

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

In the Matter of:	)	
	)	
Rose's Dream, Inc.	)	License No.: 087032
t/a Rose's Dream	)	Case No.: 12-CMP-00231
	)	Order No.: 2013-161
	)	
	)	
Holder of a Caterer's License	)	
at premises	)	
1370 H Street, N.E.	)	
Washington, D.C. 20002	)	
	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Rose's Dream, Inc., t/a Rose's Dream, Respondent  
  
Veronica Roberts, Owner, on behalf of the Respondent  
  
Clive Roberts, Manager, on behalf of the Respondent  
  
Fernando Rivero, Esq., Assistant Attorney General,  
on behalf of the District of Columbia  
  
Martha Jenkins, Esq., General Counsel  
Alcoholic Beverage Regulation Administration

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

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**INTRODUCTION**

We find that Rose's Dream, Inc., t/a Rose's Dream, (Respondent) violated District of Columbia (D.C.) Official Code §§ 25-113(i)(1), 25-113(i)(4), 25-735 and § 2000.1 of Title 23 of the D.C. Municipal Regulations (DCMR) by hosting an event that emphasized alcohol service over food service in violation of its Caterer's License; accepting a gift from a licensed

manufacturer without Board approval; and failing to maintain records in accordance with the Board's regulations. Therefore, we order the Respondent to pay a \$3,000 fine for these offenses. In addition, the Respondent shall have its license suspended for fourteen days. The Respondent's suspension shall begin on June 16, 2013, and end at midnight on June 29, 2013.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on October 10, 2012. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1370 H Street, N.E., Washington, D.C., on October 24, 2012. The Notice charged the Respondent with a number of violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

Specifically, the Notice charged the Respondent with the following violations:

- Charge I: [On April 29, 2012,] [y]our establishment, operating with a Catering License, did not serve prepared food and served alcohol, in violation of D.C. Official Code § 25-113(i)(1) and . . . 23 DCMR [§] 2000.1 . . . .
- Charge II: [On April 29, 2012,] [y]our establishment accepted a gift from an alcohol manufacturer, in violation of D.C. Official Code § 25-735(b)(2) and subsection (c) . . . .
- Charge III: You failed to provide invoices for the food and alcohol purchased under [your license], in violation of D.C. Official Code § 25-113(i)(4) . . . .

*ABRA Show Cause File No.*, 12-CMP-00231, Notice of Status Hearing and Show Cause Hearing, 2-3 (Oct. 10, 2012).

Both the Government and Respondent appeared at the Show Cause Status Hearing on November 28, 2012. The parties proceeded to a Show Cause Hearing and argued their respective cases on February 20, 2013.

### **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:

1. The Respondent holds a Caterer's License, ABRA License Number 87032. See ABRA Licensing File No. 87032. The establishment's premises are located at 1370 H Street, N.E., Washington, D.C. See ABRA Licensing File No. 87032.
2. Alcoholic Beverage Regulation Administration (ABRA) Investigator Erin Mathieson received a telephone complaint regarding 1351 H Street, N.E., on February 29, 2012. *Transcript (Tr.)*, February 20, 2013 at 11; Case Report 12-CMP-00231, 1. Investigator Mathieson arrived at

1351 H Street, N.W., at 12:25 a.m., where she was met by members of the Metropolitan Police Department and the Fire Marshall. *Tr.* 2/20/13 at 11.

3. Upon reviewing the Respondent's Caterer's License and Certificate of Occupancy for 1351 H Street, N.W., provided by the Fire Marshall and the Metropolitan Police Department, Investigator Mathieson determined that the Respondent was catering an event at 1351 H Street, N.W. *Id.* David Fogel, the promoter of the event, stated that the event was part of the Forward Festival, and that it started at 9:00 p.m. *Id.* at 14-16. According to Mr. Fogel, he thought between 150 and 200 people would attend the event. *Id.* at 15. In addition, the event featured a guest DJ from England. *Id.* Finally, Mr. Fogel stated that he had a verbal agreement with the Respondent to provide barbeque-style food and alcohol. *Id.* at 16.

4. Investigator Mathieson entered the event site around 1:00 a.m. *Id.* at 17. Upon entering, she observed approximately 15 to 20 patrons. *Id.* She also observed a dance floor and a bar area. *Id.*

5. The bar area was comprised of several folding tables. *Id.* at 22; Government Exhibit No. 1 (Picture Exhibit 1). Investigator Mathieson observed bottles of liquor in the bar area, as well as a drink menu written on a blackboard that advertised "drunk punch" for \$8.00, DC Draft Brau for \$5.00, and water for \$4.00. *Id.* She further found seltzer and juice, cups with carrots in them, and small bags of potato chips on the table. *Id.* at 23. She also found a box in the bar area that contained various flavors of Smirnoff Vodka. *Id.* She further discovered a keg covered in ice and a cooler containing cans of Miller Genuine Draft beer and water. Government Exhibit No. 1 (Picture Exhibits 2 and 3); *Tr.*, 2/20/13 at 22. Finally, Investigator Mathieson found a box containing Boca Burgers, hamburger rolls, and cheese. *Id.* at 24.

6. During her investigation, Investigator Mathieson did not observe any menus advertising food. *Id.* at 24. She also did not see anything indicating the price of potato chips or carrots. *Id.* Investigator Mathieson also met Clive Roberts, the Respondent's ABC Manager, at the event. *Id.* at 14. According to Mr. Roberts, the Respondent was acting as the caterer for the event at 1351 H Street, N.W. *Id.* Mr. Roberts told Investigator Mathieson that the Respondent provided hamburgers, hot dogs, chips, and dips at the event. *Id.* at 14. He also told the investigator that a table with food was available to patrons during the event, but that the patrons had eaten all of the food. *Id.* at 25.

7. After speaking with Mr. Roberts, Investigator Mathieson searched the premises for evidence of food service. *Id.* at 25. Investigator Mathieson did not see any evidence that tables had been set up. *Id.* She also did not find any paper plates, silverware, or any other products related to the service of food inside the event. *Id.* at 25, 57-58. In addition, upon searching the outside of the establishment, she only found kegs of DC Brau beer covered with ice. *Id.* at 26. Investigator Mathieson also looked in various open trash bags, but did not see any indication that the Respondent had served food at the event. *Id.* at 58.

8. During her investigation, Investigator Mathieson discovered a flyer advertising the Forward Festival. *Id.* at 26. According to the flyer, individuals could purchase pins, t-shirts, and CD's at the event. Government Exhibit No. 2 (Picture Exhibit 8). In addition, the flyer

advertised a “Forward Festival Pass” for \$120 that included access to the festival’s events, drink tickets, and a t-shirt. Id.; *Tr.*, 2/20/13 at 26.

9. During her investigation of the event, Investigator Mathieson also met with Inspector Worrell from the Office of the Fire Marshall. Id. at 29. According to Inspector Worrell, the event was being shut down, because the operator did not have a business license and the event did not conform with the property’s Certificate of Occupancy. Id. at 29. Investigator Mathieson then observed Inspector Worrell shut down the event. Id. at 30.

10. During a telephone conversation between Investigator Mathieson and Mr. Roberts on May 3, 2012, he told the investigator that the Respondent bought alcohol from retail stores and Washington Cash and Carry. *Tr.*, 2/20/13 at 33. Investigator Mathieson requested that the Respondent provide invoices for the alcoholic beverages present at the event. Id. at 31. Mr. Roberts presented Investigator Mathieson with an invoice from the Washington Wholesale Liquor Company (Washington Wholesale). Government Exhibit No. 3 (Invoice 309971028); *Tr.*, 2/20/13 at 32. The invoice indicated that Washington Wholesale delivered the alcoholic beverages listed on the invoice to Rose’s Dream Bar & Lounge, an entity that is not covered by the Respondent’s Caterer’s License. Id., *Tr.*, 2/20/13 at 31-32. Investigator Mathieson noted that there are two ABC licenses listed at 1370 H Street, N.E.; the Caterer’s License held by the Respondent and a separate tavern license. *Tr.*, 2/20/13 at 31-32. According to the invoice, the entity holding the tavern license, Rose’s Dream Bar & Lounge, bought Smirnoff Vodka, Tanqueray London Gin, Bulleit Bourbon, and Seagrams Seven Crown Whiskey. Government Exhibit No. 3. In addition, on May 9, 2012, Mr. Roberts gave Investigator Mathieson an additional invoice that showed that Rose’s Dream Bar & Lounge bought various flavors of Smirnoff Vodka and a bottle of Bulleit Whiskey. Government Exhibit No. 4.

11. Mr. Roberts also gave Investigator Mathieson an invoice from DC Brau. Government Exhibit 5. The invoice indicated that DC Brau, which holds a Manufacturer’s Class B License, gave the Respondent four kegs of beer at no charge. Id. The invoice indicates that DC Brau gave the kegs to the Respondent for the Forward Festival. Id. Investigator Mathieson determined that the kegs were worth approximately \$700 in value, which indicates that each individual keg was worth \$175 each. Id. at 59; Government Exhibit No. 7 (Case Report, 4). The Board takes administrative notice that ABRA’s records show that at no time did the Respondent request that the Board approve this transaction as a gift.

12. Investigator Mathieson noted that the alcoholic beverage invoices submitted by the Respondent did not cover all of the alcoholic beverages that she observed at the event. *Tr.*, 2/20/13 at 42-43. Specifically, the invoices did not indicate that the Respondent received cans of Miller Genuine Draft from Washington Wholesale. Id. at 43.

13. Mr. Roberts also gave Investigator Mathieson documentation regarding the food he purchased for the event. Id. at 48. One receipt from David’s Farm indicates that the Respondent spent \$79.29 to purchase food on April 28, 2012, which consisted of chicken and produce. Government Exhibit No. 6. Another receipt from David’s Farm indicates that the Respondent spent \$110.18 on food, which consisted of chicken, produce, and other grocery items. Id. Investigator Mathieson noted that the baby carrots, bottled water, chips, Boca Burgers, cheese,

juice, and seltzer water that she observed at the event were not listed on the receipts. *Tr.*, 2/20/13 at 51, 53. Mr. Roberts told Investigator Mathieson that he bought additional food at Giant, but he did not provide any receipts proving this claim. *Id.* at 52, 135.

14. David Fogel submitted a notarized affidavit to the Board regarding the event on April 28, 2012. Licensee Exhibit No. 1. According to Mr. Fogel's affidavit he had a verbal agreement with the Respondent to provide catering service. *Id.* Under the agreement, the Respondent provided "Barbeque style food, chips, dip, and vegetable trays," bar, and clean-up services. *Id.* Mr. Fogel averred that he told Investigator Mathieson that the food at the event had been consumed and that the Respondent moved the tables to make more room for patrons. *Id.* Finally, Mr. Fogel avowed that DC Brau donated beer to the festival and that Mr. Roberts only obtained the beer. *Id.*

15. Mr. Roberts served as the ABC Manager for the Respondent during the event. *Id.* at 64. Mr. Fogel hired the Respondent, because Mr. Fogel was friends with Mr. Roberts. *Id.* at 65. Mr. Roberts testified that Rose's Dream, Inc., is the corporation that owns the alcohol licenses for the Respondent's catering business and the separately licensed tavern. *Id.* at 68.

16. Mr. Roberts stated that he provided chicken wings, hamburgers, and hot dogs at the event for one hundred people. *Id.* at 95, 104. The Forward Festival paid him \$8.00 per person. *Id.* at 111. Mr. Roberts testified that he spent \$300 on food for the event. *Id.* at 72.

17. According to Mr. Roberts, approximately 60 to 70 people showed up at the event. *Id.* at 94. He testified that the patrons consumed all of the food at the event. *Id.* at 97. After the patrons finished eating, Mr. Roberts stated that he and his staff cleaned up the food area and broke down the tables before the investigator visited the establishment. *Id.* at 95, 98. He stated that he and his staff brought everything back to the restaurant after they cleaned the food area. *Id.* at 95. He further stated he and his staff cleaned up the food area sometime between 11:00 p.m. and 11:30 p.m. *Id.* at 97.

18. Some of the alcohol at the event was provided by DC Brau and the Forward Festival. *Id.* at 65, 67. Specifically, Mr. Roberts admitted that DC Brau donated the kegs to the Respondent for the Forward Festival. *Id.* at 67. Nevertheless, he asserted that the kegs actually belonged to David Fogel and the Forward Festival—not the Respondent. *Id.* In addition, he claimed that the Forward Festival provided the cans of Miller Genuine Draft. *Id.*

19. Mr. Roberts testified that he was unaware that he had to order beverages separately for each business. *Id.* at 68. He also admitted that the invoices shown to the Board include Bailey's Irish Crème, which was not used at the event, but kept at the tavern. *Id.* at 80. Mr. Roberts admitted that his business's practice was to commingle the alcohol purchases made by the catering business and the tavern. *Id.* at 81, 83. Mr. Roberts returned the unused alcohol to 1370 H Street, N.E., after the event. *Id.* at 77.

20. Mr. Roberts charged the Forward Festival a flat fee for the food and did not charge for the alcohol, because he operated a cash bar during the event. *Id.* at 100. The proceeds from the keg and the cans of beer at the event went to the Forward Festival. *Id.* at 101. The Respondent

earned \$1,000 from the sale of liquor at the event, while Mr. Fogel earned \$900 from the sale of liquor at the event. Id. at 141. Finally, The Respondent earned \$800 from the sale of food. Id. at 141-42.

## CONCLUSIONS OF LAW

21. 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. Code § 25-830 (West Supp. 2013); 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine “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. Code § 25-447 (West Supp. 2013).

22. We find the Respondent guilty of all of the charges presented by the government. We find the Respondent guilty of Charge I, because the event emphasized alcohol service over food service. We find the Respondent guilty of Charge II, because the Respondent needed the approval of the Board before it could receive the four free kegs from DC Brau. Finally, we find the Respondent guilty of Charge III, because it did not maintain its records in accordance with § 1204.1

23. We find the Respondent guilty of the violation described by Charge I, because the Respondent permitted the service of food to be incidental to service of alcohol in violation of § 2000.1. Under D.C. Official Code § 25-113(i)(1), a caterer may “sell, deliver and serve alcoholic beverages for consumption on the premises of a catered event at which the licensee is also serving prepared food.” D.C. Code § 25-113(i)(1) (West Supp. 2013). Under § 2000.1,

A Caterer is a business entity engaged principally in the processing, preparation, and service of food products which it has prepared especially for the customer for an event, *and the service of alcoholic beverages is incidental to the food preparation and service.* A Caterer's license shall not be granted to or maintained by entities which only serve snack items. Snack items shall include, but not limited to, potato chips, popcorn, pretzels, nuts, cookies, and candy.

23 DCMR § 2000.1 (West Supp. 2013) (emphasis added). We note that Black’s Law Dictionary defines “incidental” as “Subordinate to something of greater importance” or “having a minor role.” Black's Law Dictionary (9th ed. 2009) (incidental).

24. Here, the record shows that the Respondent operated a “pop-up nightclub” where the service of food was incidental to the service of alcohol. The totality of the facts demonstrates that food service was only an incidental part of the event. First, Investigator Mathieson only found snack items, like vegetables and potato chips, when she searched the establishment, and she did not find a food menu. Supra, at ¶¶ 5-6. Second, the promotional flyer found by Investigator Mathieson does not mention food as part of the cost of the festival, and it only advertised drink tickets. Supra, at ¶ 8. Third, the Respondent intended to continue the service of alcoholic beverages long after the service of food ended, and the alcohol service would have

continued had the Fire Marshall not ordered the venue closed. Supra, at ¶¶ 2, 9, 17. And Fourth, the Respondent testified that he received \$1000 in gross revenue from the sale of alcohol and \$800 from the sale of food, which means that over fifty percent of the event's gross revenue came from the sale of alcohol, not food. Supra, at ¶ 20.

25. In addition, the event did not feature either prepared food, or, at the very least, food that we could consider as anything more than snack food. Supra, at ¶ 13. We do not credit the Respondent's claims that Investigator Mathieson did not find anything more than snack food, because the rest of the food had been consumed and cleaned up before she arrived. Supra, at ¶¶ 6, 17. The Board is skeptical of the Respondent's claims, because if food service was a major part of the event, Investigator Mathieson should have found evidence of food consumption in the trash bags found inside the establishment. Supra, at ¶ 7. We, therefore, find the Respondent guilty of Charge I, because the substantial evidence in the record shows that the Respondent made the service of food a minor part of the event.

26. We further find that the Respondent accepted an illegal gift in violation of D.C. Official Code § 25-735 by accepting kegs from DC Brau, a licensed manufacturer, without Board approval. A licensed retailer may not receive property from a manufacturer in excess of \$50 without the "prior approval" of the Board. D.C. Code § 25-735(b)(2), (c) (West Supp. 2013). Nevertheless, the DC Brau invoice provided by the Government shows that the Respondent received four kegs valued at \$175 each from DC Brau, a licensed manufacturer, without requesting Board approval. Supra, at ¶ 11. Mr. Roberts's testimony that the Respondent merely accepted the gift on behalf of the Forward Festival does not absolve him of guilt for this offense. We find that acting as a conduit for a gift on behalf of a third party is sufficient to trigger the prohibition described in § 25-735. Supra, at ¶ 18. Therefore, we find the Respondent guilty of the violation described by Charge II.

27. Finally, we find that the Respondent failed to maintain its alcohol invoices in accordance with the law. Under D.C. Official Code § 25-113(i)(4), a caterer must maintain records in accordance with the Board's regulations. D.C. Code § 25-113(i)(4). Under 23 DCMR § 1204.1, "Each holder of a Retailer's license shall keep and maintain upon the licensed premises, records which include invoices . . . and which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer, made to it. 23 DCMR 1204.1 (West Supp. 2013). Here, Mr. Roberts admitted that the Respondent commingled alcoholic beverage purchases made by the separately licensed tavern and the catering businesses. Supra, at ¶ 19. In this case, we note that the alcoholic beverage invoices obtained by Investigator Mathieson show that the purchases were made by Rose's Dream Bar & Lounge, the tavern license holder. Supra, at ¶ 10. Consequently, the Respondent's catering business cannot produce records that show the purchases and deliveries of alcoholic beverages that it has made and received. Id. Based on these facts, we find the Respondent cannot satisfy the requirements of § 1204.1 and is guilty of the violation described by Charge III.

28. The Respondent's investigative history shows that it has no prior violations. *Investigative History*, License No. 087032. The fine range for a first time primary tier offense ranges from \$1,000 to \$2,000. 23 DCMR § 801.1(A) (West Supp. 2013). We further note that the violations described by Charge I and II are both primary tier violations. 23 DCMR § 800. In

addition, Charge III describes cites a statute that is unlisted in the schedule of civil penalties; therefore, we fine the violation as a primary tier violation under D.C. Official Code § 25-830(f). D.C. Code § 25-830(f) (West Supp. 2013).

### **ORDER**

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 8th day of May 2013, finds that Rose's Dream, Inc., t/a Rose's Dream, violated D.C. Official Code §§ 25-113(i)(1), 25-113(i)(4), 25-735(b)(2) and § 2000.1 of Title 23 of the DCMR.

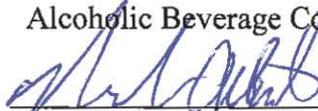
**IT IS FURTHER ORDERED** that the Respondent shall pay a fine of \$1,000 for each offense. Therefore, the Board orders the Respondent to pay a \$3,000 fine, which the Respondent must pay within thirty (30) days from the date of this Order. In addition, the Respondent shall have its license suspended for fourteen (14) days.

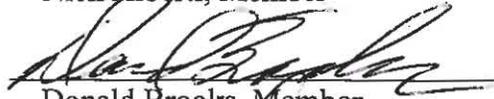
**IT IS FURTHER ORDERED** that the Respondent's suspension shall begin on June 16, 2013, and end at midnight on June 29, 2013.

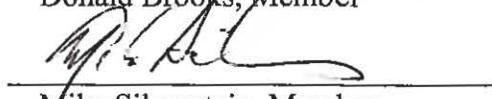
**IT IS FURTHER ORDERED** that the Respondent's investigative history shall reflect that it has been convicted of two primary tier violations and one unlisted violation as of the date of this Order.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia  
Alcoholic Beverage Control Board

  
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Nick Alberti, Member

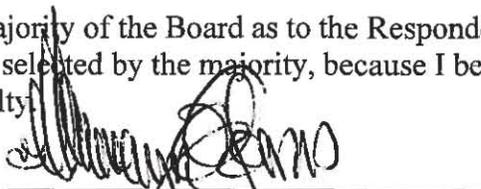
  
\_\_\_\_\_  
Donald Brooks, Member

  
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Mike Silverstein, Member

I concur with the decision reached by the majority of the Board as to the violations described in Charge II and Charge III. Nevertheless, I dissent as to the Board's decision to find the Respondent guilty of the violation described in Charge I. For this reason, I also believe that the Respondent's violations merit a lower penalty.

  
\_\_\_\_\_  
Ruthanne Miller, Chairperson

I concur with the decision reached by the majority of the Board as to the Respondent's guilt. Nevertheless, I dissent as to the punishment selected by the majority, because I believe the Respondent's violations merit a higher penalty.

  
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Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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).