THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
A & P Liquors, LLC t/a Crown Liquors	Case No.: License No: Order No:	15-CMP-00811 88121 2016-436
Holder of a Retailer's Class A License		
at premises 1325 Connecticut Avenue, N.W. Washington, D.C. 20036		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: A & P Liquors, LLC, t/a Crown Liquors, Respondent

Zachary Shapiro, 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 A & P Liquors, LLC, t/a Crown Liquors, (hereinafter "Respondent" or "Crown Liquors") guilty of violating D.C. Official Code § 25-119 on November 17, 2015 for failing to obtain an import permit for alcoholic beverages offered for sale at the establishment. The Respondent shall pay a $1,000 fine.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on March 25, 2016. *ABRA Show Cause File No., 15-CMP-00811*, Notice of Status Hearing and Show Cause Hearing, 2 (Mar. 25, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1325 Connecticut Avenue, N.W., Washington, D.C., on March 25, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00811*, Service Form. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violation:

> Charge I: [On November 17, 2015,] [y]our failed to maintain importation permits for the purchase of alcoholic beverages transported or imported into the District of Columbia, in violation of D.C. Official Code § 25-119 and 23 DCMR § 1301.1 . . . .

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on May 4, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on June 8, 2016.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. Crown Liquors holds a Retailer's Class A License at 1325 Connecticut Avenue, N.W., Washington, D.C. *ABRA License No. 88121*. In 2012, Crown Liquors received a warning related to an import violation. *Case Report No. 15-CMP-00811*, at 2.

2. D.C. Official Code § 25-119 allows retailers to forgo buying alcoholic beverage from a licensed wholesaler when the retailer obtains an importation permit from the Board. D.C. Official Code § 25-119(a). Under the law, the retailer, not the shipper, is responsible for obtaining the permit. *Id.* The importation permit ensures that the appropriate taxes on the beverages are paid. *Id.* Upon issuance, the retailer must present the permit to the distributor so that the permit may accompany the shipment. § 25-119(c). Once delivered, the retailer must mark the permit canceled and maintain it for three years on the premises. §§ 25-119(d), 25-773(a).

II. ABRA Investigator Vernon Leftwich

3. On November 17, 2015, ABRA Investigator Leftwich conducted regulatory inspections on Connecticut Avenue, N.W., which includes investigating whether licensees are maintaining appropriate records. *Transcript* (*Tr.*), June 8, 2016 at 8. During these routine inspections, Investigator Leftwich conducted a records inspection at Crown Liquors. *Id.* at 9. At the time of his inspection, the owner, Anil Sharma, was present. *Id.* at 12.

4. While at Crown Liquors, Investigator Leftwich determined that the Respondent had two invoices from a seller located in Virginia that were not accompanied by import permits. One invoice, labeled 2015.5, says "Global Wines Distribution DC" in the header, and "Global Wines Virginia" on the header and footer. *Invoice No. 2015.5.* The invoices further indicate that Crown Liquors bought twelve cases of wine. *Id.* Another invoice, 2015.7.10, has the name of the entity faded in a manner that makes them unreadable in the header, but the footer indicates that the distributor is "Global Wines Distribution Virginia." *Invoice No. 2015-7.10.* The second invoice indicates that Crown Liquors bought one case of wine. *Id.* No import permits related to these invoices exist in ABRA's records. *Id.* at 28. During the investigation, Mr. Sharma could not provide any import permits associated with the invoices. *Id.* at 14.

5. If Global Wines of Virginia was a licensed wholesaler, the invoices provided by the business should indicate the business address of the seller and the license number. 23 DCMR §§ 1203.1(b); 1204.2(c) (West Supp. 2016). The invoices submitted into the record do not contain this information and do not satisfy the record keeping requirements imposed on licensed retailers and wholesalers. *Id.*

6. Upon returning to ABRA's offices, Investigator Leftwich searched ABRA's records on Global Wines Distribution Virginia. *Id.* at 16. No record indicated that they held a distribution license in the District. *Id.*

7. The Respondent indicates that he accepted the delivery of alcohol from Global Wines of Virginia because the company had previously shown that it had a District address on its invoices. *Id.* at 66-67.

CONCLUSIONS OF LAW

8. 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 (D.C.) Official Code pursuant to D.C. Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). 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.

III. Standard of Proof

9. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.,* 726 A.2d 1242, 1247 (D.C.1999).

IV. Offense

10. Under § 25-119(a), "An importation permit shall authorize the licensee to import, transport, or cause to be imported or transported, alcoholic beverages into the District. An importation permit shall be issued to the licensee under a retailer's license." D.C. Official Code § 25-119(a). Further, under part (c) and (d), "The permit shall accompany the alcoholic beverages during transportation in the District to the licensed premises of the licensee" and "The permit shall, immediately upon receipt of the alcoholic beverages by the retail licensee, be marked "canceled" by the licensee and the canceled permit maintained for 3 years." § 25-119(c)-(d).

11. In this case, the Board credits the investigator's testimony that the Respondent bought alcohol from an out of state distributor, the Respondent did not apply for an importation permit authorizing the shipment, receive and mark the permit cancelled upon delivery, and failed to maintain appropriate records related to the importation in violation of § 25-119. *Supra*, at ¶ 4. While the Respondent argues that he was defrauded by the distributor pretending to be licensed in the District, the Board is not persuaded by this argument because the invoices shown to the Board fail to comply with the minimum information requirements for wholesaler and retailer invoice records on their face. *Supra*, at ¶ 5. The Board notes that it is a retailer's responsibility to ensure that the records in its possession comply with the law, to reject shipments that are not accompanied by the proper documents or accompanied by documents that fail to comply with this standard, and to obtain import permits when necessary. Consequently, the Board is satisfied that the prosecution has met its burden of proof.

V. Penalty

12. As a first time offense, the Board may levy a fine ranging between $1,000 and $2,000., because the offense is deemed a primary tier violation under the law. 23 DCMR §§ 800, 801 (West Supp. 2016).

ORDER

Therefore, the Board, on this 13th day of July 2016, finds that A & P Liquors, LLC, t/a Crown Liquors, guilty of violating § 25-119. The Board imposes the following penalty on Crown Liquors:

(1) For the violation described in Charge I, Crown Liquors shall pay a $1,000 fine

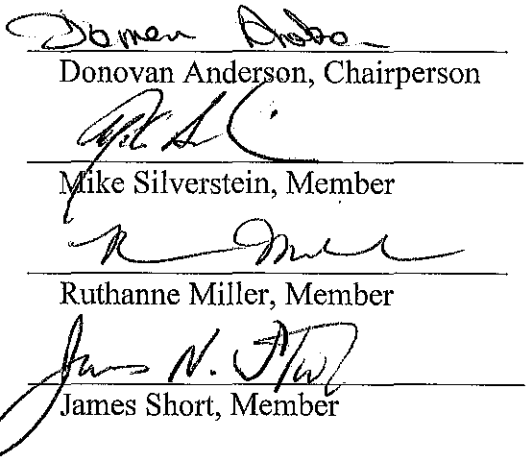
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violation found by the Board in this Order shall be deemed a primary tier violation.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



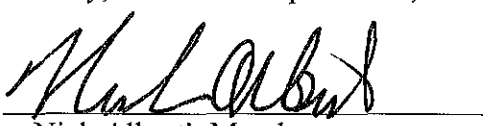
Donovan Anderson, Chairperson

Mike Silverstein, Member

Ruthanne Miller, Member

James Short, Member

I concur with the Board's decision related to liability, but would impose a $2,000 fine for the offense.



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, 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).