

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

**In the Matter of:**

R & J, 24 Liquors, Inc.  
t/a Town Square Gourmet

Holder of a Retailer's Class A License

at premises  
4418 MacArthur Blvd NW  
Washington, D.C. 20007

Case Number: 12-251-00107  
License Number: 78664  
Order Number: 2013-076

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

**ALSO PRESENT:** Richard Kim, Owner, on behalf of the Respondent

James Shin, on behalf of the Respondent

Fernando Rivero, Assistant Attorney General,  
on behalf of 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**

On January 16, 2013, the Alcoholic Beverage Control Board ("Board") conducted a Show Cause hearing concerning two charges brought by the Alcoholic Beverage Regulation Administration ("ABRA") against R & J, 24 Liquors, Inc., t/a Town Square Market ("Respondent") in regards to an incident occurring on February 28, 2013 at its premises, 4418 MacArthur Boulevard N.W., Washington, DC 20007 ("Premises"). The Notice of Status and Show Cause Hearings ("Notice") was adopted by the Board on

August 15, 2012 and personally served on Richard Kim, the owner, on August 22, 2012. The specific violations noted in the Notice were (1) permitting the sale of alcoholic beverages to a person under the age of twenty-one (21) years, in violation of D.C. Official Code § 25-781(a) (1); and (2) the failure to take steps reasonably necessary to ascertain whether a person to whom an alcoholic beverage was sold was of legal drinking age, in violation of D.C. Official Code § 25-783(b).

The matter proceeded to a Show Cause Hearing and the Government presented evidence through the testimony of witnesses and the submission of documents.

### FINDINGS OF FACT

The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and all documents comprising the Board's official file, makes the following findings:

#### A. Investigator Tyrone Lawson

1. ABRA Investigator Tyrone Lawson testified that he visited the establishment on February 17, 2012 to conduct a regulatory inspection and to provide the establishment information on the requirements for checking personal identification in order to avoid the sale of alcoholic beverages to under aged individuals. *Transcript*, January 16, 2013 at 115. He further testified that he talked with the owner, Richard Kim and his daughter Jean who also worked at the establishment and was fluent in English and discussed the process for checking identification. *Tr.* at 117-118.

2. Investigator Lawson showed the owner a provisional license issued in the District of Columbia and pointed out the differences between a provisional license issued to someone under the age of 21 and a license issued to someone over the age of 21. *Tr.* at 119. Investigator Lawson pointed out that a provisional license is vertical whereas a regular license is horizontal. He further showed that the pictures are differently oriented and that a provisional license has the notation that states when the licensee will become 21. *Id.*

3. Investigator Lawson requested that the owner's daughter translate his words, whereupon Mr. Kim stated to Investigator Lawson that he understood what Investigator Lawson had said. *Id.*

#### B. Investigator Erin Mathieson

4. Investigator Erin Mathieson testified that the day following the regulatory inspection conducted by Investigator Lawson she, along with ABRA investigator Ghenene and two officers from the Metropolitan Police Department ("MPD"), conducted surveillance at the establishment to determine whether the establishment was allowing the sale of alcoholic beverages to minors. *Transcript* at 80.

5. The ABRA investigators and MPD Officers viewed two males entering the establishment who appeared to be under age, whereupon one of the MPD officers stationed

himself so that he could see inside of the establishment. *Tr.* at 81. The MPD Officer witnessed the transaction, including the ID check by the clerk. *Tr.* at 105-106.

6. Upon exiting the establishment, the two males who were seen entering the establishment were approached by the ABRA investigators and the MPD Officers and requested to produce identification. *Tr.* at 82. The males were carrying significant quantities of alcoholic beverages. *Id.*

7. One of the males, who later was determined to be 17 years old, produced a fake Pennsylvania driver's license. *Id.* The picture on the identification was not the picture of the person who had presented it and the identification had expired on October 5, 2010. *Tr.* at 85-86. In addition, the identification had two punched holes through the identification's bar code. *Id.*

8. The other male, who was later determined to be 18 years old, produced a valid identification that stated that he was under 21 years of age. *Id.*

9. The alcohol consisted of two cases of beer, a bottle of lager and a bottle of a liqueur. *Tr.* at 89-92. The alcohol was confiscated as evidence against the two minors. *Tr.* at 93.

10. After photographing the alcohol, Investigators Mathieson and Ghenene and one of the MPD officers entered the establishment to speak with the clerk who sold the alcoholic beverages. *Tr.* at 98. The clerk turned out to be Mr. Richard Kim, the owner of the establishment. *Id.*

11. Mr. Kim was informed that the two ABRA investigators would be conducting a regulatory inspection and was advised that he had just sold alcoholic beverages to several minors. *Tr.* at 99. In order to ensure that Mr. Kim understood what he was being told, the MPD officer requested that a member of MPD who spoke Korean respond to the establishment. *Tr.* at 100.

12. Once the MPD officer arrived to translate, the ABRA investigators repeated what they had told Mr. Kim and the officer translated their words into Korean. *Tr.* at 101. Mr. Kim then signed the minor notification form and the regulatory inspection form. *Id.*

13. Mr. Kim stated that he had checked the identification, whereupon he was told by Ms. Mathieson of the problems with the identification. *Id.*

14. Mr. Kim was then placed under arrest by the MPD Officer. *Tr.* at 102.

### **C. Officer William Morrison**

15. Officer William Morrison of the MCPD testified that in November of 2011 a parent at Bethesda Chevy Chase High School notified MCPD that the establishment was selling alcoholic beverages to minors. *Tr.* at 13. At the same time, Officer Morrison testified that during MCPD's investigation of under aged drinking parties in Montgomery County MCPD was informed that the establishment was a good place for minors to purchase alcoholic beverages. *Id.*

16. On January 6, 2012, Officer Morrison parked outside of the establishment in an unmarked car used for undercover operations so that he could view the inside of the establishment. *Tr.* at 17.

17. Officer Morrison stated that he witnessed an individual who appeared to be under age exit from the vehicle, enter the establishment, make a purchase and return to the vehicle with a bottle of vodka, whereupon the vehicle left and began heading towards Maryland. *Id.*

18. Officer Morrison then followed the vehicle from the District of Columbia into Maryland, where he radioed a colleague in a marked vehicle to stop the vehicle. *Tr.* at 18. The vehicle was stopped for exceeding the speed limit. *Id.* The uniformed officer approached the driver's side of the vehicle and asked the occupants for identification. *Id.* The uniformed officer reported back to Officer Morrison that all occupants of the vehicle were under the age of 21. *Id.*

19. Officer Morrison then approached the vehicle and interviewed the passenger whom he had witnessed purchasing the alcohol. *Id.* Officer Morrison asked the passenger for his age and then requested any fake IDs in the passenger's possession. *Id.* The passenger stated that he did not have a fake ID and did not need identification when purchasing alcohol from the establishment since the establishment had never asked for identification when he had purchased alcohol at the establishment. *Id.* All occupants of the vehicle were cited for illegally being in possession of alcohol. *Id.*

20. On January 13, 2012, Officer Morrison again parked outside of the establishment in an unmarked car used for undercover operations so that he could view the inside of the establishment. *Transcript* at 26. Officer Morrison stated that he witnessed an individual who appeared to be under age exit from the rear of the vehicle, enter the establishment, make a purchase and return to the vehicle with a bottle of vodka, whereupon the vehicle left and began heading towards Maryland. *Tr.* at 27.

21. Officer Morrison then followed the vehicle from the District of Columbia into Maryland, where he radioed a colleague in a marked vehicle to stop the vehicle. *Id.* The uniformed officer approached from the driver's side of the vehicle while Officer Morrison approached from the passenger side. *Id.* at 28. All occupants produced driver's licenses indicating that they were minors. *Id.* Additionally, all occupants admitted to being under the age of 21. *Id.* Officer Morrison asked the backseat passenger who had purchased the alcohol to produce a fake ID. *Id.* However, the passenger stated that he did not have one and that he did not need one to purchase the bottle of vodka. *Id.* A search of the vehicle and the passenger did not turn up any fake IDs. *Id.* All occupants of the vehicle were cited for illegally being in possession of alcohol. *Id.*

22. Officer Morrison also testified that, in all of the traffic stops conducted during the operation, no fake IDs were ever found. *Tr.* at 31. Officer Morrison further testified that in all of the traffic stops in which he was involved, the individuals stated that they did not have to show identification in order to purchase the alcohol and that the establishment was known as the place to purchase alcohol if you were under aged. *Tr.* at 35. One individual received three citations in a six-week period, all involving the possession of alcoholic

beverages purchased from the establishment. *Tr.* at 36-37. Officer Morrison also testified that he never observed anyone who appeared to be of legal age entering the establishment during the time when he conducted surveillance at the establishment. *Tr.* at 38.

**D. Sergeant Mark White**

23. Sergeant Mark White of MCPD testified that he was in charge of the Alcohol Initiative Section within the Traffic Section. *Transcript* at 45. He testified that the surveillance activity was part of the Department's annual holiday task force that targeted the purchase of alcohol by minors. *Tr.* at 63. This establishment, because of the large amount of alcohol that was being purchased at the establishment, was the Department's biggest focus during this life of the annual holiday task force. *Tr.* at 63.

24. Sergeant White confirmed the information on the background for the operation at the establishment provided by Officer Morrison in his testimony. *Tr.* at 45-60. Sergeant White testified that in the six-week period from late November to early January during which MCPD conducted surveillance activity at the establishment, MCPD issued approximately 30 citations for minors in possession of alcohol from stops carried out involving vehicles that had left and were followed from the establishment. *Tr.* at 56. During those stops, no other alcohol was present in the vehicles other than that purchased from the establishment. *Tr.* at 59. The youngest person who was stopped was 16 years of age. *Tr.* at 66.

25. Sergeant White also testified that, of the alcohol seized by the Department during the operation of the task force, by far the largest amount of alcohol had been purchased at the establishment. *Tr.* at 64-65.

**E. Richard Kim**

26. Mr. Kim testified that he was the only person at the establishment who sold alcoholic beverages during the period in which the sales to minors occurred. *Transcript* at 128-129. He further testified that he did not routinely check whether identifications provided to him had expired. *Tr.* at 130.

27. Mr. Kim remembered that Investigator Lawson had visited with him and told him the differences between an adult driver's license and a minor's driver's license. *Tr.* at 130-132. Regarding the identification check for the sale on February 18<sup>th</sup>, Mr. Kim stated that he did not match the person purchasing the alcohol with the picture on the identification and did not see the two holes punched in the driver's license. *Tr.* at 133.

28. Mr. Kim further testified that he was convicted of the charge of selling alcohol to a minor stemming from the incident on February 18<sup>th</sup>. *Tr.* at 141-142.

## CONCLUSIONS OF LAW

### I. Charge I

We find that the Respondent sold alcohol to patrons under the age of twenty-one in violation of D.C. Official Code § 25-781(a) (1). Under D.C. Official Code § 25-781(a) (1), an establishment may not “[sell] or deliver alcoholic beverages” to “[a] person under 21 years of age, either for the person’s own use or for the use of any other person . . . . Here, the record shows that the establishment sold alcoholic beverages to two minors the day after the owner of the establishment had received training on how to recognize false identification from ABRA investigator Lawson. This is in addition to the voluminous sales of alcohol to minors determined to have occurred by the MCPD. As such, the Respondent is liable for violating D.C. Official Code § 25-781(a)(1).

### II. Charge II

We find that the Respondent failed to take steps reasonably necessary to ascertain whether the two minors who were sold alcoholic beverages were of legal drinking age, in violation of D.C. Official Code § 25-783(b). Under D.C. Official Code § 25-783(a), “[a] licensee shall refuse to sell, serve, or deliver an alcoholic beverage to any person who, upon request of the licensee, fails to produce a valid identification document.” Here, the record shows that one of the patrons who was sold alcohol possessed a fake Pennsylvania driver’s license with a picture that did not match the person who had presented it. Moreover, the identification had expired over a year prior to it being presented to the owner of the establishment and had two punched holes through the identification’s bar code, a further indication that it was invalid. The record also establishes that the other patron had produced a valid identification that stated that he was under 21 years of age and was printed in the vertical format that is issued to a driver who is under the legal age for the purchase of alcoholic beverages. As such, the Respondent is liable for violating D.C. Official Code § 25-783 (b).

### III. Penalty

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

We find that the violation of D.C. Official Code § 25-781(a)(1) is egregious, and does not merit the warning provided for in D.C. Official Code § 25-830(e)(1).

The Board has defined an egregious sale to minor violation as one in which the licensee “(1) sold or served an alcoholic beverage to a minor who was unable to produce a valid identification after a request from the licensee to do so, or (2) intentionally sold an alcoholic beverage to a minor.” 23 DCMR § 807.1. The courts define general intent “as the intent to do the prohibited act.” *Morgan v. District of Columbia*, 476 A.2d 1128, 1132 (D.C. 1984). Further, in determining intent, “the existence of [a] required state of mind is

to be determined subjectively” through inference. *Bethea v. U.S.*, 365 A.2d 64, 87 (D.C. 1976).

We find that the establishment intended to sell alcoholic beverages to minors on February 18, 2012. The record shows that two underage patrons either presented identification that was clearly false or that indicated that the person was not of an age to legally purchase alcoholic beverages. Nevertheless, they were sold large quantities of alcoholic beverages and allowed to leave the establishment with their purchases. Moreover, as the record indicates, the establishment had an established practice of blatantly ignoring the law and selling alcoholic beverages to minors regardless of whether they presented valid identification or, in some cases, any identification. It is inconceivable that an establishment would continue to carry out a cursory inspection of identification and allow for sales to minors on the day after ABRA took it upon itself to educate the owner of the establishment on how to thoroughly check identification and to spot fake identification. We find this behavior to be egregious and unwarranted.

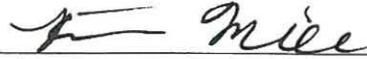
Under the alcoholic beverage control laws, the maximum penalty for a first-time sale to minor offense is a suspension of five days and a \$3,000 fine. D.C. Official Code § 25-781(f)(1). Furthermore, the maximum penalty for a first time failure to reasonably ascertain the validity of identification in order to determine whether the person is of legal drinking age is a suspension of five days and a fine of \$2,000. D.C. Official Code § 25-783(c)(1). Based on the egregiousness of the offense, we find that the maximum penalty is an appropriate punishment for the Respondent.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 27th day of March 2013, finds that the Respondent, R & J, 24 Liquors, Inc., t/a Town Square Market, violated D.C. Official Code §§ 25-781(a)(1) and 25-783(b). The Board hereby **ORDERS** that:

- (1) The Respondent shall pay a fine in the amount of \$5,000 by no later than thirty (30) days from the date of this Order;
- (2) The Respondent shall receive a suspension of its license for ten (10) days, to be served beginning on April 22, 2013 through May 2, 2013;
- (3) The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

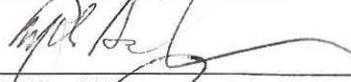
District of Columbia  
Alcoholic Beverage Control Board



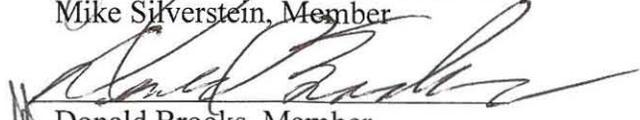
Ruthanne Miller, Chairperson



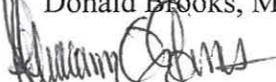
Nick Alberti, Member



Mike Silverstein, Member



Donald Brooks, Member



Herman Jones, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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 under 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).