

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

In the Matter of:	)	
Lydia Assefa	)	Case No.: 14-CMP-00740
t/a Super Saver Grocery & Deli	)	License No: 11247
Holder of a	)	Order No: 2016-433
Retailer's Class B License	)	
at premises	)	
4413 14th Street, N.W.	)	
Washington, D.C. 20011	)	
	)	

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

**ALSO PRESENT:** Lydia Assefa, t/a Super Saver Grocery & Deli, Respondent  
  
Zachary Shapiro, 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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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) dismisses the charge filed against Lydia Assefa, t/a Super Saver Grocery & Deli, (hereinafter "Respondent" or "Super Saver Grocery & Deli") because the charging document is deemed deficient.

***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on March 16, 2016. *ABRA Show Cause File No., 14-CMP-00740,*

Notice of Status Hearing and Show Cause Hearing, 2 (Mar. 16, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 4413 14th Street, N.W., Washington, D.C., on March 24, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 14-CMP-00740*, Service Form. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violation:

**Charge I:** [On November 7, 2014, at 1:35 a.m.] [y]ou failed to comply with D.C. Official Code § 25-741 . . . by providing a patrons with a go-cup accompanying the purchase of an alcoholic beverage.

*Notice of Status Hearing and Show Cause Hearing, 2.*

Both the Government and Respondent appeared at the Show Cause Status Hearing on April 27, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 25, 2016.

#### **CONCLUSIONS OF LAW**

1. During trial, it was discovered that the notice incorrectly stated the time of the offense as 1:35 a.m., rather than 1:35 p.m. Courts generally allow the prosecution to correct minor errors in the offense so long as they are not prejudicial to the defendant. *Hall v. United States*, 697 A.2d 1225, 1227 (D.C. 1997). In this case, the prosecution meant "p.m." even though the prosecution stated "a.m." Normally, this type of error is not sufficient to merit the dismissal of a charge. Nevertheless, because the original incident occurred almost two years before the service of the notice, the Board finds the failure to state the correct time prejudicial because the Respondent had a right to rely on the time stated by the prosecution for the purpose of preparing an adequate defense.

#### **ORDER**

Therefore, the Board, on this 13th day of July 2016, **DISMISSES** the charge filed against the Respondent. The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia  
Alcoholic Beverage Control Board



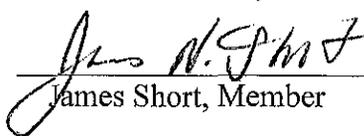
Donovan Anderson, Chairperson



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

I dissent from the opinion of the majority. The evidence does not support the majority's conclusion that the charging document's error in the time designation is prejudicial to the licensee.

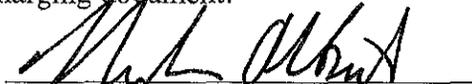
The majority bases its conclusion on the fact the charging document was not delivered in a timely manner, 'almost two years' after the violation. But, the evidence shows that the license knew or should have known the correct time of the alleged violation less than one month after the date of the violation. A citation was issued to the licensee on December 3, 2014, less than one month after the alleged violation. That citation clearly states the time of the violation, as 1:35 pm. It was delivered to Ms. Yohanes who is the licensee's mother and appeared as a witness on behalf of the licensee. Ms. Yohanes testified that she gave the citation to the licensee. This case comes to the Board because the licensee chose not to pay the citation, but instead requested a hearing.

There is no evidence in the record that the licensee was confused by the error in the charging document or otherwise questioned the validity of the alleged time of the violation prior to the Show Cause hearing. The licensee had ample opportunity to discuss the time stated in the charging document with the government's attorney or the agency's staff prior to the Show Cause hearing. In fact the licensee had the opportunity to address the error in the charging document at the April 27, 2016 Show Cause Status hearing, but failed to do so.

The error in the charging document is very elementary. The charging document stated the time of the violation was 1:35 am instead of the correct time of 1:35 pm. Given that the correct time was clearly recorded on the citation delivered to the licensee, the time stated in the charging document was an obvious error. It is unreasonable to conclude this error would cause any doubt about the nature of the allegation against the licensee.

The facts of this case are very simple. The licensee was issued a citation that recorded the correct time of the violation less than one month after the violation. The licensee's mother gave the citation to the licensee. The licensee requested a hearing in lieu of paying the citation. There is no evidence in the record that the licensee was confused by the error in the charging document

or otherwise questioned the validity of the charge prior to the Show Cause hearing. Given the totality of the information available, the error in the charging document is not a fatal error. Based on these simple facts, the only reasonable conclusion is that the licensee had full knowledge of charge against her including the correct time of the alleged violation and was therefore not prejudiced by the error in the charging document.

  
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, Reeves Center, 2000 14th Street, NW, 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, 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 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).