

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

In the Matter of:)	
)	
Café Dupont, LLC)	License No.: 60138
t/a Café Citron)	Case Nos.: 10-251-00245
)	11-251-00146
)	Order No.: 2012-148
Holder of a Retailer's Class CR License)	
at premises)	
1343 Connecticut Avenue, N.W.)	
Washington, D.C. 20036)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member
Jeannette Mobley, Member

ALSO PRESENT: Café Dupont, LLC, t/a Café Citron, Respondent

Andrew Kline, Non-Lawyer Representative, 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

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

On August 30, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated August 3, 2011, on Café Dupont, LLC, t/a Café Citron, (Respondent) at premises 1343 Connecticut Avenue, N.W., Washington, D.C. The Notice charged the Respondent, in Case Numbers 10-251-00245 and 11-251-00146, with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

Charge I: On April 27, 2011, the Respondent allowed the establishment to be used for an unlawful and disorderly purpose in violation of District of Columbia Official Code § 25-823(2).

Charge II: On April 27, 2011, the Respondent violated its security plan in violation of District of Columbia Official Code § 25-823(6) by not complying with the plan's uniform and radio requirements, intoxicated patron assistance procedures, minimum security staff requirements, and procedures for contacting the Metropolitan Police Department (MPD) after witnessing an act of violence.

Charge III: On October 9, 2010, the Respondent violated its security plan by failing to immediately contact the police in violation of District of Columbia Official Code § 25-823(6).

The Board held the Show Cause Hearing regarding the charges on January 25, 2011.

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

FINDINGS OF FACT

I. Security Plan

1. The establishment's security plan on April 27, 2011, contained the following provisions:

All security personnel shall be attired in their uniform, must carry a flash light [sic] and a security radio

Unruly Patrons

. . . . When a patron acts in a manner that is violent, abusive, indecent, profane, boisterous, or otherwise disorderly; licensee will immediately contact the police and request that the police invoke the provisions of the [unruly patron ordinance].

Circumstances under which the Police will be called

The police will be called, in a timely manner, any time management or staff has information to believe a crime has been or is about to be committed; and/or whenever a threat or act of violence occurs on premises.

Handling of Physical Disturbances, including Fights

Security or management will ask anyone who is fighting to leave. If necessary, security or management will call the local enforcement agency for assistance.

Case Report No. 11-251-00146, Security Plan 1, 3.

II. April 27, 2011

2. On Wednesday, April 27, 2011, intoxicated patrons, David Lopez-Carr and Michael Meehan, were ejected from Café Citron. Case Report No. 11-251-00156, Exhibit No. 17. Mr. Lopez-Carr and Mr. Meehan walked away from the establishment, but returned shortly after their ejection in order to obtain the personal effects that they had left inside the premises. Id. Jason Mullen, the establishment's bartender, obtained their personal effects and gave them to Phillip Cohen, a manager, who then gave the items to Mr. Lopez-Carr and Mr. Meehan. Id. at 15, Exhibit No. 17.

3. Video footage then shows Mr. Mullen, without provocation, begin to push Mr. Lopez-Carr and Mr. Meehan away from the establishment. Id. at 15. Subsequently, the video footage shows Mr. Cohen and Marlhon Lucero, the establishment's security manager, quickly joining Mr. Mullen. Id.

4. Once out of camera view, it is clear that, at the very least, Mr. Mullen punched both Mr. Meehan and Mr. Lopez-Carr. Id. at 8. Then, either Mr. Mullen or Mr. Lucero kicked or stomped on Mr. Meehan's face. Id. at 8, Exhibit No. 3. We base this conclusion on the false statements Mr. Lucero and Mr. Cohen made to the police in order to hide the identity of Mr. Mullen by claiming that he was a random patron, as well as Investigator Lawson's Case Report. Id. at 7-8; Exhibit Nos. 17-18.

5. After the fight, Mr. Cohen, Mr. Mullen, and Mr. Lucero left Mr. Lopez-Carr and Mr. Meehan unconscious in the street, and returned to the establishment. Id. at 15. The video does not show Mr. Cohen and Mr. Lucero contacting the police. Id. at 8, 15. In addition, the video shows Mr. Mullen fleeing the establishment in a taxi. Id. at 15-16.

6. The establishment's video on the night of April 27, 2011, also shows that Mr. Cohen and Mr. Lucero were not wearing uniforms and did not possess security radios. Case Report No. 11-251-00156, 15.

III. October 9, 2010

7. On October 9, 2010, around 2:35 a.m., Metropolitan Police Department (MPD) Master Patrol Officer Shannon Williams received a radio report from the MPD dispatcher. *Transcript (Tr.)*, January 25, 2012 at 20. The dispatcher informed Officer Williams that an incident occurred on the 1300 block of Connecticut Avenue, N.W. *Tr.*, 1/25/12 at 20. Officer Williams, along with Officer Florence Spain, responded to the incident, and proceeded to the location indicated by the dispatcher. *Tr.*, 1/25/2012 at 18-19.

8. Upon arriving at 1343 Connecticut Avenue, N.W., Officer Williams observed a man in an ambulance with a restraint placed on his head. *Tr.*, 1/25/2012 at 20, 24, 86. The ambulance crew told her that witnesses to the incident told them that one of the Respondent's bouncers had pushed the man they were treating. *Tr.*, 1/25/2012 at 20, 24. The crew further told Officer Williams that witnesses stated that the man became unconscious after his head slammed into the

pavement. *Tr.*, 1/25/2012 at 20, 24. Based on witness statements, the ambulance crew described the aggressor as bald and wearing a black button-up shirt. *Tr.*, 1/25/2012 at 26. The crew of the ambulance also noted that the victim had consumed alcohol. *Tr.*, 1/25/2012 at 87.

9. The Respondent did not inform MPD of the incident that occurred outside of the establishment. *Tr.*, 1/25/2012 at 22-23. As a result, MPD did not know about the incident until the ambulance requested MPD assistance in order to help control the victim. *Tr.*, 1/25/2012 at 23, 88.

10. After interviewing the crew of the ambulance, Officer Williams then proceeded to enter the establishment. *Tr.*, 1/25/2012 at 25. Upon entering the establishment, Officer Williams requested identification from the establishment's bartender. *Tr.*, 1/25/2012 at 27. In addition, one of the establishment's female managers was inside the establishment as well. *Tr.*, 1/25/2012 at 27.

11. Officer Williams attempted to interview the bartender and the establishment's manager; however, the bartender did not cooperate with the investigation. *Tr.*, 1/25/2012 at 28. The bartender refused to answer questions about the establishment's bouncer, and stated, "We don't have to disclose that information to you." *Tr.*, 1/25/2012 at 28. The bartender then told the female manager that she did not have to speak to the officer, and stated, "Nobody has to cooperate with this." *Tr.*, 1/25/2012 at 33. Officer Williams asked to speak with the rest of the establishment's employees, but the bartender began telling employees that they could leave the establishment. *Tr.*, 1/25/2012 at 79, 100. Instead of speaking with Officer Williams, the other employees shut the establishment's music off, cleared the establishment of patrons, and left the premises. *Tr.*, 1/25/2012 at 102, 105. The female manager walked away as well. *Tr.*, 1/25/2012 at 108. Officer Williams then contacted MPD's dispatcher and requested that the Alcoholic Beverage Regulation Administration (ABRA) respond to the incident. *Tr.*, 1/25/2012 at 33.

12. Officer Williams left the establishment, and then went to the hospital to interview the victim. *Tr.*, 1/25/2012 at 38. The hospital's medical staff informed Officer Williams that the victim had to have a brain scan due to the head injury. *Tr.*, 1/25/2012 at 38.

13. MPD's dispatcher also provided Officer Williams with the phone number of Brandon James. *Tr.*, 1/25/2012 at 36. Mr. James witnessed the incident outside the Respondent's establishment, and he contacted emergency medical services on behalf of the victim. *Tr.*, 1/25/2012 at 36, 46, 73. Officer Williams called the witness, and spoke with him on the telephone. *Tr.*, 1/25/2012 at 40. The witness confirmed the events described by the crew of the ambulance. *Tr.*, 1/25/2012 at 40.

14. On October 9, 2010, ABRA Supervisory Investigator Craig Stewart received a call to respond to the establishment. *Tr.*, 1/25/2012 at 136. A few minutes after the call, Supervisory Investigator Stewart received a call from the Respondent's female manager, Stacie Courbois. *Tr.*, 1/25/2012 at 136. Supervisory Investigator Stewart, along with ABRA Investigator Tyrone Lawson, arrived at the establishment around 3:40 a.m. *Tr.*, 1/25/2012 at 137, 150.

15. MPD did not receive a call for service for an incident at 1343 Connecticut Avenue, N.W., until 5:04 a.m. on October 9, 2010. Case Report No. 10-251-00245, Exhibit No. 8.

CONCLUSIONS OF LAW

16. 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 District of Columbia 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. Code § 25-830 (West Supp. 2012); 23 DCMR § 800, *et seq.* (West Supp. 2012).

I. Factual Findings

17. The Board based its factual findings on the substantial evidence contained in the record. 23 DCMR § 1718.3 (West Supp. 2012). The courts define substantial evidence as evidence that “reasonable minds might accept as adequate to support the [Board’s] conclusions.” 2641 Corp. v. District of Columbia Alcoholic Beverage Control Bd., 950 A.2d 50, 52 (D.C. 2008) *citing* Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1387 (D.C. 1977).

II. Charge I

18. We first find that the Respondent allowed its establishment to be used for an unlawful and disorderly purpose in violation of § 25-823(2) on April 27, 2011.

19. Under the law, a licensee may not “allow[] their establishment to be used for any unlawful or disorderly purpose.” D.C. Code § 25-823 (West Supp. 2012). The District of Columbia Court of Appeals has affirmed the Board’s authority to find a licensee liable for violating § 25-823(2) where a licensee’s “method of operation, continued over time, harbor[s] sufficient danger of mischievous consequences sooner or later. . . .” Am-Chi Restaurant, Inc. v. Simonson, 396 F. 2d 686, 688 (D.C. Cir. 1968). The Board has also previously found that “a single incident can be sufficient [to find a violation of § 25-823(2)] where the single incident deals with existing patterns and practices at an establishment.” In re Bar Command, LLC, t/a Mirrors, Board Order No. 2008-262, ¶ 18 (D.C.A.B.C.B. Nov. 6, 2008).

20. We note that in Levelle the court affirmed the Board’s revocation of the Licensee’s Retailer’s Class CR License based on a violation of § 25-823(2). Levelle, Inc. v. District of Columbia Alcoholic Beverage Control Board, 924 A.2d 1030, 1039 (D.C. 2007). According to the court, the Board’s decision was proper where the Board concluded that “various incidents were attributable to the lack of training and supervision of petitioner’s security staff, the failure of petitioner to maintain a sufficient number of security personnel, the inadequacy of petitioner’s security plan, petitioner’s failure to fully enforce its security procedures, and petitioner’s failure to properly communicate with police about incidents.” *Id.* at 1037.

21. The Board finds that the Respondent’s employees’ aggressive response to Mr. Lopez-Carr and Mr. Meehan on April 27, 2011, as well as their subsequent actions, appalling and in

violation of § 25-823(2). First, we are convinced that Mr. Cohen, Mr. Lucero, and Mr. Mullen instigated the scuffle by aggressively pushing Mr. Lopez-Carr and Mr. Meehan without justification. Supra, at ¶ 3. Second, we find that punching patrons, and stomping on them once they are down, goes beyond the scope of reasonable and acceptable security practices. Supra, at ¶ 4. Third, we find it reprehensible that the Respondent's staff knocked two patrons unconscious, and made no effort to call emergency services. Supra, at ¶ 5. Fourth, we are simply disgusted that Mr. Cohen and Mr. Lucero attempted to hide the identity of Mr. Mullen by lying to the police, which blatantly interfered with MPD's investigation. Supra, at ¶ 4. Therefore, similar to Levelle, we find that the Respondent is guilty of violating § 25-823(2) based on the unnecessarily violent nature of its employees' actions; the participation of the Respondent's management in the incident; the failure of the Respondent's employees to communicate the incident to the police; and the fact that the Respondent's managers lied to the police about Mr. Mullen's participation in the fight.

II. Charge II

22. We further find that the Respondent violated the terms of its security plan on April 27, 2011.

23. Section 25-823(6) requires an establishment to abide by the terms of its security plan. D.C. Code § 25-823(6) (West Supp. 2012). Here, the Respondent's security plan states, "All security personnel shall be attired in their uniform, must carry a flash light [sic] and a security radio" Supra, at ¶ 1. The plan then states, ". . . When a patron acts in a manner that is violent, abusive, indecent, profane, boisterous, or otherwise disorderly; licensee will immediately contact the police and request that the police invoke the provisions of the [unruly patron ordinance]." Id.

24. Here, the evidence shows that the establishment did not abide by the terms of its security plan on April 27, 2011. Specifically, the establishment's employees did not wear uniforms or possess radios on the night of the incident. Supra, at ¶ 6. In addition, as noted above, the establishment failed to notify police about the fight with Mr. Lopez-Carr and Mr. Meehan. Supra, at ¶ 5. Therefore, we find the Respondent in violation of § 23-823(6).

III. Charge III

25. Finally, the Board finds that the Respondent violated its security plan on October 9, 2010.

26. As noted above, § 25-823(6) requires an establishment to abide by the terms of its security plan. D.C. Code § 25-823(6) (West Supp. 2012). Here, the Respondent's security plan states, "The police will be called, in a timely manner, any time management or staff has information to believe a crime has been or is about to be committed; and/or whenever a threat or act of violence occurs on premises." Supra, at ¶ 1.

27. We find that the Government has shown through substantial evidence that the Respondent failed to contact the police on October 9, 2010. Here, the Respondent's staff pushed the victim. Regardless of whether this action may or may not have qualified as self-defense, the

Respondent had an obligation to report this incident under the terms of its security plan, because the Respondent has an obligation to report any act of violence or threat of violence in a timely manner. Id. Yet, considering that MPD did not have a record of a call until after 5:00 a.m., approximately three hours after the incident occurred, there is no indication that the establishment called for police assistance within a reasonable amount of time after the incident occurred. Supra, at ¶¶ 7, 9, 13-15. Therefore, we find that the Respondent violated its security plan on October 9, 2010.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 2nd day of May 2012, finds that the Respondent, Café Dupont, LLC, t/a Café Citron, violated §§ 25-823(2) and 25-823(6). The Board hereby **ORDERS** that

1. The Respondent is liable for Charge I and shall pay a fine of \$2000.00 by no later than thirty (30) days from the date of this Order;
2. The Respondent is liable for Charge II and shall pay a fine of \$2000.00 by no later than thirty (30) days from the date of this Order;
3. The Respondent is liable for Charge III and shall pay a fine of \$2000.00 by no later than thirty (30) days from the date of this Order;
4. The Respondent shall receive a suspension of its license for five (5) days; two (2) days to be served and three (3) days stayed for one year, provided that the Respondent does not commit any additional ABC violations; and
5. The served suspension days shall run from June 8, 2012, through June 9, 2012.

The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



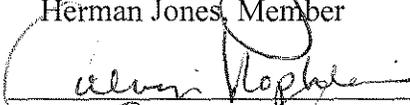
Nick Alberti, Member



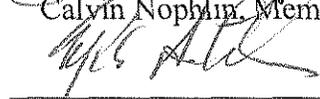
Donald Brooks, Member



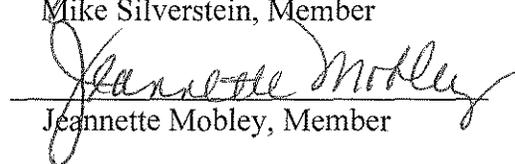
Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member



Jeannette Mobley, Member

I dissent from the position taken by the majority of the Board.



Ruthanne Miller, Chairperson

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).