

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

In the Matter of:)	
)	
The Wonderland Ballroom, LLC)	
t/a The Wonderland Ballroom)	
)	Case No. 10-CMP-00578
Holder of a Retailer's Class CN License)	License No. ABRA-071202
at premises)	Order No. 2011-199
1101 Kenyon Street, N.W.)	
Washington, D.C. 20010)	

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: The Wonderland Ballroom, LLC, Respondent

Amy Caspari, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On February 11, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 2, 2011 on The Wonderland Ballroom, LLC, t/a The Wonderland Ballroom (Respondent), at premises 1101 Kenyon Street, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Licensee failed to obtain an importation permit authorizing the licensee to import, transport, or cause to be imported or transported, alcoholic beverages into the District, in violation of the D.C. Official Code § 25-119, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 and 23 D.C.M.R. § 800 et seq.

Charge II: The Licensee failed to keep and maintain upon the licensed premises. Records which include invoices and delivery slips and which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer, in violation of 23 D.C.M.R. § 1204, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 and 23 D.C.M.R. § 800 et seq.

The Board held a Show Cause Status Hearing on March 9, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on April 13, 2011. 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, dated February 2, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00578. The Respondent holds a Retailer's Class CN license and is located at 1101 Kenyon Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-071202.
2. The Show Cause Hearing was held on April 13, 2011. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 10-CMP-00578.
3. The Government called its first witness, ABRA Investigator Tyrone Lawson. *Transcript, (Tr.)* 4/13/11 at 11. Investigator Lawson conducts regulatory inspections and investigations of ABC licensed establishments in the District of Columbia. *Tr.*, 04/13/11 at 11. On August 10, 2010, at 12:40 a.m., Investigator Lawson conducted a regulatory inspection at the Respondent's establishment. *Tr.*, 04/13/11 at 12. He testified that he went to the bar and identified himself to the bartender and requested to speak to an ABC licensed manager or the owner. *Tr.*, 04/13/11 at 13. Mr. Daniel Ellis identified himself to Investigator Lawson as an ABC licensed manager and Investigator Lawson identified himself to Mr. Ellis as an ABRA Investigator. *Tr.*, 04/13/11 at 13, 58.
4. Investigator Lawson testified that as part of the regulatory inspection, he requested Mr. Ellis to produce the invoices housed on the premises. *Tr.*, 04/13/11 at 14. Mr. Ellis produced some folders of the establishment's alcoholic beverage invoices. *Tr.*, 04/13/11 at 14. Investigator Lawson examined the invoices to determine the establishment's trade name, the wholesaler's trade name, the license number of the wholesaler, and the license number of the licensed establishment. *Tr.*, 04/13/11 at 14. He also checked to ensure that the wholesaler is licensed in or outside the District of Columbia. *Tr.*, 04/13/11 at 14.
5. Investigator Lawson testified that it is his practice to perform a sampling of invoices, rather than inspect each invoice. *Tr.*, 04/13/11 at 15. On August 10, 2010, he inspected ten invoices. *Tr.*, 04/13/11 at 15. Investigator Lawson stated that one of the folders was marked Hop & Wine. *Tr.*, 04/13/11 at 16. He explained to Mr. Ellis that this out-of-state wholesaler product would require an importation permit attached to the

purchase invoice. *Tr.*, 04/13/11 at 6. Investigator Lawson asked Mr. Ellis to produce the importation permits for the Hop & Wine alcoholic beverage product. *Tr.*, 04/13/11 at 16. Mr. Ellis informed Investigator Lawson that he was unfamiliar with the importation permits. *Tr.*, 04/13/11 at 16-17, 39-40. Investigator Lawson testified that there were no importation permits associated with the Hop & Wine invoices. *Tr.*, 04/13/11 at 17. Mr. Ellis did not ask him to return another day to talk to the General Manager or the owners about the importation permits. *Tr.*, 04/13/11 at 40.

6. Investigator Lawson showed Mr. Ellis a blank copy of an importation permit. *Tr.*, 04/13/11 at 18. He informed Mr. Ellis that the importation permit is required to be provided to the establishment at the time of delivery of the alcoholic beverage received from a wholesaler located outside the District of Columbia. *Tr.*, 04/13/11 at 18, 24, 53-54.

7. Investigator Lawson stated that Mr. Ellis went down to the basement to look for the importation permits and could not locate them. *Tr.*, 04/13/11 at 19. Investigator Lawson testified that the Respondent was compliant with all other legal and regulatory requirements. *Tr.*, 04/13/11 at 19. He then explained to Mr. Ellis that the Respondent was not in compliance with the requirement that the importation permits be produced during the regulatory inspection. *Tr.*, 04/13/11 at 19. He further explained to Mr. Ellis that the Respondent may store the invoices and importation permits off-site, but that he must have ABC Board approval to do so. *Tr.*, 04/13/11 at 19-20.

8. Investigator Lawson testified that he did not make any attempt to follow-up with the licensee after the inspection. *Tr.*, 04/13/11 at 23, 27. He assumed that because the importation permits were not at the establishment, there was no reason to follow-up with Mr. Ellis. *Tr.*, 04/13/11 at 23, 27. Investigator Lawson stated that importation permits are required because it indicates that D.C. taxes are paid on the alcohol brought in from outside the District. *Tr.*, 04/13/11 at 25. He further elaborated that the wholesaler provides the delivery slips, the invoices, and the importation permits to the licensee upon delivery of the alcoholic beverages. *Tr.*, 04/13/11 at 25. Investigator Lawson conducted the regulatory inspection to determine that the Respondent's record keeping was compliant with ABRA requirements, not to determine if the Respondent was making illegal purchases. *Tr.*, 04/13/11 at 27.

9. Investigator Lawson stated that he never checked ABRA's records to verify that Hop & Wine had secured the proper permits to transport alcoholic beverages into the District of Columbia. *Tr.*, 04/13/11 at 31. He initiated the investigation of the Respondent; however, when the Respondent's staff could not produce the importation permits during the regulatory inspection. *Tr.*, 04/13/11 at 32, 34. Investigator Lawson took no additional steps to ascertain if the establishment had the importation permits from Hop & Wine or whether Hop & Wine was properly permitted, because the licensee is expected to have that information at the time of the regulatory inspection. *Tr.*, 04/13/11 at 32-33.

10. Investigator Lawson testified that the regulatory inspection was conducted at 1:00 a.m., because the Respondent's hours of operation indicated that the establishment would be open at that hour. *Tr.*, 04/13/11 at 34. He has conducted other regulatory inspections at that hour and this is standard operating procedure for ABRA investigators. *Tr.*, 04/13/11 at

42-43. He is assigned 25 licensed establishments at a time to conduct regulatory inspections. *Tr.*, 04/13/11 at 44.

11. He stated that he did not conduct an audit but rather he sampled importation permits and invoices to ensure that the establishment maintained these records on the premises as is required by law. *Tr.*, 04/13/11 at 34, 62. Investigator Lawson indicated that it has been his experience that most ABC licensed managers know where the records are kept on their respective premises. *Tr.*, 04/13/11 at 35. Investigator Lawson stated that other duties performed at a regulatory inspection include examining the license information to ensure that all required information is listed. *Tr.*, 04/13/11 at 65. He also checks the Certificate of Occupancy for the license number, the date of expiration, the zoning classification, and the occupancy load. *Tr.*, 04/13/11 at 65. The inspection also includes confirming the general operating hours, the hours of alcoholic beverage sales and service, and any type of Board-approved endorsement such as entertainment or a sidewalk café. *Tr.*, 04/13/11 at 65. Investigator Lawson also checks the establishment to ensure that the proper lettering is on the window or door and that the license is conspicuously posted. *Tr.*, 04/13/11 at 66.

12. Investigator Lawson testified that he was satisfied that Mr. Ellis showed him a significant amount of records and that there were enough alcoholic beverage invoices on the licensed premises to demonstrate that they were maintained for three years. *Tr.*, 04/13/11 at 35. Investigator Lawson also acknowledged that the Respondent's records were kept in different locations on the premises. *Tr.*, 04/13/11 at 36. Investigator Lawson testified that he samples importation permits and invoices rather than inspecting each and every one, because he was satisfied that the Respondent had three years worth of alcoholic beverage purchase invoices on the premises. *Tr.*, 04/13/11 at 68. In those instances, he simply conducts a spot check. *Tr.*, 04/13/11 at 68. *Tr.*, 04/13/11 at 68. And he was looking for any importation permit but did not locate any. *Tr.*, 04/13/11 at 68.

13. Investigator Lawson stated that he did not provide the Respondent with reasonable advance notice that he would be there to inspect the licensed premises. *Tr.*, 04/13/11 at 38-39, 66-67. He indicated that the provision in the law regarding reasonable advance notice does not apply to regulatory inspections. *Tr.*, 04/13/11 at 39.

14. The Respondent called Mr. Danny Ellis as its first witness. *Tr.*, 04/13/11 at 69. Mr. Ellis testified that he is an ABC licensed manager, and he works as the floor manager for the Respondent. *Tr.*, 04/13/11 at 69, 73-74. He stated that he has worked for the Respondent for three years. *Tr.*, 04/13/11 at 78. He was the manager on duty on August 10, 2010. *Tr.*, 04/13/11 at 78. He has been present at previous regulatory inspections when he shadowed as a trainee. *Tr.*, 04/13/11 at 79. Mr. Ellis testified that he did not understand the distinction between an audit and an inspection. *Tr.*, 04/13/11 at 80.

15. Mr. Ellis stated that he asked for a copy of the regulatory inspection form that he was required to sign. *Tr.*, 04/13/11 at 72-73. He indicated that as the floor manager, it would be his responsibility to contact the owners for serious incidents. *Tr.*, 04/13/11 at 74-75. Mr. Ellis took notes of the ABRA visit that evening and the owner would have been made aware of them that evening. *Tr.*, 04/13/11 at 76. Mr. Ellis provided copies of the invoices to Investigator Lawson. *Tr.*, 04/13/11 at 76-77. He went down to the basement to retrieve more records for Investigator Lawson. *Tr.*, 04/13/11 at 77. Mr. Ellis presented

a file labeled Hop & Wine to Investigator Lawson. *Tr.*, 04/13/11 at 77. Mr. Ellis stated that he knows where all of the critical files are located and he looked for the requested documents, but was not able to find the one for Hop & Wine. *Tr.*, 04/13/11 at 81. He stated he communicated that to the investigator. *Tr.*, 04/13/11 at 81.

16. He made no attempt to call anyone in management for assistance, because it was 1:00 a.m. in the morning and he thought he could handle it. *Tr.*, 04/13/11 at 82, 88. He testified that he forgot to ask for Investigator Lawson's name and phone number. *Tr.*, 04/13/11 at 84. He now knows where those documents are kept on the premises. *Tr.*, 04/13/11 at 85. He was looking in the same location that night, but could not locate them. *Tr.*, 04/13/11 at 85. Mr. Ellis stated that his incident log contained a statement that the "inspector said it was a tax issue and that he could not tell me what it would mean for the bar". *Tr.*, 04/13/11 at 85-86. Mr. Ellis also stated that the Investigator did not elaborate further and mentioned that the Respondent would be receiving something in the mail. *Tr.*, 04/13/11 at 86. Mr. Ellis stated that he tried to ascertain how important was it that he could not locate the documents. *Tr.*, 04/13/11 at 87.

17. The Respondent then called Carris Seever as its next witness. *Tr.*, 04/13/11 at 88. Ms. Seever is the General Manager. *Tr.*, 04/13/11 at 88. She testified that she sees the incident log on a daily basis. *Tr.*, 04/13/11 at 89. She informed the owner, Mr. McGovern that a regulatory inspection had been conducted by ABRA. *Tr.*, 04/13/11 at 89-90. She stated that she and the owner decided to call Investigator Lawson and explain that the importation permits were on the premises the night of the inspection. *Tr.*, 04/13/11 at 80.

18. It is her experience that all of the invoices are kept with the checkbook and filed into their respective folders. *Tr.*, 04/13/11 at 90. She stated that with Hop & Wine, the invoices and importation permits are delivered with the alcoholic beverages. *Tr.*, 04/13/11 at 91. Ms. Seever testified that she filed the importation permits in a separate file rather than with the invoices, because ABRA had not checked for them before. *Tr.*, 04/13/11 at 91-92, 97. She indicated that Mr. Ellis has access to the cabinets where the permits and invoices are stored. *Tr.*, 04/13/11 at 97. The importation permits are stored in the top drawer of an unlocked file cabinet on the premises. *Tr.*, 04/13/11 at 98. She stated that there are five file cabinets and staff knows that there are certain things ABRA looks for, such as invoices. Ms. Seever was not working that night, but she stated that Mr. Ellis does have her cell phone number. *Tr.*, 04/13/11 at 99.

19. Ms. Seever testified that she contacted ABRA the next day and explained to ABRA staff that the Respondent did indeed have the importation permits but that Mr. Ellis could not locate them because she had filed them separately from the invoices. *Tr.*, 04/13/11 at 93. She asked ABRA staff if the investigator could return to the establishment to witness for himself that the importation permits were on premises and she was directed to Supervisory Investigator Matthews. *Tr.*, 04/13/11 at 93. She explained the situation to Supervisory Investigator Matthews and expected to hear back from him, but she did not. *Tr.*, 04/13/11 at 93. She never received any follow-up from ABRA over the next two months. *Tr.*, 04/13/11 at 93-94. She testified that the Respondent has not had a regulatory inspection since the one conducted in August 2010. *Tr.*, 04/13/11 at 95

20. Ms. Seever testified that she is at the establishment five days per week. *Tr.*, 04/13/11 at 95. Her work hours vary from day to day. *Tr.*, 04/13/11 at 96. She stated that if ABRA contacted the establishment, she would know about it because management is always notified. *Tr.*, 04/13/11 at 96.

21. The Government then recalled its witness, Investigator Lawson. *Tr.*, 04/13/11 at 100. Investigator Lawson read the numbers of the invoices he inspected that night but did not locate a corresponding importation permit from Respondent's Exhibit 2 submission. *Tr.*, 04/13/11 at 102-103.

CONCLUSIONS OF LAW

22. 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.*

23. 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)

24. With regard to Charge I set forth in the Notice to Show Cause, dated February 2, 2011, the Board must determine whether the Licensee failed to obtain an importation permit authorizing the licensee to import, transport, or cause to be imported or transported, alcoholic beverages into the District, in violation of the D.C. Official Code § 25-119. In this case, based upon the law, the Board finds that there is sufficient evidence to establish that the Respondent failed to obtain an importation permit.

25. The Board relies on the credible testimony of Investigator Lawson who established that he identified himself as an ABRA Investigator and informed the ABC Manager that he was there to conduct a regulatory inspection. Investigator Lawson testified that a regulatory inspection routinely involves checking invoices and importation permits to ensure that alcoholic beverages delivered into the District of Columbia from outside distributors has been done so with the authority of the agency. Investigator Lawson testified that he was satisfied that the Respondent was compliant with every aspect of the regulatory inspection, with the exception of producing copies of importation permits. The Respondent could not produce a copy of the importation permit for Hop & Wine.

26. The testimony of the Respondent's witness, Mr. Ellis, corroborates the testimony of Investigator Lawson. Mr. Ellis testified that he was the ABC licensed manager on duty that night and that he knew where all of the critical files were located at the establishment for the regulatory inspection. He admitted, however, that he was not able to locate the importation permit for Hop & Wine. Mr. Ellis made no attempt to contact other ABC managers or the owners for assistance and, thus, left Investigator Lawson no choice but to assume that the importation permits he sought to confirm did not exist.

27. With regard to Charge II set forth in the Notice to Show Cause, dated February 2, 2011, the Board must determine whether the Licensee failed to keep and maintain upon the licensed premises, records which include invoices and delivery slips and which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer, in violation of 23 D.C.M.R. § 1204. In this case, based upon the testimony of Investigator Lawson, the Board finds that there is insufficient evidence to establish that the Respondent failed to keep and maintain upon the licensed premises, records which include invoices and delivery slips. Specifically, Investigator Lawson unequivocally stated that he was satisfied that Mr. Ellis showed him a significant amount of records and that there existed enough alcoholic beverage invoices on the licensed premises to demonstrate that the Respondent maintained his invoices for three years as required by law.

28. Based upon the above testimony and the evidence in the record, the Board finds that the Respondent did violate D.C. Official Code § 25-119 as set forth in Charge I of the Notice to Show Cause, dated February 2, 2011.

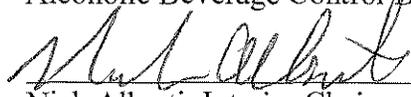
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 15th day of June 2011, finds that:

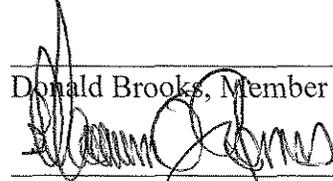
1. For Charge I, failure to obtain an importation permit authorizing the licensee to import, transport, or cause to be imported or transported, alcoholic beverages into the District, the Respondent shall pay a fine in the amount of \$500.00, by no later than thirty (30) days from the date of this Order.
2. Charge II as set forth in the Notice to Show Cause, dated February 2, 2011, alleging that the Respondent, failed to keep and maintain upon the licensed premises, records which include invoices and delivery slips hours should be and is hereby **DISMISSED**.

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

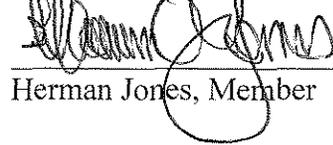
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson

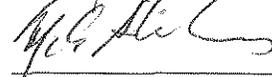


Donald Brooks, Member



Herman Jones, Member

Calvin Nophlin, Member



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, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

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).