

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

In the Matter of:)	
)	
Domaine DC, LLC)	License No: N/A
t/a Domaine Wine Storage)	Case No.: N/A
)	Order No: 2016-102
4221 Connecticut Avenue, N.W.)	
Washington, D.C. 20008)	

TO: Paul Pascal
Counsel
Pascal & Weiss, P.C.
1008 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

ORDER ON CEASE AND DESIST

INTRODUCTION

On March 2, 2016, the Alcoholic Beverage Control Board (Board) reviewed compelling evidence that Domaine DC, LLC , t/a Domaine Wine Storage, (Domaine), holder of a Storage Facility Permit, permitted or allowed the consumption of alcoholic beverages at 4221 Connecticut Avenue, N.W., in violation of § 25-102(d) and 23 DCMR § 205.5 through the operation of a wine tasting room on the premises. In accordance with District of Columbia (D.C.) Official Code § 25-829, Domaine is ordered to cease and desist permitting the consumption of alcoholic beverages on the premises.

FINDINGS OF FACT

The Board bases its decision on the following facts:

I. Background

1. Domaine applied for a Storage Facility Permit on February 8, 2012. *Case Report*, Domaine Wine Storage, 2 (Nov. 30, 2015). The Board issued the permit on May 2, 2012, which expired on May 3, 2013. *Id.* ABRA's records show that the permit was not renewed as of December 2015. *Id.* The Board notes that the failure to renew the permit is not the subject of this Order, because Domaine has recently applied for and received a new Storage Facility Permit

2. Alcoholic Beverage Regulation Administration (ABRA) Investigator Jason Peru received a complaint regarding the use of the premises by wholesalers on October 6, 2015. *Id.* at 1. He went to Domaine’s premises on November 30, 2015, in order to investigate the complaint and conduct an inspection. *Id.* During the investigation, he spoke with Domaine’s manager, Fitzgerald Crawford. *Id.*

3. Mr. Crawford told Investigator Peru that “the facility had a wine tasting room that allowed private collectors to consume the wine that they stored at the facility.” *Id.*

CONCLUSIONS OF LAW

4. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public . . .” D.C. Official Code § 25-829(a).

I. DOMAINE PERMITTED THE SALE OR CONSUMPTION OF ALCOHOL IN VIOLATION OF § 25-102(d).

5. Under § 25-102(d)

[n]o person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation or where facilities are especially provided and service is rendered for the consumption of alcoholic beverages who does not possess a license under this title shall permit the consumption of alcoholic beverages on the premises.

D.C. Official Code § 25-102(d). In *Manuel Solosso*, the Board indicated that the use of the premises to store and consume alcohol satisfy the “provision” and “service” element of § 25-102(d) because this type of activity is addressed by Title 25 of the D.C. Official Code. *In re Manuel Solosso*, Board Order No. 2016-085, ¶ 10 (D.C.A.B.C.B. Feb. 24, 2016) *citing* D.C. Official Code §§ 25-101(45) (“keeping for sale”; “trafficking in”), 25-754 (regulating the storage of alcohol), 23 DCMR § 205 (West Supp. 2016).

6. In this case, Domaine’s use of the premises as an alcohol storage facility and the operation of wine tasting room constitute the provision of a facility where alcohol related services are provided. *Supra*, at ¶¶ 1, 3. Therefore, under § 25-102(d), the consumption of alcohol on the premises is prohibited without an appropriate license.

II. DOMAINE CANNOT PERMIT THE CONSUMPTION OF ALCOHOL UNDER A STORAGE FACILITY PERMIT.

7. Under § 205.1, “A storage facility permit shall allow the holder to establish a bonded warehouse in the District of Columbia for the storage of alcoholic beverages.” 23 DCMR § 205.1

(West Supp. 2016). Under § 205.5, “The sale, service, or consumption of alcoholic beverages at a storage facility permit location shall be prohibited.” 23 DCMR § 205.5 (West Supp. 2016).

8. As a Storage Facility Permit holder, Domaine cannot operate a tasting room or permit the consumption of alcohol on the premises. Therefore, the tasting room operated by Domaine violates the requirements of § 205.5.

III. THE CONTINUATION OF OPERATIONS AT THE PREMISES CONSTITUTE AN IMMEDIATE AND IRREPERABLE HARM TO THE PUBLIC.

9. Under the law, § 25-829(a) permits the issuance of a cease and desist order when a violation threatens “immediate and irreparable harm to the public.” D.C. Official Code § 25-829(a). The Council of the District of Columbia provided the Board with a cease and desist power for the purpose of combatting the unlicensed sale and service of alcohol. D.C. Council, Report on Bill 13-449 at 155 (Nov. 20, 2000). The unlicensed sale of alcohol poses a danger to the public for several reasons: (1) the presence of an unlicensed establishment hinders the city’s ability to provide adequate coverage by police and other emergency services, because the city is not on notice that an alcohol establishment is operating on the premises; (2) the staff of an unlicensed establishment may not have adequate training to provide security, address violent or inebriated patrons, or otherwise manage emergencies; (3) an unlicensed establishment is not subject to regular inspections; and (4) the premises have not been adequately vetted to ensure that operations are safe and appropriate for the public. *See* D.C. Official Code §§ 25-113(d)(1) (requirement that nightclubs operate in accordance with security plans); 25-201(c)(4) (duty to inspect); 25-335(1) (requiring denial based on a violation of the Construction Codes and other public safety rules). Moreover, all violations of Title 25 of the D.C. Official Code constitute a nuisance as a matter of law and cannot be permitted to continue on an ongoing basis. D.C. Official Code § 25-805.

ORDER

Therefore, the Board on this 2nd day of March 2016, hereby orders the Landlord and its agents to **CEASE AND DESIST** allowing or permitting the consumption of alcoholic

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-115(c) and 23 DCMR § 1003.1, that ABRA shall no longer issue temporary licenses and one-day substantial change licenses for 4221 Connecticut Avenue, N.W., until this matter is resolved.

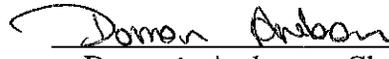
IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance), if necessary.

The Board **ADVISES** Domaine that a copy of this Order is being forwarded to the Metropolitan Police Department and licensed wholesalers to ensure compliance. If it is found

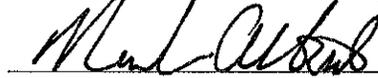
that the sale, service, or consumption of alcohol continues at this location without the approval from the Board, Domaine may be subject to both civil and criminal penalties.

ABRA shall serve notice by certified mail or personal delivery to Domaine's Counsel.

District of Columbia
Alcoholic Beverage Control Board



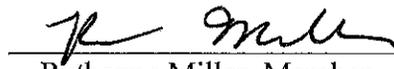
Donovan Anderson, Chairperson



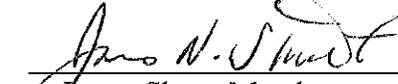
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, 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 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).