

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

In the Matter of:)
)
Sunami, LLC)
t/a Sportsman Wine and Liquors)
)
Holder of a)
Retailer's Class A License)
)
at premises)
3249 Mount Pleasant Street, NW)
Washington, D.C. 20010)
)

Case No.: 17-CC-00078
License No.: ABRA-070310
Order No.: 2018-002

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Donald Isaac, Sr., Member

ALSO PRESENT: Arun Mody, on behalf of Sunami, LLC, t/a Sportsman Wine and
Liquors, 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

The Alcoholic Beverage Control Board (Board) finds that Sunami, LLC, t/a Sportsman Wine and Liquors (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-781 and 25-783 on July 6, 2017. As a result, the Respondent must pay a \$3,500 fine. Additionally, the Respondent shall have its license suspended for five (5) days; one (1) day to be served, and four (4) days to be stayed for one (1) year pending completion of alcohol awareness training for all employees who serve alcoholic beverages within ninety (90) days from the date of this Order.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on September 27, 2017. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3249 Mount Pleasant Street, NW, Washington, D.C., on September 28, 2017.

The Notice charged the Respondent with the following violations:

Charge I: [On Thursday, July 6, 2017] [y]ou or another person at the licensed establishment sold, delivered, or in any other manner dispensed alcoholic beverages to a person under 21 years of age, in violation of D.C. Official Code § 25-781...

Charge I: [On Thursday, July 6, 2017] [y]ou failed to take steps reasonably necessary to ascertain whether a person to whom your establishment sold an alcoholic beverage was of legal drinking age, in violation of D.C. Official Code § 25-783...

ABRA Show Cause File No. 17-CC-00078, Notice of Status Hearing and Show Cause Hearing, 2-4 (September 27, 2017).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on October 25, 2017, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on November 29, 2017.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the 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 September 27, 2017. *See* ABRA Show Cause File No. 17-CC-00078. Sunami, LLC, t/a Sportsman Wine and Liquors, holds a Retailer's Class A License No. ABRA-070310. *See* ABRA Licensing File No. ABRA-070310. The establishment's premises is located at 3249 Mount Pleasant Street, NW, Washington, D.C. *See* ABRA Licensing File No. ABRA-070310.

2. The Show Cause Hearing was held on November 29, 2017. The Notice charges the Respondent with the violations enumerated above. *See* ABRA Show Cause File No. 17-CC-00078.

II. Stipulation to Facts

3. The Government and the Respondent stipulated to the admissibility, sufficiency and accuracy of the evidence contained in ABRA's investigative report and the Notice to Show Cause. *Transcript (Tr.)* 11/29/17 at 3-4. *See* ABRA Show Cause File No. 17-CC-00078.

Specifically, the stipulated facts as set forth in the Notice are:

- (a) On Thursday, July 6, 2017, at approximately 6:45 p.m., ABRA Investigator Vernon Leftwich directed two minors who were acting in an undercover capacity to enter the Respondent's establishment.
 - (b) On that day and at that time, the minors entered the Respondent's establishment first, and then Investigator Leftwich entered the establishment a few minutes later.
 - (c) Investigator Leftwich observed the minors go directly to a beer refrigerator and retrieve a four (4) pack of Sutter Home wine. The minors then walked to the owner, Arun Mody, who was acting as the cashier.
 - (d) Even though the minors' possessed identifications which clearly stated "Under 21 until 06/08/1997" and "Under 21 until 08/10/1998," Mr. Mody sold the minors the alcoholic beverages without asking for their identification.
 - (e) The minors handed Mr. Mody currency and left the establishment with the four (4) pack of Sutter Home wine.
 - (f) The minors handed the alcoholic beverages to Investigator Leftwich.
 - (g) Following the incident, at approximately 6:52 p.m., ABRA Investigators Kevin Puente and DaVon Todd entered the Respondent's establishment and informed Mr. Mody that he sold alcoholic beverages to minors without checking their identification.
 - (h) Mr. Mody read and signed a Sale to Minor Notification Form.
 - (i) Investigator Leftwich kept the alcoholic beverages for evidence.
4. The Respondent does not dispute the facts in Investigator Leftwich's report and admitted that he violated the law by selling alcoholic beverages to minors without checking their identifications. *Id.* at 4, 7-10.

III. Arguments as to Penalty

5. For Charge I, the Government recommends that the Board fine the Respondent \$3,000 to be paid within thirty (30) days or its license shall be suspended until the fines is paid; that the license be suspended for five (5) days, with all five (5) days stayed for one (1) year; and all employees who serve alcoholic beverages in the licensed establishment shall complete an alcohol awareness training within three (3) months from the date of this Order. *Id.* at 5.

6. For Charge II, the Government recommends that the Board fine the Respondent \$1,000 to be paid within thirty (30) days or its license shall be suspended until the fine is paid; and that the license be suspended for five (5) days, with all five (5) days stayed for one (1) year. *Id.* In total, the Respondent shall pay a fine in the amount of \$4,000; ten (10) days stayed for one (1) year; and alcohol awareness training within three (3) months from the date of this Order. *Id.* at 6.

7. The Respondent offered the following mitigating factors for the Board's consideration in assessing the penalty. *Id.* at 7-10.

8. Mr. Mody has owned the establishment for fourteen (14) years. *Id.* at 7. During the ABRA's visit to his establishment, he mistook one of the minors for somebody he thought he knew. *Id.* at 7-8. He has a longtime female customer who has two daughters; one twenty four (24) years old and the other one twenty nine (29) years old. *Id.* at 8. He believed that one of the minors who purchased the alcoholic beverages was one of his customer's daughters. *Id.* He asked the minor about her mother, but the minor did not respond. *Id.* Then, he sold the alcoholic beverages to her. *Id.*

9. When Mr. Mody realized that the minor never replied to his question, he went outside looking for her, but it was too late; ABRA Investigators were already in his establishment. *Id.*

10. Additionally, although Mr. Mody made that mistake, he believes he deserves another opportunity. *Id.* at 10-11. He ensured the Board that these violations would not happen again. *Id.* at 9. He admitted that in 2016 he received a sale to minor warning letter. *Id.* at 11. He also stated that the employee who sold to the minor in 2016 received training and that the employee is still working at his establishment. *Id.* at 13.

CONCLUSIONS OF LAW

11. 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 Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). 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. THE RESPONDENT VIOLATED § 25-781

12. The Board finds that the Respondent sold an alcoholic beverage to an underage female on July 6, 2017. Under § 25-781(a)(1), the Respondent may not sell or deliver alcohol to an individual under 21 years of age. D.C. Code § 25-781(a)(1) (West Supp 2013). The record shows that on July 6, 2017, two minors purchased a four (4) pack of Sutter Home wine from the Respondent. The minors possessed identification indicating that they were not 21 years of age.

13. Furthermore, the Respondent admitted to the violation when he stipulated to the facts. The stipulated facts are received into evidence in lieu of further proof and testimony. Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-781.

II. THE RESPONDENT VIOLATED § 25-783

14. The Board also finds that the Respondent failed to take reasonable measures to ascertain the age of the individual purchasing the alcohol on July 6, 2017. Under § 25-

783(b), the Respondent and its agents must “take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age.”

15. Here again, the Respondent admitted that he did not ask the minors for their identification during the sales transaction although they possessed identification indicating that they were not 21 years of age.

16. Furthermore, the Respondent admitted to the violation when he stipulated to the facts. The stipulated facts are received into evidence in lieu of further proof and testimony. Thus the Board holds the Respondent liable for violating D.C. Official Code § 25-783.

III. PENALTY

17. The Respondent’s Investigative History shows that these charges are the Respondent’s first Sale to Minor and Failure to Take Reasonable Steps to Ascertain Legal Age violations. *Licensing File No. ABRA-070310*, Investigative History. Under the graduated penalty schedule, the Board may fine the Respondent between \$2,000 and \$3,000 for Charge I and between \$1,000 and \$2,000 for Charge II. *Licensing File No. ABRA-070310*, Investigative History; D.C. Official Code §§ 25-781(f)(1) and 25-783(c)(1).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 10th day of January, 2018, finds that the Respondent, Sunami, LLC, t/a Sportsman Wine and Liquors, Market, located at 3249 Mount Pleasant Street, NW, Washington, D.C., holder of a Retailer’s Class A License, violated D.C. Official Code §§ 25-781 and 25-783.

The Board hereby **ORDERS** that:

- 1) For Charge I – The Respondent must pay a fine in the amount of \$2,500 and shall have its license suspended for five (5) days, with one (1) day to be served, and four (4) days to be stayed for one (1) year pending completion of alcohol awareness training for all employees who serve alcoholic beverages within ninety (90) days from the date of this Order.
- 2) For Charge II – The Respondent must pay a fine in the amount of \$1,000.
- 3) In total, the Respondent must pay a fine in the amount of \$3,500 payable on or before February 10, 2018 or its license shall be suspended until all outstanding fines are paid.
- 4) The Respondent’s one (1) day suspension will be served on Friday, February 2, 2018.

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

District of Columbia
Alcoholic Beverage Control Board



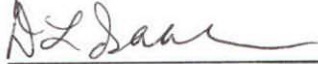
Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



Donald Isaac, Sr., 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).