

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

In the Matter of:)
)
Dennis S. Hodge)
t/a Family Liquors)
)
Holder of a Retailer's Class A License)
)
at premises)
710 H Street, N.E.)
Washington, D.C. 20002)
)

Case No. 12-CMP-00473
License No. ABRA-021877
Order No. 2013-162

BEFORE: Ruthanne Miller, Chairperson¹
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Dennis S. Hodge, t/a Family Liquors, Respondent

Louise Phillips, 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 Dennis S. Hodge, t/a Family Liquors, (Respondent), violated District of Columbia (D.C.) Official Code § 25-741(a), on July 19, 2012. The Respondent must pay a \$500.00 fine and have its license suspended for five days. These suspension days are activated from Case No. 11-251-00096. The suspension must run from June 12 through June 16, 2013.

On December 18, 2012, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated December 12, 2012, on the Respondent charging the Respondent with the following violation:

¹ Board Member Nick Alberti recused himself from the Show Cause Hearing and the deliberation of this matter.

Charge I: The Respondent provided for sale go-cups to customers, in violation of D.C. Official Code § 25-741(a), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On August 14, 2012, Citation #8127 was issued to the Respondent in the amount of \$250.00 for selling go-cups to customers in violation of D.C. Official Code § 25-741(a).

On September 12, 2012, the Respondent chose not to pay the citation and requested a hearing instead. The Board held a Show Cause Status Hearing on February 6, 2013. There was no settlement of the matter and it proceeded to a Show Cause Hearing on April 3, 2013.

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

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing to the Respondent, dated December 12, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00473. The Respondent holds a Retailer's Class A license and is located at 710 H Street, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-021877.
2. The Show Cause Hearing was held on April 3, 2013. *See* ABRA Show Cause File No. 12-CMP-00473. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-CMP-00473.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Brian Owens. *Transcript (Tr.)*, 4/3/13 at 4. Investigator Owens conducts regulatory inspections and investigations for ABRA. *Tr.*, 4/3/13 at 5. On July 19, 2012, Investigator Owens conducted an undercover operation to check several establishments' compliance with the law, to include limitations on container size, the sale of go-cups, and the sale of fewer than six (6) miniatures of spirits or wine per purchase. *Tr.*, 4/3/13 at 9. The undercover operation was conducted in the 700 to 1200 blocks of H Street, N.E., Washington, D.C. *Tr.*, 4/3/13 at 9. The Respondent's establishment was one of the establishments that Investigator Owens visited. *Tr.* 4/3/13 at 8. *See* ABRA Show Cause File No. 12-CMP-00473.
4. On July 19, 2012, Investigator Owens visited the Respondent's establishment and requested a bottle of MD 20/20 Peaches & Cream in a cup. *Tr.*, 4/3/13 at 10. The cashier took a white Styrofoam cup from below his counter and handed the bottle of MD 20/20 and the Styrofoam cup to Investigator Owens. *Tr.*, 4/3/13 at 10. Investigator Owens paid \$2.30 for the bottle of MD 20/20 and the Styrofoam cup. *Tr.*, 4/3/13 at 10.
5. After completing the compliance check operation, Investigator Owens returned to ABRA's offices and completed an evidence transmittal sheet. *Tr.*, 4/3/13 at 11. He secured

the MD 20/20 and the Styrofoam cup in ABRA's locked cabinet. *Tr.*, 4/3/13 at 11. *See* ABRA Show Cause File No. 12-CMP-00473.

6. As a result of the undercover operation conducted at the Respondent's establishment on July 19, 2012, ABRA issued Citation #8127 to the Respondent in the amount of \$250.00 for violating the law regarding selling go-cups to customers. *Tr.*, 4/3/13 at 11. *See* ABRA Show Cause File No. 12-CMP-00497.

7. At the Show Cause Hearing, Investigator Owens produced the bottle of MD 20/20 and the Styrofoam cup that he had purchased at the Respondent's establishment on July 19, 2012. *Tr.*, 4/3/13 at 13. The evidence produced at the hearing matched the photograph presented as Exhibit 1 attached to Investigator Owens's investigative report dated August 29, 2012. *Tr.*, 4/3/13 at 13-14. *See* ABRA Show Cause File No. 12-CMP-00473.

8. Investigator Owens paid cash for the purchase of the bottle of MD 20/20 and the Styrofoam cup. *Tr.*, 4/3/13 at 25-26. Investigator Owens did not request a receipt. *Tr.*, 4/3/13 at 26. Investigator Owens did not identify himself as an ABRA investigator, nor did he request to speak with either the owner or an ABC-licensed manager because he was in an undercover capacity. *Tr.*, 4/3/13 at 26-27.

9. The Respondent called Lincoln Jerome Hodge as his witness. *Tr.*, 4/3/13 at 32. Mr. Lincoln Hodge is the Respondent's brother and has served as the establishment's manager for eighteen years. *Tr.*, 4/3/13 at 32. Mr. Lincoln Hodge purchases the merchandise for the Respondent. *Tr.*, 4/3/13 at 33. The Respondent sells \$0.50, \$1.00 and \$2.00 packs of ice. *Tr.*, 4/3/13 at 33. Also, the Respondent sells packs of cups. *Tr.*, 4/3/13 at 33.

10. Lincoln Hodge stated that he has never seen Investigator Owens in the Respondent's establishment. *Tr.*, 4/3/13 at 33. Lincoln Hodge and Mr. Hodge were the only people operating the establishment on July 19, 2012. *Tr.*, 4/3/13 at 36.

11. Lincoln Hodge stated that the Respondent does not sell single cups. *Tr.*, 4/3/13 at 36. Mr. Lincoln Hodge and Mr. Dennis Hodge know that selling single cups is against the law. *Tr.*, 4/3/13 at 36. There is a sign posted at the entrance of the Respondent's establishment that sets forth the establishment's rules of operation. *Tr.*, 4/3/13 at 37.

12. Lincoln Hodge denied that the Styrofoam cup produced as evidence at the hearing was provided by the Respondent to Investigator Owens during the undercover operation. *Tr.*, 4/3/13 at 38. Lincoln Hodge stated that the Respondent sells plastic cups, but they do not sell Styrofoam cups. *Tr.*, 4/3/13 at 43-44.

13. Mr. Hodge corroborated Mr. Lincoln Hodge's testimony and stated that he and his brother were the only people operating his establishment on July 19, 2012. *Tr.*, 4/3/13 at 52. Mr. Hodge has never seen Investigator Owens before the day of the undercover operation, and he did not sell any items to Investigator Owens. *Tr.*, 4/3/13 at 52.

14. Mr. Hodge argued that he could not know whether Investigator Owens was in his establishment on July 19, 2012, because Investigator Owens was unable to produce a receipt for the purchase of the bottle of MD 20/20 and the Styrofoam cup. *Tr.*, 4/3/13 at 56.

15. Mr. Hodge admitted that he does not always provide receipts when customers pay cash. *Tr.*, 4/3/13 at 56-57. Mr. Hodge signed the citation issued for the violating the statute against selling go-cups. *Tr.*, 4/3/13 at 58. *See* ABRA Show Cause File No. 12-CMP-00473.

CONCLUSIONS OF LAW

16. 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.*

17. 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).

18. With regard to Charge I, the Board finds that the Respondent provided go-cups for sale to its customers. Under D.C. Official Code § 25-741(a), the Respondent may not provide go-cups for sale. The record shows that on July 19, 2012, the Respondent sold a single Styrofoam cup to Investigator Owens. The Board makes this finding based on the findings of fact set forth above, particularly the credible testimony of Investigator Owens.

19. The Board gives no credence to the Respondent’s argument that absent a receipt, the Styrofoam go-cup could have been purchased anywhere. The Board recognizes the purposeful undercover operational practice of not requesting a receipt lest the investigator reveals the operation. Additionally, the Respondent admitted that he does not always provide receipts to customers when they use cash for their purchases. It is evident to the Board that a receipt is not necessary to establish that the Respondent sold a bottle of MD 20/20 and a Styrofoam cup to Investigator Owens during the compliance check.

20. Therefore, based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-741(a) as set forth in Charge I of the Notice to Show Cause, dated December 12, 2012, warrants the imposition of a fine and the suspension further set forth below. The Board also finds that previously stayed suspension days, imposed in Case No. 11-251-00096, are triggered by the case at hand, and will now be served by the Respondent as set forth more fully below.

21. The Board takes administrative notice that this is the Respondent’s first secondary tier violation.

ORDER

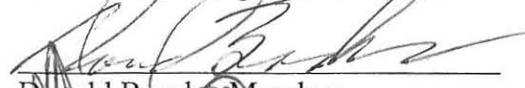
Based on the foregoing findings of fact and conclusions of law, the Board, on this 22nd day of May, 2013, finds that the Respondent, Dennis S. Hodge, t/a Family Liquors, located at 710 H Street, N.E., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code § 25-741(a).

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$500.00 and receive a suspension of its license for one (1) day. The one (1) day of suspension will be stayed for one year, provided that the Respondent does not commit any additional ABC violations.
- 2) The Respondent must pay the \$500.00 fine 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.
- 3) In addition to the stayed suspension day levied for Charge 1, the Respondent must serve five (5) days of suspension. These suspension days are activated from Case No. 11-251-00096.
- 4) The Respondent's five (5) suspension days must be served beginning on June 12 through June 16, 2013.

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

District of Columbia
Alcoholic Beverage Control Board



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I dissent as to the penalty selected by the majority of the Board. In my view, the circumstances of this case merit a lesser penalty as recommended by the Office of the Attorney General.



Ruthanne Miller, Chairperson

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).