

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

<hr/>	
<b>In the Matter of:</b>	)
	)
Woodward Bros., Inc.	)
t/a The Rhino-Bar & Pumphouse	)
	)
Holder of a	)
Retailer's Class CT License	)
	)
at premises	)
3295 M Street, N.W.	)
Washington, D.C. 20007	)
<hr/>	

Case No.	13-CMP-00161
License No.	ABRA-000523
Order No.	2014-249

**BEFORE:** Ruthanne Miller, Chairperson  
 Nick Alberti, Member  
 Donald Brooks, Member  
 Mike Silverstein, Member  
 Hector Rodriguez, Member  
 James Short, Member

**ALSO PRESENT:** Charles B. Swan Jr., President, on behalf of Woodward Bros., Inc.,  
 t/a The Rhino-Bar & Pumphouse, Respondent

Walter Adams, 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**

The Alcoholic Beverage Control Board (Board) finds that Woodward Bros., Inc., t/a The Rhino-Bar & Pumphouse, (Respondent), violated District of Columbia (D.C.) Official Code § 25-781(a) and (c) (2001), on February 24, 2013. The Respondent must pay a \$3,000.00 fine and have its license suspended for five (5) days. The suspension must run from July 8 through July 12, 2014. The Board dismisses Charge II.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 6, 2013. The Alcoholic Beverage

Regulation Administration (ABRA) served the Notice on the Respondent, located at 1338 Wisconsin Avenue, N.W., Washington, D.C., on September 19, 2013.

The Notice charged the Respondent with the following violations:

Charge I: The Respondent permitted the sale or delivery of an alcoholic beverage to a person under the age of twenty-one (21), in violation of D.C. Official Code § 25-781(a) and (c) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge II: The Respondent failed to take steps reasonably necessary to ascertain whether the persons to whom you served alcoholic beverages were of legal drinking age, in violation of D.C. Official Code § 25-783(b) (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Show Cause Status Hearing occurred on October 30, 2013. On January 9, 2014, the Board rescheduled the Show Cause Hearing to April 2, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on April 2, 2014.

## FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

### I. Background

1. Rhino holds a Retailer's Class CT License, ABRA License Number 523. *See ABRA Licensing File No. 523*. The establishment's premises are located at 3295 M Street NW., Washington, D.C. *See ABRA Licensing File No. ABRA-000523*.

### II. Testimony of Detective David Carter

2. Detective David Carter, employed by the Metropolitan Police Department (MPD), testified on behalf of the Government. *Transcript (Tr.) 04/02/14*. He has been a Detective for eight years and has worked alcohol enforcement matters for the MPD for 16 years. *Tr.*, 04/02/14 at 8-9. Detective Carter's employment has provided him with substantial experience identifying underage minors consuming alcoholic beverages throughout the District of Columbia. *Tr.*, 04/02/14 at 9.

3. One of the MPD programs that Detective Carter works is Cops in Shops. *Tr.*, 04/02/14 at 9, 27-28. Cops in Shops involves MPD working alongside door staff at a given licensed establishment to check patrons' identifications. *Tr.*, 04/02/14 at 9. If a patron produces a false identification, MPD will place that person under arrest. *Tr.*, 04/02/14 at 9,

12, 39-40. Another MPD program allows officers entering licensed establishments to check the identification of patrons already admitted to the premises. *Tr.*, 04/02/14 at 10.

4. On February 24, 2013, Detective Carter was conducting the Cops in Shops program with the door staff at the Respondent's establishment. *Tr.*, 04/02/14 at 10. He introduced himself to the Respondent's door staff and asked if the staff would like to have MPD assist with the identification check. *Tr.*, 04/02/14 at 11, 13. Additionally, MPD offered to assist the door staff with any questions staff may have about a presented ID due to the sophistication of fake IDs. *Tr.*, 04/02/14 at 11, 13.

5. Detective Carter has conducted the Cops in Shops program with the Respondent on previous occasions and the joint effort yields about three arrests every time. *Tr.*, 04/02/14 at 12, 27-29. Most of the underage patrons are college students who are in line to enter the establishment. *Tr.*, 04/02/14 at 12, 27. Detective Carter acknowledged that the Respondent has performed a good job of checking IDs on previous Cops in Shops operations. *Tr.*, 04/02/14 at 34. He has been successful in the past with making arrests due to the cooperation of the Respondent. *Tr.*, 04/02/14 at 34.

6. On the night of the incident, there were about 20 to 30 people standing in line, seeking admission to the establishment. *Tr.*, 04/02/14 at 13-14. Detective Carter stood at the entrance across from the door staff. *Tr.*, 04/02/14 at 13. Two female patrons, one of whom Detective Carter recognized, walked past the line to the front of the establishment. *Tr.*, 04/02/14 at 13, 42. One of the females walked up to the door staff. *Tr.*, 04/02/14 at 14. Detective Carter witnessed one of the door staff whisper in one of the female patron's ear. *Tr.*, 04/02/14 at 14, 31, 41-42.

7. The two female patrons then walked very quickly down M Street N.W. *Tr.*, 04/02/14 at 14, 31. Detective Carter immediately walked after the two females and stopped them around the corner from the establishment. *Tr.*, 04/02/14 at 15, 45. One of the females admitted that she had been arrested two years earlier by Detective Carter for using a fake ID at the Respondent's establishment. *Tr.*, 04/02/14 at 15, 30. She did not have a fake ID in her possession on the night of the incident. *Tr.*, 04/02/14 at 15. The second female did possess a fake ID but was not arrested because she did not display it for purposes of gaining admission to the establishment. *Tr.*, 04/02/14 at 15.

8. The two female patrons informed Detective Carter that the door staff whispered to them not to enter the establishment and that is why they fled. *Tr.*, 04/02/14 at 15. They admitted that the Respondent had allowed them into the establishment on previous occasions without identification. *Tr.*, 04/02/14 at 16.

9. Detective Carter later informed the door staff that the two women told him that the door staff had warned them to leave. *Tr.*, 04/02/14 at 37. He then informed the door staff that because he knew the patrons were under aged and thus had warned them to leave, the door staff was interfering with a police investigation. *Tr.*, 04/02/14 at 37, 40.

10. Detective Carter handed the two women a clipboard and asked them to write their statements. *Tr.*, 04/02/14 at 16, 19, 45; Government's Exhibit No. 1 and No. 2. One of the statements was authored by Catherine Williams Moreno, the individual who had previously been arrested by Detective Carter. *Tr.*, 04/02/14 at 17-18. She is the patron who

was tipped off by the door staff. *Tr.*, 04/02/14 at 18. The second statement was authored by Alexandria Pitelia. *Tr.*, 04/02/14 at 19.

11. Ms. Moreno's written statement indicated that she recognized Detective Carter, and so she warned her friend. *Tr.*, 04/02/14 at 21, 30. The statement further provided that her friend, Zach, the door staff, had allowed her into the establishment twice in the past month without proper identification. *Tr.*, 04/02/14 at 21.

12. Ms. Pitelia's statement provided that she "approached the establishment and the bouncer told her not to come in. I left and the ABC police stopped me. I cooperated. The bouncer knows I am underage." *Tr.*, 04/02/14 at 21.

13. The two female patrons further informed Detective Carter that a majority of the patrons at the establishment are not yet 21. *Tr.*, 04/02/14 at 22. He then decided to enter the establishment to conduct an ID check. *Tr.*, 04/02/14 at 22.

14. Detective Carter noticed two female patrons near the front door. *Tr.*, 04/02/14 at 22. He checked their identification and one of the two was 21 years old. *Tr.*, 04/02/14 at 22-23. The second female did not have any identification and she was holding a beer in her hand. *Tr.*, 04/02/14 at 23. She then admitted to MPD that she was 19 years old. *Tr.*, 04/02/14 at 23-24.

15. Detective Carter testified that he approached the two females because they appeared to be young and were consuming alcoholic beverages. *Tr.*, 04/02/14 at 23, 132. The minor female is a member of a University Lacrosse team and it is well known by members that they will be admitted to the establishment regardless of their age. *Tr.*, 04/02/14 at 24, 26.

16. Detective Carter notified former ABRA Investigator Brian Molloy pursuant to MPD-ABRA protocol. *Tr.*, 04/02/14 at 35. Mr. Molloy arrived and conducted his own investigation. *Tr.*, 04/02/14 at 35-36.

### **III. Testimony of Former ABRA Investigator Brian Molloy**

17. Former ABRA Investigator Brian Molloy testified on behalf of the Government. *Id.* at 49. He worked for ABRA for about one year before leaving for private law practice. *Tr.*, 04/02/14 at 50. As an ABRA investigator, he conducted a number of regulatory inspections and investigations. *Tr.*, 04/02/14 at 51. He has conducted a regulatory inspection at the establishment about six times over the course of his employment. *Tr.*, 04/02/14 at 66.

18. Mr. Malloy arrived at the Respondent's establishment around 2:25 a.m. on the night of February 24, 2013. *Tr.*, 04/02/14 at 51-52. He received a call from his Supervisor informing him that the Cops in Shops program had found a violation. *Tr.*, 04/02/14 at 52. Mr. Malloy introduced himself to the door staff and located Detective Carter in the bar area. *Tr.*, 04/02/14 at 52-53. He took statements from MPD personnel who reiterated that they had witnessed door staff whisper in the woman's ear, and that she and her friend left. *Tr.*, 04/02/14 at 54.

19. According to the officers' statements to Mr. Malloy, MPD followed the two women because they looked under age. *Tr.*, 04/02/14 at 54. When questioned by the police, one woman had a fake ID and the other woman had no ID at all. *Tr.*, 04/02/14 at 54. This led the MPD personnel to enter the establishment and check for other underage patrons. *Tr.*, 04/02/14 at 54.

20. Mr. Molloy noticed 40 to 50 patrons inside the establishment. *Tr.*, 04/02/14 at 54. Most were leaving the establishment because it was near closing time. *Tr.*, 04/02/14 at 54, 66-67. He noticed one of the MPD officers standing near a staircase, questioning patrons located in that area of the bar. *Tr.*, 04/02/14 at 55. He did not witness the incident described by Detective Carter concerning the young female patron who had no ID, but who was consuming a Bud Light beer. *Tr.*, 04/02/14 at 55, 64, 68-69.

21. Mr. Molloy spoke to the Respondent's ABC Manager, David Nelson, who was very cooperative. *Tr.*, 04/02/14 at 56, 66. He informed Mr. Nelson that MPD had caught a patron with no ID and who volunteered that she was under 21 years old. *Tr.*, 04/02/14 at 56, 63, 68-69; Government's Exhibit 3. Mr. Molloy then followed ABRA protocol and conducted a regulatory inspection. *Tr.*, 04/02/14 at 56. He did not find any violations as a result of his inspection. *Tr.*, 04/02/14 at 56.

22. Mr. Molloy briefed Mr. Nelson on the Sale to Minor form, had Mr. Nelson read it, and then asked him to sign it. *Tr.*, 04/02/14 at 57. Mr. Nelson informed Mr. Molloy that he would take immediate action to ensure that not another sale to minor incident would happen. *Tr.*, 04/02/14 at 57. Mr. Molloy left the establishment after MPD finished checking the IDs of the remaining patrons. *Tr.*, 04/02/14 at 57. Mr. Molloy did not personally check any IDs. *Tr.*, 04/02/14 at 62.

#### **IV. Testimony of Respondent, Robert Swann**

23. Charles Britton Swan testified on behalf of the Respondent. *Tr.*, 04/02/14 at 71. He is the president and sole owner of Woodward Brothers, Inc., t/a The Rhino Bar and Pumphouse. *Tr.*, 04/02/14 at 71. The Respondent has held an ABC license for over 50 years. *Tr.*, 04/02/14 at 72.

24. Mr. Swan and his staff have attended 20 to 30 trainings sponsored by ABRA regarding proper ID checking, and identifying intoxicated patrons. *Tr.*, 04/02/14 at 72. He also has a security plan that he uses to train his staff. *Tr.*, 04/02/14 at 72. His staff will require a second identification if they're not certain the first one is valid. *Tr.*, 04/02/14 at 73. They do not encourage underage drinking at the establishment. *Tr.*, 04/02/14 at 73-74. If a patron is arrested at the establishment, it is because the Respondent cooperated with the MPD Cops In Shops program. *Tr.*, 04/02/14 at 73-74.

25. Mr. Swan testified that the Respondent does not sell Budweiser products. *Tr.*, 04/02/14 at 75, 111, 114. They did not sell the product in February 2013, or in the months prior to the incident. *Tr.*, 04/02/14 at 75. The Respondent's primary source of beer product is Premium Distributors, and they carry Miller products. *Tr.*, 04/02/14 at 112-114.

26. Mr. Swan was not present at the establishment on the night of the incident and has no personal knowledge of what transpired. *Tr.*, 04/02/14 at 91. He does not know how the

minor entered the establishment without identification and then obtained a Budweiser product. *Tr.*, 04/02/14 at 76. He believes that the minor jiggered the lock on the back door and entered through the kitchen with the beer in her hand. *Tr.*, 04/02/14 at 78, 100-100, 106. There is no security in the back of the establishment because the kitchen door is not a public means of egress. *Tr.*, 04/02/14 at 78, 100.

27. As a result of the incident, Mr. Swan conducted his own investigation. *Tr.*, 04/02/14 at 92. His General Manager, Mr. Nelson, was able to locate the minor, Megan Connolly, walking down the street. *Tr.*, 04/02/14 at 94, 101, 103. She is a student at Georgetown University, and he has seen her in the establishment several times. *Tr.*, 04/02/14 at 92, 97, 106.

28. Mr. Nelson informed Ms. Connolly that she had created difficulty for the Respondent because she was arrested in the establishment, under age, and drinking alcoholic beverages. *Tr.*, 04/02/14 at 79. She confirmed her entry into the establishment through the back door, identified herself as the minor who was arrested on the night of the incident, and she provided a written, undated, and unsworn statement to Mr. Swan. *Tr.*, 04/02/14 at 79, 85, 93-94, 104.

29. Ms. Connolly indicated in her statement that she is 20 years old. *Tr.*, 04/02/14 at 95, 97. Mr. Swan assumes that because she is known to the General Manager as a frequent patron of the establishment, she must have a fake ID; otherwise she could not gain entry inside. *Tr.*, 04/02/14 at 98-99, 101, 110.

#### **V. Rebuttal Testimony of Detective David Carter**

30. Detective Carter prepared police reports following the incident. *Tr.*, 04/02/14 at 116; Government's Exhibit No. 4. MPD records the identification of the persons arrested in their police reports. *Tr.*, 04/02/14 at 118. Arrested persons are not released from MPD custody until they have been identified. *Tr.*, 04/02/14 at 118. If a minor does not have identification on them, MPD will require that the person have another person bring the identification to the scene of the incident. *Tr.*, 04/02/14 at 118. If necessary, MPD will have campus police called to the scene to identify the minor patron. *Tr.*, 04/02/14 at 118.

31. The minor with whom Detective Carter spoke and who was stopped inside the establishment on the night of the incident identified herself as Lauren Shewalje. *Tr.*, 04/02/14 at 119-120, 124; Government's Exhibit No. 4. She is a member of the Georgetown University Lacrosse team. *Tr.*, 04/02/14 at 119, 124-125. MPD verified her identity that night with the use of her student ID. *Tr.*, 04/02/14 at 120, 130. Ms. Shewalje's identity was also confirmed through the use of the internet to access the website to obtain a photograph of the Georgetown University Women's Lacrosse team. *Tr.*, 04/02/14 at 122-126; Government Exhibit No. 5.

32. Detective Carter confirmed that the woman in the Lacrosse team photograph identified as Lauren Shewalje is the minor he stopped inside the establishment in possession of alcoholic beverages. *Tr.*, 04/02/14 at 127-129. He is certain that the woman he stopped with the alcoholic beverage in her hand was not Megan Connolly. *Tr.*, 04/02/14 at 134.

33. Ms. Shealje was not arrested by MPD because she was not observed presenting a fake ID and entering the establishment. *Tr.*, 04/02/14 at 133. Possession of the alcoholic beverage by a minor is a civil violation, and is not an arrestable offense. *Tr.*, 04/02/14 at 133.

## **CONCLUSIONS OF LAW**

34. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines “that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed.” D.C. Official Code § 25-447.

### **I. S & P VIOLATED § 25-781**

35. The Board finds that the Respondent sold alcoholic beverages to a minor on February 24, 2013. Under § 25-781(a)(1), the Respondent may not sell or deliver alcohol to an individual “under 21 years of age.” D.C. Code § 25-781(a)(1) (West Supp. 2013). The Board credits the testimony of MPD Detective Dave Carter that the female patron he stopped inside the bar was identified by her Georgetown University student ID as nineteen years old. Additionally, she volunteered that she was underage. Because she was underage and in possession of an alcoholic beverage, the Board finds the Respondent in violation of § 25-781.

36. The Respondent argues that his establishment should not be blamed for this violation because it had no knowledge that the underage patron was inside the establishment, nor did he or his staff admit her into the establishment. The scenario described by the Respondent concerning the minor’s efforts to enter through a locked door with a beer in her hand stretches credibility. Respondent’s argument is based solely on his presentation of a handwritten undated and unsworn statement by an individual who was not the one identified in the MPD records, and accordingly, not related to the violation at issue. In any event, Respondent would be liable for underage drinking in its establishment regardless of how the patron entered the establishment.

37. The Respondent also argues that there is insufficient evidence to show that the establishment served the minor in question because they don’t carry certain beer products. The Board disagrees. Unless the establishment routinely allows patrons to enter its premises with open containers of alcohol, the underage female patron caught with an alcoholic beverage had no other source of alcohol other than the establishment. Therefore, we find that the Government has proven Charge I.

### **II. S & P VIOLATED § 25-783**

38. The Board does not find that the Respondent failed to take reasonable measures to ascertain the age of individuals purchasing alcohol on February 24, 2013. Under § 25-783(b), the Respondent and its agents must “take steps reasonably necessary to ascertain

whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age. D.C. Code § 25-783(b) (West Supp. 2013). The Board finds insufficient evidence to support this charge. The mere presence of a minor in possession of an alcoholic beverage inside the establishment is not sufficient evidence to establish that the Respondent failed to “take steps reasonably necessary to ascertain” the legal drinking age of that minor. Based on these facts, the Board does not find that the Government has proven the violation described in Charge II.

39. The Board finds that Charge I is the Respondent’s second Sale to Minor violation within two years and the Board imposes a fine of \$3,000.00, and have its license suspended for five (5) days. *Licensing File No. ABRA-000523*, Investigative History; D.C. Official Code § 25-781(f)(1). The Board dismisses Charge II as being unsubstantiated.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 18<sup>th</sup> day of June, 2014, finds that the Respondent, Woodward Bros., Inc., t/a The Rhino-Bar & Pumhouse, located at 3295 M Street, N.W., Washington, D.C., holder of a Retailer’s Class CT license, violated D.C. Official Code § 25-781(a) and (c).

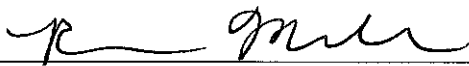
The Board hereby **ORDERS** that:

- 1) Charge I: Respondent must pay a fine in the amount of \$3,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.
- 2) Charge II: Dismissed.
- 3) In addition, the Respondent shall receive a five (5) day suspension of its license.
- 4) The Respondent’s five (5) suspension days will be served from July 8 through July 12, 2014.

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

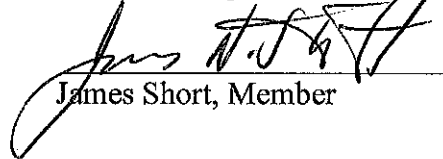


District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

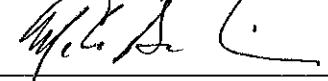
  
Donald Brooks, Member

Hector Rodriguez, Member

  
James Short, Member

We disagree with the Board's decision as to Charge II. We believe the evidence more than supports a finding of liability and that the Government sustained the charge. Regardless of the absence of identification, it is clear that the Respondent failed to ascertain the legal drinking age of the minor patron, or she would not have been present inside the establishment on the night of the incident. MPD ascertained that the minor had no identification and if the Respondent's door staff had performed due diligence at the time of admission, they would have discovered the same thing.

  
Nick Alberti, Member

  
Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433, 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 14<sup>th</sup> 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 D.C. Official Code § 25-433, 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).