

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

In the Matter of:)	
)	
M & M Beer & Wine, Inc.)	Case No.: 15-CMP-00751
t/a M & M Market)	License No: 78461
)	Order No: 2016-467
Holder of a)	
Retailer's Class B License)	
)	
at premises)	
3544 East Capitol Street, N.E.)	
Washington, D.C. 20019)	

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

ALSO PRESENT: M & M Beer & Wine, Inc., t/a M & M Market, Respondent

Amanuel Mebrahtu, on behalf of the Respondent

Fernando Rivero, 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 *sua sponte* vacates Board Order No. 2016-434 and reissues the opinion to clarify the Board's findings of fact and conclusions of law for the parties. The Board notes that the Board's determination to issue a warning remains the same.

INTRODUCTION

The Alcoholic Beverage Control Board (Board) issues M & M Beer & Wine, Inc., t/a M & M Market, (hereinafter "Respondent" or "M & M Market") a warning for violating D.C.

Official Code § 25-741(a) by illegally providing a go-cup to an investigator with the purchase of an alcoholic beverage on September 18, 2015. 23 DCMR § 800 (West Supp. 2016); *Transcript (Tr.)*, May 18, 2016 at 53 (indicating that the Board has the discretion to issue a warning for violations of § 25-741). The Respondent is advised that future violations of this provision or another secondary tier offense may result in the imposition of a fine ranging from \$1,000 or \$2,000; therefore, it is imperative that the Respondent come into compliance with the law.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 20, 2016. *ABRA Show Cause File No., 15-CMP-00751*, Notice of Status Hearing and Show Cause Hearing, 2 (Jan. 20, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3544 East Capitol Street, N.E., Washington, D.C., on February 16, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00751*, 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 September 18, 2015,] [y]ou permitted the provision of a go-cup to a patron in your establishment, in violation of D.C. Official Code § 25-741(a)

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on April 6, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 18, 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:

1. M & M Market holds a Retailer's Class B License at 3544 East Capitol Street, N.E., Washington, D.C. *ABRA License No. 78461*. ABRA Investigator Anthony Howze entered the Respondent's establishment on September 18, 2015, around 2:20 p.m. *Transcript*, May 18, 2016 at 9. He walked to the back of the establishment and picked out a bottle of MD 20/20, a type of citrus wine. *Id.* He then walked to the cash register and placed the bottle on the register. *Id.* Investigator Howze then observed a freezer below the ledge of the counter where the cash register was located. *Id.* at 10. The investigator opened the freezer, pulled out a Styrofoam cup with ice in it and put it next to the alcoholic beverage on the counter. *Id.* The investigator then paid for the beverage and left with the drink and the cup. *Id.* at 12.

CONCLUSIONS OF LAW

2. 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.

I. Standard of Proof

3. 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).

II. Violation

4. Under § 25-741(a), “[t]he licensee under an off-premises retailer's license, class A or B, shall not provide go-cups to customers.” D.C. Official Code § 25-741(a). A “go-cup” is defined as “a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment.” D.C. Official Code § 25-101(23). In this case, the Government substantiated that on September 18, 2015, the Respondent’s employee sold the investigator an alcoholic beverage and provided a cup of ice with the purchase, which violates the requirement of § 25-741(a). *Supra*, at ¶ 1.

III. Penalty

5. Under § 800, the Board may issue a warning for a violation of § 25-741(a). 23 DCMR § 800. In this case, the Board finds that the Respondent merits a warning based on the Respondent’s investigative history.

ORDER

Therefore, the Board, on this 27th day of July 2016, issues M & M Beer & Wine, Inc., t/a M & M Market a **WARNING** for violating § 25-741(a).

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



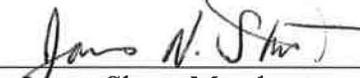
Donovan Anderson, Chairperson



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

I dissent from the position taken by the majority of the Board.



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).