

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

In the Matter of:)	
)	
Barcode Corporation)	License No.: 82039
t/a Barcode)	Case No.: 12-CMP-00112
)	Order No.: 2013-006
)	
)	
Holder of a Retailer's Class CT License)	
at premises)	
1101 17th Street, N.W.)	
Washington, D.C. 20036)	

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

ALSO PRESENT: Barcode Corporation, t/a Barcode, Respondent

Chrissy Gephardt, Esq., Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

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

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), dated July 11, 2012, served on Barcode Corporation, t/a Barcode (Respondent), located at premises 1101 17th Street, N.W., Washington, D.C., on July 19, 2012. The Notice charged the Respondent with the following violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

Charge I: You violated D.C. Official Code § 25-725(a) (2009) by producing noise or music of such intensity that it could be heard in a premises other than the licensed establishment, specifically, in a premises located in the SP-2 zone

On Sunday, March 4, 2012, at approximately 1:18 a.m., a noise complaint was received on the ABRA Hotline regarding your establishment. An ABRA Investigator visited the complainant, who resides down the street from your establishment in the SP-2 zone, per the zoning regulations When the Investigator arrived, he heard low levels of music and bass inside the complainant's residence. According to the Investigator, the noise was audible while standing in front of the window. The complainant informed the Investigator that he has double-paned windows which help to buffer the noise. At approximately 1:30 a.m., the Investigator visited your establishment and advised you of the violation and to lower the music volume. While in your establishment, the Investigator observed a DJ and the front doors and windows open. The Investigator met with ABC Manager Arman Amirshahi, and advised him that low levels of music could be heard inside the complainant's residence and to lower the volume. Mr. Amirshahi complied and gave his contact information to the Investigator so that the complainant could call your establishment for future complaints.

ABRA Show Cause File No., 12-CMP-00112, Notice of Status Hearing and Show Cause Hearing (Jul. 11, 2012).

The Government and the Respondent appeared before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on August 25, 2012. The Board conducted the Show Cause Hearing in this matter on November 7, 2012. At the Show Cause Hearing, the parties stipulated to facts contained in the Notice. *Transcript (Tr.)*, November 7, 2012 at 5-6.

Based on the stipulated facts, we find that the Respondent violated § 25-725 of Title 25 of the District of Columbia (D.C.) Official Code, on March 4, 2012, by generating noise that was audible in a residential premises located in an SP-2 zone. Under § 25-725, "The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any . . . [m]echanical device . . . for amplification of the human voice or any sound or noise." D.C. Code §25-725(a), (a)(1) (West Supp. 2012). We further note that under § 25-725(b)(3), § 25-725 does not apply to "Any premises other than the licensed establishment which are located within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District." § 25-725(b)(3).

The Respondent argues that we should include SP-2 zones into the exception in § 25-725(b)(3), because such zones permit similar commercial activity. *Tr.*, 11/7/12 at 16. We reject this argument, because § 25-725(b)(3) is clear and unambiguous on its face; namely, only C-1, C-2, C-3, C-4, C-M, and M zones, and no other zones, are exempted from the noise prohibition created by § 25-725. For this reason, under the facts stipulated by the parties, we find that the Respondent's activities on May 4, 2012, constitute a violation of § 25-725.

Nevertheless, we issue a warning for this violation, because SP-2 zones permit commercial activity similar to a C-1 zone, the noise heard in the complainant's home was

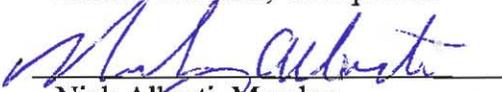
minimally invasive, and the Respondent acted quickly to remedy the violation upon learning that noise from the establishment could be heard in a residence. See Respondent's Exhibit No. 3. We urge the Respondent to take greater care to monitor the noise generated by the establishment in order to avoid disturbing residents in the future.

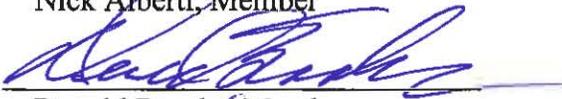
ORDER

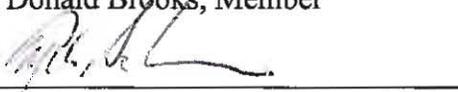
Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of January 2012, issues a **WARNING** to Barcode Corporation, t/a Barcode, for the violation of D.C. Official Code § 25-725 described in Charge I. The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, 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, Reeves Center, 2000 14th Street, N.W., 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, District of Columbia 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).