained in the Notice dated January 8, 2014 and provided oral argument on the penalty. *Transcript (Tr.)*, 5/14/14 at 4-5.

The Government recommended that the Board fine the Respondent \$750.00 for this violation. *Tr.*, 5/14/14 at 5-6. However, Mr. Mack argued that this is the Respondent's first secondary tier violation; therefore, the Respondent is entitled to a mandatory warning. *Tr.*, 5/14/14 at 8-9. Mr. Mack also stated that the Respondent is not liable for more than a \$250.00 fine. *Tr.*, 5/14/14 at 9.

Based on the stipulated facts, the Board finds that the Respondent violated D.C. Official Code § 25-711 on September 24, 2013, by failing to post the alcoholic beverage license conspicuously in the licensed establishment.

The Board takes administrative notice that this violation is the Respondent's third secondary tier violation within three years. *Licensing File No. ABRA-08091*; Investigative History. Thus, the present violation shall be fined as a third secondary tier violation and the Board may impose a fine in the range of \$750.00 and \$1,000.00. *Licensing File No. ABRA-080916*, Investigative History; DCMR § 23-802.

¹ The Investigator erroneously issued Citation #7681 in the amount of \$250.00 instead of \$750.00. The Board takes administrative notice that this is the Respondent's third secondary tier violation within three years.

ORDER

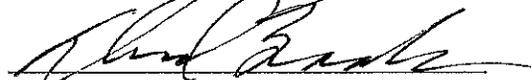
Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 4th day of June, 2014, finds that the Respondent, Acacia Skylan, Inc., t/a Acacia Wellness Bistro, located at 4340 Connecticut Avenue, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-711.

The Board hereby **ORDERS** that:

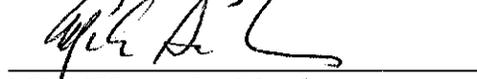
- 1) The Respondent must pay a fine in the amount of \$750.00. by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

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

District of Columbia
Alcoholic Beverage Control Board



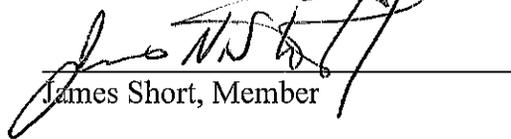
Donald Brooks, Member



Mike Silverstein, Member

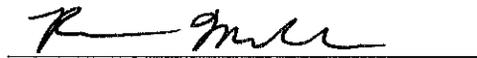


Hector Rodriguez, Member



James Short, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I disagree with the penalty selected by the majority of the Board. I believe the evidence supports a finding of a warning for Charge I.



Ruthanne Miller, Chairperson

I concur with the majority's decision as to its finding of the Respondent's liability, but I disagree with the penalty selected by the majority of the Board. I believe the evidence supports a finding of a \$1,000.00 fine for Charge I.



Nick Alberti, 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).