THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
Bowen Enterprise, Inc. t/a Bowen Discount Liquors	) License Number: 73781) Case Number: 09-CMP-00762) Order No.: 2010-363	
Holder of a Retailer's Class A License at premises 4510 Bowen Rd., S.E. Washington, D.C. 20019	)	

BEFORE: Charles Brodsky, Chairperson
Nick Alberti, Member
Donald Brooks, Member

ALSO PRESENT: Bowen Enterprise, Inc., t/a Bowen Discount Liquors, Respondent

Paul L. Pascal, Esq., on behalf of the Respondent

Amy Caspari, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING MOTION FOR RECONSIDERATION

On May 26, 2010, the Alcoholic Beverage Control Board ("Board") found the Respondent, Bowen Enterprise, Inc., t/a Bowen Discount Liquors, in violation of D.C. Code § 25-346(b)(2) (2009) in Board Order No. 2010-346. The Respondent agreed to be bound by the result in Linda's Market, Inc., t/a Economy Market, Board Order No. 2010-345. The Board ordered the Respondent to pay a $500.00 fine within thirty (30) days from the date Board Order No. 2010-346 was issued.

Subsequently, the Respondent submitted a Motion for Reconsideration, which requests that the Board reduce the $500.00 fine issued by the Board. The Respondent argues that Board Order No. 2010-345 was a case of first impression before the Board and that the Board relied upon federal regulations in making its decision. Furthermore, the Respondent argues that the Board should reduce the fine because the supplier has removed the offending alcoholic beverages from all Wards subject to the moratorium on the sale of individual containers of alcoholic beverages under 70 ounces.

The Board rejects the Respondent's contention that Board Order No. 2010-345 relied on any federal regulations in forming its holding. The Board clearly indicated in paragraph 20 that the federal regulations were not binding on the Board and that the regulations cited were merely persuasive. Board Order No. 2010-345, para. 20. As such, Board Order No. 2010-345 relies solely on the laws of the District of Columbia. Furthermore, based on a plain reading of ABC laws cited in Board Order No. 2010-345 and the facts of the case, the Board is hard pressed to believe that the result was surprising or unexpected.

The Board notes that Licensees have an individual responsibility to know and follow the ABC Code. As a result, it is irrelevant that the supplier has removed the offending alcoholic beverages from the Wards subject to the moratorium.

Finally, the Board notes that the penalty imposed on the Respondent falls within the statutory fine range set by D.C. Code § 25-830 (2001).

Therefore, upon consideration of the Respondent's Motion and the entire record of this matter, the Board, on this 23rd day of June, 2010, hereby **DENIES** Respondent's Motion.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson

Nick Alberti, Member

Donald Brooks, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 23 DCMR § 1719.1 (April 2004) 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).