

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

In the Matter of:)	
)	
M&T Grocer's Beer and Wine, Inc.)	License Number: 077390
t/a M&T Grocer's Beer and Wine)	Case Number: 12-CMP-00392
)	Order Number: 2013-331
)	
Holder of a Retailer's Class B License)	
at premises)	
201 15 th Street, NE)	
Washington, D.C. 20002)	

BEFORE: Ruthanne Miller, Chairperson
Donald Brooks, Member
Mike Silverstein, Member

ALSO PRESENT: Walter Adams II, Assistant Attorney General, on behalf of the
District of Columbia

Mulugeta Misiel, on behalf of the Respondent

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

PROCEDURAL BACKGROUND

On April 14, 2013, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated March 27, 2013, on M&T Grocer's Beer and Wine, Inc. t/a M&T Grocer's Beer and Wine (Respondent), at premises 201 15th Street, NE, Washington, D.C. 20002, charging the Respondent with the following violation:

Charge I: The Respondent failed to abide by its Settlement Agreement by selling individual alcoholic beverage containers of wine or fortified wine with a capacity of less than 750 ml in size, in violation of D.C. Official Code § 25-823(6). The date of this alleged incident was August 8, 2012.

FINDINGS OF FACT

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

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated March 27, 2013. (*See Alcoholic Beverage Regulation Administration Show Cause File Number 12-CMP-00392*). The Respondent holds a Retailer's Class B License and is located at 201 15th Street, NE, Washington, D.C. 20002.
2. The Show Cause Hearing in this matter was held June 5, 2013. The Respondent was charged with one violation: failure to abide by its Settlement Agreement by selling individual alcoholic beverage containers of wine or fortified wine with a capacity of less than 750 ml in size, in violation of D.C. Official Code § 25-823(6).
3. The Government presented its case through the testimony of ABRA Investigator Brian Malloy. *Transcript, 6/5/13* at 10. Mr. Malloy testified that ABRA had received a complaint that the establishment was selling fortified wine in 375 ml. bottles, whereas the establishment's Settlement Agreement prohibited the sale of such product in any container less than 750 ml. *Tr.* at 12. On August 8, 2012, Investigator Malloy and Investigator Parker traveled to the establishment, went inside and notified the person who identified himself as the owner that they were there to conduct a regulatory inspection. *Tr.* at 12, 22. The investigators then proceeded to the back of the store and observed a cooler with two different brands of fortified wine that were 375 ml. in size on the top shelf of the cooler. *Tr.* at 13. They then spoke to the owner, informed him of the violation of the Settlement Agreement applicable to his license and requested that he remove the non-compliant items from the cooler so that they could not be individually sold. *Tr.* at 14. Investigator Malloy testified that, before the two investigators had visited the establishment, they had reviewed the Settlement Agreement that was on file for the establishment and confirmed that the establishment had agreed not to sell fortified wine in containers less than 750ml in size. *Tr.* at 15. The owner stated to them that he did not know anything about the Settlement Agreement, whereupon he was shown the relevant portion of the Settlement Agreement from a copy that the investigators had brought with them. *Tr.* at 15-16. Investigator Malloy testified that he pointed to the copy of the displayed license which noted that it was subject to a Settlement Agreement. *Tr.* at 16. Finally, Investigator Malloy testified that the Settlement Agreement stays with the address and transfers with a change in licensee. *Tr.* at 27, 30.

4. The next witness was Mr. Misiel, who stated that he owned the business for around six and a half years and that he was unaware of the Settlement Agreement *Tr.* at 17, 37. Mr. Misiel further testified that when he purchased the business he was not advised of the Settlement Agreement and that he was simply carrying on the business as it had been by the previous owner, including the sale of 375 ml. bottles of fortified wine. *Tr.* at 19. Mr. Misiel admitted that his establishment was selling wine in the 375 ml. size bottle. *Tr.* at 26, 36. He further testified that when he was told of the violation, he removed all of the 375 ml. bottles from the cooler and no longer sells that size. *Tr.* at 35.

CONCLUSIONS OF LAW

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)(2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Official Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

The Board finds, as to Charge I that there is sufficient credible evidence to establish that the Respondent failed to abide by its Settlement Agreement by selling individual alcoholic beverage containers of wine or fortified wine with a capacity of less than 750 ml, in violation of D.C. Official Code § 25-823(6). Respondent admitted to and did not dispute the violation in its testimony before the Board. Accordingly, there is no issue with regard to the violation having occurred at the establishment.

The Government asked that the Board impose a fine of \$500 for the violation. The Board finds that the violation warrants a penalty in the amount of \$250. The Board finds credible evidence that Respondent violated D.C. Official Code § 25-823(6). While the Board is sympathetic to Respondent's claim that it did not know of the existence of the Settlement Agreement and was continuing the business the way it had previously been conducted, a licensee is required to know what obligations or restrictions apply to the business, including that a Settlement Agreement that prohibits the sale of wine and fortified wine in containers less than 750 ml in size is a part of the license. Moreover, it is difficult to fathom that the licensee had been in business at least six years prior to this violation and did not note that his license clearly stated that it was subject to a Settlement Agreement. A Settlement Agreement is a contract between an establishment and the neighborhood in which they reside and must be fully complied with, to the extent that it is legally enforceable, in the manner to which it was agreed upon. We trust that Respondent, now that it is fully aware of the Settlement Agreement, will fully abide by its terms.

ORDER

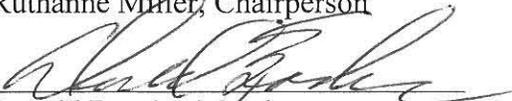
Based on the foregoing findings of fact and conclusions of law, the Board, on this 17th day of July, 2013, finds that the Respondent, M&T Grocer's Beer and Wine, Inc. t/a M&T Grocer's Beer and Wine, holder of a Retailer's Class B License, violated D.C. Official Code § 25-823(6). The Board hereby **ORDERS** that:

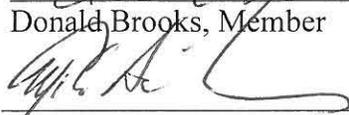
1. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$250 for the conceded violation of D.C. Official Code § 25-823(6).

The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Government and to the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Donald Brooks, Member


Mike Silverstein, 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, under 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 under 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).