

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

In the Matter of:)	
)	
AKB Enterprises, Inc.)	
t/a Gandel's Liquors)	
)	Case No. 11-CMP-00054
Holder of a Retailer's Class A License)	License No. ABRA-071312
at premises)	Order No. 2011-385
211-213 Pennsylvania Avenue, S.E.)	
Washington, D.C. 20003)	
)	

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

ALSO PRESENT: Fernando Rivero, 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 June 21, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated June 15, 2011, on AKB Enterprises, Inc., t/a Gandel's Liquors (Respondent), at premises 211-213 Pennsylvania Avenue, S.E., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee permitted the establishment to operate without the presence of a Board-approved manager, in violation of D.C. Official Code § 25-701 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Respondent was personally served with the Notice on June 21, 2011. The Respondent failed to appear at the Show Cause Status Hearing on July 20, 2011. The Respondent also failed to appear at the Show Cause Hearing on August 17, 2011, so the Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

The Board having considered the evidence, the testimony of the Government's witness, 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 to the Respondent, dated June 15, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-CMP-00054. The Respondent holds a Retailer's Class A license and is located at 211-213 Pennsylvania Avenue, S.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-071312.
2. The Show Cause Hearing was held on August 17, 2011. *See* ABRA Show Cause File No. 11-CMP-00054. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 11-CMP-00054.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Vincent Parker. *Transcript (Tr.)*, 8/17/11 at 6. Investigator Parker conducts regulatory inspections and investigations for ABRA. *Tr.*, 8/17/11 at 7.
4. Investigator Parker testified that on February 16, 2011, he conducted a regulatory inspection at the Respondent's establishment. *Tr.*, 8/17/11 at 7. Investigator Parker stated that he approached the cashier and asked to speak with an ABC-licensed manager or the owner. *Tr.*, 8/17/11 at 8. The cashier informed Investigator Parker that neither the ABC-licensed manager nor the owner was present on the premises. *Tr.*, 8/17/11 at 8. Investigator Parker observed, during the inspection, a patron purchasing alcoholic beverages and took a photograph of the transaction. *Tr.*, 8/17/11 at 8-10; *see* Government Exhibit No. 1.
5. Investigator Parker testified that upon completion of the regulatory inspection, the owner, who identified herself as Ms. Bhuller, arrived at the establishment. *Tr.*, 8/17/11 at 11. Investigator Parker stated that he advised Ms. Bhuller that alcoholic beverages were sold without an ABC-licensed manager or owner on duty. *Tr.*, 8/17/11 at 11. Ms. Bhuller informed Investigator Parker that she had gone to the bank. *Tr.*, 8/17/11 at 11. Investigator Parker advised Ms. Bhuller of the violation and issued her a citation. *Tr.*, 8/17/11 at 12.
6. Investigator Parker further testified that he personally served Ms. Bhuller with the Notice of the hearings. *Tr.*, 8/17/11 at 12-13.
7. The Respondent failed to appear at the Show Cause Hearing held on August 17, 2011, and did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. *Tr.*, 8/3/11 at 5-16.

CONCLUSIONS OF LAW

8. 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.*

9. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a “reasonable mind might accept as adequate to support the conclusion” and there must be a “rational connection between facts found and the choice made.” 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008)

10. With regard to Charge I, permitting the establishment to operate without the presence of a Board-approved manager, the Board finds that the Respondent violated D.C. Official Code § 25-701 by failing to superintend in person or keep an ABC-licensed manager on duty at all times.

11. The Board credits the testimony of Investigator Parker, who testified that when he conducted a regulatory inspection at the licensed establishment on February 16, 2011, he discovered that there was no ABC-licensed manager on the premises when the Respondent’s cashier sold alcoholic beverages to an establishment’s patron. Additionally, Investigator Parker testified that the cashier admitted there was no ABC-licensed manager or owner present when alcoholic beverages were sold.

12. Therefore, based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-701, as set forth in Charge I of the Notice to Show Cause, dated June 15, 2011, to warrant the imposition of a fine and the suspension of the Respondent’s Class A Retailer’s License, as set forth below.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 14th day of September 2011, finds that the Respondent, AKB Enterprises, Inc., t/a Gandel's Liquors, located at 211-213 Pennsylvania Avenue, S.E., Washington, D.C., holder of a Retailer’s Class A license, violated D.C. Official Code § 25-701.

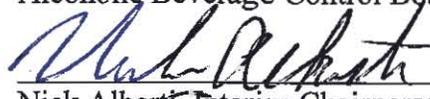
The Board hereby **ORDERS** that:

- 1) The Respondent shall pay a fine in the amount of \$500.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.
- 2) The Respondent shall also be suspended for one (1) day with one (1) day stayed for one (1) year.

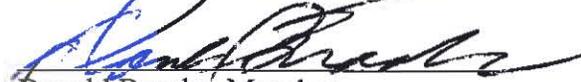
Copies of this Order shall be sent to the Respondent and the Government.

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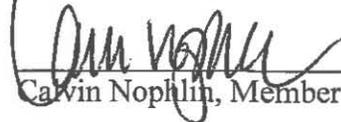
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



Donald Brooks, Member



Calvin Nophlin, Member

DISSENT:

Board Members Herman Jones and Mike Silverstein dissent from the position taken by the majority of the Board.



Herman Jones, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

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 (2008) 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) (2004).