THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
Samuel Payton Davis Sr., Inc. t/a S & P Wine & Liquors	)	License No.: 85239 Case No.: 12-251-00358 Order No.: 2014-050
Holder of a Retailer's Class A License at premises 2316 Pennsylvania Ave., S.E. Washington, D.C. 20020	)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Samuel Payton Davis Sr., Inc., t/a S & P Wine & Liquors, Respondent

Walter Adams, Esq., Assistant Attorney General,
on behalf of the District of Columbia

Paul L. Pascal, Esq., Counsel for the Respondent

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REVOKING RESPONDENT'S LICENSE

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Samuel Payton Davis Sr., Inc., t/a S & P Wine & Liquors, (hereinafter "S & P" or "Respondent") has abused its license by knowingly permitting the sale of cocaine on the premises. The record shows that S & P had cocaine in its office area and permitted successive sales of cocaine to a confidential law enforcement informant on its premises between September 2012 and November 2012. Based on

this evidence, the Board revokes the Retailer's Class A License held by S & P in accordance with D.C. Official Code § 25-822(2).

Procedural Background

This matter arises from the Notice of Status Hearing and Show Cause Hearing (Notice) executed by the Board on August 16, 2013. *ABRA Show Cause File No. 12-251-00358*, Notice of Status Hearing and Show Cause Hearing, 2-3 (August 16, 2013) [*Notice*]. The Notice charges the Respondent with a number of violations, which if proven true, would justify the imposition of a fine, suspension, and possible revocation of the Respondent's license.

Specifically, the Notice charges S & P with the following violations:

Charge I: [S & P] knowingly permitted, in the establishment, the illegal sale or negotiation for sale of a[n] illegal controlled substance, or the possession of drug paraphernalia . . . [in violation of District of Columbia (D.C.)] Official Code § 25-822(2) [on or before November 16, 2012] . . . .

Charge II: [S & P] allowed the establishment to be used for an unlawful and disorderly purpose . . . [in violation of] D.C. Official Code § 25-823(2) [on or before November 16, 2012] . . . .

Charge III: [S & P] failed to keep a licensed ABC manager on duty at all times in violation of D.C. Official Code §25-701 and 23 DCMR § 707.1 . . . .

Notice, 2-3 (August 16, 2013).

The Office of the Attorney General for the District of Columbia (OAG) and S & P appeared at the Show Cause Status Hearing on October 9, 2013. *Transcript* (*Tr.*), October 9, 2013 at 4-5. At that time, it was unclear whether the Alcoholic Beverage Regulation Administration (ABRA) had served S & P with the Notice, despite making efforts to do so. Nevertheless, counsel for S & P proffered at the hearing that S & P understood the charges laid out in the Notice, and did not intend to raise the issue of service. Id. at 4-5. The parties proceeded to a Show Cause Hearing on December 4, 2013.

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. S & P holds a Retailer's Class A License, ABRA License Number 85239. See *ABRA Licensing File No. 85239*. The establishment's premises are located at 2316 Pennsylvania Ave., S.E., Washington, D.C. See *ABRA Licensing File No. 85239*.

2. During the preliminary stages of the hearing, S & P offered to surrender its license, but asked the Board to hold the surrender in abeyance until S & P completed the sale of the entity to a third party. *Tr.*, December 4, 2013 at 10. In response, the OAG told the Board that "The District takes no position regarding the proposal that is being proffered preliminarily. However, . . . if the Board decides that the proposal is not acceptable, we are prepared to go forward with the case." Id. at 19. The Board then instructed the parties that "the Board's [position is] that the Government should go forward with its case and that [the proposal] may be considered when [the Board] consider[s] the whole case." Id. at 21.

II. Testimony of Special Agent Frank Oliver

3. Special Agent Frank Oliver, employed by the Bureau of Alcohol, Tobacco, and Firearms and Explosives (ATF), testified on behalf of the OAG. Id. at 78. Special Agent Oliver has worked for the ATF for the past thirteen years on the High Intensity Drug Trafficking Area (HIDTA) group, which focuses on "drug traffickers and armed drug gangs" throughout the United States. Id. at 78, 80.

4. Around September 2012, Special Agent Oliver received information that narcotics were being sold at S & P. Id. at 81-82. In response, Special Agent Oliver employed a "confidential source to make several controlled-purchases from [S & P]." Id. at 82-83. Between September 2012 and November 2012, the agent had his confidential source make three purchases of cocaine, while another law enforcement officer reported a fourth drug sale the following year. Id. at 84.

5. Special Agent Oliver described the sale that led to the issuance of a search warrant. Id. at 88. The special agent had his confidential source enter the establishment in order to attempt to purchase narcotics. Id. at 88. Before entering the establishment, Special Agent Oliver searched his source and found that his source "had nothing on him" except money provided by Special Agent Oliver. Id. at 89. Further, an individual acting undercover entered the establishment pretending to be a customer in order to observe the sale. Id. at 89. Before entering the store, the confidential source did not "stop" or "speak to anyone prior to entering the store." Id. at 89.

6. Upon entering the establishment, the confidential source entered the partition area and met two individuals near S & P's office. Id. at 89. The confidential source left the establishment and immediately returned to Special Agent Oliver. Id. The informant then turned over a folded piece of paper, which was shown by a field test to contain cocaine. Id. at 90, 106.

7. Based on this sale, Special Agent Oliver executed a search warrant against S & P on November 16, 2012, with other law enforcement officers. Id. at 86-87, 97. Before beginning their search, Samuel Davis, Jr., was asked to exit the establishment. Id. at 97. Outside the establishment, Mr. Davis, Jr., was informed of the search warrant and officers prevented people from entering or leaving the establishment. Id. at 97-98. The officers then secured the employee inside the establishment. Id. at 98.

8. Special Agent Oliver and the other officers began searching the premises. Id. The search lead to the discovery of 41 packets of cocaine in cubby holes in S & P's office. Id. A file

cabinet contained a .38 caliber revolver. Id. at 99. The search also recovered a digital scale and a knotted plastic bag containing white powder from the same drawer. Id. at 105-06. The evidence discovered through the search were then taken into custody. Id. at 100.

9. Special Agent Oliver noted that drugs were being packaged in little pieces of paper "stamped DC Lottery." Id. at 104. Based on the special agent's observations, the papers were folded and cocaine was placed in the folds. Id. The paper recovered by Special Agent Oliver is similar to the paper recovered by his confidential informant during the controlled-purchase conducted before the issuance of the search warrant. Id.

III. Testimony of ABRA Investigator Felicia Dantzler

10. ABRA Investigator Felicia Dantzler testified on behalf of the OAG. Id. at 34. In November 2012, she received a police report from the Metropolitan Police Department (MPD) describing drug activity related to S & P. Id. at 36, 42. In response, on December 5, 2012, Investigator Dantzler visited S & P's location to investigate the allegations contained in the police report. Id. at 42.

11. Investigator Dantzler described the layout of S & P. Id. at 49. The establishment has one entrance for customers. Id.; *Government Exhibit No. 3*. Coolers are located on the left side of the establishment. Id. Located near the right side of the entrance, is an "L-shaped" glass partition with a locked door that separates customers from the employees. Id. at 49-51, 68; *Government Exhibit No. 3*. The employee area inside the petition connects to an office Id. at 69-70; *Government Exhibit Nos. 4-6*.

12. During her investigation, Investigator Dantzler interviewed Samuel Davis, Sr. Id. at 45. Mr. Davis let the investigator into the partition area before beginning the interview. Id. at 51. She was aware that Mr. Davis's son had been arrested on drug possession charges and discussed the matter with Mr. Davis. Id. According to Mr. Davis, his son, Samuel Davis, Jr., managed the establishment on a daily basis. Id. at 46. Mr. Davis also claimed that he was unaware of the drug dealing occurring at and around the establishment. Id. Mr. Davis further told the investigator that due to ill health he had not worked at the business for approximately six years. Id.

IV. Court Record

13. The records of the Superior Court of the District of Columbia show that the court accepted the plea of Samuel Davis, Jr., to one count of the crime of "Attempted Poss[ession] [With Intent] to Dist[ribute] a Control Substance (Cocaine)" and one count of "Possession of Unregistered Firearm/Unlawful Possession of a Firearm or Destructive Device." Government Exhibit No. 1 (Sentence of the Court in Case No. 2012 CF2 019876). The court accepted this plea on April 18, 2013. Id.

CONCLUSIONS OF LAW

14. 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. THE BOARD DENIES S & P's ATTEMPT TO SURRENDER THE LICENSE VOLUNTARILY.

15. During the hearing, S & P attempted to surrender its license. Supra, at ¶ 2. A licensee may not "abrogate [the Board's] investigative authority and render inoperative [the Board's] power to suspend and revoke licenses" by voluntarily surrendering or canceling its license before the conclusion of a disciplinary action. See 800 Water St., Inc. v. D.C. Alcoholic Beverage Control Bd., 992 A.2d 1272, 1275 (D.C. 2010). In light of the serious drug-related charges brought by the OAG, the Board does not find it in the public interest to "acquiesce" to such a request. Id. Therefore, the Board denies S & P's offer to surrender its license.[1]

II. S & P VIOLATED § 25-822(2) BY PERMITTING SUCCESSIVE SALES OF COCAINE AT THE ESTABLISHMENT.

16. The OAG has demonstrated that S &P knowingly permitted the sale of cocaine inside the establishment.

17. Under D.C. Official Code § 25-822(2), "The Board shall revoke the license of a licensee. . ." when

> The licensee has knowingly permitted, in the licensed establishment (A) the illegal sale, or negotiations for sale, or the use, of any controlled substance identified in the CSA, or (B) the possession or sale, or negotiations for sale, of drug paraphernalia in violation of the CSA or Chapter 11 of Title 48. Successive sales, or negotiations for sale, over a continuous period of time shall be deemed evidence of knowing permission . . . .

D.C. Official Code § 25-822(2). Chapter 9 of Title 48 identifies cocaine and its derivatives as a controlled substance. D.C. Official Code §§ 25-101(17) (defining the term "CSA"), 48-902.06(1)(D) (describing Schedule II substances).

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[1] The District of Columbia Court of Appeals also added the following, "[W]e agree with the Board that allowing a licensee to render moot the Board's enforcement authority by voluntarily 'cancelling' its license would be at odds with the overall legislative scheme the Board is charged with administering." 800 Water St., Inc. v. D.C. Alcoholic Beverage Control Bd., 992 A.2d 1272, 1275 n. 1 (D.C. 2010). The Board takes the position that this reasoning should also be applied to the surrender of a license.

18. The record contains convincing evidence that S & P knowingly allowed the sale of cocaine on its premises. The ATF had a confidential source make three purchases of cocaine at the establishment between September 2012 and November 2012. Supra, at ¶ 4. In addition, the search of S & P's premises conducted by Special Agent Oliver on November 16, 2012, found 41 packets of cocaine, a scale, a .38 caliber revolver, and paper used to distribute cocaine in the establishment's office. Supra, at ¶¶ 8-9, 12-13. Based on the successive sales of cocaine, and the presence of cocaine and other drug-related items in S & P's office, the Board concludes that S & P had knowledge that cocaine was being sold at the establishment.

III. THE BOARD DENIES S & P'S REQUEST TO SURRENDER AND TRANSFER ITS LICENSE BECAUSE IT IS CONTRARY TO THE PUBLIC INTEREST.

19. S & P has requested that the Board permit it to surrender its license and hold the cancellation of its license in abeyance pending the transfer of the license to a third party. Nevertheless, the Board finds S & P's proposal wholly unacceptable in light of the serious drug-related crimes committed at the establishment. The law of the District of Columbia mandates revocation when a licensee permits illegal narcotics to be sold at the premises. When a licensee engages in this type of harmful activity it no longer deserves the privileges of licensure, which includes the privilege of transferring the license to a third party when approved by the Board.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of February 2014, finds that Samuel Payton Davis Sr., Inc., t/a S & P Wine & Liquors violated D.C. Official Code § 25-822(2). In light of this violation, the Board hereby **REVOKES** the Retailer's Class A License held by the Respondent under D.C. Official Code § 25-822.

IT IS FURTHER ORDERED that no liquor license shall be issued to Samuel Payton Davis, Sr., in the District of Columbia for five (5) years from the date of this Order under D.C. Official Code § 25-821(c).

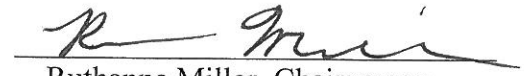
IT IS FURTHER ORDERED that the Respondent shall **CEASE AND DESIST** all alcoholic beverage activity at 2316 Pennsylvania Ave., S.E., Washington, D.C., including, but not limited to, permitting the sale, service, and consumption of alcohol. The Board **WARNS** the Respondent that continuing to permit the sale, service, or consumption of alcoholic beverages on the premises in defiance of this Order is a misdemeanor criminal offense under D.C. Official Code §§ 25-102 and 25-831.

IT IS FURTHER ORDERED that the Board holds its determination regarding Charges II and III in abeyance, because the charges are rendered moot by the Board's determination regarding Charge I.

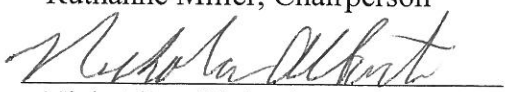
IT IS FURTHER ORDERED that the Board **DENIES** S & P's request to surrender and transfer its license to a third party.

The ABRA shall deliver copies of this Order to the OAG and the Respondent.

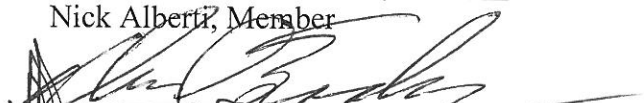
District of Columbia
Alcoholic Beverage Control Board



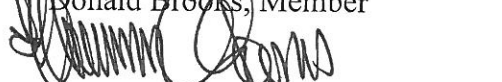
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



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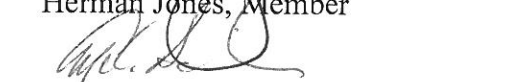

Mike Silverstein, Member

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).