

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

| | | |
|--|---|------------------------|
| In the Matter of: |) | |
| |) | |
| Dennis S. Hodge |) | License No.: 21877 |
| t/a Family Liquors |) | Case No.: 11-251-00096 |
| |) | Order No.: 2012-080 |
| Holder of a Retailer's Class A License |) | |
| at premises |) | |
| 710 H Street, N.E. |) | |
| Washington, D.C. 20002 |) | |

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Dennis S. Hodge, on behalf of the Respondent

Louise Phillips, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On September 22, 2011, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 14, 2011, on Dennis S. Hodge, t/a Family Liquors, (Respondent) at premises 710 H Street, N.E., Washington, D.C., charging the Respondent, in Case No. 11-251-00096, with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC license:

Charge I: On February 17, 2011, the Respondent violated District of Columbia Official Code § 25-781(a) by permitting the sale of an alcoholic beverage to a person under the age of twenty one (21) years, for which the Board

may take the proposed action pursuant to District of Columbia Official Code § 25-823 (2001).

Charge II: On February 17, 2011, the Respondent violated District of Columbia Official Code § 25-783(b) by failing to take reasonably necessary steps to ascertain whether individuals to whom alcoholic beverages were sold by the Respondent were of the legal drinking age, for which the Board may take the proposed action pursuant to District of Columbia Official Code § 25-823 (2001).

The parties came before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on October 26, 2011. The matter proceeded to a Show Cause Hearing on November 30, 2011, 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 the parties, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. In Case No. 11-251-00096, the Board issued a Notice, dated September 14, 2011. See ABRA Show Cause File Nos. 11-251-00096. The Respondent holds a Retailer's Class A License and is located at 710 H Street, N.E., Washington, D.C. See ABRA Licensing File No. 21877.
2. The Show Cause Hearing in this matter was held on November 30, 2011, and the Notice charges the Respondent with the two violations enumerated above. See Notice of Status Hearing and Show Cause Hearing.
3. At 9:45 p.m. on February 17, 2011, officers with the Metropolitan Police Department (MPD) observed two young males enter the Respondent's establishment and communicate in writing with the owner, Dennis Hodge. Notice of Status Hearing and Show Cause Hearing, 2 (May, 25, 2011) (*Notice*). The officers observed that Mr. Hodge did not view the identification of the two males, and sold them a six pack of Miller Genuine Draft Beer. *Notice*, 2. The two males were deaf and communicated with the owner in writing. *Notice*, 2. The officers entered the establishment and discovered that the male who purchased the alcoholic beverage was twenty (20) years old. *Notice*, 2.
4. Counsel for the Government presented its case-in-chief with four witnesses consisting of two MPD detectives and two MPD officers.
5. David Carter has been a detective with MPD for almost 16 years. *Transcript (hereinafter "Tr.")*, November 30, 2011, at 9. Det. Carter was present at the establishment on February 17, 2011, accompanied by Sergeant Christopher Thornton, Officer Roger Williams and Detective Scott Emmons. *Tr.* at 10. The four MPD personnel were seated in an unmarked vehicle, located directly in front of the door of the establishment. *Tr.* at 11-12. They had a clear view of the

front counter, and they observed the transaction that occurred inside the store. *Tr.* at 12. None of the officers was in the store at the time of the incident. *Tr.* at 12.

6. The establishment's front counter has bullet-proof plexi-glass that separates the customers from the cashier. *Tr.* at 12. There is a portal in the plexi-glass that allows the customers and cashier to communicate. *Tr.* at 12, 32-33, 50. The portal is also large enough to allow alcoholic products to pass through to the customers. *Tr.* at 12. The whole interior of the store is protected by the bullet-proof plexi-glass. *Tr.* at 47-48, 50, 111-114.

7. Det. Carter testified that between 9:30 p.m. and 9:45 p.m., two young males, one white and one black, entered the establishment. *Tr.* at 13, 19. They appeared to be under the age of 21. *Tr.* at 13. He observed the young men communicate by written note with the cashier at the counter. *Tr.* at 13, 15-16, 19, 33-34. The note was passed back and forth between the white man and the cashier. *Tr.* at 22, 25, 35, 37. The white man purchased a six pack of Miller Lite through the portal in the plexi-glass window. *Tr.* at 13. Det. Carter then observed money exchange hands between the white man and the cashier, and the cashier passed the beer to the young white man through the portal. *Tr.* at 13, 35, 54.

8. Det. Carter and the other officers entered the store to verify the age of the young men. *Tr.* at 13-14. MPD discovered that the two young men were hard of hearing and that neither of them had identification. *Tr.* at 14. The young men were from Sweden and had left their identification at Gallaudet University where they were staying while visiting Washington, D.C. *Tr.* at 14. The white man who purchased the beer stated he was 20, and the black man stated he was 22. *Tr.* at 16, 31, 35. MPD permitted the black man who did not purchase the beer to return to Gallaudet University to retrieve their identification. *Tr.* at 14, 16, 36.

9. Detective Carter testified that the note that was being passed back and forth between the young men and the cashier read, "You have ID. Police is outside. Are you 21?". *Tr.* at 15; Government's Exhibit No. 2. There was no response to the questions on the note. *Tr.* at 15, 27-28. MPD stated that the cashier admitted he didn't ask for identification because the young men had been in the establishment the previous week. *Tr.* at 16-17. However, when MPD checked their passports, the passports were stamped with a date that indicated the young men had only been in the United States two days before the incident. *Tr.* at 17, 93.

10. MPD then documented the information from the incident. *Tr.* at 18. All four MPD personnel were present inside the establishment and confirmed Det. Carter's testimony. *Tr.* at 18. MPD monitored this particular establishment because it received a complaint from ABRA that underage students from Gallaudet University were purchasing alcoholic beverages there. *Tr.* at 24.

11. Detective Carter stated that MPD was able to somewhat communicate with the two young men without the use of sign language. *Tr.* at 29-31.

12. Sergeant Christopher Thornton has worked for MPD for 21 years, and was present at the establishment on the evening of February 17, 2011. *Tr.* at 40-41. He witnessed the same transaction observed by Detective Carter and confirmed Detective Carter's testimony. *Tr.* at 41.

Sergeant Thornton was present in his capacity as the supervisor of the operation, but he did not communicate much with the two young men. *Tr.* at 43.

13. Det. Scott Emmons has worked for MPD for 15 years, and was present at the establishment on the evening of February 17, 2011. *Tr.* at 40-41. He witnessed the same transaction observed by Detective Carter and confirmed Detective Carter's testimony regarding the white man procuring the beer. *Tr.* at 41, 53. Detective Emmons was able to communicate with the two young men by gesturing. *Tr.* at 45-46. He has worked the area around Gallaudet University throughout his MPD career, and he has friends who are hard of hearing. *Tr.* at 46.

14. Det. Emmons also stated that the owners have a camera security system, but that MPD could not obtain access to the video because the owners couldn't produce it. *Tr.* at 46-47. Det. Emmons stated that the white man took possession of the beer after the payment. *Tr.* at 54-55. Det. Emmons also examined the young men's passports, and confirmed the stamped date of their arrival on February 15, 2011, by the U.S. Customs and Border Patrol. *Tr.* at 57-58.

15. Officer Roger Williams has worked for MPD's 7th District for 11 years, and was present at the establishment on the evening of February 17, 2011. *Tr.* at 63. He witnessed the same transaction observed by Det. Carter and confirmed Det. Carter's testimony. *Tr.* at 63.

16. Lincoln Jerome Hodge testified on behalf of the Respondent. *Tr.* at 63. He has worked at Family Liquors for 16 years. *Tr.* at 65, 73, 92. He recalled that the two young men walked into the establishment on the night of the incident. *Tr.* at 66. He testified that the displays of alcoholic beverages are protected by the bullet-proof glass. *Tr.* at 66, 111-114. The counter has a portal through which one can communicate to the cashier and pass purchased goods to the customers. *Tr.* at 67, 115-117.

17. Mr. Hodge was approached by the white man who was 20 years old. *Tr.* at 67, 73, 82. Mr. Hodge confirmed that a note was passed to him, and that he wrote and asked the white man for his identification. *Tr.* at 68, 75; Respondent's Exhibit No. 1. Mr. Hodge also testified that he thought the black man passed him a note, but he wasn't sure. *Tr.* at 83, 88, 103. Mr. Hodge then testified that a third different customer came up to the counter from the back, and indicated to him that the police were located outside. *Tr.* at 89-90, 109-110. Mr. Hodge testified that this third customer speaks English. *Tr.* at 110. This third customer went to the lottery booth and wrote on the back of a lottery ticket that the police were located outside. *Tr.* at 90. This note was not produced by Mr. Hodge at the Show Cause Hearing. *Tr.* at 84.

18. The note passed by Mr. Hodge to the white man stated "Police is outside. They will stop you. We cannot serve you. The next guy is 21. We will help. We will sell him". *Tr.* at 77-78, 97; Respondent's Exhibit No. 1. Mr. Hodge testified that when the white man indicated that he didn't have his identification, Mr. Hodge stopped the transaction. *Tr.* at 68, 87, 99. He did not sell the Miller Lite to the white man because the white man was not 21 years old. *Tr.* at 83-84. Mr. Hodge determined that the white man was not 21 years old because the white man indicated on a note that he wasn't 21. *Tr.* at 84, 86-87, 101-102. Mr. Hodge indicated that there were several notes used to communicate during the transaction, but that not all of the notes were in the possession of MPD, nor did he bring them to the Show Cause Hearing. *Tr.* at 84, 87, 91.

19. Mr. Hodge then testified that his brother received the money for the purchase from the black man. *Tr.* at 68-69, 78, 102. He and his brother knew that the black man was 21 years old, although they did not request his identification. *Tr.* at 88, 108. Mr. Hodge stated that the black man had been in the store on several occasions two weeks prior to the night of the incident. *Tr.* at 93-94. Mr. Hodge had never seen the white man before February 17, 2011. *Tr.* at 94.

20. Mr. Hodge testified that MPD then entered the store and identified themselves as police. *Tr.* at 69. Mr. Hodge's brother stated that he knew the young men because they had been inside the establishment two weeks earlier with a young woman who also couldn't speak English. *Tr.* at 69. Mr. Hodge informed Det. Carter that the black man, and not the white man, purchased the alcoholic beverages. *Tr.* at 69.

21. Mr. Hodge witnessed his brother sell the six pack of Miller Lite to the black man. *Tr.* at 99. The black man gave his brother \$10.00 for the beer and received change. *Tr.* at 99-100.

22. The note identified as Respondent's Exhibit No. 1, was never provided to Detective Carter or the other three MPD officers by Mr. Hodge on the night of the incident. *Tr.* at 79. Mr. Hodge was also unaware that the other note, Government's Exhibit No. 2, existed until he received a copy of the investigative report in the mail. *Tr.* at 79-80. He stated that he did not write it. *Tr.* at 79. Mr. Hodge did not examine the passports when the black man returned to the store with them. *Tr.* at 80.

23. Mr. Hodge further testified that after Det. Carter realized that the black man had purchased the beer and that he was 21, Det. Carter change his story to state that it was the white man who purchased the beer. *Tr.* at 71-72. Mr. Hodge believes that MPD's version of what happened that night is an injustice, and that it is nothing more than a total fabrication. *Tr.* at 71, 73.

24. Mr. Hodge stated that he is very supportive of the community, and that it is not customary for them to sell alcoholic beverages to minors. *Tr.* at 70. His establishment has contributed financial aid to area school children for more than ten years. *Tr.* at 92. There are security cameras that monitor the establishment, but they have not been operable for six months. *Tr.* at 72, 86. Mr. Hodge works six days a week at the establishment, from 9:00 a.m. to 10:00 p.m., but he is not an ABC licensed manager. *Tr.* at 95-97.

CONCLUSIONS OF LAW

25. The Board has the authority to suspend or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia 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. District of Columbia Official Code § 25-830 and 23 DCMR § 800, *et seq.*

26. The Board bases its factual findings on the substantial evidence contained in the record. 23 DCMR § 1718.3 (2008). The courts define substantial evidence as evidence that “reasonable minds might accept as adequate to support the [Board’s] conclusions.” 2641 Corp. v. District of Columbia Alcoholic Beverage Control Bd., 950 A.2d 50, 52 (D.C. 2008) citing Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1387 (D.C. 1977).

27. The Board finds that the Government has proven through substantial evidence that the Respondent is guilty of the violation described above in Charge I, that the Respondent sold alcohol to patrons under the age of twenty-one in violation of § 25-781(a). Under § 25-781(a), an establishment may not “[sell] or deliver alcoholic beverages” to “[a] person under 21 years of age, either for the person’s own use or for the use of any other person” D.C. Code § 25-781(a).

28. The Board relies on the very credible testimony of the four MPD personnel to find that the establishment sold alcoholic beverages to the minor on February 17, 2011. The Board finds the inconsistent testimony of Mr. Hodge to be so far-fetched, it stretches the bounds of credibility. The Respondent paints a very confusing picture for the Board by stating that multiple notes were passed between the customers and the cashier, and that a mysterious third customer, who speaks English, also passed a written note tipping the management to MPD’s presence. Unfortunately for the Respondent, the Board doubts the existence of these additional notes, as they were never produced at the hearing to rebut the Government’s case.

29. Additionally, Mr. Hodge would have the Board believe that both the white man and the black man passed notes for the purchase of alcohol at the counter at the same time, but they only sold to the black man because they knew he was 21 years old. The Hodge brothers knew that the black man was 21 years old because he had purchased alcoholic beverages in the establishment weeks earlier, notwithstanding that his passport had been stamped by the U.S. Custom and Border Patrol only two days prior to the incident. The Board finds the Respondent’s testimony completely contrary to the testimony of the four MPD personnel who witnessed the transaction and who examined the passports. The Board finds that the record is clear in this instance that the establishment sold alcoholic beverages to the white male who was under the age of twenty-one.

30. With regard to Charge II, the Board finds that the Respondent violated § 25-783(b). Under § 25-783(b), an establishment must take reasonably necessary steps to ascertain whether any person to whom the Respondent sells alcoholic beverages is of the legal drinking age. Here, the Respondent admits to the offense listed in Charge II, by testifying that neither he, nor his brother requested identification at the time of the transaction. As such, the Respondent is liable for violating § 25-783(b).

31. Finally, the Board finds that the Respondent’s behavior is not merely negligent, and thus will require the Respondent to have all employees who sell alcoholic beverages, enroll and complete Alcohol Awareness Training within three months of this Order. Furthermore, the Respondent shall demonstrate proof of the completion of the course by submitting copies of the certificates to ABRA with one week of the completion of the course.

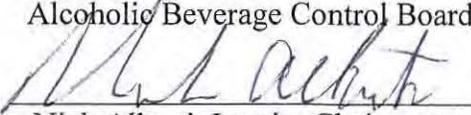
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 7th day of March, 2012, finds that the Respondent, Dennis S. Hodge, t/a Family Liquors, violated D.C. Official Code § 25-781(a) and § 25-783(b). The Board hereby **ORDERS** that:

- (1) The Respondent shall pay a fine of \$4,000.00 no later than thirty (30) days from the date of this Order.
- (2) The Respondent shall have its license suspended for 15 days, with ten days served and five days stayed for one year provided there are no further violations. The ten days served shall be from April 2, 2012 through April 7, 2012, and from April 9, 2012 through April 12, 2012.
- (3) The Respondent and its employees shall complete Alcohol Awareness Training within three months from receipt of this Order, and provide proof of the course completion to ABRA.

The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

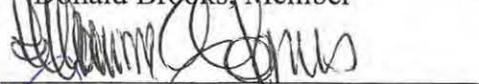
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, 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).