

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

In the Matter of:)	
)	
E & K, LLC)	Case No.: 18-CC-00037
t/a 13th Street Market)	License No.: ABRA-78242
)	Order No.: 2018-734
Holder of a)	
Retailer's Class B License)	
)	
at premises)	
3582 13th Street, N.W.)	
Washington, D.C. 20010)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Rema Wahabzadah, Member

ALSO PRESENT: E & K, LLC, t/a 13th Street Market, Respondent

Amy Schmidt, 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that E & K, LLC, t/a 13th Street Market, (hereinafter "Respondent" or "13th Street Market") illegally sold alcohol to a minor, failed to properly check the minor's identification, and failed to have a licensed manager present on March 30, 2018. In total, the Respondent shall pay a fine of \$7,000. The Respondent shall also serve a suspension from January 7, 2019, to January 11, 2019. In addition, in lieu of serving the full suspension required by law, all employees engaged in the selling of alcoholic beverages shall obtain training from a certified alcohol awareness program within ninety days from the date of this Order. If completed, the remaining suspension days shall be converted into stayed

suspension days that shall not go into effect unless further violations are committed within one year from the date of this Order.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on July 13, 2018. *ABRA Show Cause File No. 18-CC-00037*, Notice of Status Hearing and Show Cause Hearing, 2 (Jul. 13, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3582 13th Street, N.W., Washington, D.C., on July 17, 2018. *ABRA Show Cause File No. 18-CC-00037*, Service Form. The Notice charges the Respondent with multiple violations, 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 violations:

Charge I: [On March 30, 2018,] [y]ou sold an alcoholic beverage to a person under 21 years of age in violation of D.C. Code § 25-781(a)(1)

Charge II: [On March 30, 2018,] [y]ou . . . did not take steps reasonably necessary to ascertain whether the person(s) to whom you sold, served, or delivered alcoholic beverages to were of legal drinking age, in violation of D.C. Code § 25-783(b)

Charge III: [On March 30, 2018,] [y]ou failed to keep a licensed ABC manager on duty at all times in violation of D.C. Official Code § 25-701(a) . . . and 23 DCMR § 707.1

Charge IV: [On March 30, 2018,] [y]ou failed to display your ABC license in a conspicuous location within the licensed establishment, in violation of D.C. Official Code § 25-711(a)

Notice of Status Hearing and Show Cause Hearing, 2-4.

Both the Government and Respondent appeared at the Show Cause Status Hearing on September 12, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on October 17, 2018. At the start of the trial, the Respondent stipulated to Charges I through III, which leaves resolving Charge IV and determining an appropriate penalty for Charges I through III as the sole remaining issues in this matter. *Transcript (Tr.)*, October 17, 2018 at 5.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. 13th Street Market holds a Retailer's Class B License at 3582 13th Street, N.W., Washington, D.C. *ABRA License No. 78245*.

2. ABRA Investigator Vernon Leftwich conducted a sale to minor compliance check at the Respondent's establishment on March 30, 2018. *Tr.* 10/17/18 at 9-10. After conducting the compliance check, the investigator spoke with staff present at the establishment. *Id.* at 12. While inside the establishment, neither the investigator nor the Respondent's staff could locate the Respondent's alcohol license, which was required to be conspicuously posted pursuant to D.C. Official Code § 25-711(a). *Id.* at 13.

3. The owner, Kebedshachew Girma, indicated that she was not present on the day of the compliance check because she was responding to an emergency. *Id.* at 20. Instead of closing, she left her nephew in charge, who does not have a manager's license and is not a regular employee. *Id.* at 20-21. She also indicated that the license was properly posted on the wall behind the cash register and not taken down. *Id.* at 22.

CONCLUSIONS OF LAW

4. 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 (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1).

I. Standard of Proof

5. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2018). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

II. The Board Dismisses Charge IV.

6. The Board credits the Respondent's testimony that the license was actually conspicuously posted in the store on the date of the compliance check. *Supra*, at ¶ 3. Therefore, the Board dismisses Charge IV.

III. Penalty

7. The present sale to minor offenses constitutes a second primary tier violation of D.C. Official Code § 25-781, and a first time primary tier violation of D.C. Official Code § 25-783, which mandate a special fines and suspensions for the respective offenses. Furthermore, the violation of D.C. Official Code § 25-701(a) constitutes a fifth level secondary tier offense, which shall be fined in accordance with the schedule of fines listed for secondary tier offenses.

ORDER

Therefore, the Board, on this 12th day of December 2018, finds E & K, LLC, t/a 13th Street Market, guilty of violating D.C. Official Code §§ 25-701, 25-781, and 25-783. The Board imposes the following penalty on 13th Street Market:

- (1) For the violation described in Charge I, 13th Street Market shall pay a fine of \$4,000. The Respondent shall receive a ten (10) day suspension, four (4) days of which shall be served and six (6) days of which shall be stayed for a period of one (1) year on condition that no further infraction occurs within a period of one (1) year from the date of this Order. In addition, all employees engaged in the selling of alcoholic beverages shall obtain training from a certified alcohol awareness program within ninety (90) days from the date of this Order. If the training is not completed within ninety (90) days, the six (6) stayed days of suspension shall be served.
- (2) For the violation described in Charge II, 13th Street Market shall pay a fine of \$1,000. The Respondent shall receive a five (5) day suspension, one (1) day of which shall be served and four (4) days of which shall be stayed for a period of one (1) year on condition that no further infraction occurs within a period of one (1) year from the date of this Order. In addition, all employees engaged in the selling of alcoholic beverages shall obtain training from a certified alcohol awareness program within ninety (90) days from the date of this Order. If the training is not completed within ninety (90) days, the four (4) stayed days of suspension shall be served.
- (3) For the violation described in Charge III, 13th Street Market shall pay a fine of \$2,000.
- (4) Charge IV is **DISMISSED**.

IT IS FURTHER ORDERED that the four (4) day suspension of the Respondent's license shall start on January 7, 2019, and end at 11:59 p.m. on January 11, 2019.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within ninety (90) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed two primary tier violations and one secondary tier violation.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

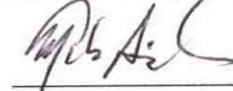
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson




Nick Alberti, Member



Mike Silverstein, Member

James Short, Member



Rema Wahabzadah, 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).