

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

In the Matter of:)	
)	
K & B, LLC)	
t/a Montana Liquors)	
Holder of a Retailer's Class A License)	Case No. 12-CMP-00062
)	License No. ABRA-085906
at premises)	Order No. 2013-033
1801 Montana Avenue, N.E.)	
Washington, D.C. 20002)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Walter Adams, Assistant Attorney General
Office of Attorney General, District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 14, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 6, 2012, on K & B, LLC, t/a Montana Liquors (Respondent), at premises 1801 Montana Avenue, N.E., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent failed to superintend in person or keep a licensed ABC Manager on duty at all times, in violation of D.C. Official Code § 25-701 (2001) and 23 DCMR § 707.1, for which the Board

may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge II: The Respondent violated Section 5C of the Voluntary Agreement (VA), as approved by the Board on August 12, 2009, which prohibits the establishment from selling, offering, or exposing for sale products which may be regarded as drug paraphernalia, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(6) (2001).

The Respondent was personally served with a copy of the Notice on September 14, 2012. A Show Cause Status Hearing was held on October 17, 2012, and the Respondent failed to appear. The matter proceeded to a Show Cause Hearing on January 9, 2013. The Respondent failed to appear at the Show Cause Hearing, and the Board proceeded to a hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated September 6, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00062. The Respondent holds a Retailer's Class A license and is located at 1801 Montana Avenue, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-085906.
2. The Show Cause Hearing in this matter was held on January 9, 2013. The Notice to Show Cause charged the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 12-CMP-00062
3. The Government presented its case through the testimony of one witness, ABRA Investigator Tyrone Lawson. *Transcript (Tr.)*, 1/9/13 at 4. Investigator Lawson is familiar with the Respondent's establishment, which he visited on November 18, 2011, to deliver a service form for a Notice of Status Hearing and Show Cause Hearing in an unrelated case. *Tr.* 1/9/13 at 5. After this visit, Investigator Lawson completed an investigative report. *Tr.* 1/9/13 at 5-6. *See* Government's Exhibit 1.
4. Investigator Lawson testified that on November 18, 2011, he asked Abraham Fiseha, Respondent's employee, to speak with an ABC-licensed manager or the owner. *Tr.* 1/9/13 at 6. Mr. Fiseha informed Investigator Lawson that there was no ABC-licensed manager on the premises. *Tr.* 1/9/13 at 6.
5. Investigator Lawson observed during his visit an alcoholic beverage transaction while the establishment was been operated only by Mr. Fiseha. *Tr.* 1/9/13 at 9-10; *see* Government Exhibit No. 1A. Investigator Lawson also observed cigarette rolling papers underneath the cash register. *Tr.* 1/9/13 at 10-11; *see* Government Exhibit No. 1B.

Investigator Lawson informed Mr. Fiseha that D.C. Official Code prohibits the sale of drug paraphernalia unless the establishment sells more than twenty five percent (25%) of its gross sales in loose tobacco products. *Tr.* 1/9/13 at 11. Investigator Lawson testified that he handed a copy of the drug paraphernalia flyer to Mr. Fiseha and Mr. Fiseha acknowledged that he knew that cigarette rolling papers were drug paraphernalia. *Tr.* 1/9/13 at 14-15.

6. Investigator Lawson testified that Mr. Fiseha stated that the Respondent offered the drug paraphernalia for sale to its patrons. *Tr.* 1/9/13 at 16.

7. Investigator Lawson testified that he did not observe any loose tobacco, but he observed wrapped tobacco products, cigars, and cigarillos. *Tr.* 1/9/13 at 16-17. Investigator Lawson stated that the majority of products sold by the Respondent are alcoholic beverages and the tobacco products are a small selection. *Tr.* 1/9/13 at 18.

8. Investigator Lawson testified that he reviewed the Respondent's Voluntary Agreement, approved by the Board on July 21, 2009, which provides in section 5(c) that the Respondent agrees not to sell, give, offer, expose for sale, or deliver any product or other item which may be regarded as drug paraphernalia. *Tr.* 1/9/13 at 19.

9. Investigator Lawson further testified that he visited the establishment a second time on September 14, 2012, to determine if the establishment was open for business and fully operating. *Tr.* 1/9/13 at 21. During this visit, Investigator Lawson served a copy of the Show Cause Notice and reminded the ABC-licensed Manager about the hearing. *Tr.* 1/9/13 at 22. Investigator Lawson stated that he did not observe cigarette rolling papers for sale during this visit. *Tr.* 1/9/13 at 23.

10. The Respondent failed to appear at the Show Cause Hearing held on January 9, 2013, and he did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. The Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance.

CONCLUSIONS OF LAW

11. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2009). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

12. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a "reasonable mind might accept as adequate to support the conclusion" and there must be a "rational connection between facts found and the choice made." 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008).

13. With regard to Charge I, the Board finds that the Respondent permitted the establishment to operate without the presence of a Board-approved Manager. The Board makes this finding based on the testimony of Investigator Lawson and the documentary evidence admitted as Government's Exhibit 1 and 1A. Investigator Lawson testified that during his visit to the Respondent's establishment, on November 18, 2011, he discovered that there was no ABC-licensed Manager on the premises when a Respondent's employee sold an alcoholic beverage to a patron. Additionally, Investigator Lawson testified that the Respondent's employee admitted that there was no ABC-licensed Manager or owner present when the alcoholic beverage was sold.

14. With regard to Charge II, the Board finds that the Respondent failed to comply with Section 5C of its Voluntary Agreement by selling cigarette rolling papers, which may be regarded as drug paraphernalia. The Board again relies on the credible testimony of Investigator Lawson and the documentary evidence admitted as Government's Exhibit 1 and 1B. Investigator Lawson testified that during his visit to the Respondent's establishment, on November 18, 2011, the Respondent was offering cigarette rolling papers for sale to its patrons.

15. Therefore, based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-701 and 23 DCMR § 707.1, as set forth in Charge I, and § 25-823(6), as set forth in Charge II, of the Notice to Show Cause, dated September 6, 2012, warrants the imposition of a fine and the suspension further set forth below. The Board also finds that a previously stayed suspension day, imposed in Case No. 11-CMP-00042, is triggered by the case at hand, and will now be served by the Respondent as set forth more fully below.

16. The Board takes administrative notice that these violations are the third secondary tier violations within three years and, thus, warrants a higher fine under D.C. Official Code § 25-830.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 30th day of January, 2013, finds that the Respondent, K & B, LLC, t/a Montana Liquors (Respondent), located at 1801 Montana Avenue, N.E., Washington, D.C., holder of a Retailer's Class A license, violated D.C. Official Code §§ 25-701, 25-823(6), and 23 DCMR § 707.1.

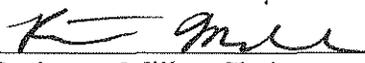
The Board hereby **ORDERS** that:

1. Charge I: Respondent shall pay a fine in the amount of \$1,000.00 and receive a suspension of its license for one (1) day. The one (1) day of suspension will be stayed for one year, provided that the Respondent does not commit any additional ABC violations.

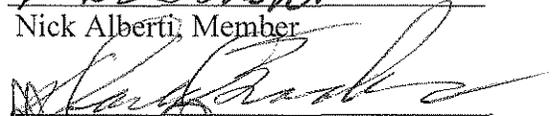
2. Charge II: Respondent shall pay a fine in the amount of \$1,000.00 and receive a suspension of its license for one (1) day. The one (1) day of suspension will be stayed for one year, provided that the Respondent does not commit any additional ABC violations.
3. In total, the Respondent shall pay a fine in the amount of \$2,000 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.
4. In addition to the stayed suspension days levied for Charge 1 and Charge II, the Respondent shall serve one (1) day. This suspension day is activated from one (1) stayed day resulting from an Offer in Compromise entered into by the Respondent on July 27, 2011, in Case No. 11-CMP-00042.
5. In total, the Respondent shall receive a suspension of its license for two (2) days, both days stayed for one year, and one (1) day to be served on Friday, February 15, 2013.

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

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).