

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

In the Matter of:)
)
Bella Market, LLC)
t/a Economy Market)
)
Holder of a)
Retailer's Class B License)
)
at premises)
1804 D Street, N.E.)
Washington, D.C. 20002)
)

Case No.: 17-CMP-00664
License No.: ABRA-094127
Order No.: 2018-330

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member

PARTIES: Bella Market, LLC, t/a Economy 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 finds that Bella Market, LLC, t/a Economy Market (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-823(6) and 25-711(a) on September 27, 2017. As a result, the Respondent must pay a \$600 fine for Charge I and a \$600 fine for Charge II.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on December 18, 2017. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1804 D Street, N.E., Washington, D.C., on March 27, 2018.

The Notice charged the Respondent with the following violations:

Charge I: [On Wednesday, September 27, 2017] [y]ou failed to comply with the provisions of your settlement agreement by failing to maintain clear plastic bags to use for alcoholic beverage purchases, in violation of D.C. Official Code § 25-823(6)...

Charge II: [On Wednesday, September 27, 2017] [y]ou failed to make available a copy of your settlement agreement immediately accessible to an official of ABRA, in violation of D.C. Official Code § 25-711(a)...

ABRA Show Cause File No., 17-CMP-00664, Notice of Status Hearing and Show Cause Hearing, 2-3 (December 8, 2017).

On November 7, 2017, the Respondent attended a preliminary settlement conference where the Respondent requested a hearing in lieu of settlement. On January 24, 2018, the Board held a Show Cause Status Hearing. There was no settlement of the matter and following to continuances, the matter proceeded to a Show Cause Hearing on April 25, 2018.

The Respondent failed to appear at the Show Cause Hearing held on April 25, 2018. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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:

I. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated December 18, 2017. *See ABRA Show Cause File No. 17-CMP-00664.* Bella Market, LLC, t/a Economy Market, holds a Retailer's Class B License, ABRA License No. ABRA-094127. *See ABRA Licensing File No. ABRA-094127.* The establishment is located at 1804 D Street, N.E., Washington, D.C. *See ABRA Licensing File No. ABRA-094127.*

2. The Show Cause Hearing was held on April 25, 2018. The Notice charges the Respondent with two violations enumerated above. *See ABRA Show Cause File No. 17-CMP-00664.*

II. Testimony of ABRA Investigator Nicole Langway

3. The Government presented its case through the testimony of one witness, ABRA Investigator Nicole Langway. *Transcript (Tr.) 4/25/18 at 7.*

4. Investigator Langway authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr.* 4/25/18 at 11. Government's Exhibit 1.
5. On September 27, 2017, Investigator Langway visited the Respondent's establishment to conduct a Regulatory Inspection in response to a complaint. *Tr.* 4/25/18 at 9. The complainant indicated that the Respondent was violating the terms of its Settlement Agreement by selling alcoholic beverages in black, rather than clear, bags. *Tr.* 4/25/18 at 9. Investigator Langway introduced herself to the ABC Manager and asked for her assistance to conduct the inspection. *Tr.* 4/25/18 at 9.
6. During the visit, Investigator Langway asked the ABC Manager for the Settlement Agreement and the Manager indicated that she was unaware of the Agreement's existence. *Tr.* 4/25/18 at 9. Investigator Langway then pulled out her copy of the Agreement, explained that it was a document drafted by the Respondent and the community and that the establishment was required to adhere to its terms. *Tr.* 4/25/18 at 10.
7. Investigator Langway reviewed the terms of the Settlement Agreement with the ABC Manager. *Tr.* 4/25/18 at 10. Specifically, she explained to the ABC Manager that on page 5, the Settlement Agreement provides that "clear bags must be used for all purchases of single sales or beer, malt liquor, ale, wine or fortified wine." *Tr.* 4/25/18 at 11-12; Government's Exhibit 2.
8. Investigator Langway asked the ABC Manager whether the establishment used clear bags and the Manager indicated they were used only for sales of incense. *Tr.* 4/25/18 at 12. Investigator Langway examined the clear bags in the presence of the ABC Manager and noted that they were not large enough to hold a single container of beer or wine. *Tr.* 4/25/18 at 12.
9. During the Regulatory Inspection, Investigator Langway also observed the ABC Manager make a sale of beer to a customer and place the purchase in a black bag. *Tr.* 4/25/18 at 15.

CONCLUSIONS OF LAW

10. 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(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Official Code § 25-447.

I. Standard of Proof

11. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). 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. Violations

12. The Board finds the Respondent guilty of both charged offenses.

a. The Respondent failed to comply with its Settlement Agreement in violation of § 25-823(6).

13. The Board finds the Respondent liable for violating the terms of its Settlement Agreement on September 27, 2018, in violation of D.C. Official Code § 25-823(6).

14. In this case, the Respondent’s Settlement Agreement required the establishment to use clear bags for all purchases of single sales of beer and wine. *Supra*, at ¶ 7. It is unrefuted that on September 27, 2018, the Respondent’s ABC Manager sold an alcoholic beverage and placed the purchase in a black bag. *Supra*, at ¶ 9. Consequently, the Board sustains Charge I.

b. The Respondent failed to make its Settlement Agreement immediately accessible to an ABRA official in violation of § 25-711(a).

15. The Board finds that the Respondent did not provide a copy of its Settlement Agreement to Investigator Langway during the regulatory inspection as required by D.C. Official Code § 25-711(a). The Board credits Investigator Langway who testified that she had to utilize the copy of the Settlement Agreement she brought with her to the regulatory inspection, in order to review the terms with the Respondent’s staff. *Supra*, at ¶ 6. Consequently, the Board sustains Charge II.

III. Penalty

16. The Respondent’s Investigative History shows that these are the Respondent’s second secondary tier violations within two years. *Licensing File No. ABRA-094127*, Investigative History. Thus, the Board may fine the Respondent between \$500 and \$750. *Licensing File No. ABRA-094127*, Investigative History; DCMR § 23-802.

ORDER

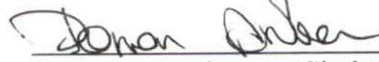
Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of May 2018, finds that the Respondent, Bella Market, LLC, t/a Economy Market, located at 1804 D Street, N.E., Washington, D.C., holder of a Retailer's Class B license, violated D.C. Official Code §§ 25-823 and 25-711(a).

The Board hereby **ORDERS** that:

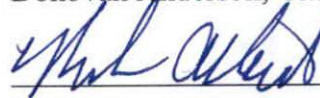
- 1) Charge I: Respondent must pay a fine in the amount of \$600.
- 2) Charge II: Respondent must pay a fine in the amount of \$600.
- 3) In total, the Respondent must pay a fine in the amount of \$1,200 by no later than thirty (30) from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

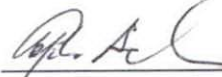
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



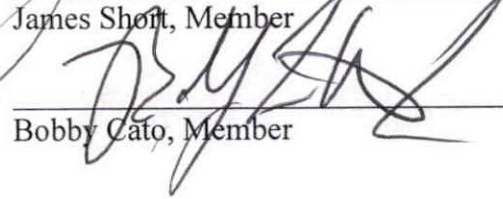
Nick Alberti, Member



Mike Silverstein, Member



James Short, 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, 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, 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 (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).