

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

<b>In the Matter of:</b>	)	
	)	
Zanzibar on the Waterfront, Inc.	)	
t/a Zanzibar on the Waterfront	)	License No. 26504
	)	Case No. 09-251-00142
Holder of a CN License	)	Order No. 2010-034
at premises	)	
700 Water Street, S.W.	)	
Washington, D.C.	)	
	)	

**BEFORE:** Charles Brodsky, Chairperson  
Mital M. Gandhi, Member  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member

**ALSO PRESENT:** Michel Daley, on behalf of the Respondent

Louise Phillips, Assistant Attorney General  
District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

On July 7, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Summary Suspension on Zanzibar on the Waterfront, Inc., t/a Zanzibar on the Waterfront (Respondent) located at premises 700 Water Street, S.W., Washington, D.C., suspending the Respondent's license. Specifically, the Notice of Summary Suspension resulted from a Notice of Closure issued by Cathy L. Lanier, Chief of Police, Metropolitan Police Department for the District of Columbia (MPD) that closed the establishment for 96 hours starting at 6:00 p.m. on July 1, 2009.

The Summary Suspension Hearing came before the Board on July 8, 2009 in accordance with D.C. Official Code § 25-601 (2001) at which time the Board suspended the license until two conditions were met to the satisfaction of the Board; namely that the Respondent would upgrade its camera security system and it would retain MPD Reimbursable Detail. The Board also ordered the matter to the Office of the Attorney

General to Show Cause. The Respondent met the Board's two conditions on July 16, 2009, and the Board lifted the suspension of the license at that time.

On September 4, 2009, the Board served a Notice of Status Hearing and Show Cause Hearing dated September 3, 2009, on the Respondent charging the Respondent with the following violations:

- Charge I: The Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose in violation of D.C. Official Code § 25-823(2). The date of this alleged incident was July 1, 2009.
- Charge II: The Respondent violated a Board Order issued on August 18, 2008 in violation of and which the Board may take the proposed action pursuant to D.C. Official Code § 25-201 (7), § 25-801 (a) and § 25-823 (6) (2001). The date of this alleged incident was July 1, 2009.
- Charge III: The Respondent violated a Board Order issued on August 18, 2008 in violation of and which the Board may take the proposed action pursuant to D.C. Official Code § 25-201 (7), § 25-801 (a) and § 25-823 (6) (2001). The date of this alleged incident was July 1, 2009.
- Charge IV: The Respondent failed to failed to comply with conditions the Board placed upon the establishment's license through the Security Plan, dated October 2008, in violation of D.C. Official Code § 25-447 (2001). The date of this alleged incident was July 1, 2009.
- Charge V: The Respondent failed to comply with conditions the Board placed upon the establishment's license through the Security Plan, dated October 2008, in violation of D.C. Official Code § 25-447 (2001). The date of this alleged incident was July 1, 2009.
- Charge VI: The Respondent failed to comply with conditions the Board placed upon the establishment's license through the Security Plan dated October 2008 in violation of D.C. Official Code § 25-447 (2001). The date of this alleged incident was July 1, 2009.

The matter proceeded to a Show Cause Hearing on January 20, 2010, where the Government moved and the Respondent agreed, to the admission of the transcript from the Summary Suspension Hearing dated July 8, 2009. No further testimony of witnesses was offered and the parties proceeded to oral argument regarding the recommended penalty. The Board took administrative notice of the July 8, 2009 Summary Suspension Hearing transcript, considered the arguments of counsel, and the documents comprising the Board's official file, and made the following:

## FINDINGS OF FACT

1. The Board issued a Notice of Summary Suspension (Notice) dated July 7, 2009, to the Respondent. The Respondent holds a Class CN Retailer's License located at 700 Water Street, S.W., Washington, D.C. (*See* Summary Suspension Case File No. 09-251-00142; ABRA Licensing File No. 26504).
2. The Board held a Summary Suspension Hearing on that Notice on July 8, 2009. (*See* Summary Suspension Case File No. 09-251-00142). The Notice of Summary Suspension was issued as a result of a written request from MPD Chief Lanier to the Board, based upon a report of a stabbing that happened inside the licensed establishment on July 1, 2009. (*See* Summary Suspension Case File No. 09-251-00142). On July 8, 2009 at the conclusion of the Summary Suspension hearing, the Board suspended the Respondent's CN license indefinitely and ordered the matter to the Attorney General for Show Cause. (*See* Summary Suspension Case File No. 09-251-00142).
3. On January 20, 2010, the matter proceeded to a Show Cause Hearing where the Government moved and the Respondent agreed, to the admission of the transcript from the Summary Suspension Hearing dated July 8, 2009. *Transcript, January 20, 2010* (hereinafter *Tr.*) at 4, 9-10; *See* Government Exhibit No. AA.) No further testimony of witnesses was offered and the parties proceeded to oral argument regarding the recommended penalty. *Tr.* at 4.
4. The Respondent acknowledged that one of the goals of the Board is to ensure that when a licensee violates a law or a regulation, the licensee does not repeat the violation in the future. *Tr.* at 12-13. He stated that one of the ways to prevent recurring bad behavior is for the Board to impose a penalty that creates a hardship or inconvenience for the licensee. *Tr.* at 13.
5. The Respondent believes that the Board has already levied a sufficient punishment as a result of the Summary Suspension Hearing and argues that the Board does not need to do anything further. *Tr.* at 13. For instance, while the Board did not fine the Respondent during the suspension period, the establishment lost over \$250,000 in revenue while the nightclub was closed. *Tr.* at 13. The Respondent stated that this revenue loss would be greater than any fine imposed by the Board. *Tr.* at 13. The establishment has not yet recovered from this financial loss due to the fact that the fixed costs such as the mortgage and insurance had to be paid during the establishment's closure. *Tr.* at 14.
6. The Respondent also asked the Board to not further suspend the license because it was already suspended for 23 days following Chief Lanier's original closure and the subsequent suspension imposed by the Board. *Tr.* at 14. In support of this consideration, he argued that the business was never intended to be used for unlawful or disorderly purposes. *Tr.* at 14.

7. More importantly, the Respondent states that he has fully complied with the Board's requirements that he install and upgrade the camera security system and he now engages MPD Reimbursable Detail each night the establishment is open after 11:00 p.m. *Tr.* at 14. The request for MPD Reimbursable Detail is made five days in advance of when it is needed. *Tr.* at 15; *See* Licensee's Exhibit No. 1. The Respondent has also released its former Security Director and he has hired a new professionally trained security team. *Tr.* at 15. The security team pats down each guest before they are allowed to enter and they use metal wand detectors when warranted. *Tr.* at 16. Lastly, the Respondent stated that they have completely revamped the establishment's security manual. *Tr.* at 16. Given its current compliance evidenced by the improvements made to the establishment, the Respondent argues that the Board has achieved its goal and any further penalty would be redundant and excessive. *Tr.* at 16.

8. The Government argued that the Respondent's eventual efforts to come into compliance with a Board Order issued August 13, 2008 falls short of the Board's expectations. *Tr.* at 16. The fact that it took 23 days from the summary suspension, which was 11 months after the initial Board Order requiring the Respondent to upgrade its security system and to engage MPD Reimbursable Detail, is telling. *Tr.* at 18. The very reason for the Summary Suspension Hearing in July 2009 is because the Respondent failed to comply with the 2008 Board Order. *Tr.* at 18.

9. The Government argued that the fact the Respondent lost sizable revenue during the 23 days suspension is unfortunate, but it took him 11 months to come into compliance with the 2008 Board Order. *Tr.* at 19. Any hardship incurred by the Respondent is solely a result of their failure to do what the Board ordered in 2008. *Tr.* at 20. Thus the Government argues, their noncompliance still dictates that the Board impose a fine and additional suspension of the license. *Tr.* at 20. The Government recommends that the establishment be fined \$9,500 and receive a 17 day suspension with all of those days stayed for one year pending no further violations. *Tr.* at 21.

## CONCLUSIONS OF LAW

10. 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)(2001). 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.*

11. The Board takes administrative notice of the summary suspension hearing transcript dated July 8, 2009. As a result of that summary suspension hearing, the Board finds that the Government has proven that the Respondent violated D.C. Official Code and failed to comply with Board Order No. 2008-248 dated August 13, 2008. The Board agrees with the Government that if the Respondent had complied with the original requirement for an upgraded security system and the use of the MPD Reimbursable Detail, the Summary Suspension Hearing may never have taken place and the Respondent only has itself to blame for its failure to come into compliance sooner. At the same time, the Board does recognize that the Respondent is fully in compliance now

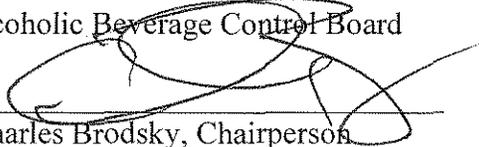
with those two previously ordered conditions and that the original 23 day suspension did serve its purpose to ensure compliance.

### ORDER

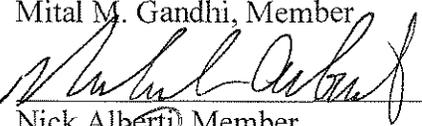
Based on the foregoing findings of fact and conclusions of law, the Board, on this 24th day of February, 2010, finds that the Respondent, Zanzibar on the Waterfront, LLC t/a Zanzibar on the Waterfront at premises 700 Water Street, S.W., Washington, D.C., holder of a Retailer's Class CN License, violated D.C. Official Code and Board Order No. 2008-248 dated August 13, 2008. The Board hereby **ORDERS** that:

1. The Respondent shall pay a fine in the amount of \$5,000.00 by no later than sixty (60) days from the date of this Order. A total of 17 days suspension of the license shall be stayed for one year, provided that the Respondent does not commit any ABC violations.

District of Columbia  
Alcoholic Beverage Control Board

  
Charles Brodsky, Chairperson

\_\_\_\_\_  
Mital M. Gandhi, Member

  
Nick Alberti, Member

  
Donald Brooks, Member

\_\_\_\_\_  
Herman Jones, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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).