

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

<b>In the Matter of:</b>	)	
	)	
Arlington Beverage Corporation	)	
t/a Sheffield Wine and Liquors	)	
	)	Case No. 12-CMP-00497
Holder of a Retailer's Class A License	)	License No. ABRA-060563
	)	Order No. 2013-048
at premises	)	
5025 Connecticut Avenue, N.W.	)	
Washington, D.C. 20008	)	
	)	

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

**ALSO PRESENT:** Nam Dayhoff, on behalf of Arlington Beverage Corporation, t/a  
Sheffield Wine and Liquors, Respondent

Fernando Rivero, Assistant Attorney General  
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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On November 10, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated November 7, 2012, on Arlington Beverage Corporation, t/a Sheffield Wine and Liquors (Respondent), at premises 5025 Connecticut Avenue, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Respondent permitted the sale of fewer than six (6) miniatures of spirits per purchase, in violation of D.C. Official Code § 25-751 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On August 28, 2012, Citation #8119 was issued to the Respondent for the amount of \$250.00 for the violation of D.C. Official Code § 25-823(1). The Respondent declined to pay the citation and instead requested a hearing before the Board.

The Board held a Show Cause Status Hearing on December 12, 2012. There was no settlement of the matter and it proceeded to a Show Cause Hearing on January 30, 2013.

The Board having considered the evidence, the testimony of the witnesses, the arguments of parties, 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 November 7, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00497. The Respondent holds a Retailer's Class A license and is located at 5025 Connecticut Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-060563.
2. The Show Cause Hearing was held on January 30, 2013. *See* ABRA Show Cause File No. 12-CMP-00497. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-CMP-00497.
3. On January 30, 2013, at the Show Cause Hearing, the Government moved to amend the Notice by striking the sentence, "Another ABRA investigator made the same purchase on August 22, 2012." (Motion). *Transcript (Tr.)*, 1/30/13 at 3. There was no objection from the Respondent and the Board granted the Government's Motion. *Tr.*, 1/30/13 at 3-4.
4. The Government presented its case through the testimony of one witness, ABRA Investigator Tyrone Lawson. *Tr.*, 1/30/13 at 8. Investigator Lawson conducts regulatory inspections and investigations for ABRA. *Tr.*, 1/30/13 at 9. Investigator Lawson is familiar with the Respondent's establishment, because he visited the premises on August 17, 2012 to conduct an undercover operation. *Tr.*, 1/30/13 at 9. On August 17, 2012, Investigator Lawson was conducting an undercover operation at several establishments to ensure their compliance with certain regulations. *Tr.*, 1/30/13 at 9. These regulations included limitations on container size, the prohibition on the sale of go-cups, and the prohibition on the sale of fewer than six (6) miniatures of spirits or wine per purchase. *Tr.*, 1/30/13 at 9.
5. On August 17, 2012, Investigator Lawson visited the Respondent's establishment in an undercover capacity and observed that the Respondent had a plastic plexiglass container holding miniature bottles of alcoholic beverages sitting on the counter. *Tr.*, 1/30/13 at 10. There were two males operating the Respondent's establishment at that time of Investigator Lawson's undercover operation. *Tr.*, 1/30/13 at 10.

6. Investigator Lawson purchased a bottle of alcoholic beverage named Glenlivet Scotch at the Respondent's establishment. *Tr.*, 1/30/13 at 10. He paid \$7.70 for the miniature bottle of Glenlivet Scotch. *Tr.*, 1/30/13 at 10.
7. After completing the compliance check operation, Investigator Lawson returned to the ABRA offices and photographed the bottle of Glenlivet Scotch purchased at the Respondent's establishment. *Tr.*, 1/30/13 at 11. *See* Government's Exhibit 1. Investigator Lawson also completed an evidence transmittal sheet and secured the alcoholic beverage in his locked cabinet. *Tr.*, 1/30/13 at 11. *See* Government's Exhibit 2. Investigator Lawson completed the evidence transmittal sheet within two (2) hours after he purchased the bottle of Glenlivet Scotch from the Respondent. *Tr.*, 1/30/13 at 11.
8. Investigator Lawson visited the Respondent's establishment a second time to notify the Respondent of the violation. *Tr.*, 1/30/13 at 16. During his second visit to the Respondent's establishment, the same two males who were present during his first visit, informed Investigator Lawson that they were members of Arlington Beverage Corporation, t/a Sheffield Wine and Liquors. *Tr.*, 1/30/13 at 16-17.
9. Investigator Lawson did not request a receipt for the bottle of Glenlivet Scotch that he purchased at his first visit to the Respondent's establishment. *Tr.*, 1/30/13 at 17.
10. During Investigator Lawson's second visit to the Respondent's establishment, he identified himself as an ABRA investigator and presented his badge to the same two males who were present during his first visit. *Tr.*, 1/30/13 at 18. Investigator Lawson testified that he advised the two males about the violation that occurred during his first visit on August 17, 2012. *Tr.*, 1/30/13 at 18.
11. Investigator Lawson described the practices of undercover operations. *Tr.*, 1/30/13 at 21. It is the practice of an investigator in an undercover capacity to not request a receipt for the purchase because it can trigger suspicion by the Licensee. *Tr.*, 1/30/13 at 21. It is also not customary to disclose the identity of the investigator during an undercover operation. *Tr.*, 1/30/13 at 21. Generally a different investigator notifies the Licensee of the violation. *Tr.*, 1/30/13 at 21. Investigator Lawson further testified that he disclosed his identity in this instance because he wanted to inform the Respondent about the violation as soon as possible. *Tr.*, 1/30/13 at 21.
12. Investigator Lawson testified that Investigator Vincent Parker issued a citation to the Respondent for the violation regarding limitations on containers. *Tr.*, 1/30/13 at 21. *See* ABRA Show Cause File No. 12-CMP-00497.
13. The Respondent, Nam Dayhoff, testified that without a receipt representing the purchase from her establishment, she would not know that Investigator Lawson had purchased the bottle of alcoholic beverage from her establishment. *Tr.*, 1/30/13 at 26.
14. Ms. Dayhoff testified that she was not present when Investigator Lawson made the purchase of the alcoholic beverage at Sheffield Wine and Liquors. *Tr.*, 1/30/13 at 27. She learned about the violation when she received Citation #8119. *Tr.*, 1/30/13 at 27. Ms. Dayhoff further testified that her employees stated that they did not sell the bottle of Glenlivet Scotch. *Tr.*, 1/30/13 at 28.

16. Ms. Dayhoff submitted into evidence a certificate awarded to her on July, 2012, for receiving a 100 percent compliance rating for ABRA's Enforcement of Underage Drinking Program. *Tr.*, 1/30/13 at 29. *See* Respondent's Exhibit 1.

17. The Board takes administrative notice that Ms. Dayhoff is the President of Arlington Beverage Corporation, t/a Sheffield Wine and Liquors. *See* ABRA Licensing File No. ABRA-060563. The Board's record reflects that the two males present during Investigator Lawson's two visits to the Respondent's establishment are Hai H. Nguyen and Son H. Nguyen. *See* ABRA Show Cause File No. 12-CMP-00497. Furthermore, ABRA records reveal that Hai H. Nguyen is the Secretary and Son H. Nguyen is the Treasurer of Arlington Beverage Corporation, t/a Sheffield Wine and Liquors.

18. The Board takes administrative notice that this is the Respondent's first secondary tier violation.

### CONCLUSIONS OF LAW

19. 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.*

20. 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).

21. With regard to Charge I, the Board finds that the Respondent permitted the sale of fewer than six (6) miniatures of spirits per purchase. The Board makes this finding based on the testimony of Investigator Lawson and the documentary evidence admitted as Government's Exhibit 1 and Exhibit 2. The Board finds credible the testimony of Investigator Lawson who stated that he purchased the Glenlivet Scotch during a compliance check of the Respondent's establishment.

22. The Board rejects Ms. Dayhoff's contention that without a receipt from the purchase made by Investigator Lawson, there is no way to prove the sales transaction transpired at her establishment. The Board finds credible and commonsensical that the practices of ABRA investigators in undercover capacities is to not request receipts for purchases of illegal sales lest the operation be exposed. Additionally, the Board does not give credence to Ms. Dayhoff's representation that her employees did not sell the bottle of Glenlivet Scotch to Investigator Lawson.

23. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-751 as set forth in Charge I of the Notice to Show Cause, dated November 7, 2012, warrants the imposition of a fine further set forth below.

## **ORDER**

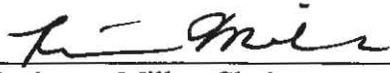
Based on the foregoing findings of fact and conclusions of law, the Board, on this 13<sup>th</sup> day of March, 2013, finds that the Respondent, Arlington Beverage Corporation, t/a Sheffield Wine and Liquors, located at 5025 Connecticut Avenue, N.W., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code § 25-751.

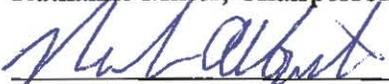
The Board hereby **ORDERS** that:

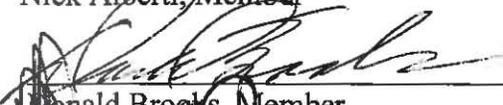
- 1) The Respondent shall pay a fine in the amount of \$500.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

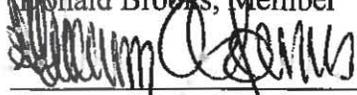
Copies of this Order shall be sent to the Respondent and the Government.

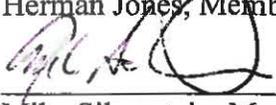
District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

  
Nick Alberti, Member

  
Donald Brooks, Member

  
Herman Jones, 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).