

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

In the Matter of:)	
)	
Decatur Liquors, Inc.)	License Number: 24362
t/a Decatur Liquors)	Case Number: 12969-08/169C and
)	12021-08/120C
)	Order No.: 2010-337
Holder of a Retailer's Class A License)	
at premises)	
4704 14th Street, N.W.)	
Washington, D.C. 20011)	

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

ALSO PRESENT: Decatur Liquors, Inc., t/a Decatur Liquors, Respondent

Fernando Rivero, 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 December 9, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated November 18, 2009, on Decatur Liquors, Inc., t/a Decatur Liquors (Respondent), at premises 4704 14th Street, N.W., Washington, D.C., charging the Respondent with a single violation:

Charge I: The Respondent failed to comply with the terms of a Board Order by failing to pay a fine of \$500.00 as ordered in violation of D.C. Official Code § 25-823(6) (2009), for which the Board may take action pursuant to D.C. Official Code § 25-823(5) (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 November 18, 2009. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 12969 and 12021). The Respondent holds a Retailer's Class A License and is located at 4704 14th Street, N.W., Washington, D.C. (*See* ABRA Licensing File No. 025935).
2. The Show Cause Hearing in this matter was held on April 7, 2010. The Notice to Show Cause, dated November 18, 2009, charges the Respondent with the violations enumerated above. (*See* ABRA Show Cause File Number 12969 and 12021).
3. Both the Government and Respondent presented their case through the testimony of one witnesses, John Wilson, the Respondent. *Transcript (Tr.)*, 4/7/10 at 4. In addition, the Government submitted an email between the Respondent and ABRA Director Fred Moosally dated February 9, 2009 (Exhibit 1), Board Order 2009-029 (Exhibit 2); an email between Mr. Moosally and the Respondent dated January 11, 2010 (Exhibit 3); an email between the Respondent and Mr. Moosally dated January 22, 2010 (Exhibit 4); a decision from the District of Columbia Court of Appeals attached to Exhibit 4 (Exhibit 5); and a decision from the District of Columbia Court of Appeals (Exhibit 6). (*See* ABRA Show Cause File Number 12969 and 12021).
4. Finally, Board Order No. 2009-029 is a valid Board Order. (*See* ABRA Show Cause File Number 12969 and 12021). Board Order No. 2009-029 found that the Respondent violated §25-341(c), which forbids licensees in Ward 4 from selling individual containers of beer that are 70 ounces or less. (*See* ABRA Show Cause File Number 12969 and 12021). The order, signed on February 4, 2009, ordered the Respondent to pay a \$500.00 civil penalty within thirty days from receipt of the Order. (*See* ABRA Show Cause File Number 12969 and 12021).
5. The Respondent testified that during 2009 he was the owner of Decatur Liquors, which is now trading as Uptown Wine and Spirits. *Tr.*, 4/7/10 at 10. The Respondent testified that he appeared before the Board in September of 2008 because of the singles sales ban in Ward 4, where the store was located. *Tr.*, 4/7/10 at 11. The Respondent testified that he was involved in a class action lawsuit challenging the District of Columbia's slaw banning the sale of single containers in Ward 4. *Tr.*, 4/7/10 at 12. The Respondent testified that he had not seen the decision by the Court of Appeals, which instructed the lower court to "dismiss the underlying complaint" made by the Respondent.

Tr., 4/7/10 at 24. However, the Respondent testified that his attorney, Paul Pascal, who represented him during the appeal, told him that his case was overturned. *Tr.*, 4/7/10 at 25.

6. The Respondent testified that he spoke to Mr. Moosally and admitted that Mr. Moosally did not tell the Respondent that he did not have to pay the fine. *Tr.*, 4/7/10 at 28. The Respondent admitted that he still owes the District of Columbia \$500 and he knew that the fine was mandated by a Board Order. *Tr.*, 4/7/10 at 38-39.

7. The Respondent stated that he believed the single-sale law was struck down. *Tr.*, 4/7/10 at 49. Two days after being fined \$500.00 by the Board, the Respondent stated that his attorney, Paul Pascal, told him that the law was thrown out of court. *Tr.*, 4/7/10 at 47. The Respondent stated that his lawyer told him that D.C. Council Member Muriel Bowser was going to reintroduce the law. *Tr.*, 4/7/10 at 47. Nevertheless, the Respondent admitted that his lawyer did not discuss whether the Respondent still had to pay the fine. *Tr.*, 4/7/10 at 47.

8. The Respondent testified that he knew that the decision overturning the law was not final and that it was being appealed. *Tr.*, 4/7/10 at 52. After learning about the state of his case, he contacted Mr. Moosally in order to determine the status of the fine. *Tr.*, 4/7/10 at 52. The Respondent admitted that Mr. Moosally did not tell him that he did not have to pay the fine. *Tr.*, 4/7/10 at 53.

CONCLUSIONS OF LAW

9. 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. Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

10. The Board finds that the Government has proven the charge against the Respondent. The Respondent failed to comply with the terms of Board Order No. 2009-029 by failing to pay his \$500.00 fine within thirty days from receipt of the order in violation of D.C. Official Code § 25-823(6) (2009).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of May, 2010, finds that the Respondent, Decatur Liquors, Inc., t/a Decatur Liquors at premises 4704 14th Street, N.W., Washington, D.C., holder of a Retailer's Class A License, violated D.C. Code § 25-823(6). The Board hereby **ORDERS** that:

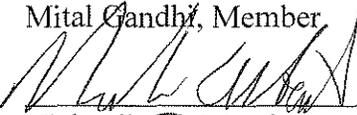
1. The Respondent shall pay the fine issued in Board Order No. 2009-029, in the amount of \$500.00, by no later than thirty (30) days from the date of this Order.

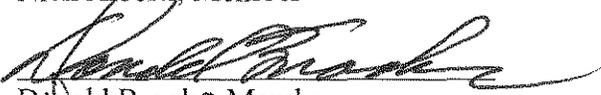
2. In addition, the Respondent shall pay another fine in the amount of \$500.00 by no later than thirty (30) days from the date of this Order for violating D.C. Code § 25-823(6) by failing to pay the fine originally issued in Board Order No. 2009-029.
3. The Respondent shall receive a suspension of its license for fifteen (15) days; all fifteen (15) stayed for one year, provided that the Respondent pays both fines contained in this Order within the thirty (30) day period. If the Respondent fails to pay both fines within the thirty (30) day period contained in this Order, then the Respondent's license will be suspended for fifteen (15) days from July 1st, 2010, to July 15th, 2010.

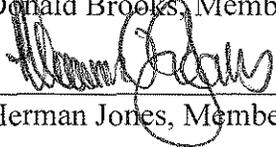
District of Columbia
Alcoholic Beverage Control Board


Charles Brodsky, Chairperson

Mital Gandhi, Member


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).