

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

_____)	
In the Matter of:)	
Bar 9, LLC)	License No. 71156
t/a DC 9)	Case No. 10-251-220
Holder of a Retailer's License)	Order No. 2010-551
Class CN at premises)	
1940 9th Street, N.W.)	
Washington, D.C. 20001)	
Respondent)	
_____)	

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Andrew Kline and Scott Rome,
on behalf of the Respondent, Bar 9, LLC, t/a DC 9

Louise Phillips and Fernando Rivero, Assistant Attorneys 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 SUMMARY SUSPENSION**

On October 19, 2010, the Alcoholic Beverage Control Board (Board), pursuant to D.C. Official Code §§ 25-826 (2008) and 25-827(a) (2005), ordered the suspension of the Retailer's License Class CN held by Bar 9, LLC, t/a DC 9 (Respondent). The suspension was based upon an investigation conducted by Alcoholic Beverage Regulation Administration (ABRA) Investigator Erin Mathieson as the result of a PD-

251, CCN #101 incident report received from the Third District of the Metropolitan Police Department (MPD) pursuant to D.C. Official Code § 25-804(b) (2001).

Additionally, the Board's suspension of the Respondent's license was based upon the written request of Chief of Police Cathy L. Lanier, MPD, dated October 15, 2010, pursuant to D.C. Official Code § 25-827(a), which included a determination made by Chief Lanier that the establishment presented an imminent danger to the health and safety of the residents of the District of Columbia and to visitors to the city. As such, Chief Lanier requested that the Board revoke the Respondent's license. The grounds for the suspension are set forth in the Notice of Summary Suspension, dated October 20, 2010, which was served on the Respondent.

On Wednesday, October 20, 2010, the Respondent requested a summary suspension hearing pursuant to D.C. Official Code § 25-826(c) which was held on November 1, 2010. At the conclusion of the hearing, the Board issued from the bench, on the record and through a formal articulation of the decision and vote, its 6-0 decision to keep the Respondent's license in a summary suspension status for another thirty (30) days based upon the evidence presented at the summary suspension hearing.

At the conclusion of the hearing, the Respondent requested that the Board stay its decision, which the Board denied. The motion fails on its own merits. To prevail on a motion for a stay, petitioners must satisfy the following four-part test: 1) they suffer an imminent threat of irreparable harm should a stay be denied; 2) they have a substantial likelihood of success on the merits; 3) more harm will result to petitioners from the denial of a stay than will result to other parties from the grant of a stay; and 4) the public interest will not be disserved by issuance of a stay. Barry v. Washington Post Co., 529 A.2d 319, 320-21 (D.C. 1987).

The issue before the Board is whether the Respondent poses an imminent danger to the health and safety of the public. In determining that the establishment poses such a danger, staying the Board's decision would run counter to the public interest. As such, the Board denies the Respondent's request.

Additionally, the Board scheduled a second summary suspension hearing for December 1, 2010, pursuant to D.C. Official Code § 25-447(c) (2004) and Title 23 of the District of Columbia Municipal Regulations (DCMR) § 1604 (2008), to consider additional testimony and evidence for purposes of determining whether the license should be suspended beyond December 1, 2010 or revoked.

Accordingly, the Board continued the suspension of the license at the close of the Summary Suspension Hearing and reduces such decision to writing by this Order. The Board considered, in making its decision, the evidence addressed at the hearing, the testimony of the witnesses, the arguments of counsel, the exhibits admitted at the hearing, and the documents comprising the Board's official file.

FINDINGS OF FACT

1. The Respondent holds a Retailer's Class CN License and is located at 1940 9th Street, N.W. (ABRA Licensing File No. 71156.)
2. The Board held a Summary Suspension Hearing on November 1, 2010. (*See* Summary Suspension File No. 10-251-220.) On November 1, 2010, the Board issued from the bench, on the record, and through articulation of the decision and vote, its 6-0 decision to keep the Respondent's license in a summary suspension status and to schedule a further summary suspension hearing, pursuant to D.C. Official Code § 25-447(c) and 23 DCMR § 1604. (*See* Summary Suspension File No. 10-251-220.)
3. The Respondent's Retailer's Class CN License has been suspended since October 19, 2010, when the Board, pursuant to D.C. Official Code § 25-826(a), issued the Notice of Summary Suspension to the Respondent, based upon an investigation conducted by ABRA Investigator Erin Mathieson as a result of a PD-251 incident report received from MPD's Third District pursuant to D.C. Official Code § 25-804(b). (*See* Summary Suspension File No. 10-251-220.)
4. Additionally, the Board's suspension of the Respondent's license was also based upon the written request of Chief of Police Cathy L. Lanier, MPD, dated October 15, 2010, pursuant to D.C. Official Code § 25-827(a), which included a determination made by Chief Lanier that the establishment presented an imminent danger to the health and safety of the residents of the District of Columbia and to visitors to the city. (*See* Summary Suspension File No. 10-251-220.)
5. The Government presented its case through the testimony of one witness, ABRA Investigator Erin Mathieson. *Transcript (Tr.)*, 11/1/10 at 18. The Government also submitted the Case Report written by Investigator Mathieson. (*See* Summary Suspension File No. 10-251-220, Government Exhibit A); *Tr.*, 11/1/10 at 19. The Government also submitted a color photo of the front of the Respondent's establishment. (*See* Summary Suspension File No. 10-251-220, Government Exhibit 8A).
6. The Government called Investigator Erin Mathieson to testify. *Tr.*, 11/1/10 at 19. Investigator Mathieson stated that she initiated an investigation of the Respondent on Friday, October 15, 2010, due to an alleged homicide that occurred near the Respondent's establishment, located at 1940 9th Street, N.W. *Tr.*, 11/1/10 at 23, 25. She was notified by MPD at approximately 9:00 a.m., that there was an alleged homicide near the Respondent's establishment. *Tr.*, 11/1/10 at 23.
7. Investigator Mathieson testified that the Respondent is owned by Joseph Englert, Kyle Ramissong, Brian Diely, and Bill Spieler. (ABRA Licensing File No. 71156), *Tr.*, 11/1/10 at 24, *ABRA Summary Suspension File 10-251-220, Government Exhibit A*.
8. Upon contacting Joseph Englert, one of the owners, regarding the alleged homicide, she was directed by Mr. Englert to Andrew Kline. *Tr.*, 11/1/10 at 25. She

stated that Mr. Kline told her that the Respondent does not currently have a camera system and no video footage of the incident is available. *Tr.*, 11/1/10 at 26. She stated that Mr. Kline said that she could not speak to the ABC Manager on duty the night the alleged homicide occurred or the employees involved because they were being detained by the police in jail. *Tr.*, 11/1/10 at 27. She was also told that she could not enter the establishment until Monday, October 18, 2010, because everyone who was involved in the alleged homicide and had access to the Respondent's property was incarcerated. *Tr.*, 11/1/10 at 28.

9. Investigator Mathieson also interviewed Inspector Angel Medina, MPD, as part of her investigation. *Tr.*, 11/1/10 at 29. According to Investigator Mathieson, Inspector Medina told her that he arrived on the scene over an hour and a half after the alleged homicide occurred. *Tr.*, 11/1/10 at 29.

10. According to Investigator Mathieson, Inspector Medina told her that the decedent, Ali Ahmed Mohammed, attempted to gain entry to the Respondent's establishment. *Tr.*, 11/1/10 at 29; *ABRA Summary Suspension File 10-251-220, Government Exhibit A*. Inspector Medina believes that the decedent was intoxicated. *Tr.*, 11/1/10 at 29. Upon being denied entry by the Respondent's employees, Inspector Medina told Investigator Mathieson that the decedent threw bricks through the Respondent's window. *Tr.*, 11/1/10 at 29. In response, the Respondent's employees chased the decedent up 9th Street, N.W., to around the 2000 block. *Tr.*, 11/1/10 at 29. Inspector Medina told Investigator Mathieson that the Respondent's employees tackled the decedent and kicked him until the decedent became unconscious. *Tr.*, 11/1/10 at 30.

11. Investigator Mathieson further testified that Inspector Medina told her that one of the Respondent's employees flagged down a police cruiser. *Tr.*, 11/1/10 at 30. He noted that an ambulance arrived and transported the decedent to Howard University Hospital. *Tr.*, 11/1/10 at 30.

12. Investigator Mathieson also spoke to Captain Michael Farrish, the lead homicide detective for the homicide investigation. *Tr.*, 11/1/10 at 31. Captain Farrish informed Investigator Mathieson that MPD arrested five people in relation to the alleged homicide. *Tr.*, 11/1/10 at 31.

13. Captain Farrish told Investigator Mathieson that the decedent attempted to gain entry to the Respondent's establishment at 2:30 a.m. *Tr.*, 11/1/10 at 31. Captain Farrish stated that the decedent, who appeared intoxicated, attempted to gain entry to the club after the establishment had closed. *Tr.*, 11/1/10 at 32. Investigator Mathieson noted that Captain Farrish stated that the decedent left the area and then returned to throw bricks through the establishment's window. *Tr.*, 11/1/10 at 32.

14. Captain Farrish told Investigator Mathieson that after the decedent threw a brick through the window, one of the owners began to chase the decedent. *Tr.*, 11/1/10 at 32. He stated that two of the establishment's employees, Arthur Zaloga and Evan Praler, soon followed. *Tr.*, 11/1/10 at 32-33. One of the employees tackled the decedent to the

ground. *Tr.*, 11/1/10 at 32. Captain Farrish then told Investigator Mathieson that five of the Respondent's employees, including the owner, joined in and began to punch and kick the decedent while the decedent was on the ground. *Tr.*, 11/1/10 at 32. Captain Farrish noted that the decedent had a contusion and abrasion on the forehead, a laceration on his upper and lower lip, and bruising on his forearms. *Tr.*, 11/1/10 at 33. Captain Farrish told Investigator Mathieson that the MPD officer who responded found the decedent unconscious and unresponsive. *Tr.*, 11/1/10 at 34.

15. Captain Farrish told Investigator Mathieson that a call had been placed for the destruction of property. *Tr.*, 11/1/10 at 33. He noted that one employee, Damon Dixon, remained in the establishment and did not chase the decedent. *Tr.*, 11/1/10 at 34. Investigator Mathieson testified that she could not interview Mr. Dixon because of the ongoing criminal investigation. *Tr.*, 11/1/10 at 35.

16. Investigator Mathieson then interviewed the responding MPD officer, Officer Brian Morgan. *Tr.*, 11/1/10 at 36, 40. Officer Morgan told Investigator Mathieson that he received a radio run for the destruction of property at the Respondent's establishment. *Tr.*, 11/1/10 at 36. Officer Morgan stated that while responding to the call, Bill Spieler flagged down the officer and told him that he had apprehended the brick thrower. *Tr.*, 11/1/10 at 36-37. Officer Morgan told Investigator Mathieson that after following the owner to the scene, he saw the decedent lying on the ground surrounded by the Respondent's employees. *Tr.*, 11/1/10 at 37. He at first tried to awaken the decedent but when he realized it was "far more serious," he called for a medic and additional MPD support. *Tr.*, 11/1/10 at 37. Officer Morgan stated that the Respondent's employees were cooperative. *Tr.*, 11/1/10 at 37. Investigator Mathieson noted that the police report generated by Officer Morgan indicated that the Respondent had a gun shot wound on his foot. *Tr.*, 11/1/10 at 40.

17. Investigator Mathieson stated that she received another MPD report regarding the destruction of property caused by a person other than the decedent, before she was informed of the homicide. *Tr.*, 11/1/10 at 40, 95. She stated that the destruction of property report indicates that the destruction of property occurred at 2:00 a.m. on October 15, 2010. *Tr.*, 11/1/10 at 41. Investigator Mathieson was also not able to investigate this particular incident because the employees and the owner had been arrested for the other incident. *Tr.*, 11/1/10 at 46. According to Investigator Mathieson, the police report she received states that the suspect punched out the Respondent's window. *Tr.*, 11/1/10 at 46.

18. Investigator Mathieson stated that she reviewed the Respondent's Voluntary Agreement and did not find any violations. *Tr.*, 11/1/10 at 51.

19. Investigator Mathieson further stated that the Respondent has a security plan. *Tr.*, 11/1/10 at 52. She noted that the Respondent's security plan does not list the location of its cameras pursuant to D.C. Code § 25-403 (2008). *Tr.*, 11/1/10 at 52. Investigator Mathieson testified that the security plan submitted by the establishment does not address situations that occur outside the establishment after closing. *Tr.*, 11/1/10 at 53.

Investigator Mathieson stated that the security plan instructs staff to approach problem customers with at least one manager and one security personnel present. *Tr.*, 11/1/10 at 54. She stated that the security plan also instructs employees to verbally warn problem patrons and that should the patron fail to comply with the warning, the problem patron should be escorted off the premises. *Tr.*, 11/1/10 at 54. The security plan instructs employees to use their body stance to help direct problem patrons off the premises so that the establishment does not have to touch the patron. *Tr.*, 11/1/10 at 56. Investigator Mathieson believes that the security plan encourages employees to use verbal commands and body stance instead of touching patrons who are being unruly. *Tr.*, 11/1/10 at 57. Investigator Mathieson noted that the security plan also instructs staff to deny entry to intoxicated persons. *Tr.*, 11/1/10 at 54.

20. Investigator Mathieson stated that she does not believe the establishment violated its security plan. *Tr.*, 11/1/10 at 86. She noted that the establishment was unable to complete its incident log regarding the incident because the employees and owner involved in the alleged homicide were incarcerated. *Tr.*, 11/1/10 at 86. Investigator Mathieson stated that the language in the security plan that referred to escorting patrons out of the establishment only referred to patrons already inside the establishment. *Tr.*, 11/1/10 at 86-87.

21. Investigator Mathieson stated that she included articles from the Washington Post regarding the incident as attachments to her investigative report based on the recommendation of ABRA staff. *Tr.*, 11/1/10 at 62. She stated that no information in her Case Report is from the media articles included in her exhibits. *Tr.*, 11/1/10 at 64.

22. Investigator Mathieson stated that Inspector Medina's information came from speaking with other officers who were on the scene. *Tr.*, 11/1/10 at 65. Inspector Medina did not indicate that he spoke to witnesses. *Tr.*, 11/1/10 at 65.

23. Investigator Mathieson stated that Captain Farrish interviewed two witnesses. *Tr.*, 11/1/10 at 67. Captain Farrish described the locations of the witnesses but he did not identify the witnesses in any other way. *Tr.*, 11/1/10 at 67. According to Investigator Mathieson, Captain Farrish said the first witness was located on 9th Street, N.W., and was able to observe the front of the establishment. *Tr.*, 11/1/10 at 68. Investigator Mathieson was unable to determine how long the witness observed the incident. *Tr.*, 11/1/10 at 68. Captain Farrish also indicated that the second witness he spoke to stated that he was located on U Street, N.W., around the 2000 block, and was close to where the decedent was tackled. *Tr.*, 11/1/10 at 70. Investigator Mathieson did not know the exact location of the second witness. *Tr.*, 11/1/10 at 70. Investigator Mathieson did not contact the witnesses due to the ongoing criminal investigation. *Tr.*, 11/1/10 at 72.

24. Investigator Mathieson stated that the decedent was not a patron of the establishment. *Tr.*, 11/1/10 at 83. She did not have information regarding whether the decedent had entered the establishment at any time before his death. *Tr.*, 11/1/10 at 83.

25. Investigator Mathieson stated that the Respondent has no previous ABRA violations. *Tr.*, 11/1/10 at 93.

26. The Respondent presented its case through the testimony of five witnesses, Joseph Englert, Kathleen Robeson, Joshua Copeland, Getinet Bantayehu, and Abdul Kayoumy. The Respondent also submitted a resignation letter from Mr. Spieler, one of the owners, the establishment's updated security plan, a video interview of Mr. Dixon, and an audio recording of a 911 call. (*See* Summary Suspension File No. 10-251-220, Licensee's Exhibit L-2, Licensee's Exhibit L-3, Licensee's Exhibit L-4); *Tr.*, 11/1/10 at 198, 204, 207.

27. The Respondent called Joseph Englert to testify. *Tr.*, 11/1/10 at 105. Mr. Englert stated that he is a 40 percent owner of the Respondent. *Tr.*, 11/1/10 at 106. He stated that he has been involved in the establishment for the past seven years. *Tr.*, 11/1/10 at 106. In regards to the Respondent, Mr. Englert stated that Mr. Spieler, one of the owners, manages the front-end of the operation, which includes booking bands, DJs, and events. *Tr.*, 11/1/10 at 116. Mr. Englert stated that he provides support regarding pensions, payrolls, management, training, marketing, and financial resources. *Tr.*, 11/1/10 at 116.

28. The Board takes administrative notice that Mr. Englert owns several ABC licensed establishments in the District of Columbia and it also takes notice of the respective investigative histories of those establishments during his ownership. *Tr.*, 11/1/10 at 111-12, 115. While a majority of Mr. Englert's establishments have few to no violations, the Board does note that Lucky Bar was the scene of a simple assault where licensee's staff interfered with an ABRA investigation and for which management agreed to implement new and improved training for all staff. (*See* Fact Finding File No. 10-251-0094.)

29. Mr. Englert stated that he has a specific security philosophy. *Tr.*, 11/1/10 at 117. Mr. Englert stated that he prefers to use the term hosts and ID checkers rather than bouncers. *Tr.*, 11/1/10 at 117. He further stated that his goal is to ensure that all of his customers feel welcome when they enter the establishment. *Tr.*, 11/1/10 at 117-18. Mr. Englert stated that in his establishments he ensures patrons are safe by having his establishments check IDs, employing roving hosts, picking up broken glass, ensuring that the inside is well-lit, avoiding overcrowding, and preventing patrons from being harassed. *Tr.*, 11/1/10 at 118. He stated that he ensures his security philosophy is carried out by hiring the right people, holding trainings, and having meetings. *Tr.*, 11/1/10 at 119.

30. Mr. Englert testified that his partner, Mr. Spieler is a good manager and is very active in the community. *Tr.*, 11/1/10 at 121.

31. Mr. Englert testified that he felt "at ease" about the incident because employees did what they were supposed to: call 911 and secure the establishment. *Tr.*, 11/1/10 at 122. He stated that he does not believe the allegations that the co-owner Mr. Spieler and his employees acted violently. *Tr.*, 11/1/10 at 126. He stated that he has worked with Mr. Spieler for 23 years. *Tr.*, 11/1/10 at 126. He described Mr. Spieler as someone who

“never ever loses his temper.” *Tr.*, 11/1/10 at 126. He also stated that the employees involved in the incident are “gentle people.” *Tr.*, 11/1/10 at 127.

32. Mr. Englert stated that he “let the five individuals go indefinitely until the situation” is resolved. *Tr.*, 11/1/10 at 127. He also noted that Mr. Spieler resigned from the Respondent’s operations and he hoped that Mr. Spieler would rejoin the team once the matter was resolved as well. *Tr.*, 11/1/10 at 127. He stated that Mr. Spieler still retains his ownership interest in the Respondent but that he has resigned as an officer and director. *Tr.*, 11/1/10 at 128.

33. Mr. Englert admitted that his employees detained the decedent. *Tr.*, 11/1/10 at 129, 139. He stated that his establishments, as a policy, do not detain unruly individuals but Mr. Englert noted that the circumstances in this case were extraordinary. *Tr.*, 11/1/10 at 130.

34. Mr. Englert stated that he made a number of changes in response to the October 15, 2010 incident. *Tr.*, 11/1/10 at 130. First, he let go the individuals involved and he asked co-owner Mr. Spieler to resign. *Tr.*, 11/1/10 at 130. Second, he had a camera system installed and amended the security plan. *Tr.*, 11/1/10 at 130. Third, he called the HOST Training Program in California and has secured the services of an instructor for a two-day training session for the staff of the Respondent and Mr. Englert’s other ABC licensed establishments. *Tr.*, 11/1/10 at 130. He stated that because the Respondent has no money, another owner, Kyle Ramissong and he are funding the training. *Tr.*, 11/1/10 at 131.

35. Mr. Englert admitted that the Respondent’s security plan that was effective at the time of the incident does not address detaining individuals. *Tr.*, 11/1/10 at 134. Mr. Englert admitted that as of October 15, 2010, his employees were not trained how to detain individuals, nor were they trained to tackle them. *Tr.*, 11/1/10 at 139, 141. Mr. Englert stated that Mr. Spieler attended Techniques in Alcohol Management (TAMS) sessions but was not trained to detain individuals. *Tr.*, 11/1/10 at 144. Mr. Englert further stated that he did not know if the other employees involved in the incident had received training on detaining individuals. *Tr.*, 11/1/10 at 145-46. He further admitted that his original security plan does not have a procedure for leaving the confines of the establishment, tracking unruly patrons, and detaining them outside the establishment. *Tr.*, 11/1/10 at 160.

36. Mr. Englert stated that of the employees involved in the incident: one security person had worked for the Respondent for only a few months, the other security person worked for the Respondent for a year and a half, the bartender had worked for the establishment since it opened, and the employee who worked as a barback worked for the Respondent for approximately one year. *Tr.*, 11/1/10 at 148.

37. Mr. Englert stated that he had not attended security trainings at the establishment but that his partner, Bill Spieler had. *Tr.*, 11/1/10 at 150. Mr. Englert stated that he would hire Mr. Spieler again if he had the opportunity. *Tr.*, 11/1/10 at 152. He also

stated that he believed the establishment would be safe once the new management team is installed and the training is completed. *Tr.*, 11/1/10 at 154.

38. Mr. Englert believed that there would not be any incidents in the future. *Tr.*, 11/1/10 at 156. He also asserted that he had a good relationship with the neighborhood and his clientele are well-behaved. *Tr.*, 11/1/10 at 156.

39. Mr. Englert testified that his employees called 911 immediately after the brick was thrown through the window. *Tr.*, 11/1/10 at 159. He stated that one of the employees chasing the decedent called 911 from one of his cell phones. *Tr.*, 11/1/10 at 159. Mr. Englert testified that the employees violated the spirit of his operating principles by “leaving the establishment to track” the decedent. *Tr.*, 11/1/10 at 161.

40. The Respondent played a video recording of a media interview with Damon Dixon, who stated in the video that he was a bartender and licensed manager for the Respondent. *Tr.*, 11/1/10 at 175, 195. Mr. Dixon stated that he has worked for the Respondent for a few years. *Tr.*, 11/1/10 at 175. He stated that the Respondent’s employees were cleaning up the mess after the first incident where an individual broke a window. *Tr.*, 11/1/10 at 175. As staff was cleaning, the decedent, who was intoxicated, came to the establishment and was denied entrance. *Tr.*, 11/1/10 at 176. The decedent left and then returned, but was denied entry again. *Tr.*, 11/1/10 at 176. According to Mr. Dixon, the decedent became belligerent and left. *Tr.*, 11/1/10 at 176. Mr. Dixon stated that he went upstairs to count money and when he came back downstairs, he heard a brick go through a window. *Tr.*, 11/1/10 at 176.

41. The video interview of Mr. Dixon further stated that Mr. Spieler was cutting wood outside the establishment to replace the window from the first destruction. *Tr.*, 11/1/10 at 176. According to Mr. Dixon, the decedent threw two bricks through the window. *Tr.*, 11/1/10 at 176, 193. Mr. Dixon stated that some of the staff chased the decedent. *Tr.*, 11/1/10 at 176. He stated that he called 911 on his phone and walked up the street and observed what happened. *Tr.*, 11/1/10 at 176. Mr. Dixon asserted that the employees brought the decedent to the ground and subdued the decedent. *Tr.*, 11/1/10 at 176. According to Mr. Dixon, the employees were “dressing him down.” *Tr.*, 11/1/10 at 176. He also noted that another employee was restraining the decedent’s hand. *Tr.*, 11/1/10 at 176-77. Mr. Dixon stated that he did not see any employee punch or kick the decedent. *Tr.*, 11/1/10 at 177. He stated that another employee was pressing down on the decedent. *Tr.*, 11/1/10 at 187-88. Mr. Dixon stated that he stood on the corner and watched for five to 10 minutes. *Tr.*, 11/1/10 at 188.

42. Mr. Dixon stated that the first car he saw was a “paddy wagon” and then he saw police cars. *Tr.*, 11/1/10 at 190. He then stated that he “never saw an ambulance.” *Tr.*, 11/1/10 at 190. Mr. Dixon stated that the decedent was awake. *Tr.*, 11/1/10 at 190. Mr. Dixon stated that the owner, one of the managers, a bar guy, and two of the door staff were involved in the incident. *Tr.*, 11/1/10 at 195.

43. The Respondent then proffered an audio recording of an emergency medical technician radioing ahead to Howard University Hospital regarding the condition of the decedent. *Tr.*, 11/1/10 at 198. The speaker, identified as EMS 4, stated that they had a 45-year-old black male in cardiac arrest. *Tr.*, 11/1/10 at 201. EMS 4 stated that cardiac arrest occurred after a fight and that there was no obvious trauma. *Tr.*, 11/1/10 at 201. EMS 4 stated that the male became unconscious while the police were present at the scene. *Tr.*, 11/1/10 at 201. Mr. Kline, on behalf of the Respondent, stated that the decedent was actually 27 years old and he explained that this was the recording provided by the Office of Communications in response to his subpoena. *Tr.*, 11/1/10 at 203.

44. The Respondent then called Kathleen Robeson to testify. *Tr.*, 11/1/10 at 207. Ms. Robeson stated that she is employed by the Respondent as a manager and has worked at the establishment for six years and has been a manager for five years. *Tr.*, 11/1/10 at 208. She stated that she previously worked at the Black Cat for four years, where she worked on ticket sales and security. *Tr.*, 11/1/10 at 209. She stated that while working at the Black Cat she received security training from senior staff and during staff meetings. *Tr.*, 11/1/10 at 210. She stated that she received training on how to handle situations with unruly patrons and other situations that could occur at a nightclub. *Tr.*, 11/1/10 at 210. She stated that she was trained to de-escalate situations by referring unruly patrons to other staff people. *Tr.*, 11/1/10 at 211. She stated that she currently has an ABC manager's license and has undergone alcohol awareness training. *Tr.*, 11/1/10 at 211.

45. Ms. Robeson stated that the Respondent bought a security system. *Tr.*, 11/1/10 at 212. She stated that the cameras are pointed at the front door, the downstairs bar, and everywhere else patrons may go, excluding restrooms. *Tr.*, 11/1/10 at 212-13. She stated that the establishment currently has 16 cameras, can store footage for 30 days, and has night-vision. *Tr.*, 11/1/10 at 214. Ms. Robeson stated that she knows how to utilize the system. *Tr.*, 11/1/10 at 214.

46. Ms. Robeson stated that she was trained to never place her hands on a patron and would probably never try to detain someone in response to a crime. *Tr.*, 11/1/10 at 215-16. She stated that the establishment has never needed a camera system but believes it will increase patron safety. *Tr.*, 11/1/10 at 216.

47. Ms. Robeson stated that the entire staff of the Respondent, including herself, will undergo security training by Robert Smith, a retired San Diego police officer. *Tr.*, 11/1/10 at 218. She stated that the staff is reminded about security during staff meetings. *Tr.*, 11/1/10 at 219. She stated that the establishment will probably require employees to be familiar with the security plan as part of their employment contract. *Tr.*, 11/1/10 at 219. Ms. Robeson stated that her role is to ensure that any security measures required by the Board or the independent trainer are carried out. *Tr.*, 11/1/10 at 222.

48. Ms. Robeson stated that she learned about security through on the job training. *Tr.*, 11/1/10 at 221. During her time in the hospitality industry, she did not learn how to detain an individual. *Tr.*, 11/1/10 at 221. She stated that she learned not to touch patrons unless they touched her first. *Tr.*, 11/1/10 at 222.

49. The Respondent called Joshua Copeland to testify. *Tr.*, 11/1/10 at 237. Mr. Copeland is employed by the Respondent and has worked in the hospitality industry in Washington, D.C., for 13 years. *Tr.*, 11/1/10 at 239. He stated that he is currently employed as a manager. *Tr.*, 11/1/10 at 240. Mr. Copeland stated that he is regularly involved in the establishment's security. *Tr.*, 11/1/10 at 240. He stated that he does not have formal training in security but received on the job training. *Tr.*, 11/1/10 at 241. Mr. Copeland noted that he served as head of security for The Reef for a year and a half and was trained by the owner of the bar. *Tr.*, 11/1/10 at 242. Mr. Copeland stated that he will attend the HOST security training program. *Tr.*, 11/1/10 at 241.

50. Mr. Copeland testified that the establishment is not a violent environment. *Tr.*, 11/1/10 at 242. He stated that the events of October 15, 2010, were unusual. *Tr.*, 11/1/10 at 242. Mr. Copeland stated that he left about two and half hours before the incident occurred. *Tr.*, 11/1/10 at 243.

51. Mr. Copeland stated that he was "always taught never to detain anybody against their will" and to leave such matters to the police. *Tr.*, 11/1/10 at 243. He stated that he has worked at establishments in the past that detained individuals. *Tr.*, 11/1/10 at 244. Mr. Copeland stated that he has never received training regarding how to detain individuals. *Tr.*, 11/1/10 at 246. Further, he stated that he has never been trained to detain someone by sitting on their torso or chasing an individual who threw a brick through a window. *Tr.*, 11/1/10 at 248.

52. Mr. Copeland stated that he was aware that the establishment had a new security plan. *Tr.*, 11/1/10 at 244. He stated that he also knows how to use the new security system. *Tr.*, 11/1/10 at 245. He stated that the new security plan instructs staff not to touch or detain anyone. *Tr.*, 11/1/10 at 248.

53. Mr. Copeland stated that if he had been at the establishment at the time the incident occurred, he would have gone outside and observed the situation. *Tr.*, 11/1/10 at 252. He stated that that he would call the police and follow the person until the police arrested the decedent. *Tr.*, 11/1/10 at 252. He also stated that he might have acted differently if he believed there was a threat to the safety of himself and others. *Tr.*, 11/1/10 at 253.

54. The Respondent called Getinet Bantayehu to testify. *Tr.*, 11/1/10 at 257. Mr. Bantayehu stated that has previously operated other ABC establishments with Mr. Englert. *Tr.*, 11/1/10 at 259. He stated that he operated Palace of Wonders and Granville Moore's Brickyard. *Tr.*, 11/1/10 at 259. He stated that Mr. Englert has always emphasized the importance of security and would employ security personnel even when nights were slow. *Tr.*, 11/1/10 at 259. He stated that Mr. Englert would not cut corners regarding security. *Tr.*, 11/1/10 at 260. He further testified that Mr. Englert only hired experienced individuals. *Tr.*, 11/1/10 at 264.

55. Mr. Bantayehu testified that he did not know the content of the Respondent's training meetings. *Tr.*, 11/1/10 at 265. He also noted that he never attended any training meetings at the Respondent's establishment. *Tr.*, 11/1/10 at 265.

56. The Respondent called Abdul Kayoumy to testify. *Tr.*, 11/1/10 at 267. He stated that he is the co-owner of Velvet Lounge and Dodge City. *Tr.*, 11/1/10 at 268. He stated these establishments are located around the corner from the establishment. *Tr.*, 11/1/10 at 269. He stated that he has visited the Respondent's establishment on a daily basis. *Tr.*, 11/1/10 at 270. Mr. Kayoumy stated that he has never seen any security incidents at the Respondent's establishment. *Tr.*, 11/1/10 at 271. The Respondent testified that he has observed the Respondent's security personnel interact with the public and stated they acted professionally. *Tr.*, 11/1/10 at 274.

57. Mr. Kayoumy stated that he has never had to restrain anyone while working in the hospitality industry. *Tr.*, 11/1/10 at 278. Mr. Kayoumy testified that he has never received training on how to restrain anyone. *Tr.*, 11/1/10 at 279.

58. The Board takes administrative notice of § 23-581(a)(2), which states that "a private person may arrest another. . . who he has probable cause to believe is committing in his presence. . . a felony or an offense enumerated in section 23-581(a)(2)." D.C. Code § 23-581(a)(2) (1988). The Board notes that § 23-581(a)(2) states that malicious destruction of property can authorize a citizen's arrest. D.C. Code § 23-581(a)(2) (2009).

CONCLUSIONS OF LAW

59. The Board has the authority to "summarily revoke, suspend, fine, or restrict" a license to sell alcoholic beverages in the District of Columbia if the Board determines after an investigation that the operations of the licensee present "an imminent danger to the health and safety of the public." D.C. Code § 25-826(a) (2008). If properly requested by the licensee, "[t]he Board shall hold a hearing within 48 hours of receipt of a timely request and shall issue a decision within 72 hours after the hearing." § 25-826(c). The hearing shall be conducted in accordance with D.C. Code § 25-447 and 23 DCMR § 1604.1. In the present case, the Board finds that the Respondent's actions, as described below, warrant the continued suspension of the Respondent's Retailer's Class CN License for at least an additional 30 days.

60. The Board notes that it has the power to fine. . . suspend, or revoke the license of any licensee. . . [who] allows the licensed establishment to be used for any unlawful or disorderly purpose." D.C. Code § 25-823(2) (2009). "[A]n unlawful or disorderly purpose under D.C. Code § 25-823 can be imputed to a licensee who engages in a method of operation that is conducive to unlawful or disorderly conduct. Levelle, Inc. v. D.C. Alcoholic Bev. Control Bd., 924 A.2d 1030, 1036 (D.C. 2007) (quotation marks removed). Thus, § 25-823(2) allows the Board to punish a licensee who, although otherwise may operate in accordance with the law, has a method of operation that encourages unlawful or disorderly conduct.

61. The ongoing criminal investigation being conducted by MPD and other law enforcement agencies has prevented the Board, the parties, and ABRA from hearing from the individuals directly involved in the events of October 15, 2010, and other facts related to the incident. As such, the Board cannot determine whether the owner and the other employees involved merely restrained the decedent or assaulted him. The only uncontested facts that the Board can reasonably rely on are that on October 15, 2010, the decedent threw bricks through the Respondent's window. The Board can also reasonably infer that Bill Spieler, an owner of the licensed establishment, and four other employees chased the decedent down the street. Finally, the Board can reasonably infer that some or all of the Respondent's employees and perhaps the owner restrained the decedent on the ground.

62. As such, the Board agrees with the Government that the facts presented at the November 1, 2010 Summary Suspension Hearing are sufficient to demonstrate that the Respondent currently poses an imminent danger to the health and safety of the public. As the Government noted, nothing in the facts indicate that the owner or the employees who were involved in the October 15, 2010, incident, or the employees who testified on behalf of the Respondent, were trained to properly detain or restrain individuals. Furthermore, the Board cannot discern that the owner or employees were trained to assess a situation where detaining or restraining a problem patron may not be the safest course of action. The Board is equally concerned about the safety of owners, managers, and employees as they are about other patrons and members of the public.

63. The Board is appalled to discover that the persons involved in the incident included not only security personnel with employment longevity, but also one of the owners. The Board has long held management to a higher standard of conduct and accountability when operating a licensed establishment. Managing a nightclub in a vibrant and active city such as the District of Columbia is a privilege and challenging responsibility. This responsibility requires a management team that is fully aware of the consequences of their actions. To have otherwise, places public safety at risk. Moreover, if management's behavior negatively impacts other employees, those employees cannot be expected or entrusted to comport to a lawful standard of conduct.

64. The Board is also very disturbed to find that the owner and the establishment's employees thought it appropriate to leave the confines of the club in order to pursue the decedent who for all they knew, could still have been armed with bricks. The Board finds that the pursuit of the decedent, in and of itself, threatened the safety of pedestrians, vehicles, the participants, and certainly, here, the decedent. The Government has demonstrated that the establishment's policies and procedures were inadequate to deal with the incident that occurred on October 15, 2010. As such, the Board must be satisfied that this incident or any incident involving altercations will not occur again before the suspension of the license will be lifted.

65. Notwithstanding the Chief of Police's request for revocation of the Respondent's license to protect the public safety, the Board will not revoke the Respondent's license at this time. The Board notes, as one of the owners indicated, that the Respondent has taken

some steps following the incident of October 15, 2010 to improve the operations of the establishment. Those actions include updating the security plan to conform to statutory requirements, installing a security camera system, and providing security training for its staff. However, the Board also notes that not all of these steps have been completed nor have these steps been confirmed by ABRA's Enforcement Division to the satisfaction of the Board. As such, until the Respondent demonstrates that it will implement and adhere to its new security plan and internalize the security training into its daily operations, the Board is unwilling to lift the suspension. The Board trusts that the Respondent will be able to provide a satisfactory update to the Board at the December 1, 2010, hearing.

66. The Respondent has also noted that under § 23-581, the owner and the employees may have had the right to perform a citizen's arrest in response to the decedent's actions. Regardless of whether the owner and the employees involved in the incident had the right to arrest or pursue the decedent, such behavior is not conducive to a healthy and safe nightlife, either for other patrons or the public at large. As discussed above, it is simply too risky for licensees to arrest unruly individuals because arrestees may respond violently or untrained employees may utilize too much force. As such, the Board is entitled to find that such behavior by the Respondent is "disorderly conduct" under § 25-823(2) even if the action was legal under § 23-581 because such behavior may lead to highly dangerous situations. Finally, the Board notes that § 23-581 does not offer any immunity to private persons engaging in a citizen's arrest.

ORDER

THEREFORE, it is hereby **ORDERED** on this 5th day of November 2010, that the Retailer's License Class CN, issued to Bar 9 LLC, t/a DC 9, be and hereby remains **SUSPENDED**. The Government and the Respondent will appear before the Board on December 1, 2010, at which time the Board will conduct an additional hearing for purposes of determining further action.

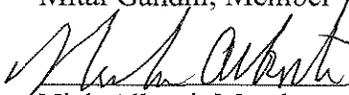
District of Columbia
Alcoholic Beverage Control Board



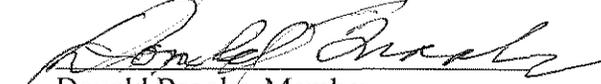
Charles Brodsky, Chairperson



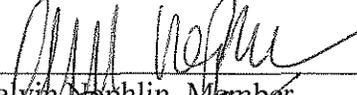
Mital Gandhi, Member



Nick Alberti, Member



Donald Brooks, Member



Calvin Nophlin, 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, 1250 U Street N.W., Suite 300, Washington, D.C. 20009.

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).