

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

**In the Matter of:** )  
 )  
A&F, LLC )  
t/a L Street Market )  
 )  
Holder of a )  
Retailer's Class B License )  
 )  
at premises )  
1100 4th Street, N.E. )  
Washington, D.C. 20002 )  
 )

Case No. 14-CC-00057  
License No. ABRA-079164  
Order No. 2015-017

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

**ALSO PRESENT:** Afework Dawit, on behalf of A&F, LLC, t/a L Street Market,  
Respondent  
  
Fernando Rivero, Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

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This case arises from the Notice of Status Hearing ("Notice"), which the Board executed on September 10, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1100 4th Street, N.E., Washington, D.C., on September 18, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent permitted the sale of an alcoholic beverage to a person under the age of twenty-one (21) years, in

violation of D.C. Official Code § 25-781(a) (2012 repl.), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2012 repl.).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on October 22, 2014, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on December 10, 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. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated September 10, 2014. See ABRA Show Cause File No. 14-CC-00057. A&F, LLC, t/a L Street Market, holds a Retailer's Class B License, ABRA License Number ABRA-079164. See ABRA Licensing File No. ABRA-079164. The establishment's premises are located at 1100 4th Street, N.E., Washington, D.C. See ABRA Licensing File No. ABRA-079164.

2. The Show Cause Hearing was held on December 10, 2014. The Notice charges the Respondent with a single violation enumerated above. See ABRA Show Cause File No. 14-CC-00057.

### II. Testimony of ABRA Investigator Shawn Townsend

3. The Government presented its case through the testimony of one witness, ABRA Investigator Shawn Townsend. *Transcript (Tr.)* 12/10/14 at 8.

4. Investigator Townsend, accompanied by ABRA Investigator Abyie Ghenene, conducted a Sale To Minor Compliance Check at the Respondent's establishment on April 14, 2014, at approximately 1:00 p.m. *Tr.* 12/10/14 at 10-11. The investigators entered the establishment with two male undercover minors. *Tr.* 12/10/14 at 10, 17.

5. The investigators stood in the food aisle about 15-20 feet from where the transaction took place. *Tr.* 12/10/14 at 27. The investigators observed the minors retrieve alcoholic beverages from the Respondent's refrigerator located in the back of the store. *Tr.* 12/10/14 at 10, 27. The alcoholic beverage product was a two-pack of 24 ounce cans of Miller Lite. *Tr.* 12/10/14 at 27. The minors approached the counter, and the male clerk, later identified as the owner, sold the two alcoholic beverages to the minors. *Tr.* 12/10/14 at 10. Once the purchase of the alcoholic beverages were made, the minors exited the establishment. *Tr.* 12/10/14 at 10.

6. Investigators Townsend and Ghenene followed the minors out of the establishment, and retrieved the purchased alcoholic beverages from them. *Tr.* 12/10/14 at 10. The investigators re-entered the establishment and notified the owner that he had just committed a violation by selling alcoholic beverages to a minor. *Tr.* 12/10/14 at 10-11. The owner was identified by the investigators when they examined his D.C. Driver's License. *Tr.* 12/10/14 at 11.

7. The investigators showed the owner pictures of the minors, and copies of the minors' identification. *Tr.* 12/10/14 at 14. The identification provided the minors' date of birth. *Tr.* 12/10/14 at 14. The identification also stated in bold lettering that the minors were under the age of 21 until a future date. *Tr.* 12/10/14 at 14.

8. It is standard protocol for the investigators to show licensed establishment owners copies of identification, rather than the actual identification, because the actual identification is in the possession of the minor. *Tr.* 12/10/14 at 16, 23. The investigators do not carry the actual identification of the minors. *Tr.* 12/10/14 at 16. They make copies of the minors' identification before commencing the Sale to Minor Compliance Check operation. *Tr.* 12/10/14 at 16.

9. Investigator Townsend prepared an investigative report contemporaneous to the date of the incident. *Tr.* 12/10/14 at 18; Government's Exhibit 1. The case report was prepared pursuant to his regular duties in the normal course of business. *Tr.* 12/10/14 at 19. The case report contained copies of the pictures of the minors' identification. *Tr.* 12/10/14 at 20. One of the minor's possessed a Washington, D.C. identification card, which stated that the minor is under the age of 21 years until April 8, 2016. *Tr.* 12/10/14 at 22. The other minor possessed a state of Maryland's Learner's Permit, which stated that the minor is under the age of 21 until March 1, 2018. *Tr.* 12/10/14 at 22-23.

### **III. Testimony of Respondent, Afework Dawit**

10. Mr. Dawit testified that he was working the register when three investigators and two minors entered the store. *Tr.* 12/10/14 at 30, 35. He observed the three investigators selecting groceries while the two minors headed straight to the beer area. *Tr.* 12/10/14 at 30, 51. The minors approached his register with the two-pack of Miller Lite beer. *Tr.* 12/10/14 at 30, 31. Mr. Dawit requested identification from the minors. *Tr.* 12/10/14 at 30. After checking the identification of the first minor, he determined that the minor was not of legal age and therefore, he did not sell the alcoholic beverages to him. *Tr.* 12/10/14 at 30-31, 37-38.

11. Mr. Dawit then checked the identification of the second minor, and sold him the alcoholic beverage. *Tr.* 12/10/14 at 31, 38. It did not occur to him that he sold the two pack of alcoholic beverages to one individual who was in the company of a minor. *Tr.* 12/10/14 at 39. The three investigators then purchased their groceries and left the establishment. *Tr.* 12/10/14 at 31. Five minutes later the investigators returned and notified Mr. Dawit that he was in violation of selling alcoholic beverages to a minor. *Tr.* 12/10/14 at 31-32.

12. Mr. Dawit requested to see the identification used by the second minor. *Tr.* 12/10/14 at 31. The identification used by the second minor was the Washington, D.C. identification that stated the minor was not 21 until April 8, 2016. *Tr.* 12/10/14 at 41. Mr.

Dawit examined the identification produced by the investigators and determined it was not the same identification produced by the second minor at the time of the purchase. *Tr.* 12/10/14 at 31, 42-43.

13. Following the incident, Mr. Dawit purchased equipment to check and scan identification. *Tr.* 12/10/14 at 32, 47, 51, 53; Respondent's Exhibit No. 2. He purchased the equipment on April 17, 2014. *Tr.* 12/10/14 at 53-54. He has not had any problems checking identification since the purchase of the equipment. *Tr.* 12/10/14 at 32.

14. Mr. Dawit stated that there were 11 people in the establishment at the time of the incident. *Tr.* 12/10/14 at 33. He does not believe that the compliance check was conducted pursuant to proper procedure. *Tr.* 12/10/14 at 33. He ensures that he follows the law and does everything he can to prevent sale to minor violations. *Tr.* 12/10/14 at 33.

15. Mr. Dawit has been in business since 2008. *Tr.* 12/10/14 at 33-34. He has had training on how to examine identification and he has read the laws and regulations that govern ABC licensees. *Tr.* 12/10/14 at 34. He is very cautious and responsible. *Tr.* 12/10/14 at 34. He admitted that he has committed Sale to Minor violations in the past. *Tr.* 12/10/14 at 44. He is aware that ABRA offers classes to licensees regarding how to spot and inspect fake IDs, but he has never taken the class. *Tr.* 12/10/14 at 45-46.

## **CONCLUSIONS OF LAW**

16. 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. Official Code § 25-830; 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. Official Code § 25-447.

### **I. THE RESPONDENT VIOLATED § 25-781(a)**

17. The Board finds that the Respondent sold alcoholic beverages to an underage male on April 14, 2014. 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 April 14, 2014, a minor purchased a Miller Lite two-pack from the Respondent. The Board credits the testimony of Investigator Townsend who observed the sales transaction between the owner and the minor inside the establishment. The minor possessed and produced for the owner identification indicating that he was not 21 years of age until April 8, 2016. Therefore, the Board finds the Respondent guilty of Charge 1.

18. The Board does not credit the Respondent's testimony that the identification produced by the minor at the time of the sale was not the same identification produced by the investigators after the sale, when he was notified by the investigators that he had committed a violation. Sale to Minor Compliance Checks are conducted pursuant to a

standard protocol and it is inconceivable that ABRA investigators would produce a different identification from the one used by the minor to make the purchase.

## II. PENALTY

19. The Board finds that Charge I is the Respondent's second Sale to Minor violation within two years and the Board imposes a fine of \$4,000.00, and a suspension of the license for ten (10) days six (6) days to be served, and four (4) days to be stayed for a one-year period which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order. *Licensing File No. ABRA-079164*, Investigative History; D.C. Official Code § 25-781.

## ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 14<sup>th</sup> day of January, 2015, finds that the Respondent, A&F, LLC, t/a L Street Market, located at 1100 4th Street, N.E., Washington, D.C., holder of a Retailer's Class B License, violated D.C. Official Code § 25-781(a).

The Board hereby **ORDERS** that:

- 1) Respondent must pay a fine in the amount of \$4,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.
- 2) In addition, the Respondent shall be suspended for ten (10) days; six (6) days to be served, and four (4) days to be stayed for a one-year period which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order.
- 3) The Respondent's six (6) suspension days will be served from January 20 through January 25, 2015.

**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 2015 ID Checking Guide; and make it available to any employee responsible for the sale of alcoholic beverages;
- (2) The Respondent must attend ABRA's free training regarding how to check fake identification.

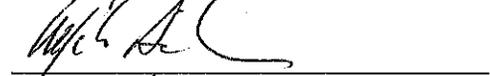
Copies of this Order shall be sent to the Respondent and the Government

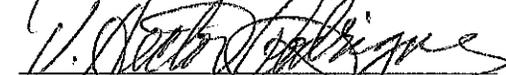
District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

  
Nick Alberti, Member

  
Donald Brooks, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

Under 23 DCMR § 1719.1 (2008), 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 (2008) 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).