

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

In the Matter of:	)	
	)	
Parker Enterprises, Inc.	)	License Number: 10677
t/a Suburban Market	)	Case Number: 90-CMP-0076
	)	Order No.: 2010-394
Holder of a Retailer's Class B License	)	
at premises	)	
4500 Sheriff Road, N.E.	)	
Washington, D.C. 20019	)	

BEFORE: Charles Brodsky, Chairperson  
Mital Gandhi, Member  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

ALSO PRESENT: Parker Enterprises, Inc., t/a Suburban Market, Respondent

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

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

Jonathan Berman, Assistant Attorney General  
Alcoholic Beverage Regulation Administration

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

On March 23, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated March 3, 2010, on Parker Enterprises, Inc., t/a Suburban Market (Respondent), at premises 4500 Sheriff Road, N.E., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Respondent permitted the sale of an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or less, as well as

spirits (liquor) sold in half-pints or smaller volumes in violation of D.C. Official Code § 25-342(c) (2001), for which the Board may take action pursuant to D.C. Official Code § 25-823(1) (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 March 3, 2010. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 90-CMP-0076). The Respondent holds a Retailer's Class B License and is located at 4500 Sheriff Road, N.E., Washington, D.C. (*See* ABRA Licensing File No. 10677).
2. The Show Cause Hearing in this matter was held on May 12, 2010. The Notice to Show Cause, dated March 3, 2010, charges the Respondent with the violation enumerated above. (*See* ABRA Show Cause File Number 90-CMP-0076).
3. The Government presented its case through the testimony of one witness, ABRA Investigator Felicia Dantzler. *Transcript (Tr.)*, 5/212/10 at 10. Furthermore, the Government submitted a number of exhibits, including: a report from the Committee on Public Works and the Environment dated April 11, 2008, regarding the "The Ward 8 Anti-Sale of Single Containers of Alcoholic Beverages Amendment Act of 2007" (Exhibit B-1); *State v. Feldman*, 202 A.2d 259 (Conn. App. Ct. 1964) (Exhibit A-3); 27 C.F.R. pt. 7, 25 (2003) (Exhibit A-4); an article titled: "Spirited debate: some lawmakers think flavored malt beverages need tighter regulation" by Michelle Blackstone found in State Legislatures (Exhibit A-4). and *800 Water St., Inc. v. D.C. Alcoholic Bev. Control Bd.* (Exhibit A-6), No. 09-AA-238, 2010 D.C. App. LEXIS 204 (D.C. 2010) (Exhibit A-6). (*See* ABRA Show Cause File Number 90-CMP-0076).
4. Investigator Dantzler stated that she visited the Respondent's establishment in an undercover capacity with Investigator Vincent Wills. *Tr.*, 5/212/10 at 12. She stated that she saw that the establishment was selling Boone's Farm Blue Hawaiian, an alcoholic beverage. *Tr.*, 5/212/10 at 13; (*See* ABRA Show Cause File Number 90-CMP-0076, *Exhibit A-2*). Investigator Dantzler testified that she took the Boone's Farm product and brought it to the cash register along with a bag of chips. *Tr.*, 5/212/10 at 13. She stated that she then bought the products from the Respondent and exited. *Tr.*, 5/212/10 at 13-14.
5. Investigator Dantzler stated that the Boone's Farm Blue Hawaiian was priced at \$3.59. *Tr.*, 5/212/10 at 15. She noted that the product states on the label that it is a "malt beverage" and contains "flavored beer." *Tr.*, 5/212/10 at 16. She also noted that the product does not state that it is a "brine product" or a "spirit." *Tr.*, 5/212/10 at 17. Finally,

Investigator Dantzler noted that the label indicated that it had an alcohol by volume level of 4 percent and contained 9.4 fluid ounces. *Tr.*, 5/212/10 at 18-19.

6. Irvine C. Parker, who operates the Respondent's business, stated that he bought the Boone's Farm product from a wholesaler and it did not sell well. *Tr.*, 5/212/10 at 21. He further stated that he removed the product from the shelf as soon as the Investigator told him he could not sell it. *Tr.*, 5/212/10 at 21. He stated that he bought the product because some of his customers requested it. *Tr.*, 5/212/10 at 22. Furthermore, Mr. Parker stated that he pulled other products of similar size off the shelf just in case those products also violated the law. *Tr.*, 5/212/10 at 23.

7. Mr. Parker admitted that his establishment sold the Boone's Farm Blue Hawaiian product. *Tr.*, 5/212/10 at 24. He stated that he was unaware that the law forbade him from selling malt beverages, such as Boone's Farm Blue Hawaiian. *Tr.*, 5/212/10 at 24.

### CONCLUSIONS OF LAW

8. 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.*

9. The Board finds that the Government has proven that the Respondent violated D.C. Official Code § 25-342(c) by permitting the sale of an individual container of Boone's Farm Blue Hawaiian that was under 70 ounces in Ward 7.

10. D.C. Official Code § 25-342(c) states that a Class B Licensee in Ward 7 is prohibited from selling "an individual container of beer. . .with a capacity of 70 ounces or less." D.C. Code § 25-342(c). As defined in D.C. Official Code § 25-101(10), "beer [is] a fermented beverage of any name or description manufactured from malt, wholly or in part, or from any substitute for malt." D.C. Code § 25-101(10) (2010). Boone's Farm Blue Hawaiian's label states that it is a "malt beverage" and contains "flavored beer" and, as such, it is a beverage covered by D.C. Official Code § 25-342(c). Therefore, by selling Boone's Farm Blue Hawaiian to Investigator Dantzler, the Respondent violated D.C. Official Code § 25-342(c).

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 21st day of July, 2010, finds that the Respondent, Parker Enterprises, Inc., t/a Suburban Market at premises 4500 Sheriff Road, N.E., Washington, D.C., holder of a Retailer's Class B License, violated D.C. Code § 25-342(c).

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.

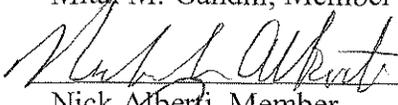
District of Columbia  
Alcoholic Beverage Control Board

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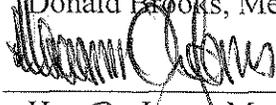
Charles Brodsky, Chairperson

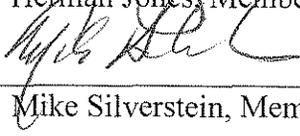
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Mital M. Gandhi, Member

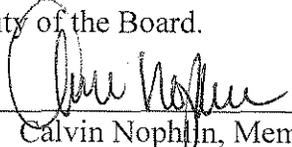
  
Nick Alberti, Member

  
Donald Brooks, Member

  
Herman Jones, Member

  
Mike Silverstein, Member

I dissent from the position taken by the majority of the Board.

  
Calvin Nophlin, 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).