

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

In the Matter of:)	
)	
1807 Corporation)	Case No.: 21-CC-00119
t/a Dupont Market)	License No.: ABRA-21578
)	Order No.: 2022-113
Holder of a)	
Retailer's Class B License)	
)	
at premises)	
1807 18th Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: 1807 Corporation, t/a Dupont Market, Respondent

Stephen Ortiz, 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 1807 Corporation, t/a Dupont Market, (hereinafter "Respondent" or "Dupont Market") failed to have a licensed manager present on August 2, 2019, while the store was in operation. The Respondent shall pay a fine of \$750. The sale to minor charge is dismissed. The Board's reasoning and order are provided below.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on November 8, 2019. *ABRA Show Cause File No. 21-CC-00119* Notice of Status Hearing and Show Cause Hearing, 2 (Nov. 8, 2019). 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 August 2, 2019,] [y]ou or another person at the licensed establishment, 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 August 2, 2019,] [y]ou failed to superintend in person or keep a licensed ABC manager on duty at all times, in violation of D.C. Code § 25-701 and 23 DCMR § 707.1

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

Both the Government and Respondent appeared at the Show Cause Status Hearing on January 8, 2020, and December 1, 2021. The parties proceeded to a Show Cause Hearing and argued their respective cases on January 26, 2022.

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. Dupont Market holds a Retailer’s Class B License at 1807 18th Street, N.W., Washington, D.C. *ABRA License No. 21578*. Kelly Hernandez works as a manager at the store. *Transcript (Tr.)*, January 26, 2021 at 59-60. She was working at the store on August 2, 2019. *Id.* at 60. She admitted that the investigator entered the store and that her manager’s identification had expired before the date of the investigation. *Id.* at 60, 65, 67, *see also id.* at 96. There is no indication that a licensed manager was supervising the store on the day of the investigation.

CONCLUSIONS OF LAW

2. 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). Furthermore, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). 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).

I. The Board Dismisses the Sale to Minor Charge.

3. In this case, there are significant factual discrepancies between the case report, the evidence, and the testimony that prevent the Board from crediting evidence related to the sale to minor charge. It has been stated by the court that “Credibility determinations are exclusively within the domain of the fact-finder . . .” *Charles P. Young Co. v. Dist. of Columbia Dept. of Employment Services*, 681 A.2d 451, 457 (D.C. 1996). First, the case report indicates that the bottle of wine cost \$10.99 in the narrative and in the Notice, but a picture in the report indicates that the price was \$9.99. *Case Report No. 19-CC-00119*, at 1, Exhibit No. 4; *Notice*, at 3. The Board further credits testimony that the store does not utilize a scanner, even though the case report indicated there was. *Compare Case Report No. 19-CC-00119*, at 2 with *Tr.*, 1/26/22 at 64. In light of the doubt caused by these discrepancies on matters critical to determining whether an illegal sale of alcohol to a minor occurred, the Board cannot sustain Charge I.

II. The Board Finds that Dupont Market Failed to Have a Licensed Manager Present.

4. Nevertheless, the record contains sufficient credible evidence that Dupont Market failed to have a licensed manager present on August 2, 2019. Under § 25-701(a) and (a-1),

(a) A person designated to manage an establishment shall possess a manager's license.

(a-1)(1) . . . an establishment’s owner or Board-approved manager shall be present on the premises at all times during the establishment’s hours of sale, service, and consumption of alcoholic beverages.

D.C. Code § 25-701(a), (a-1); 23 DCMR § 707.1 (West Supp. 2022). On August 2, 2019, no licensed manager or owner was present while the business was in operation. *Supra*, at ¶ 1. Moreover, it is the responsibility of the licensed manager and the ownership to ensure that the license is valid; therefore, any alleged failure to complete the renewal of the license rests with Dupont Market. *See Tr.*, 1/26/22 at 87, 94. Therefore, the Board sustains Charge II.

III. The Board Imposes a Fine.

5. Dupont Market has one prior secondary tier violations on its record. A second secondary tier violation allows for a fine of between \$500 and \$750. 23 DCMR § 802 (West Supp. 2022).

ORDER

Therefore, the Board, on this 23rd day of March 2022, finds 1807 Corporation, t/a Dupont Market, guilty of violating § 25-701. The Board imposes the following penalty on Dupont Market:

(1) Charge I is **DISMISSED**.

(2) For the violation described in Charge II, Dupont Market shall pay a fine of \$750.

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 (West Supp. 2022), the violation found by the Board in this Order shall be deemed a 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

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430b06b9d5f0be4b730009d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f620de6ac8d1b3328d2d48ec

James Short, Member

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Bobby Cato
Key: 256d3fca1f6e146d7f4b75bd7817d20d

Bobby Cato, Member

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Jeni Hansen, Member

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Edward S. Grandis, Member
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Edward S. Grandis, 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).