

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

In the Matter of:)
)
)
Stop & Go, LLC)
t/a Stop & Go Market)
)
Holder of a)
Retailer's Class B License)
)
at premises)
3001 Sherman Avenue, N.W.)
Washington, D.C. 20001)
)

Case No.: 15-CC-00068
License No.: ABRA-071763
Order No.: 2016-469

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: Stop & Go, LLC, t/a Stop & Go Market, Respondent

Girma Tekleab, on behalf of the Respondent

Amy Schmidt, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Stop & Go, LLC, t/a Stop & Go Market (Respondent) violated District of Columbia (D.C.) Official Code § 25-781(a)(1). As a result, the Respondent must pay a \$2,000.00 fine. In addition, the Respondent shall have its license suspended for five (5) days, with one (1) day to be served, and four (4) days stayed for

one (1) year which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order. The Board dismisses Charge II.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 13, 2016. *ABRA Show Cause File No. 15-CC-00068*. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3001 Sherman Avenue, N.W., Washington, D.C., on January 21, 2016. *ABRA Show Cause File No. 15-CC-00068*, Service Form.

The Notice charged the Respondent with the following violations:

Charge I: [On Thursday, July 10, 2015] [y]ou permitted the sale of an alcoholic beverage to a person under 21 years of age at the licensed establishment, in violation of D.C. Official Code § 25-781(a)(1)...

Charge II: [On Thursday, July 10, 2015] [y]ou failed to reasonably ascertain whether patrons to whom you sold alcohol were of legal drinking age, in violation of D.C. Official Code § 25-783(b)...

ABRA Show Cause File No., 15-CC-00068, Notice of Status Hearing and Show Cause Hearing, 2-3 (January 13, 2016).

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. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated January 13, 2016. See *ABRA Show Cause File No. 15-CC-00068*. Stop & Go, LLC, t/a Stop & Go Market, holds a Retailer's Class B License, ABRA License Number ABRA-071763. See *ABRA Licensing File No. ABRA-071763*. The establishment's premises is located at 3001 Sherman Avenue, N.W., Washington, D.C. See *ABRA Licensing File No. ABRA-071763*.

2. The Show Cause Hearing was held on May 4, 2016. The Notice charges the Respondent with the violations enumerated above. See *ABRA Show Cause File No. 15-CC-00068*.

II. Stipulation to Facts

3. The Government and the Respondent stipulated to the admissibility, sufficiency and accuracy of the evidence contained in ABRA's investigative report and the Notice to Show Cause. *Transcript (Tr.) 5/4/16 at 4, 6*. See *ABRA Show Cause File No. 15-CC-00068*.

Specifically, the stipulated facts as set forth in the Notice are:

- (a) On Thursday, July 10, 2015, at approximately 12:00 p.m., ABRA Investigator Donnell Butler directed two minors who were acting as undercover capacity (minors) to enter the Respondent's establishment.
- (b) On that day and at that time, Investigator Butler entered the Respondent's establishment first, and then he observed the two minors come into the Respondent's establishment.
- (c) Investigator Butler observed one of the minors go directly to a cooler and pick up a Bud Light 25 fluid ounces can of Straw-Ber-Rita and walk to the owner, Girma Tekleab, while he was acting as the cashier.
- (d) Mr. Tekleab asked the minor for her identification.
- (e) Even though minor's identification clearly stated "Under 21 until 5/30/2019," Mr. Tekleab sold the minor the alcoholic beverage.
- (f) The minor handed Mr. Tekleab currency and he tendered cash to her for change.
- (g) The minor exited the store and handed the alcoholic beverage to ABRA Investigator Felicia Dantzler who was waiting outside of the Respondent's establishment.
- (h) Investigator Dantzler kept the alcoholic beverage for evidence.

4. The Respondent does not dispute the facts in Investigator Butler's report and admitted that he violated the law by selling an alcoholic beverage to a minor. *Tr.* 5/4/16 at 11-13.

III. Arguments as to Penalty

5. For Charge I, the Government recommends that the Board fine the Respondent \$3,000.00; that the license be suspended for five (5) days, with all five (5) days stayed for one (1) year; and the Respondent take alcohol awareness training. *Tr.* 5/4/16 at 14. For Charge II, the Government recommends that the Board fine the Respondent \$2,000.00. *Tr.* 5/4/16 at 15. In total, the Respondent shall pay a fine in the amount of \$5,000.00 by no later than sixty (60) days from the date of this Order. *Tr.* 5/4/16 at 15.

6. The Respondent offered the following mitigating factors for the Board's consideration in assessing a penalty. *Tr.* 5/4/16 at 11-13.

7. He operates the establishment by himself. *Tr.* 5/4/16 at 11. He does not have more than one customer at a time. *Tr.* 5/4/16 at 12. During the ABRA investigator and the minors' visit to his establishment, he became nervous because he had three customers at one time. *Tr.* 5/4/16 at 12. He asked the minor for her identification, and then he sold the alcoholic beverage to her. *Tr.* 5/4/16 at 12.

8. Additionally, he believes that he committed only one violation and not two as the Government argues. *Tr.* 5/4/16 at 13, 17. Therefore, he should pay a \$2,000.00 fine for selling an alcoholic beverage to a minor. *Tr.* 5/4/16 at 13, 17. The fine recommended by the Government would be a financial burden. *Tr.* 5/4/16 at 17. He runs a grocery store and he does not make money from selling liquor or cigarettes. *Tr.* 5/4/16 at 17.

CONCLUSIONS OF LAW

9. 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 RESPONDENT VIOLATED § 25-781(a)(1)

10. The Board finds that the Respondent sold an alcoholic beverage to an underage female on July 10, 2015. 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 record shows that on July 10, 2015, a minor purchased a Bud Light 25 fluid ounces can of Straw-Ber-Rita from the Respondent. The minor possessed and produced for the owner identification indicating that she was not 21 years of age until May 30, 2019.

11. Furthermore, the Respondent admitted to the violation when he stipulated to the facts. The stipulated facts are received into evidence in lieu of further proof and testimony. Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-781(a)(1).

II. THE RESPONDENT DID NOT VIOLATE § 25-783(b)

12. The Board does not find that the Respondent failed to take reasonable measures to ascertain the age of an individual purchasing alcohol on July 10, 2015. 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).

13. The Respondent asked the minor for her identification before he sold her the alcoholic beverage. Based on these facts, the Board does not find that the Government has proven the violation described in Charge II. Therefore, the Board does not find the Respondent guilty of Charge II.

III. PENALTY

14. The Board finds that Charge I is the Respondent's first Sale to Minor violation within two years. The Board imposes a fine of \$2,000.00, and a suspension of the license for five (5) days, one (1) day to be served, and four (4) days to be stayed for a one-year period. The stayed suspension days shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order. *Licensing File No. ABRA-071763*, Investigative History; D.C. Official Code § 25-781(a)(1).

15. The Board dismisses Charge II because it was not substantiated by the Government.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 27th day of July, 2016, finds that the Respondent, Stop & Go, LLC, t/a Stop & Go Market, located at 3001 Sherman Avenue, N.W., Washington, D.C., holder of a Retailer's Class B license, violated D.C. Official Code § 25-781(a)(1).

The Board hereby **ORDERS** that:

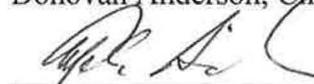
- 1) Charge I: Respondent must pay a fine in the amount of \$2,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.
- 2) Charge II: Dismissed.
- 3) In addition, the Respondent shall be suspended for five (5) days; one (1) day to be served, and four (4) days to be stayed for a one-year period which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order.
- 4) The Respondent's one (1) suspension day will be served on Friday, September 2, 2016.

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

District of Columbia
Alcoholic Beverage Control Board

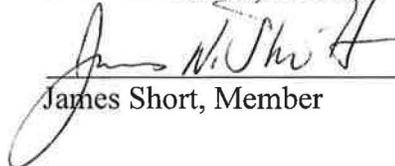


Donovan Anderson, Chairperson



Mike Silverstein, Member

Ruthanne Miller, Member



James Short, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I dissent as to the penalty selected by the majority of the Board.

Nick Alberti, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).