

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

In the Matter of:	)	
	)	
Atlas Performing Arts Center	)	Case No.: 17-CMP-00621
t/a Atlas Performing Arts Center	)	License No.: 85207
	)	Order No.: 2018-252
Holder of a	)	
Retailer's Class CX License	)	
	)	
at premises	)	
1333 H Street, N.E.	)	
Washington, D.C. 20002	)	

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
James Short, Member  
Donald Isaac, Sr., Member  
Bobby Cato, Member

**ALSO PRESENT:** Atlas Performing Arts Center, t/a Atlas, Respondent

Robert Burka, on behalf of the Respondent

Pete Chattrabhuti, 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 Atlas Performing Arts Center, t/a Atlas, (hereinafter "Respondent" or "Atlas") in violation of § 25-113(a)(5)(A) for illegally buying alcohol from an off-premise retailer. Atlas shall pay a fine of \$2,500 for the offense.

## *Procedural Background*

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 12, 2018. *ABRA Show Cause File No. 17-CMP-00621*, Notice of Status Hearing and Show Cause Hearing, 2 (Jan. 12, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1333 H Street, N.E., Washington, D.C., on January 18, 2018. *ABRA Show Cause File No. 17-CMP-00621*, 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:     You purchased alcohol from an off-premise retailer during the hours in which wholesaler establishments were open in violation of § 25-113(a)(5)(A), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(a)-(c) . . . .**

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

Both the Government and Respondent appeared at the Show Cause Status Hearing on February 7, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on March 14, 2018. At the outset of the hearing, the parties submitted a stipulation of facts and the investigative report was entered into evidence without objection. *Transcript (Tr.)*, March 14, 2018 at 4-5.

## 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. Atlas holds a Retailer's Class CX License at 1333 H Street, N.E., Washington, D.C. *ABRA License No. 85207*. ABRA Investigator Nicole Langway entered Atlas at approximately 1:05 p.m. on September 14, 2017. *Case Report No. 17-CMP-00621*, at 1. Inside, she met Malori Rhones, who holds a manager's license and requested Atlas' alcohol invoices. *Id.* Ms. Rhones presented Investigator Langway with invoices from Schneider's of Capitol Hill, which holds a Retailer's Class A License, showing alcohol purchases on Wednesday, March 15, 2017; Thursday, March 23, 2017; Wednesday, April 5, 2017; and Monday, June 12, 2017. *Id.* Ms. Rhones admitted that Atlas had been purchasing from Schneider's of Capitol Hill for approximately two and half years. *Id.* at 2.<sup>1</sup> Ms. Rhones further admitted that she believed she could purchase alcohol from a liquor store. *Id.* Later in the day, Investigator Langway went to Schneider's of Capitol Hill and confirmed that Atlas had been purchasing alcohol from the retailer. *Id.*

---

<sup>1</sup> The Board takes judicial notice of the days of the week.

2. The violation history of Atlas shows prior enforcement activity at the theater. *Case Report No. 17-CMP-00621*, 3. First, Atlas committed a primary tier violation for operating after the expiration of its licensed hours of operation for which it was fined \$1,000. *Id.* Second, it received an official warning related to compliance with its settlement agreement. *Id.*

## CONCLUSIONS OF LAW

3. 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. Official Code § 25-823(a)(1). D.C. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2018).

### I. Standard of Proof

4. 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. Atlas Violated § 25-113(a)(5)(A) by Purchasing Alcohol From an Off-Premise Retail License Holder.

5. The evidence shows that Atlas violated § 25-113(a)(5)(A) by purchasing alcohol from Schneider’s of Capitol Hill, which holds a Retailer’s Class A License, instead of a wholesaler, which is required by law. Under § 25-113(a)(5)(A), a “licensee of an on-premises retailer’s license, class C or D, shall not purchase alcoholic beverages from an off-premises retailer’s license class A or B.” D.C. Code § 25-113(a)(5)(A). Part B provides an exception to allow for the purchase of alcoholic beverages from an off-premise retailer class A on Saturday, Sunday, or a holiday when licensed wholesalers are closed. D.C. Code § 25-113(a)(5)(B). Atlas holds a Retailer’s Class C License, which makes it subject to § 25-113(a)(5)(A). It is not contested that Atlas purchased alcohol from Schneider’s of Capitol Hill, instead of a wholesaler as required. *Supra*, at ¶ 1. The record further shows that the purchases were not subject to the exception provided by part B based on the days that they occurred. *Id.* Consequently, the Board sustains Charge I.

### III. Penalty

6. A violation of § 25-113(a)(5)(A) is deemed a primary tier violation. D.C. Code §25-823(a)(1); 23 DCMR § 800 (West Supp. 2018) (See “25-823”). This conviction represents Atlas’ second primary tier violation, which is subject to a fine range \$2,000 to \$4,000. *Supra*, at ¶ 2; 23 DCMR § 801 (West Supp. 2018). During the hearing, Atlas did not contest the underlying facts related to the violation. Instead, Atlas informed the Board that it had reformed its management, pledged to have its staff undertake training, and has made efforts to ensure that its operations comply with the law. *Tr.*, 3/14/18 at 12-16, 23-26. In light of these reforms and

the establishment's community service, Atlas requested an abatement or elimination of the fine. *Id.* at 28. The Government requested a fine of \$2,500. *Id.* at 9-10. In light of the establishment's violation history, the Board finds that Atlas does not merit a warning. The Board also chooses not to impose the maximum fine based on Atlas' efforts to reform its operations. Consequently, the Board adopts the fine proposed by the Government.

**ORDER**

Therefore, the Board, on this 2nd day of May 2018, finds that Atlas violated § 25-113(a)(5)(A). Based on this finding, the Board imposes the following penalty:

- (1) For the violation described in Charge I, Atlas shall pay a fine of \$2,500.

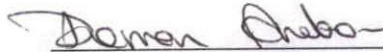
**IT IS FURTHER ORDERED** that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

**IT IS FURTHER ORDERED**, in accordance with 23 DCMR § 800.1, the violation found by the Board in this Order shall be deemed a primary tier violation.

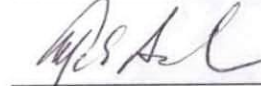
**IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

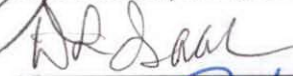
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Donovan Anderson, Chairperson

  
\_\_\_\_\_  
Nick Alberti, Member

  
\_\_\_\_\_  
Mike Silverstein, Member

  
\_\_\_\_\_  
James Short, Member

  
\_\_\_\_\_  
Donald Isaac, Sr., Member

  
\_\_\_\_\_  
Bobby Cato, 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).