

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

In the Matter of:)	
)	
Bella Investments, Inc.)	License Number: 60454
t/a New Hampshire Market)	Case Number: 09-CMP-00172
)	Order No.: 2010-344
Holder of a Retailer's Class B License)	
at premises)	
1900 16th Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Charles Brodsky, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: Bella Investments, Inc., t/a New Hampshire Market, Respondent

Walter Adams, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On September 21, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 16, 2009, on Bella Investments, Inc., t/a New Hampshire Market (Respondent), at premises 1900 16th Street, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Respondent divided a manufacturer's package of more than one container of beer, malt liquor, or ale to sell an individual container of the package in which the capacity of the individual container was 70 ounces or less in violation of D.C. Code § 25-345(b) (2008), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2009).

The matter proceeded to a Show Cause Hearing where the Government and the Respondent presented evidence through the testimony of witnesses and the submission of documentary evidence. The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, 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, dated September 16, 2009. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-CMP-00172). The Respondent holds a Retailer's Class B License and is located at 1900 16th Street, N.W., Washington, D.C. (*See* ABRA Licensing File No. 60454).
2. The Show Cause Hearing in this matter was held on March 3, 2010. The Notice to Show Cause, dated September 16, 2009, charges the Respondent with the violation enumerated above. (*See* ABRA Show Cause File Number 09-CMP-00172).
3. The Government presented its case through the testimony of one witnesses, ABRA Investigator Regina Hollis. *Transcript (Tr.)*, 3/3/10 at 5-6. The Government also presented case report, 09-CMP-00172 (Exhibit 1), and physical evidence consisting of three Budweiser beers bound by clear duct tape (Exhibit 2). (*See* ABRA Show Cause File Number 09-CMP-00172).
4. Investigator Hollis testified that on February 18, 2009, she was monitoring establishments in Ward 2 in order to determine if they were in violation of the moratorium on single sales. *Tr.*, 3/3/10 at 8. Investigator Hollis visited the Respondent's establishment as part of this investigation in an undercover capacity. *Tr.*, 3/3/10 at 8-9, 14. On February 18 at 5:05 p.m., Investigator Hollis arrived at the Respondent's establishment. *Tr.*, 3/3/10 at 9.
5. Upon entering the Respondent's establishment, Investigator Hollis proceeded to the slide-glass coolers in the rear of the establishment where the Respondent stored alcoholic beverages. *Tr.*, 3/3/10 at 9. Looking in the coolers, Investigator Hollis noticed that there were three Budweiser beers bound by clear tape. *Tr.*, 3/3/10 at 9. She picked up the beers bound by the tape and presented them to the cashier for payment. *Tr.*, 3/3/10 at 9. Investigator Hollis testified that the cashier bagged the item and she then left the Respondent's establishment. *Tr.*, 3/3/10 at 9. She stated that Esau Beraki, the Respondent, was the clerk who sold her the beer. *Tr.*, 3/3/10 at 14.
6. The Government also presented the three Budweiser beers bound by clear tape and bought by Investigator Hollis as evidence during the Show Cause Hearing. *Tr.*, 3/3/10 at 11, (ABRA Show Cause File Number 09-CMP-00172, Exhibit 2).

7. Investigator Hollis stated that the entire top shelf of the cooler, which was over five feet tall and three feet wide, was filled with beer packages created by the Respondent. *Tr.*, 3/3/10 at 47-48. Investigator Hollis also testified that that in addition to the three Budweiser beers bound by the clear tape, there were numerous divided packages of alcoholic beverages in the cooler bound by clear duct tape. *Tr.*, 3/3/10 at 10. She noted that there were packages similar to the Budweiser she bought, packaged together in groups of three and taped lengthwise with clear tape to hold the beers together. *Tr.*, 3/3/10 at 15. She testified that the packages created by the Respondent consisted of Budweiser and Bud Ice, along with about two other brands of beer. *Tr.*, 3/3/10 at 48-49, 53. Investigator Hollis also stated that there were no manufacturer's packages of three-packs in the cooler. *Tr.*, 3/3/10 at 50.

8. The Respondent presented its case through the testimony of one witnesses, Esau Beraki, Respondent. *Tr.*, 3/3/10 at 18.

9. The Respondent admitted that he sold three-packs of twenty-four ounce Budweiser beers. *Tr.*, 3/3/10 at 18. The Respondent stated that his establishment purchased approximately fifteen cases of Budweiser in twenty-four ounce containers. *Tr.*, 3/3/10 at 18. The Respondent testified that, in addition to the two-packs and three-packs, he purchases four-packs of sixteen ounce beers. *Tr.*, 3/3/10 at 22.

10. The Respondent testified that the people who deliver beer to his establishment must go down ten steps to the basement. *Tr.*, 3/3/10 at 18. On occasion, during deliveries, the delivery people break down or drop boxes as they go down the steps, which causes many of the packages to break apart. *Tr.*, 3/3/10 at 19.

11. During his testimony, the Respondent brought a two-pack of Budweiser and a three-pack of Budweiser, which were joined together by a plastic ring. *Tr.*, 3/3/10 at 19. The physical packages were not entered into evidence or marked as exhibits. *Tr.*, 3/3/10 at 19, 43. The Respondent stated that these packages break a lot but do not damage the beer itself. *Tr.*, 3/3/10 at 19. The Respondent stated that it is his establishment's practice to restore the packages using clear tape instead of the broken packages. *Tr.*, 3/3/10 at 19. He noted that his business would take a loss if the supplier did not take the beer back. *Tr.*, 3/3/10 at 20.

12. The Respondent argued that he was not in violation of the law because he did not purposefully break the packages apart in order to sell them. *Tr.*, 3/3/10 at 20. Rather, by packaging the beer with the clear tape, he attempted to restore the manufacturer's packaging and comply with the law after the packaging was broken. *Tr.*, 3/3/10 at 20, 27.

13. The Respondent testified that only Budweiser was available in the clear tape packaging used by his establishment. *Tr.*, 3/3/10 at 20-21. He stated that he had at least ten packages bound by clear tape. *Tr.*, 3/3/10 at 25.

14. The Respondent explained that the Budweiser in the clear tape bought by Investigator Hollis was the result of delivery people breaking the cases during the delivery.

Tr., 3/3/10 at 28. The Respondent stated that the delivery people often carry fifteen to twenty cases of beer at a time to his basement. *Tr.*, 3/3/10 at 28. He described the cases as open boxes with four three-packs of twenty-four ounce cans. *Tr.*, 3/3/10 at 30. He stated that in the case of the Budweiser bought by Investigator Hollis, the case they were in was dropped by the delivery person and fell approximately six or seven feet. *Tr.*, 3/3/10 at 31, 34. When this occurred, some of the cans were damaged and thrown out. *Tr.*, 3/3/10 at 35-36. As for the remaining undamaged cans, the Respondent packaged those cans for sale with clear tape. *Tr.*, 3/3/10 at 36. The Respondent noted that the Budweiser bought by Investigator Hollis had a dent in it, which was evidence that the cans were previously dropped. *Tr.*, 3/3/10 at 45, (ABRA Show Cause File Number 09-CMP-00172, Exhibit 2) .

15. The Respondent testified that he had the opportunity to buy three-packs of Budweiser in February of 2009. *Tr.*, 3/3/10 at 44.

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. The Board finds that the Government has proven the charge against the Respondent. The Respondent violated D.C. Code § 25-345(b)(1) (2008) by admitting that he divided the manufacturers' original packaging and re-packaged the individual containers in three-packs by binding them with clear plastic tape, and sold the newly created packages, which contained individual containers of beer under seventy ounces.

18. The District of Columbia, under D.C. Code § 25-345(b)(1), forbids Class A and B licensees in Ward 2 from "Divid[ing] a manufacturer's package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or less. D.C. Code § 25-345(b)(1). The Board interprets D.C. Code § 25-345(b) to mean that a licensee is prohibited from dividing a manufacturer's package and reselling the individual containers, regardless of how many containers they sell at one time or even if the licensee does not change the number of containers being sold. In addition, D.C. Code § 25-345(b)(1) is a strict liability offense and, as such, the Respondent's reasons for dividing the manufacturer's packaging are irrelevant. Therefore, based on the Respondent's admissions, the Board holds that the Government has proven Charge I.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 26th day of May, 2010, finds that the Respondent, Bella Investments, Inc., t/a New

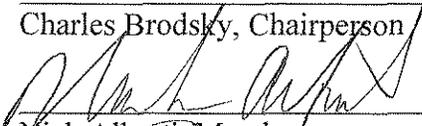
Hampshire Market (Respondent), at premises 1900 16th Street, N.W., Washington, D.C., holder of a Retailer's Class B License, violated D.C. Code § 25-345(b).

The Board hereby **ORDERS** that:

1. The Respondent shall pay a fine in the amount of \$500. Furthermore, the Respondent shall receive a suspension of its license for three (3) days. The Respondent shall have its license suspended from June 19, 2010, through June 21, 2010.

District of Columbia
Alcoholic Beverage Control Board

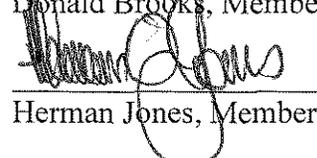
Charles Brodsky, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 23 DCMR § 1719.1 (April 2004) 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).