

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

In the Matter of:

R & J, 24 Liquors, Inc.
t/a Town Square Gourmet

Case Number: 12-PRO-00022
License Number: 78664
Order Number: 2013-092

Application to Renew a
Retailer's Class A License

at premises
4418 MacArthur Blvd NW
Washington, D.C.

BEFORE:

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

ALSO PRESENT:

Richard Kim, Owner, on behalf of the Applicant

James Shin, on behalf of the Applicant

Commissioner Stuart Ross, Advisory Neighborhood Commission
(ANC) 3D, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING PROTESTANT'S MOTION FOR RECONSIDERATION

On December 3, 2013, Protestant Advisory Neighborhood Commission 3D ("Protestant"), filed a Motion for Reconsideration of the Board's order granting renewal of the Applicant's Retailer's Class A license ("Motion") in the matter of *R & J, 24 Liquors, Inc. t/a Town Square Gourmet*, Case No. 12-PRO-00022. The Applicant, Town Square Gourmet, did not file a response thereto. On February 13, 2013, the Board heard oral argument on the Motion from both parties.

The Board finds that Licensee was convicted of the misdemeanor offense of a sale to minors on May 22, 2012. Because of that conviction Applicant does not meet the criteria set forth in D.C. Code § 25-301(a) (4) for qualification of an applicant for renewal of a license. Accordingly, we vacate Board Order No. 2012-501 in Case No. 12-PRO-00022 and deny the renewal of Applicant's license.

Factual Background

On February 23, 2012, Applicant_Town Square Gourmet filed an application for renewal of a Class A off-premises retail license. On March 2, 2012, the application was placarded at the establishment. Notice of the application was also posted in the District of Columbia Register and sent to Protestant. Protestant protested the Application, claiming that the Applicant's establishment (1) had a negative impact on the neighborhood's peace, order, and quiet; (2) operated in violation of District law; (3) had violated its settlement agreement; and (4) had repeatedly sold alcohol to minors. A protest hearing was held on August 15, 2012. At no time after Applicant filed its Application for Renewal, including prior to or during the Protest Hearing on August 15, 2012 did Applicant disclose to ABRA or the Board that Applicant had been convicted of the misdemeanor referred to above

On November 20, 2012, the Board renewed the Retailer's Class A License held by R & J, 24 Liquors, Inc. t/a Town Square Gourmet (Applicant). *R & J, 24 Liquors, Inc. t/a Town Square Gourmet*, Case No. 12-PRO-00022, Board Order No. 2012-501. Based on the evidence in the record, the Board determined that the Applicant's operations did not have a negative impact on the neighborhood's peace, order and quiet. The Board relied on the Alcoholic Beverage Regulation Administration's (ABRA) investigation of the Applicant's operations, which found that no violations of ABRA law and regulations by the establishment had occurred since February 28, 2012¹, that the licensee had taken positive measures to prevent further violations, and that the licensee had presented no issues with respect to noise, litter or other appropriateness issues under D.C. Official Code § 25-313. On December 3, 2012, the ANC timely filed the Motion on the grounds that the Board overlooked dispositive points of law and fact. *Motion to Reconsider Findings of Fact, Conclusions of Law, and Order*, December 3, 2012 at 1. The motion for reconsideration tolled the time for the Board's order to become final until after the Board's ruling on the motion.

Analysis

The ANC requests that we deny the application for renewal on the ground that the Board failed to apply the standards set forth at D.C. Official Code § 25-301(a). *Motion at 2*. In support of its Motion, the ANC states that D.C. Official Code § 25-301(a) requires that the Board, when considering a license renewal, determine that the applicant has met all of the criteria set forth in that provision, including whether (1) "the applicant is of good character and generally fit for the responsibilities of licensure [25-301(a) (1)]" and (2) "the applicant has not been convicted of any misdemeanor bearing on fitness for licensure in the 5 years before filing the application 25-301(a) (4)]." *Id.* The ANC points out that the establishment's owner was convicted in D.C. Superior Court of the sale of alcoholic beverages to a minor and that this has a bearing on whether the Applicant is of good character and fit for licensure. *Id.*, citing to *Haight v. District of Columbia Alcoholic Beverage Control Board*, 439 A. 2d 487, 492-494 (1981). Furthermore, the ANC points

¹ On March 27, 2013, the Board issued Order No. 2013-076 concerning the February 28, 2012 violation. The Board found that the licensee had violated D.C. Official Code §§ 25-781(a) (1) (Sales to Minors) and 25-783(b) (Failure to Ascertain Age) and that the Sale to Minor violation was egregious. The Board fined the licensee \$5,000 and suspended the license for ten consecutive days

out that, although adherence to D.C. Official Code § 25-301(a) was not cited by the ANC as a ground of protest, “[b]efore issuing the license, the Board, must be satisfied that all statutory requirements have been met...”*Motion* at 5, citing *Craig v. District of Columbia Alcoholic Beverage Control Board*, 721 A.2d 584, 599 (1998).² We agree.

As the courts have interpreted the law under which the Board operates, the Board is required to determine that the applicant meets **all** of the criteria set forth at D.C. Official Code § 25-301(a). See, e.g., *Craig, supra.* at 590. This includes whether the applicant is of good character and whether the applicant has been convicted of a misdemeanor bearing on fitness for licensure in the five years preceding the filing of the application. In this instance, the Applicant was convicted of the misdemeanor of selling alcoholic beverages to minors. *District of Columbia vs. Richard Dan Ki Kim*, 2012 CDC 003981, May 22, 2012. This conviction occurred three months after Applicant submitted an application for renewal of this license. While D.C. Official Code § 25-301(a)(1) refers to convictions “in the 5 years before filing the application,” the Board construes this provision as applying to applications that have been filed and are pending before the Board for issuance or renewal. To interpret this statute as not applying to convictions that occur while an application is pending would be contrary to the Council’s legislative intent to preclude the issuance of a license to an applicant recently convicted of a misdemeanor bearing upon the fitness of the applicant for licensure and would be contrary to a common sense reading of the statute. *Height, supra.* Because Applicant was convicted of a misdemeanor, directly related to the sale of alcohol, *i.e.*, sale of alcohol to a minor, that conviction has a direct bearing on Applicant’s fitness for licensure to sell alcohol and the Board has no choice but to find that this Applicant does not meet the criteria set forth in D.C. Code § 25-301(a) (4). The Board, therefore, denies the renewal of Applicant’s license.

ORDER

Therefore, the Board, on this 8th day of May, 2013 hereby **ORDERS** that the ANC’s Motion for Reconsideration is **GRANTED**; and

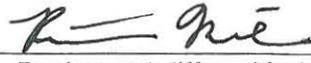
The Board further **ORDERS** that Board Order No. 2012-501 in Case No. 12-PRO-00022 is hereby **VACATED**; and

The Board further **ORDERS** that the Application to Renew a Retailer’s Class A License filed by R & J, 24 Liquors, Inc. t/a Town Square Gourmet, is **DENIED**.

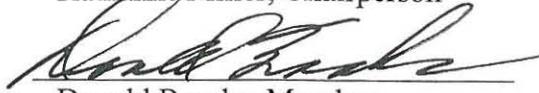
The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestant.

²The ANC also questions whether the Board considered the licensee’s record of compliance with ABRA laws and regulations during the licensure period. *Id.* at 6. Because the Board review of the Applicant’s compliance with D.C. Official Code § 25-301(a) is dispositive, we need not consider this issue here.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Donald Brooks, Member



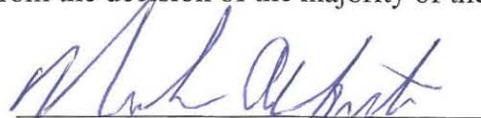
Mike Silverstein, Member

I respectfully dissent from the decision of the majority of the Board to deny the Application to Renew a Retailer's Class A License filed by R & J, 24 Liquors, Inc. t/a Town Square Gourmet. The decision of the majority of the Board rests solely on its conclusion that Licensee's single misdemeanor conviction in criminal court for the sale of alcoholic beverages to a minor, on its face, precludes that Licensee from meeting criteria set forth in D.C. Code § 25-301(a) (4). I believe the majority of the Board's strict interpretation of that statute is incorrect and has led to an arbitrary and capricious decision, one which is inconsistent with the standards routinely applied by this Board in assessing a licensee's fitness for licensure.

D.C. Code § 25-301(a) (4) states that the Board may deny a license if an applicant has been convicted of any misdemeanor bearing on fitness for licensure in the 5 years before filing the application. If one considers D.C. Code § 25-301(a) as a whole, it is clear that the Board cannot deny a license unless it establishes that the misdemeanor conviction bears on the licensee's fitness for licensure. The majority of the Board has failed to establish that fact. They have provided no basis for their conclusion that the licensee's misdemeanor conviction for the sale to a minor impacts on the licensee's good moral character and fitness for licensure.

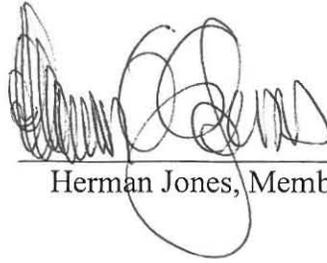
A misdemeanor conviction for the sale of alcoholic beverages to a minor in the D.C. Superior Court and a Board finding that a licensee has violated DC 25-781(a)(1) (a sale to minor violation) result from the same behavior. The only difference is that one is a criminal violation and the other is an administrative violation. The Board routinely renews licenses of applicants who have been found guilty of repeated sale to minor violations (violations of DC 781(a) (1)). Based on those past decisions, it's clear that the majority of the Board does not view an administrative sale to minor violation as indicative of a lack of good moral character and fitness for licensure. As such, the Board's conclusion that the criminal sale to minor violation impacts on the licensee's fitness for licensure is perplexing. I believe that conclusion is inconsistent with the standards routinely applied by the Board when considering renewal applications from other licensees with a history of sale to minor violations.

It is for these reasons that I dissent from the decision of the majority of the Board.



Nick Alberti, Member

I respectfully dissent.

A handwritten signature in black ink, appearing to read 'Herman Jones', is written over a horizontal line. The signature is stylized and somewhat cursive.

Herman Jones, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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 under 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).