

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

In the Matter of:

AG Corporation
t/a Fairmont Liquor & Grocery

Holder of a
Retailer's Class A License

at premises
2633 Sherman Avenue, N.W.
Washington, D.C. 20001

Case Nos. 13-251-00113
14-CC-00003
License No. ABRA-080900
Order No. 2014-452

BEFORE:

Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Abel Gizachew, on behalf of AG Corporation, t/a Fairmont Liquor
& Grocery, 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

This case arises from two Notices of Status Hearing and Show Cause Hearing (collectively the "Notices"), which the Board executed on May 14, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notices on the Respondent, located at 2633 Sherman Avenue, N.W., Washington, D.C., on May 29, 2014.

Specifically, the Notice in Case No. 13-251-00113, charged the Respondent with the following violations:

Charge I: The Respondent permitted the sale of an alcoholic beverage to a person under 21 years of age at the licensed establishment, in violation of D.C. Official Code § 25-781(a)(1) (2012 repl.), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2012 repl.).

Charge II: The Respondent failed to take steps reasonably necessary to ascertain whether a person to whom you sold an alcoholic beverage to at your establishment was of legal drinking age, in violation of D.C. Official Code § 25-783(b)(1) (2012 repl.), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2012 repl.).

ABRA Show Cause File No., 13-251-00113, Notice of Status Hearing and Show Cause Hearing, 2-3 (May 14, 2014).

In addition, the Notice in Case No. 14-CC-00003, charged the Respondent with the following violations:

Charge I: The Respondent permitted the sale of an alcoholic beverage to a person under 21 years of age at the licensed establishment, in violation of D.C. Official Code § 25-781(a)(1) (2012 repl.), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2012 repl.).

Charge II: The Respondent failed to reasonably ascertain whether patrons to whom you sold alcohol were of legal drinking age, in violation of D.C. Official Code § 25-783(b) (2012 repl.), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2012 repl.).

ABRA Show Cause File No., 14-CC-00003, Notice of Status Hearing and Show Cause Hearing, 2-3 (May 14, 2014).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on June 25, 2014, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on October 22, 2014.

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. Testimony of MPD Officer William Barnes

1. On Saturday, August 24, 2013, Master Patrol Officer (MPO) William Barnes, of the Metropolitan Police Department, (MPD) was in the vicinity of the Respondent's establishment because he had received complaints from neighborhood citizens regarding the young people who frequented the establishment. Transcript (Tr.), 10/22/14 at 108-109, 124-125. While at the establishment, MPO Barnes was approached by an elderly lady regarding the long line of customers at the establishment. Tr. 10/22/14 at 109, 125. She was upset because the young patrons inside the store told her to get to the back of the line, and would not let her buy her bottle of beer. 10/22/13 at 109.
2. MPO Barnes entered the store and spoke to the owner, Abel Gizachew, about the young persons standing in the long lines. Tr. 10/22/14 at 113, 119. Mr. Gizachew stated that he cards everyone who buys alcoholic beverages from him. Tr. 10/22/14 at 113. MPO Barnes then responded to another call, returned to the establishment and observed that the line of customers was out the front door and ran almost a block to Euclid Street N.W. Tr. 10/22/14 at 113, 120, 126. Most of the individuals in line had on Howard University sweatshirts and other university gear. Tr. 10/22/14 at 113.
3. MPO Barnes then contacted the Howard University Police Department (HUPD). Tr. 10/22/14 at 113, 120. The university sent six officers to the establishment to assist with the investigation. Tr. 10/22/14 at 113, 118, 120-121. While MPD and HUPD were standing outside the store, a white male patron exited the store and one of the HUPD officers called him by name. Tr. 10/22/14 at 113, 121. They then questioned the white male patron regarding his age, and he disclosed that he was 19 years old. Tr. 10/22/14 at 114, 123. The white male patron also produced identification, a Maine Driver's License, indicating that he was 19 years old. Tr. 10/22/14 at 114, 121-122. The white male patron also disclosed that he bought the beer and that he always buys his beer at the Respondent's establishment. Tr. 10/22/14 at 114, 123.
4. MPO Barnes and the other officers entered the establishment to speak to the owner. Tr. 10/22/14 at 114. When questioned by the police, Mr. Gizachew stated that he did not sell alcoholic beverages to the white male patron. Tr. 10/22/14 at 114. Mr. Gizachew told the officers that he sold it to the individual standing in line in front of the 19 year old patron, who in turn, gave it to the 19 year old on his way out the door. Tr. 10/22/14 at 114. The officers then approached the individual who was in line in front of the 19 year old, and that individual denied buying the beer. Tr. 10/22/14 at 114-115.
5. MPO Barnes is aware that another officer from MPD's Bicycle Unit had warned Mr. Gizachew to check patrons' identification before selling alcoholic beverages. Tr. 10/22/14 at 116-117. MPD issued a citation to Mr. Gizachew for selling alcohol to a minor. Tr. 10/22/14 at 115.

II. Testimony of Abel Gizachew

6. Abel Gizachew is the owner of the establishment Tr. 10/22/14 at 127. On August 24, 2013, there were a lot of people inside the establishment because the students were returning to Howard University for the start of the school year. Tr. 10/22/14 at 128, 129, 132, 135. He has a lot of customers from Howard University due to the proximity of the school to his establishment. Tr. 10/22/14 at 141. Mr. Gizachew estimated that sixty percent (60%) of his business is from Howard University. Tr. 10/22/14 at 143.

7. According to Mr. Gizachew, there was no line inside the establishment because the students were standing outside. Tr. 10/22/14 at 128. He told the students to disperse but they would not leave. Tr. 10/22/14 at 128, 135. There were five to 30 people inside the store. Tr. 10/22/14 at 129.

8. Mr. Gizachew acknowledged that another officer had questioned whether he was checking ID and he informed the officer that he was. Tr. 10/22/14 at 128. Mr. Gizachew testified that the officer said he would be outside the store also checking ID. Tr. 10/22/14 at 128-129. He was also aware that MPO Barnes was checking IDs on August 24, 2013, outside the door where patrons exit the establishment. Tr. 10/22/14 at 130-131, 134, 136, 144-145.

9. On the day of the incident, there were three patrons who were in line to buy alcoholic beverages. Tr. 10/22/14 at 130. The patron in front of the other two bought two beers and one small bottle of Svedka. Tr. 10/22/14 at 130-132. That patron was 23 years old. Tr. 10/22/14 at 130. The patron in the middle of the group of three was the one caught with the alcohol in his possession. Tr. 10/22/14 at 130.

10. The police then entered the store and questioned Mr. Gizachew on whether he sold the alcoholic beverage to the minor who had it in his possession outside the store. Tr. 10/22/14 at 132. Mr. Gizachew denied selling the alcohol to the minor, and instead stated that he sold it to the male patron in front of the minor who was of legal age. Tr. 10/22/14 at 133, 140.

Case Number 14-CC-00003

I. Testimony of ABRA Investigator Kofi Apraku

11. On Friday, January 24, 2014, at approximately 7:50 pm, Investigator Apraku was conducting compliance checks at the Respondent's establishment. Tr. 10/22/14 at 28, 52. ABRA's Enforcement Division had received numerous complaints regarding the sale of alcoholic beverages to under aged students from Howard University. Tr. 10/22/14 at 29, 52. While seated in an ABRA vehicle monitoring the establishment, Investigator Apraku observed large numbers of patrons who appeared to be minors enter the store. Tr. 10/22/14 at 29.

12. Investigator Apraku then entered the store in an undercover capacity where he observed 30 to 40 people shopping for alcoholic beverages. Tr. 10/22/14 at 30, 39-40. He observed one or two individuals walk to the cashier who was located behind the Plexiglass window and fist bump the cashier who was fist bumping the patron in return. Tr. 10/22/14

at 30. It was Investigator Apraku's opinion that the patrons who were fist bumping the cashier did not appear to be over the age of 19. Tr. 10/22/14 at 31.

13. Investigator Apraku moved toward the cashier area to get a better look at the activity. Tr. 10/22/14 at 30. He saw a very young man who was wearing a book bag move to the front of the purchase line. Tr. 10/22/14 at 30. The young man was carrying a bottle of Svedka Citron Vodka and a six pack of Platinum Bud Light beer. Tr. 10/22/14 at 30. He observed the young man present the alcoholic beverage items to the owner, render payment, and return to the back of the store. Tr. 10/22/14 at 31, 40, 45. Investigator Apraku did not observe the owner ask the young man for ID at the time of the purchase. Tr. 10/22/14 at 32, 40.

14. Investigator Apraku followed the young man and observed him placing the alcoholic beverage purchases into his backpack, and proceeded to exit the establishment. Tr. 10/22/14 at 32, 40, 45. The young man was clearly within Investigator Apraku's line of site from the time of purchase of the alcoholic beverage to the placement of the beverages in the backpack. Tr. 10/22/14 at 46.

15. Investigator Apraku then followed the young man outside, where he removed his ABRA credentials and identified himself to the young man. Tr. 10/22/14 at 32, 47. Investigator Apraku then requested the young man's ID. Tr. 10/22/14 at 32. The young man was only able to produce his Howard University student ID. Tr. 10/22/14 at 32, 40. He had no other identification on him. Tr. 10/22/14 at 33, 40. The young man then disclosed to Investigator Apraku that he was 20 years old. Tr. 10/22/14 at 33.

16. Investigator Apraku confiscated the alcohol beverage purchase as evidence, and then re-entered the store accompanied by ABRA Investigators Erin Mathieson and Ileana Corrales. Tr. 10/22/14 at 33. The three investigators approached the front of the store and identified themselves to the owner and the employees. Tr. 10/22/14 at 33. Investigator Apraku informed the owner, Mr. Gizachew that he had sold alcoholic beverages to a minor without checking ID. Tr. 10/22/14 at 33.

17. Investigator Apraku testified that Mr. Gizachew was visibly upset and stated that he always checks ID. Tr. 10/22/14 at 34. Mr. Gizachew demanded that Investigator Apraku bring the young man back inside the store to prove that he had actually sold to a minor. Tr. 10/22/14 at 34. Instead, Investigator Apraku presented the alcohol purchased by the minor not five minutes earlier. Tr. 10/22/14 at 34.

18. Following his conversation with Mr. Gizachew, Investigator Apraku began to conduct a regulatory inspection, while Investigator Mathieson and Investigator Corrales approached the cashier on the other side of the Plexiglass window and inquired about her methods for checking IDs. Tr. 10/22/14 at 35, 47. The cashier was not responsive to the investigators. Tr. 10/22/14 at 35. Investigator Mathieson and Investigator Corrales then began to check the IDs of the customers. Tr. 10/22/14 at 48.

19. Investigator Mathieson also approached Mr. Gizachew and asked what training had been provided to the employees. Tr. 10/22/14 at 35. Mr. Gizachew again became agitated and asked the investigators to leave the area behind the Plexiglass cashier's window and to return to the front of the store. Tr. 10/22/14 at 36.

20. Investigator Apraku testified that Mr. Gizachew blocked the cashier door and attempted to take a picture of the investigators on his smart phone. Tr. 10/22/14 at 36. Investigator Mathieson informed Mr. Gizachew that he was not permitted to take pictures of ABRA investigators while they are carrying out their official duties. Tr. 10/22/14 at 36. She also informed him that he would be charged with interfering with an active investigation. Tr. 10/22/14 at 36-37. Mr. Gizachew then ceased his behavior and permitted the investigators to pass through the doors and move to the front of the establishment. Tr. 10/22/14 at 37.

21. At the time the investigators originally entered the store, there were a large number of patrons shopping for alcoholic beverages or making their purchases. Tr. 10/22/14 at 37. When Investigator Mathieson and Investigator Corrales moved behind the Plexiglass window and started checking identification, many of the patrons started leaving the store without any purchases. Tr. 10/22/14 at 37. By the time the investigators returned to the front of the store, there were fewer than 10 patrons left. Tr. 10/22/14 at 38.

II. Testimony of Abel Gizachew

22. Abel Gizachew testified in his capacity as the owner of the establishment Tr. 10/22/14 at 57. His establishment is located very near Howard University. Tr. 10/22/14 at 57, 67. The students from Howard come to the establishment in large crowds, sometimes 15 or 20 persons at a time. Tr. 10/22/14 at 57, 69. According to Mr. Gizachew, the students take advantage of the crowd's size because they know that not every one of them can be monitored at the same time. Tr. 10/22/14 at 57. The student crowds also use an older student to purchase alcoholic beverages for those who are under the age of 21. Tr. 10/22/14 at 58.

23. When Mr. Gizachew is faced with a crowd of students trying to purchase alcoholic beverages, he reports it to the police and attempts to disperse the crowd. Tr. 10/22/14 at 58, 68. There are only two cashiers and the distance between the alcohol and the plexiglass window is only about two feet. Tr. 10/22/14 at 58-59. The space is too small to accommodate a large crowd. Tr. 10/22/14 at 59, 62. Mr. Gizachew cannot ID all of them because only two or three patrons buy the alcoholic beverages for the other students. Tr. 10/22/14 at 60. It is so crowded that some of the students steal from the store. Tr. 10/22/14 at 60, 72.

24. Mr. Gizachew stated that the cashier who was questioned by Investigator Mathieson is an ABC licensed manager. Tr. 10/22/14 at 61, 66. She has been employed by the establishment for almost three years. Tr. 10/22/14 at 65-66. The cashier was confused by Investigator Mathieson's questions, but she does know how to ID patrons and what birth year to check for people who are underage. Tr. 10/22/14 at 61-62, 66.

25. According to Mr. Gizachew, there was no way that Investigator Apraku could have observed the transaction with the young man who had the back pack. Tr. 10/22/14 at 63. Mr. Gizachew remembers the young man and remembers selling him the alcohol. Tr. 10/22/14 at 81, 84. He did not ask for the ID because the young man presented an ID with his credit card. Tr. 10/22/14 at 63-64, 81. The name on the ID matched the name on the credit card. Tr. 10/22/14 at 82. The ID presented by the patron was vertical and it stated

that the holder was 21 years of age. Tr. 10/22/14 at 65, 73, 78, 82-83, 91-92. Mr. Gizachew swiped the card and put the bottle of vodka in a bag and handed it to the patron. Tr. 10/22/14 at 63, 74-75, 77.

26. Mr. Gizachew speculated that the young man could have used a fake ID and may have been lying to the investigator. Tr. 10/22/14 at 63, 77-78, 80, 85. Mr. Gizachew would have stopped the sale if he had known the ID was fake. Tr. 10/22/14 at 79. He stated that there are very good fake IDs that are hard to identify as fakes. Tr. 10/22/14 at 87-88. Mr. Gizachew will sometimes ask the patrons for their Howard University Student identification in order to verify the name on the credit card and other identification. Tr. 10/22/14 at 87.

27. Mr. Gizachew is concerned that there are no consequences for the underage students. Tr. 10/22/14 at 70. When the police catch the underage students with alcohol, the police confront the owner who cannot deny that he sold the alcohol. Tr. 10/22/14 at 70. If the legal aged patron hands the purchase to the minor, the establishment is held responsible. Tr. 10/22/14 at 72.

CONCLUSIONS OF LAW

28. 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. Code § 25-830 (West Supp. 2013); 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. Code § 25-447 (West Supp. 2013).

29. The Board finds the Respondent guilty of Charge I in Case Number 13-251-00113 and Charges I and II in Case Number 14-CC-00003. The Board does not find the Respondent liable for Charge II in Case Number 13-251-00113.

Case Number 13-251-00113

30. The Board finds that the Respondent sold alcoholic beverages to an underage male on August 24, 2013. Under § 25-781(a)(1), the Respondent may not sell or deliver alcohol to an individual “under 21 years of age.” D.C. Code § 25-781(a)(1) (West Supp. 2013). The record shows that on August 24, 2014, a minor purchased beer from the Respondent. The Board credits the testimony of MPO Barnes who, along with members of the HUPD, confirmed that the minor in possession of the purchased beer after leaving the Respondent’s establishment, was 19 years old. *Supra*, at ¶ 3. Therefore, the Board finds the Respondent guilty of Charge I in Case Number 13-251-00113.

31. The Board however does not find that the Government sustained Charge II regarding the Respondent’s failure to take reasonable measures to ascertain the age of the individual purchasing alcohol on August 24, 2013. Under § 25-783(b), the Respondent and its agents must “take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age.

D.C. Code § 25-783(b) (West Supp. 2013). Here, the Board has no way of knowing whether the Respondent took reasonable steps to ascertain the age of the male patron. Nothing in the record indicates what steps the Respondent may have taken to check identification at the time of purchase. The record only reflects that MPD stopped a minor in possession of alcoholic beverages when the minor exited the establishment. When questioned, the minor admitted that he had purchased the alcohol from the Respondent. Supra, at ¶ 3. Therefore, the Board does not find the Respondent guilty of Charge II in Case Number 13-251-00113.

Case Number 14-CC-00003

32. Additionally, on January 24, 2014, the Board concludes that the Respondent again sold alcohol to a minor, and unlike the previous case, the Board also finds that the Respondent failed to take reasonable steps to ascertain the patron's age in violation of the law. ABRA Investigator Apraku witnessed unobstructed, a young male patron purchase a bottle of vodka and a six pack of beer, place the alcoholic beverages in his backpack, and exit the establishment. Supra, at ¶ 13, 14. Investigator Apraku confronted the young man who admitted that he was under the age of 21, and further admitted that he possessed no other identification other than his Howard University ID. Supra, at ¶ 13, 14. Equally importantly, Investigator Apraku did not observe the owner check the identification of the young man at the time of the purchase. Supra, at ¶ 13. Based on these facts, the Board finds the Respondent violated both D.C. Official Code §§ 25-781(a)(1) and 25-783(b) on January 24, 2014.

33. The Respondent argues that the large influx of Howard University students into his store impairs his ability to adequately monitor the establishment or those who are there to purchase alcoholic beverages. The Board does not credit this defense inasmuch as it appears the Respondent does little other than asking the students to disperse in his efforts to reduce the crowd size. The Board further finds it unlikely that every minor in possession of alcoholic beverages caught leaving his store was provided the beverages by another patron who lawfully made the purchase. It is evident to the Board that rarely does the owner or his cashier ask patrons for identification once they enter the establishment. As a result, the blame for these violations rests squarely with the Respondent.

34. Finally, given the testimony of the Respondent, the Board is left to believe that the Respondent's routine practice is to merely check identification against the patron's credit card to ensure the same name is on both cards, without actually giving the examination any due diligence. This, coupled with the sale to minor violation earlier this month, compels the Board to require the Respondent and his employees to undertake and complete Alcohol Awareness Training.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 19th day of November, 2014, finds that the Respondent, AG Corporation, t/a Fairmont Liquor & Grocery, located at 2633 Sherman Avenue, N.W., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code § 25-781(a)(1), 25-823(b)(1) in Case Nos. 13-251-00113 and 14-CC-00003.

In total, the Respondent must pay a total fine of \$8,000.00, which the Respondent must pay within sixty (60) days from the date of this Order. In addition, the Respondent shall have its license suspended for fifteen (15) days. The breakdown of the Respondent's penalty is as follows:

(1) In Case Number 13-251-00113, the Respondent

- a. Charge I: Respondent must pay a fine in the amount of \$3,000.00, and its license shall be suspended for five (5) days.
- b. Charge II: Dismissed.

(2) In Case Number 14-CC-00003, the Respondent

- a. Charge I: Respondent must pay a fine in the amount of \$3,000.00, and its license shall be suspended for five (5) days.
- b. Charge II: Respondent must pay a fine in the amount of \$2,000.00, and its license shall be suspended for five (5) days.

(3) In total, the Respondent must pay a fine in the amount of \$8,000.00 by no later than sixty (60) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

(4) In total, the Respondent's fifteen (15) suspension days shall begin on January 12, 2015 and end at midnight on January 28, 2015. The Respondent's approved hours of operation and sales are from Monday through Saturday.

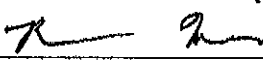
IT IS FURTHER ORDERED that the following conditions are in the best interest of the community and shall be added to the Respondent's license as a condition of licensure under D.C. Official Code § 25-447:

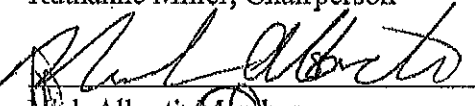
(1) The Respondent shall obtain ABRA's 2014/2015 ID Checking Guide; and make it available to employees checking identification for the establishment.

(2) The Respondent must provide alcohol awareness training to all of its employees within thirty (30) days from the date of this Order. All future employees shall receive such training within sixty (60) days of being hired.

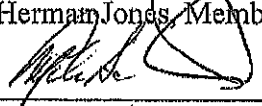
Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson

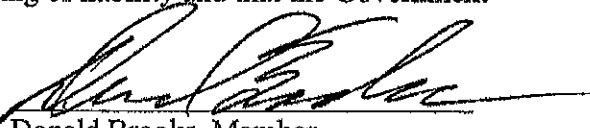

Nick Alberti, Member


Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member

We disagree with the Board's decision as to Charge II in Case No. 13-251-00113. We believe the evidence more than supports a finding of liability and that the Government sustained the charge.


Donald Brooks, Member


James Short, 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).