

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

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In the Matter of:	)		
	)		
Ching, LLC	)	Case No.:	19-CMP-00173
t/a Uproar	)	License No.:	ABRA-92012
	)	Order No.:	2021-153
Holder of a	)		
Retailer's Class CT License	)		
	)		
at premises	)		
639 Florida Avenue, N.W.	)		
Washington, D.C. 20001	)		

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**BEFORE:** Donovan Anderson, Chairperson  
Bobby Cato, Member  
Rema Wahabzadah, Member  
Rafi Aliya Crockett, Member  
Jeni Hansen, Member

**ALSO PRESENT:** Ching, LLC, t/a Uproar, Respondent

Thomas Martin, Counsel, on behalf of the Respondent

John Lui, Assistant Attorney General  
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds that Ching, LLC, t/a Uproar, (hereinafter "Respondent" or "Uproar") violated D.C. Official Code § 25-113(a)(5)(A) and (B) by illegally purchasing alcohol from an unapproved source on several occasions between 2016 and 2019. The Board imposes a fine of \$1,500 for the offense.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on December 24, 2019. *ABRA Show Cause File No. 19-CMP-00173*, Notice of Status Hearing and Show Cause Hearing, 2 (Dec. 24, 2019). 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: [On August 31, 2019,] [an investigator observed that you] purchased alcohol from an off-premises retailer's license class A [on several occasions] during the licensed hours of sale for wholesalers, in violation of D.C. Official Code § 25-113(a)(5)(A) . . . .**

*Notice of Status Hearing and Show Cause Hearing*, at 4.

The parties proceeded to a Show Cause Hearing and argued their respective cases on February 24, 2021.

### **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. Ching, LLC, t/a Uproar, holds a Retailer's Class CT License at 639 Florida Avenue, N.W., Washington, D.C. *ABRA License No. 92012*.
2. ABRA Investigator Rhoda Glasgow conducted a regulatory inspection at Uproar on August 31, 2019. *Transcript*, February 24, 2021 at 14-15. When the investigator entered the premises, she spoke with the establishment's licensed manager. *Id.* at 15. She requested the establishment's invoices and received three years of alcohol purchase records. *Id.*
3. Upon examining the records, she observed numerous receipts from Costco Wholesale, a licensed retailer. *Id.* When she asked the manager about the records, he stated that he believed it was lawful to purchase from licensed retailers. *Id.* at 15, 39. Investigator Glasgow took photographs of the Costco Wholesale receipts found in Uproar's records. *Government Exhibit Nos. 2-15*.
4. The receipts show that Uproar made 13 separate purchases from Costco between 2017 and 2019. *Id.* The receipts show that Uproar purchased alcohol from Costco at the following dates and times:

(1) Friday, May 13, 2016, at 10:49 a.m. (8 cases each of Corona and Stella Artois beer);

- (2) Sunday, February 5, 2017, at 4:06 p.m. (Bud Light beer);
- (3) Sunday, July 31, 2016, at 12:08 p.m. (Stella Artois);
- (4) Sunday, February 26, 2017, at 1:47 p.m. (Corona beer);
- (5) Wednesday, September 6, 2017, at 4:39 p.m. (Jack Daniels, Scotch, and Vodka);
- (6) Friday, October 27, 2017, at 2:50 p.m. (Fireball);
- (7) Sunday, November 5, 2017, at 4:08 p.m. (Corona);
- (8) Wednesday, January 17, 2018, at 11:46 a.m. (Fireball, Jameson, Maker's Mark, Jack Daniels);
- (9) Sunday, June 24, 2018, at 2:23 p.m. (Tito's Vodka, Jack Daniels);
- (10) Friday, January 4, 2019, at 6:12 p.m. (Fireball, Jameson);
- (11) Friday, January 11, 2019, at 12:00 p.m. (Jameson, Fireball);
- (12) Thursday, January 17, 2019, at 6:58 p.m. (showing 27 bottles of alcohol purchased for \$893.06, and which included 1 bottle of Jose Cuervo Gold, 2 bottles of Captain Morgan Rum, 2 bottles of Bombay Gin, 6 bottles of Fireball, 6 bottles of Tito's Vodka, 2 bottles of Jack Daniels, and 8 bottles of Jameson Whiskey); and
- (13) Thursday, February 21, 2019, at 8:23 p.m.

*Id.*; *Tr.*, 2/24/21 at 33, 43.

5. Investigator Glasgow indicated that during the regular course of her inspections, if a licensee informs her that they do not have books and records on the premises, then she would inform the licensee that she would return at a specific date and time to examine them. *Tr.*, 2/24/21 at 40.

6. Tammy Truong is the owner of Uproar. *Id.* at 61. Ms. Truong indicated that Uproar purchases alcohol from the following licensed wholesalers: Capital Eagle, Breakthru Beverage, and Republic National. *Id.* at 62. She indicated that the illegal purchases referenced by the government were for personal use, not business use, as well as for donations for charitable events. *Id.* at 66, 72-73, 74, 76-79, 80-81. She further stated that she stored receipts for her personal alcohol purchases with her business records. *Id.* at 97.

7. During her testimony, the owner admitted that the receipt for Friday, October 27, 2017 at 2:50 p.m., reflected a purchase of two bottles of alcohol for personal use and two bottles of alcohol for use by the establishment. *Id.* at 75-76. She indicated that she purchased from Costco because the wholesaler had not delivered her entire order and would not come back to complete

the order. *Id.* She next admitted that the purchase made on Friday, January 4, 2019, at 6:12 p.m., was because one of her wholesalers failed to deliver her order. *Id.* at 79. She further admitted that the purchase made on Friday, January 11, 2019, at 12:00 p.m., was also because the wholesaler failed to make the required delivery. *Id.* at 80. Finally, the purchase made on Thursday, February 21, 2019 at 8:23 p.m., was because the wholesaler failed to make the required delivery. *Id.* at 81.

## CONCLUSIONS OF LAW

8. 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).

### I. Standard of Proof

9. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2021). 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. The Board finds the Respondent Guilty of Violation of D.C. Official Code § 25-113(a)(5)(A) and (B).

10. The Government has demonstrated that the Respondent violated on D.C Official Code § 25-113(a)(5)(A) and (B) on several occasions. Under the relevant provisions,

(5)(A) Except as provided in subparagraph (B) of this paragraph, 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.

(B) The licensee of an on-premises retailer’s license, class C or D, may purchase alcoholic beverages from an off-premises retailer’s license, class A, on Saturday, Sunday, or holiday during the hours when licensees under a wholesaler’s license are closed.

D.C. Code § 25-113(a)(5)(A), (B). Section 25-721 of the D.C. Official Code provides the lawful hours of wholesalers as extending from 6:00 a.m. to 1:00 a.m., Monday through Saturday, and 7:00 a.m. to midnight on Sunday. D.C. Code § 25-721(a), (a-1).

11. The record shows that the Respondent repeatedly purchased alcohol during the weekday from Costco, a licensed retailer, in clear violation of § 25-113(a)(5)(A) and (B). *Supra*, at ¶ 4. At the very least, the illegal purchases occurred on Friday, May 13, 2016; Wednesday, September 6, 2017; Friday, October 27, 2017; Wednesday, January 17, 2018; Friday, January 4, 2019; Friday, January 11, 2019; Thursday, January 17, 2019; and Thursday, February 21, 2019. *Id.*

12. The Board is further not persuaded by the Respondent's disputation of the facts. First, the Board does not credit the ownership's testimony that the purchases were for personal use where the receipts were found in Uproar's business records, which permits a reasonable inference that the purchases were for the business. *Supra*, at ¶ 3. Second, the ownership's assertion of personal use was also not credible where Uproar's manager indicated that he believed such purchases were permitted, which suggests that the business itself was not aware of any limits when making such purchased and that such purchases were a regular part of its business practices. *Id.* Third, the claim of personal use is also not credible based on the volume of alcohol being purchased and the proximity in time of the purchases. *Supra*, at ¶ 4. And finally, the ownership's admission that some purchases from Costco were made due to failures of her suppliers to complete her requested deliveries is not relevant where § 25-113(a)(5)(A) and (B) are strict liability offenses and there is no emergency exception. *Supra*, at ¶ 7.

13. The Board is also not persuaded by the Respondent's argument that § 25-802(b) provides a defense or otherwise defeats the charge. Section 25-802 provides that

(a) . . . each licensee, shall allow . . . any ABRA investigator, . . . full opportunity to examine, at any time during business hours:

(1) The premises where an alcoholic beverage is . . . kept, sold, or consumed for which . . . a license has been issued; and

(2) The books and records of the business for which an application for a license has been made or for which a license has been issued.

(b) ABRA investigators shall examine the premises and books and records of each licensed establishment in the District at least once each year. The investigators shall make reasonable efforts to ensure that the licensee will know in advance the date of the inspection.

D.C. Code § 25-802(a)-(b).

14. In this case, the Board is not persuaded that the investigator violated § 25-802(b). First, on its face, § 25-802(b) only refers to the one required inspection required per year, and not unannounced inspections that may occur from time to time. This interpretation is supported by the plain language of § 25-802(b) which only refers to "the inspection" and not all inspections, and the fact that the second sentence clearly only applies to inspections conducted under part (b), and not the general inspection authority granted by § 25-802(a). Second, the Board does not agree that the investigator failed to "make reasonable efforts" to inform the licensee in "advance" of the inspection where the § 25-802(b) provides no required method of notice and no minimum time period for providing notice. Moreover, nothing in the statute bars ABRA from asking from same-day access to the records. Therefore, providing verbal notice to the licensed manager on the day of the investigation before reviewing the records satisfies the statute.

15. Additionally, the Board is further not convinced that § 25-802 provides any sort of defense in the present matter. First, the present charge is based on the contents of the records, not the Respondent's failure to turn them over, their completeness, or otherwise not cooperating with the investigator; therefore, the charge has no relation to any potential defense that could be raised under § 25-802(b), and the Respondent is not otherwise prejudiced by the prosecution in this case. Second, the Respondent never requested more time to submit documents and the licensed ABC manager's immediate provision of the records amounts to a waiver of any claims that could be brought under § 25-802. Finally, and most importantly, as a statutory instruction to the agency, § 25-802 provides no defense to licensees. Specifically, as the court noted in *Gallothom*, "Statutory provisions concerning the performance of duties by public officers generally are considered directory so that the interests of private parties and the public might not suffer due to the official's failure to act promptly." *Gallothom, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 820 A.2d 530, 535 (D.C. 2003). Therefore, § 25-802(b) cannot be used as a defense.

16. Therefore, the Board sustains the Charge brought by the Government.

### III. Penalty

17. The present violation constitutes a first level primary tier violation. 23 DCMR § 800 (West Supp. 2021). A first level primary tier violation carries a fine of anywhere from \$1,000 to \$2,000. 23 DCMR § 801.1(a) (West Supp. 2021).

### ORDER

Therefore, the Board, on this 31st day of March 2021, finds the Respondent guilty of violating D.C. Official Code § 25-113(a)(5)(A). The Board imposes the following penalty:

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$1,500 within 120 days of the date of this Order.

**IT IS FURTHER ORDERED**, in accordance with 23 DCMR § 800.1, the violations 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

eSigned via SeamlessDocs.com  
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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).