

September 3, 2019, that he sold the establishment to his brother, Antench Fantaye. *Id.* ABRA's records indicate that the Respondent has never filed or applied for a transfer of the license or a temporary operating retail permit. *Id.*

3. On April 10, 2020, at around 11:30 a.m., Supervisory Investigator Mark Brashears visited the Respondent's establishment. *Id.* at 2. He entered the store in an undercover capacity a bought beer and wine and paid \$3.50 for the beverages. *Id.*

CONCLUSIONS OF LAW

4. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public” D.C. Official Code § 25-829(a).

I. THE OPERATION OF THE RESPONDENT BY AN UNAPPROVED OPERATOR PRESENTS AN IMMEDIATE AND IRREPERABLE HARM TO THE PUBLIC.

5. The Board finds that the continued operation of Respondent by an unapproved operator constitutes an immediate and irreparable harm to the public.

a. The Respondent and the new owner failed to comply with § 25-405.

6. First, the Respondent unlawfully transferred its license without the permission of the Board in violation of § 25-405. Under § 25-405(b), “[a]n application to transfer a license to a new owner shall be filed by the transferee and approved by the Board before the consummation of the transfer.” D.C. Code § 25-405(a). As admitted by the current owner, the Respondent consummated the transfer of the business to his brother. *Supra*, at ¶ 2. As a result, these facts constitute a clear violation of § 25-405.

b. The new owner has failed to obtain a temporary operating permit in accordance with § 703.

7. Second, the new owner in this matter has failed to obtain a temporary operating permit, which would authorize the purchaser to operate the establishment while a transfer application was under review. 23 DCMR § 703 *et. seq.* (West Supp. 2020); *supra*, at ¶ 2. The failure of the parties to obtain this permit further supports the Board's conclusion to order the cessation of all alcohol-related activity at the establishment.

c. The sale of the license to an unapproved owner renders the business discontinued and requires the return of the license under § 25-791.

8. Under § 25-791(a), “A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping.” D.C. Code § 25-791(a). In this case, the

Respondent's owner of record admitted that he gave the Respondent's license to a new owner and executed a transfer. *Supra*, at ¶¶ 4-6. Therefore, the Respondent has legally discontinued operations, and the license must be surrendered to the Board for safekeeping in accordance with § 25-791.

d. The continued operation of the establishment by an unapproved operator causes immediate and irreparable harm to the public.

9. The Board finds that the continued operation of the establishment by an unapproved operator causes irreparable harm to the public by allowing the establishment to maintain a continuing nuisance and threatens the safety and welfare of the public. All violations of Title 25 are deemed nuisances pursuant to § 25-805. D.C. Code § 25-805; *see also Com. ex rel. Preate v. Danny's New Adam & Eve Bookstore*, 625 A.2d 119, 122 (1993) (It is well-settled that even a lawful business may be enjoined from operation if it is shown that, under the particular circumstance, its operation constitutes a public nuisance); *Camp v. Warrington*, 227 Ga. 674, 674, (1971) ("where it is made to appear with reasonable certainty that irreparable harm and damage will occur from the operation of an otherwise lawful business amounting to a continuing nuisance, equity will restrain the construction, maintenance or operation of such lawful business."). In this case, permitting the new owner to continue to illegally operate without approval would allow them to maintain and benefit from the operation of a continuing nuisance at the expense of the public.

10. Furthermore, the Board is convinced that the circumvention of the licensing process threatens the health, safety, and welfare of the public. The misuse of alcohol encourages crime, disorder, and other antisocial behavior. The licensing process keeps those who cannot be trusted to superintend a licensed establishment, such as criminals and individuals with a history of repeated violations of the District's alcohol laws, from obtaining a license. Therefore, the new owner cannot be permitted to continue operating the establishment until a proper transfer application is filed, properly vetted, and approved by the Board.

ORDER

Therefore, the Board on this 29th day of April 2020, hereby orders the Respondent and Antench Fantaye to cease distributing, purchasing, selling, serving, or otherwise permitting the consumption of alcoholic beverages at 2400 Minnesota Avenue, S.E.

IT IS FURTHER ORDERED that the parties shall surrender the license to the Board for safekeeping pursuant to § 25-791. In the alternative, ABRA is simultaneously authorized to seize the license in order to place it in safekeeping.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-115(c) and 23 DCMR § 1003.1, that ABRA shall no longer issue temporary licenses and one-day substantial change licenses for the above mentioned address.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA

refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance) should it be deemed necessary.

Please be **ADVISED** that a copy of this Order is being forwarded to the Metropolitan Police Department to ensure compliance. If it is found that you are continuing to sell, serve, or permit the consumption of alcoholic beverages without approval from the Board, you may be subject to both civil and criminal penalties.

ABRA shall serve notice by certified mail or personal delivery on the parties.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: a142c26294555a167929511d1c08

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 741a277622094ac11c001a2949f

James Short, Member

eSigned via SeamlessDocs.com
Bobby Cato
Key: 256d3f6a0b6140d7fb75b7017d29d

Bobby Cato, Member

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Edward Grandis, Member
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Edward S. Grandis, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia 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 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).