
NC Alcoholic Beverage Control Commission,)	
Petitioner)	
)	
v.)	FINAL DECISION
)	
Tecleab Maasho,)	
T/A Central Mini Mart,)	
Respondent)	

This contested case was heard before Donald W. Overby, Administrative Law Judge, Office of Administrative Hearings, on June 26, 2012, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: K. Renee Cowick, Esq.
 NC Alcoholic Beverage Control Commission
 Raleigh, NC

For Respondent: Robert K. Padovano, Esq.
 Padovano & Zillioux
 Raleigh, NC

ISSUES

Whether Respondent’s employee, Berhanu Maru, sold a malt beverage to Austin Taylor, a person less than 21 years old, while on the licensed premises, on or about January 6, 2012, at 9:00 PM, in violation of G.S. §18B-302(a)(1).

FINDINGS OF FACT

1. Respondent has held permanent ABC permits issued by Petitioner since 2010 for an establishment located at 1300 Oakwood Avenue, Raleigh, North Carolina.
2. Austin Taylor’s date of birth is November 29, 1991, making him 20 years of age on January 6, 2012.
3. Austin Taylor had been to Respondent’s establishment on several occasions prior to January 6, 2012, and typically purchased tobacco products.
4. At approximately 9:00 PM on January 6, 2012, Alcohol Law Enforcement Special Agent Aaron Woodlief (“SA Woodlief”) conducted a traffic stop on the vehicle Austin Taylor was driving. The registration plate light was not working.

5. SA Woodlief observed a black plastic bag hanging from the gear stick. Upon further investigation, SA Woodlief discovered an opened 40-ounce bottle of Ice House malt beverage. Austin Taylor admitted to purchasing the malt beverage around 6:30 or 7:00 PM earlier in the evening.

6. After further conversation, SA Woodlief determined that Austin Taylor's description of the establishment and the employee matched that of Respondent's establishment and employee Berhanu Maru. Austin Taylor identified Mr. Maru by the name "Solomon", a name by which Mr. Maru is sometimes known. He also identified Mr. Maru as wearing a cap and that he would always wear a cap. Austin Taylor was adamant in his identification of Mr. Maru as being the person who sold him alcohol.

7. SA Woodlief had worked in that particular area of Raleigh for approximately two years and knew the employees of Respondent's establishment to be the Respondent, Tecleab Maasho, and Respondent's nephew, Berhanu Maru.

8. Austin Taylor agreed to and did drive to the location where he purchased the malt beverage with SA Woodlief following in his own vehicle. Austin Taylor led SA Woodlief to Respondent's establishment.

9. Austin Taylor testified he has never tried to purchase alcoholic beverages from any establishment except Respondent's.

10. Austin Taylor and SA Woodlief entered Respondent's establishment. Berhanu Maru was working behind the counter and was wearing a Boston Red Sox baseball cap, consistent with Austin Taylor's description. Austin Taylor indicated to SA Woodlief that Berhanu Maru was the person who had sold the malt beverage to him and then left the premises.

11. SA Woodlief spoke with Berhanu Maru and told him about the sale of the malt beverage to Austin Taylor earlier that evening. SA Woodlief issued a criminal citation to Berhanu Maru. At the time SA Woodlief was talking with Mr. Maru, Mr. Maru did not raise an issue about the time of the sale to Austin Rivers or that he was not working at that time.

12. On January 9, 2012, at approximately 4:00 PM, SA Woodlief returned to Respondent's establishment to inform Respondent of the events of January 6, 2012. Respondent acknowledged Berhanu Maru had already informed him.

13. Respondent allowed SA Woodlief to view the video surveillance system. SA Woodlief was unable to find recordings of events for January 6, 2012 and January 8, 2012. SA Woodlief did find recordings labeled January 7, 2012 and January 9, 2012.

14. Although both Respondent and Berhanu Maru testified, neither could provide an explanation as to what happened to the recordings for January 6, 2012, and January 8, 2012. Respondent and Berhanu Maru are the only employees of this store, except on occasion someone will come in for temporary help. No one else was working on the date in question.

15. Austin is found to have been a credible witness, whereas Respondent and Berhanu Maru were not credible.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings has jurisdiction in this matter.
2. Petitioner has demonstrated by a preponderance of the evidence that Respondent's employee, Berhanu Maru, sold a malt beverage to Austin Taylor, a person less than 21 years of age, while on the licensed premises, on or about January 6, 2012, in violation of G.S. §18B-302(a)(1).

FINAL DECISION

Based upon the foregoing, Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge determines that the Respondent's ABC permits be suspended for a period of seven-days and a monetary penalty of \$500.00 be imposed (on dates to be determined at a regularly scheduled monthly ABC Commission meeting).

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This is the 5th day of July 2012.

Donald W. Overby
Administrative Law Judge