

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

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| In the Matter of: |) | |
| |) | |
| Luula Hagos |) | License Number: 81596 |
| t/a Quality Convenience Store |) | Case Number: 09-CMP-00737 |
| |) | Order No.: 2010-338 |
| Holder of a Retailer's Class B License |) | |
| at premises |) | |
| 2922 Martin Luther King Jr. Avenue, S.E. |) | |
| Washington, D.C. 20032 |) | |

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

ALSO PRESENT: Luula Hagos, t/a Quality Convenience Store, Respondent

Walter Adams II, 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 January 28, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated January 20, 2010, on Luula Hagos, t/a Quality Convenience Store (Respondent), at premises 2922 Martin Luther King Jr. Avenue, S.E., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent sold an alcoholic beverage after the establishment's ABC Board approved hours, in violation of D.C. Official Code § 25-724, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2009).

- Charge II: The Respondent failed to superintend in person or keep an ABC-licensed manager on duty at all times in violation of D.C. Official Code §§ 25-301 and 25-701 (2009), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2009).
- Charge III: The Respondent failed to carry and post a current license in violation of D.C. Official Code § 25-711(a) (2009), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (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 January 20, 2010. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-CMP-00737). The Respondent holds a Retailer's Class B License and is located at 2922 Martin Luther King Jr. Avenue, S.E., Washington D.C. (*See* ABRA Licensing File No. 81596).
2. The Show Cause Hearing in this matter was held on April 7, 2010. The Notice to Show Cause, dated January 20, 2010, charges the Respondent with three violations enumerated above. (*See* ABRA Show Cause File Number 09-CMP-00737).
3. The Government presented its case through the testimony of one witness, ABRA Investigator David Bailey. *Transcript (Tr.)*, 4/7/10 at 4. The Government also presented evidence, which included: Investigative Report 09-CMP-00737, ABRA Show Cause File Number 09-CMP-00737, Exhibit 1, an application for an ABC license, ABRA Show Cause File Number 09-CMP-00737, Exhibit 2, and a receipt for a transfer of license, ABRA Show Cause File Number 09-CMP-00737, Exhibit 3.
4. Investigator Bailey stated that he was interested in investigating the Respondent's establishment because he noticed that the establishment was not included in a previous single-sale enforcement operation conducted by ABRA. *Tr.*, 4/7/10 at 10. Before entering the establishment on October 2, 2009, Investigator Bailey had previously entered the establishment and learned that the establishment closed at 10:00 p.m. but the ABC license stated that sales ended at 8 p.m. *Tr.*, 4/7/10 at 10, 11. Upon notifying Investigator Craig Stewart, his supervisor, of this oversight, his supervisor instructed him to investigate the Respondent's establishment. *Tr.*, 4/7/10 at 10. Investigator Bailey stated that he expected to find that the Respondent was selling alcohol after their ABC Board approved hours. *Tr.*, 4/7/10 at 10.

5. On October 2, 2009, Investigator Bailey arrived at the Respondent's establishment at 9:45 p.m. *Tr.*, 4/7/10 at 11. Before entering the establishment, Investigator Bailey noticed patrons leaving the store and noticed that they appeared to have purchased alcoholic beverages. *Tr.*, 4/7/10 at 11. Upon entering the establishment, the Investigator stood behind a customer who purchased a 750 milliliter bottle of MD 20/20 Orange Jubilee, an alcoholic beverage. *Tr.*, 4/7/10 at 11, 12. He witnessed the customer place the beverage on the counter and watched the store clerk give the customer their change. *Tr.*, 4/7/10 at 13. Investigator Bailey also noticed that the establishment had no chains on the coolers that contained alcoholic beverages and were not locked in any manner. *Tr.*, 4/7/10 at 12.

6. After witnessing the customer purchase the alcoholic beverage, Investigator Bailey then identified himself to one of the two male store clerks who were working at the establishment that evening. *Tr.*, 4/7/10 at 11, 13. He stated that neither clerk was able to provide him with identification. *Tr.*, 4/7/10 at 13, 25, 31. Furthermore, he stated that when he questioned the clerks, they did not know the establishment's operating hours and stated they normally close earlier. *Tr.*, 4/7/10 at 14. According to Investigator Bailey, both clerks stated that they were not in charge and that no one in charge of the establishment was present. *Tr.*, 4/7/10 at 14. According to Investigator Bailey, neither clerk identified himself as an ABC Manager. *Tr.*, 4/7/10 at 31.

7. During his investigation, Investigator Bailey also noticed that a license, License No. 078548, was posted inside the establishment. *Tr.*, 4/7/10 at 14. However, upon reviewing ABRA records at a later time, he discovered that License No. 078548 was canceled and had been placed in safekeeping. *Tr.*, 4/7/10 at 14-15. He noted that License No. 078548 stated on the license that it was for Quality Convenience Stores. *Tr.*, 4/7/10 at 27. According to Investigator Bailey, ABRA's licensing records indicated that License No. 078548 was transferred to a new license, License No. 081596, and the Respondent was issued the new license on March 20, 2009. *Tr.*, 4/7/10 at 14.

8. The Respondent presented its case through two witnesses, Tuqabo Azeria and the Respondent, Luula Hagos. *Tr.*, 4/7/10 at 34. She also provided the Board with pictures of her coolers with chains on them, ABRA Show Cause File Number 09-CMP-00737, Licensee Exhibits 1-3, and a copy of the Respondent's license, ABRA Show Cause File Number 09-CMP-00737, Licensee Exhibit 4.

9. Mr. Azeria testified that during Investigator Bailey's investigation he was working in the store with Lorenzo Banks, another clerk, and that they were the only two employees in the store. *Tr.*, 4/7/10 at 34, 41. He told Investigator Bailey that the owner and manager of the store was Sheila. *Tr.*, 4/7/10 at 35. Mr. Azeria stated that he told the Investigator the store stopped selling alcohol at 8:00 p.m. *Tr.*, 4/7/10 at 35. Mr. Azeria told Investigator Bailey that he did not have a license for selling beer or wine. *Tr.*, 4/7/10 at 35. Mr. Azeria then testified that Investigator Bailey left the store and returned two minutes later to check the store's license. *Tr.*, 4/7/10 at 35. Mr. Azeria testified that he told the Investigator that the manager left at around 8:40 or 8:45 p.m. *Tr.*, 4/7/10 at 35. The witness stated that the Investigator did not ask him or Mr. Banks for identification. *Tr.*, 4/7/10 at 35.

10. Mr. Azeria stated that he did not possess an ABC manager's license at the time of the investigation. *Tr.*, 4/7/10 at 36, 37. Furthermore, he stated that Lorenzo Banks, the other employee, did not have an ABC manager's license as well at the time of the investigation, which was confirmed by the Respondent. *Tr.*, 4/7/10 at 37, 61. Mr. Azeria stated that after the investigation he obtained an ABC manager's license. *Tr.*, 4/7/10 at 40.

11. Mr. Azeria admitted that Investigator Bailey spoke with him after 9 p.m. *Tr.*, 4/7/10 at 37. Furthermore, Mr. Azeria stated that the store was allowed to be open until 10:00 p.m. and he knew that the store was not supposed to sell alcohol after 8 p.m. *Tr.*, 4/7/10 at 37-38.

12. He stated that the store has a policy of locking the coolers at 8:00 p.m. *Tr.*, 4/7/10 at 43. In contrast to Investigator Bailey's testimony, Mr. Azeria testified that he observed the Respondent locking the cooler and putting a chain on the beer before leaving the store at 8:00 p.m. *Tr.*, 4/7/10 at 42, 44. As a result, Mr. Azeria stated that when Investigator Bailey entered the store at 9:45 p.m. the coolers were locked. *Tr.*, 4/7/10 at 43, 45.

13. The Respondent testified that she owned a six-door cooler, which contained four doors for beer and wine and the other two doors were for soda and juice. *Tr.*, 4/7/10 at 47. She stated that the establishment chained the doors for beer and wine but not the coolers for soda and juice. *Tr.*, 4/7/10 at 47. The Respondent also stated that she had only received one license from ABRA, which she posted in her store. *Tr.*, 4/7/10 at 47. She stated that a week before the hearing on April 7, 2010, an ABRA employee told her that she had a new license and ABRA would give that to her. *Tr.*, 4/7/10 at 48.

14. The Respondent admitted that she was not at the establishment at the time of Investigator Bailey's investigation. *Tr.*, 4/7/10 at 50. She stated that her establishment's practice was to place a board between the alcoholic beverages and the juice and sodas, which prevents customers from obtaining alcoholic beverages. *Tr.*, 4/7/10 at 53. The Respondent admitted that the photographs submitted to the Board did not reflect the fact that she placed a board in between the nonalcoholic beverage and alcoholic beverage coolers. *Tr.*, 4/7/10 at 53. Furthermore, she stated that she left the keys to the locked coolers in the establishment and that both employees had access to the keys. *Tr.*, 4/7/10 at 62.

CONCLUSIONS OF LAW

15. 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.*

16. The Board finds that the Government has proven all three charges against the Respondent. The Respondent violated D.C. Official Code §§ 25-724, 25-301, 25-701, and 25-711(a) by selling an alcoholic beverage after ABC Board approved hours, failing to have an ABC licensed manager manage the establishment, and failing to post the current ABC license.

17. The Board concludes that the Respondent violated D.C. Official Code § 25-724, which requires licensees not to sell alcoholic beverages after ABC Board approved hours. The Board credits Investigator Bailey's testimony that he observed the Respondent's employee sell a 750 milliliter bottle of MD 20/20 Orange Jubilee at around 9:45 p.m. when the store was supposed to cease selling alcohol at 8:00 p.m. The Board simply does not find Mr. Azeria's contradictory testimony credible. Therefore, the Board holds that the Government has proven Charge I.

18. The Board further concludes that the Respondent violated D.C. Official Code §§ 25-301 and 25-701, which requires licensees to have the owner or an ABC manager present at the establishment. Both the Respondent and Mr. Azeria admitted that Mr. Banks and Mr. Azeria did not have an ABC manager's license at the time Investigator Bailey entered the establishment. As such, the Respondent failed to superintend the establishment because no ABC Manager was present and the owner admitted that she was not present at the time of Investigator Bailey's investigation. Therefore, the Board holds that the Government has proven Charge II.

19. Finally, the Board concludes that the Respondent violated D.C. Official Code § 25-711(a), which obligates licensees to post their license in a conspicuous place. Under the ABC law, the Respondent was obligated to post License No. 081596, not License No. 078548. The Respondent, in her testimony, admitted that she never had License No. 081596 in her possession. Therefore, the Board holds that the Government has proven Charge III.

ORDER

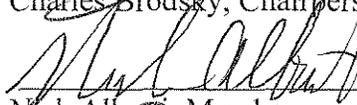
Based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of May, 2010, finds that the Respondent, Luula Hagos, t/a Quality Convenience Store at premises 2922 Martin Luther King Jr. Avenue, S.E., Washington, D.C., holder of a Retailer's Class B License, violated D.C. Official Code §§ 25-724, 25-301, 25-701, and 25-711(a) (2009). The Board hereby **ORDERS** that:

1. The Respondent shall pay a fine in the amount of \$2,500.00 by no later than thirty (30) days from the date of this Order. The Respondent shall receive a suspension of its license for six (6) days; three (3) days served and three (3) days stayed for one year, provided that the Respondent does not commit any ABC violations. The Respondent shall have its license suspended from May 17, 2010, through May 19, 2010.

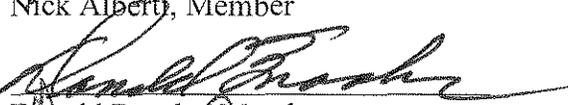
District of Columbia
Alcoholic Beverage Control Board



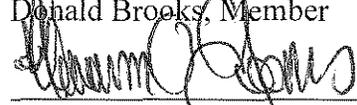
Charles Brodsky, Chairperson



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).