

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

In the Matter of:)	
)	
AG Corporation,)	License Number: 80900
t/a Fairmont Liquor and Grocery)	Case Numbers: 09-CMP-00725
)	09-CMP-00726
Holder of a Retailer's Class A License)	09-CMP-00758
at premises)	Order Number: 2010-358
2633 Sherman Ave., N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: AG Corporation, Inc., t/a Fairmont Liquor and Grocery, Respondent

Amy Schmidt, Assistant Attorney General,
Office of the Attorney General, District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On April 22, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 3, 2010, on AG Corporation t/a Fairmont Liquor and Grocery (Respondent), at premises 2633 Sherman Avenue, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent permitted the sale of an alcoholic beverage after 10:00 p.m. in violation of D.C. Code § 25-722, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2009). The date of this violation is September 18, 2009.

Charge II: The Respondent permitted the sale of an alcoholic beverage after Board approved hours in violation of D.C. Code § 25-724, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2009). The date of this violation is October 1, 2009.

On March 16, 2010, the Board served a Notice dated March 3, 2010 on the Respondent charging the Respondent with the following violation:

Charge I: The Respondent provided a go-cup in violation of D.C. Code § 25-741(a) (2008), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2009). The date of this violation is October 23, 2009.

The Board consolidated the two Notices for purposes of economy and the matter proceeded to a Show Cause Hearing on April 28, 2010. 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 two Notices of Status Hearing and Show Cause Hearing; one dated February 3, 2010 and one dated March 3, 2010. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No.s 09-CMP-00725, 09-CMP-00726 and 09-CMP-00758). The Respondent holds a Retailer's Class A License and is located at 2633 Sherman Avenue, N.W., Washington, D.C. (*See* ABRA Licensing File No. 80900). The establishment's hours of operation are Monday through Thursday, from 9:00 a.m. to 9:00 p.m. and Friday and Saturday, from 9:00 a.m. to 10:00 p.m.
2. The Show Cause Hearing in this matter was held on April 28, 2010. The two Notices to Show Cause charge the Respondent with the violations enumerated above. (*See* ABRA Show Cause File No.s 09-CMP-00725, 09-CMP-00726 and 09-CMP-00758).
3. The Government presented its case through the testimony of one witness, ABRA Investigator Erin Mathieson. *Transcript (Tr.)*, 4/28/10 at 5. The Government also presented Board Order No. 2010-027 (Exhibit 1; *See* ABRA Protest File No. 09-059P.)
4. Investigator Mathis testified that on September 18, 2009, she was monitoring the Respondent's establishment in order to conduct an investigation for a pending ABRA Protest Hearing. *Tr.*, 4/28/10 at 6. She arrived at the establishment at 9:00 p.m. and parked across the street. *Tr.*, 4/28/10 at 6. At about 10:00 p.m. she noticed that the "Open" sign was still on and that at 10:03 p.m., a male patron entered the establishment. *Tr.*, 4/28/10 at 7. At approximately 10:05 p.m., Investigator Mathieson observed three female patrons

enter the establishment. *Tr.*, 4/28/10 at 7. At 10:08 p.m., Investigator Mathieson entered the establishment in an undercover capacity. *Tr.*, 4/28/10 at 7. When she entered the store, she observed that one of the three female patrons was holding a bottle of vodka that she had just purchased. *Tr.*, 4/28/10 at 7. A second female purchased a bottle of Parrot Bay Rum with a credit card at approximately 10:10 p.m. *Tr.*, 4/28/10 at 7-8.

5. Investigator Mathieson then approached the cashier and asked to speak to the owner. *Tr.*, 4/28/10 at 8. The cashier identified himself as Abel Gizachew and stated that he was the owner. *Tr.*, 4/28/10 at 8. She advised him that his closing hours were 10:00 p.m. and that he was in violation of selling alcoholic beverages after hours. *Tr.*, 4/28/10 at 9. She then advised Mr. Gizachew that he should lock the doors and refrain from admitting additional patrons into the establishment. *Tr.*, 4/28/10 at 9.

6. Instead of complying with Investigator Mathieson's directive, Mr. Gizachew insisted that the time was 10:02 p.m. and asked if she could "help him out this one time". *Tr.*, 4/28/10 at 9. He was argumentative with Investigator Mathieson and would not lock the door. *Tr.*, 4/28/10 at 9. At that point, additional patrons entered the store through the unlocked front door. *Tr.*, 4/28/10 at 10. The owner did not sell to these patrons as Investigator Mathieson continued to advise him to lock the door. *Tr.*, 4/28/10 at 10.

7. Investigator Mathieson testified that she exited the establishment and while out on the sidewalk, the owner continued to argue that it was only 10:02 p.m. *Tr.*, 4/28/10 at 10. She suggested that he check the time on his cell phone which indicated 10:17 p.m. *Tr.*, 4/28/10 at 10. Investigator Mathieson also suggested to the owner that they review his security camera for the time-stamp on the tape to ascertain when the alcoholic beverages were sold. *Tr.*, 4/28/10 at 11. The owner stated that he had security cameras but they were not working and thus the tapes could not be reviewed. *Tr.*, 4/28/10 at 11. The owner then suggested that they review the credit card slip to determine the time of sale, but he was unable to locate it. *Tr.*, 4/28/10 at 11.

8. Investigator Mathieson returned to the establishment on Thursday, October 1, 2009. *Tr.*, 4/28/10 at 11. She was accompanied by ABRA Investigator Ileana Corrales who was working in an undercover capacity. *Tr.*, 4/28/10 at 12-13. Investigator Corrales entered the establishment between 8:55 p.m. and 9:04 p.m. when she observed a male patron exit the store with two cups and a can of beer in a clear plastic bag. *Tr.*, 4/28/10 at 13. At 9:06 p.m., Investigator Mathieson observed two female patrons exit the establishment with a six-pack of Bud Light in a clear plastic bag. *Tr.*, 4/28/10 at 13.

9. While in her undercover capacity, Investigator Corrales observed a patron purchase a 24 ounce alcoholic beverage. *Tr.*, 4/28/10 at 14. She then picked out a bottle of Corona beer and successfully purchased it at 9:07 p.m. *Tr.*, 4/28/10 at 14. She then exited the establishment at 9:08 p.m. *Tr.*, 4/28/10 at 14.

10. Following Investigator Corrales' departure, Investigator Mathieson entered the establishment at 9:09 p.m. *Tr.*, 4/28/10 at 14. A store employee was standing at the door and let her inside. *Tr.*, 4/28/10 at 15. She walked to the counter where she witnessed a

male patron purchasing a 24-ounce can of Steel Reserve. *Tr.*, 4/28/10 at 15. When the owner saw Investigator Mathieson, he immediately stated to the patrons inside the store, "No sales. We're closed". *Tr.*, 4/28/10 at 15. He also informed her that the patrons had entered the store prior to 9:00 p.m. *Tr.*, 4/28/10 at 15.

11. On Friday, October 23, 2009, Investigator Mathieson entered the premises with Supervisory Investigator Craig Stewart to issue a citation. *Tr.*, 4/28/10 at 16. While inside the store, they witnessed a male patron request a go-cup, which the owner provided. *Tr.*, 4/28/10 at 16. The investigators then located additional small shot glass-sized plastic cups next to the register as well as large red plastic cups. *Tr.*, 4/28/10 at 16. The owner explained that the cups were for juice. *Tr.*, 4/28/10 at 16.

12. Investigator Mathieson identified Government's Exhibit No. 1, Board Order No. 2010-027 and read from Conclusion No. 26, wherein the Board expressed grave concern that [during the monitoring of the establishment during the Protest period], the Respondent was not complying with ABC regulations; specifically, he allegedly sold alcoholic beverages after hours on two different occasions, had no ABC manager on duty and admitted to distributing go-cups. *Tr.*, 4/28/10 at 18; (*See* ABRA Protest File No. 09-059P.)

13. The Respondent presented its case through the testimony of one witness, Mr. Gizachew, the owner of the establishment. *Tr.*, 4/28/10 at 21. He stated that Investigator Mathieson never advised him that he had to close at 10:00 p.m. *Tr.*, 4/28/10 at 21-22. He believed he could legally sell to patrons who had entered the establishment prior to closing time. *Tr.*, 4/28/10 at 22, 36, 40. He also believed that he could give go-cups to patrons; he just couldn't sell them. *Tr.*, 4/28/10 at 25-26. Mr. Gizachew stated that he used to work in a grocery store where he provided cups for juice and that is why he gave one to his patron at the store. *Tr.*, 4/28/10 at 29.

14. The Respondent testified that he relies on his register to clock the time. *Tr.*, 4/28/10 at 30. He could not produce a copy of the receipt for Investigator Mathieson to establish the time he sold alcoholic beverages to customers. *Tr.*, 4/28/10 at 31-32. He also stated that because he is a new licensee, he didn't know he was violating ABC laws and regulations. *Tr.*, 4/28/10 at 35.

15. The Respondent testified that on the night of September 23, 2009, the person at the front door was his cousin and he let patrons in after 10:00 p.m. *Tr.*, 4/28/10 at 42-44. He admitted that he knew he was not to admit patrons inside the store after 10:00 p.m. *Tr.*, 4/28/10 at 44-45.

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 District of Columbia, under D.C. Code § 25-345(b)(1), forbids licensees to operate, sell or serve alcoholic beverages after Board approved hours. The licensee's hours of operation are Monday through Thursday, from 9:00 a.m. to 9:00 p.m. and Friday and Saturday, from 9:00 a.m. to 10:00 p.m.

18. The Board finds that the Government has proven Charges I and II in the Notice dated February 3, 2010, with regard to operating after hours. On two different occasions, Investigator Mathieson witnessed the Respondent selling alcoholic beverages after the store was to be legally closed. On the second occasion, Investigator Mathieson was accompanied by Investigator Corrales, who not only witnessed after hours sales, but who was also able to successfully purchase a Corona beer at 10:08 p.m. herself. The Board finds the testimony of both ABRA investigators to be credible and gives no credit to the testimony of the owner who stated that the patrons had entered the establishment before closing time and were merely wrapping up their purchases. The owner's testimony is contradicted by the testimony of Investigator Mathieson who also witnessed patrons *enter* the store after 10:00 p.m. Moreover, the owner admitted that he knew not to admit patrons inside the store after 10:00 p.m.

19. Additionally, the Board finds that the Government has proven Charge I in the Notice dated March 3, 2010, with regard to the distribution of a go-cup to his patron. This was not only witnessed by Investigators Mathieson and Stewart, the Respondent admitted that he gave a go-cup to his patron. Therefore, based on the investigators' testimony and the Respondent's own admission, the Board finds that the Government has proven this Charge.

20. The Respondent's arguments that he did not know the law are irrelevant and without merit. As this Board has repeatedly stated; a license is a privilege and not a right and as such, there is a presumption that the licensee knows the laws and regulations related to that privilege and equally importantly, there is an expectation that a licensee will comply with those laws and regulations.

21. Finally, the Board is extremely disturbed and offended by the behavior of the Respondent towards Investigator Mathieson. After being put on notice by her of the "operating after hours" violation, the Respondent argued with her and continued to commit the same violation in total disregard to her directive to close the store and lock the door. He followed her outside and continued to argue with her on the public sidewalk. Additionally, the Respondent asked Investigator Mathieson to "help him out this one time", suggesting that she be complicit in his violation of the law. The Board takes this type of behavior very seriously and warns the Respondent to not only comply with ABC laws and regulations, but to cooperate with ABRA investigators in his future interactions with them.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 16th day of June, 2010, finds that the Respondent, AG Corporation, t/a Fairmont Liquor and Grocery (Respondent), at premises 2633 Sherman Avenue, N.W., Washington, D.C., holder of a Retailer's Class A License, violated D.C. Code § 25-722, § 25-724 and § 25-741(a).

The Board hereby **ORDERS** that:

For the Notice dated February 3, 2010:

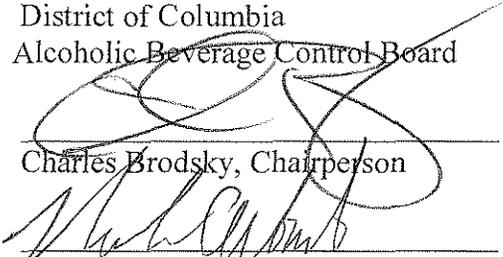
1. Charge I: Respondent shall **pay a fine in the amount of \$1,000.00** and shall be suspended for a period of two days; with one day served and one day stayed for one year, provided that the Respondent does not commit any ABC violations.
2. Charge II: Respondent shall **pay a fine in the amount of \$1,500.00** and shall be suspended for a period of two days; with one day served and one day stayed for one year, provided that the Respondent does not commit any ABC violations.

For the Notice dated March 4, 2010:

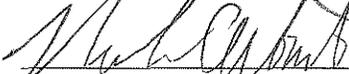
3. Charge I: Respondent shall **pay a fine in the amount of \$250.00** and shall be suspended for a period of one day, with that one day stayed for one year, provided that the Respondent does not commit any ABC violations.

In total, the Respondent shall **pay a fine in the amount of \$2,750.00** by no later than thirty (30) days from the date of this Order. The Respondent shall **serve two days suspension** on June 17, 2010 and June 18, 2010. A total of three days suspension shall be stayed for one year, provided that the Respondent does not commit any ABC violations.

District of Columbia
Alcoholic Beverage Control Board



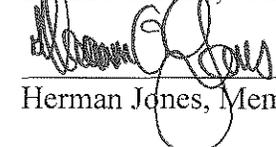
Charles Brodsky, Chairperson



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).