

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

In the Matter of:)	
Da Luft DC, Inc.,)	Case No.: 15-251-00078
t/a Da Luft Restaurant & Lounge)	License No: 87780
Holder of a)	Order No: 2015-470
Retailer's Class CR License)	
at premises)	
1242 H Street, N.E.)	
Washington, D.C. 20002)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, Respondent

Murray Kivitz, Counsel, on behalf of the Respondent

Christine Gephardt, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, (hereinafter "Respondent" or "Da Luft") in violation of District of Columbia (D.C.) Official Code §§ 25-711(e), 25-823(5), and 25-823(6). The Respondent shall pay a \$5,000 fine and receive two stayed suspension days, which shall only go into effect if the

Respondent commits another violation within one year from the date of this Order. The Respondent is further advised that it must resolve all ownership issues identified during the show cause process or it may face additional enforcement proceedings.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 24, 2015. *ABRA Show Cause File No., 15-251-00078*, Notice of Status Hearing and Show Cause Hearing, 2 (Jun. 24, 2015). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1242 H Street, N.E., Washington, D.C., on July 4, 2015, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-251-00078*, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Both the Government and Respondent appeared at the Show Cause Status Hearing on August 12, 2015. The parties proceeded to a Show Cause Hearing and argued their respective cases on September 17, 2015. At the beginning of the hearing, the Respondent requested a continuance, but this motion was denied, because the Respondent failed to demonstrate prejudice or good cause for continuing the case. *Transcript (Tr.)*, September 16, 2015 at 24-25. Furthermore, the Board denied the request because the Respondent failed to file its motion at least six days before the hearing in compliance with D.C. Official Code § 25-441(a).

Specifically, the Notice charges the Respondent with the following violations:

- Charge I: [On March 7, 2015,] [y]our failed to prevent the sale or service of alcohol between the hours of 3:00 A.M. and 8:00 A.M. on Saturdays, in violation D.C. Official Code § 25-723(b)(2)
- Charge II: [On March 7, 2015,] [y]ou failed to have a Board approved manager present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises in violation of D.C. Official Code § 25-711(e) and 23 DCMR § 707.1
- Charge III: [On March 7, 2015,] [y]ou failed to allow an ABRA investigator to examine the books and records of the business without delay, or otherwise interfered with an investigation, in violation of D.C. Official Code § 25-823(a)(5)
- Charge IV: [On March 7, 2015,] [y]ou failed to follow your Settlement Agreement when you failed to keep written record of dates and times when MPD was called for assistance and failed to keep a detailed incident log in violation of D.C. Official Code § 25-823(a)(6).

Notice of Status Hearing and Show Cause Hearing, 2-4 (bolding removed).

PREHEARING MOTIONS AND STIPULATIONS

At the Show Cause hearing, the Government indicated that it was dismissing Charge I based on the unavailability of a key witness. *Tr.*, 9/16/15 at 29-30. The Government and the Respondent further indicated that they were stipulating to the violations described in Charge II and IV. *Id.* at 30-31. Therefore, the Board must only address Charge III and determine an appropriate penalty in this Order. *Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (“The Board’s regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (West Supp. 2015).

FINDINGS OF FACT

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

I. Background

1. Da Luft Restaurant & Lounge holds a Retailer’s Class CR License at 1242 H Street, N.E., Washington, D.C. *ABRA License No. 87780.*

II. ABRA Licensing Officer William Hager

2. ABRA Licensing Officer William Hager serves as ABRA’s custodian of records. *Tr.*, 9/16/15 at 40. ABRA’s records show that the Respondent is currently owned by Josephine and Temitope Ijiti. *Id.* at 42. ABRA’s records further show that there have been attempts to change or modify the Respondent’s officers; yet, these attempted modifications have not been approved as of the date of the hearing. *Id.*

3. The Respondent submitted an application for licensure that was accepted by the agency on August 26, 2011. *Id.* at 42-43.

4. In November 2014, the Respondent filed an application to allow the establishment to charge a cover charge under its existing entertainment endorsement. *Id.* at 65.

5. The Respondent previously filed the organization’s official minutes for a meeting held on June 1, 2014. *Minutes of the Organizational Meeting of the Board of Directors of Da Luft DC, Inc.*, 1. The minutes indicate that Folorunso Paul Ijiti was elected president; Oluwatobi Solaja was elected treasurer; and Akinsola Solomon was elected director of the organization. *Id.* As of the date of this meeting, no formal application to change the Respondent’s officers to include these individuals had been submitted to ABRA. *Id.* at 54. The minutes further indicate that all of Temitope Ijiti’s shares were redeemed and Josephine Ijiti was the sole owner of the Respondent; yet, ABRA has no documentation affirming this change in ownership. *Id.* at 71.

6. Minutes taken on June 1, 2014, indicate that the Respondent’s stock was distributed as follows as of the date of the meeting: Paul Ijiti owned 600 shares; Josephine Ijiti owned 300

shares; Oluwatobi Solaja owned 50 shares (5 percent); and Akinsola Solomon owned 50 shares (5 percent). *Respondent's Minutes*, 2 (June 1, 2014) (for identification purposes the first words on the page are "endorse, accept, make, execute . . ."). Therefore, as of the date of the corporate meeting, Paul Ijiti constituted a 60 percent owner of the business. *Id.*

7. The Respondent has submitted an application to change other officers in the past. *Id.* at 45, 57. Specifically, on January 8, 2015, the Respondent filed an Application to Change Officers, which sought to add Akinsola Solomon as the Respondent's director. *Id.* at 57. And on May 4, 2015, the Respondent filed a second application requesting that Oluwatobiloba Solaja be added as the Respondent's treasurer. *Id.* at 45. ABRA sent a letter to the Respondent on May 4, 2015, which indicated that these application to add new officers were deficient. *Id.* at 45-46. There is no evidence in ABRA's records that the deficiencies identified by ABRA had been addressed as of the date of the hearing. *Id.* at 46, 62.

8. There is also no indication that either of the Change of Officers Applications requested that Paul Ijiti be added as the Respondent's president. *Id.* at 47. ABRA's records indicate that the Respondent has never submitted an application to change its president. *Id.* at 43. ABRA's records also do not show that the Respondent filed a Bill of Sale identifying any sellers or purchasers of the Respondent's stock. *Id.* at 70.

III. ABRA Investigator Shawn Townsend

9. ABRA Investigator Shawn Townsend visited the Respondent's establishment on March 19, 2015 based on a report from the Metropolitan Police Department (MPD) regarding an incident on March 7, 2015. *Id.* at 75. Investigator Townsend is familiar with the establishment because he has visited the establishment on several occasions. *Id.* at 79.

10. When Investigator Townsend entered the establishment, he met with Ijiti Ajiboye Laosebikan. *Id.* at 76. Mr. Laosebikan told the investigator that he was the establishment's licensed manager. *Id.* at 76. During his conversation, Investigator Townsend requested that Mr. Laosebikan present his manager's license for inspection; however, Mr. Laosebikan indicated that he did not have his license on his person. *Id.* at 83. Mr. Laosebikan then indicated that he would send the investigator a text message containing his identification. *Id.* at 84. On March 21, 2015, Mr. Laosebikan texted Investigator Townsend a picture of a photocopy of his identification. *Id.* Investigator Townsend checked the license number on the picture and determined that the license number was actually assigned to Habib Epimalu. *Id.* at 84.

11. Investigator Townsend returned to the establishment on March 21, 2015, and met Paul Ijiti. *Id.* Mr. Ijiti told Investigator Townsend that he was an owner. *Id.* at 77. Investigator Townsend noted that Mr. Ijiti has identified himself as an owner of the establishment during prior visits to the establishment. *Id.* at 79-80.

IV. Falanzo Paul Ijiti

12. Falanzo Paul Ijiti serves as the Respondent's director of operations. *Id.* at 97. Mr. Ijiti indicated that the Respondent was initially owned by Josephine Ijiti and Temitope Ijiti. *Id.* at 98.

Mr. Ijiti claimed that he filed the paperwork requested by an ABRA licensing specialist in November and did not hear anything about any deficiencies until May 2015. *Id.* at 98-99.

13. Mr. Ijiti indicated that he told Investigator Townsend that he was an owner based on the paperwork submitted by the Respondent in November 2014. *Id.* at 127.

CONCLUSIONS OF LAW

14. The Board has the authority to fine, 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). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2015). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines “that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed.” D.C. Official Code § 25-447.

I. The Respondent’s manager interfered with an investigation by presenting a false manager’s license to an investigator in violation of D.C. Official Code § 25-823(5).

15. The Board finds that the presentation of a falsified identification by the Respondent’s manager interfered with an investigation in violation of D.C. Official Code § 25-823(5).

16. Under § 25-823(5),

The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if: . . . [t]he licensee fails or refuses to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation.

D.C. Official Code § 25-823(5). Under the law, licensees must be managed and supervised by a licensed manager, the manager must carry their ABRA issued identification card on their person, and display it upon request of an investigator. D.C. Official Code § 25-301(a)(6); 25-711(e).

17. In this case, Investigator Townsend was conducting a lawful inspection and investigation of the establishment in March 2015. *Supra*, at ¶¶ 9-10. Mr. Laosebikan was required by law to carry an ABRA-issued identification on his person and immediately display it at the request of Investigator Townsend. *Supra*, at ¶¶ 10, 16. Instead of admitting that he was not a licensed manager (or saying nothing at all), Mr. Laosebikan lied about being a licensed manager and sent Investigator Townsend a picture of a doctored manager’s license. *Supra*, at ¶ 10. Under these circumstances, Mr. Laosebikan attempted to evade a potential violation by misrepresenting his status as a licensed manager and submitting a false identification to the investigator. Based on these facts, the Board concludes that the Respondent violated § 25-823(5).

18. The Board is not persuaded by the argument that the Respondent should not be held liable for the actions of Mr. Laosebikan, because he was acting on the Respondent's behalf when he spoke to the investigator, lied about his license status, and texted a copy of the false license to investigator. *Id.* The Board notes that the situation in this case is similar to the facts in *Club 99*, where a minor presented a licensee with false identification showing that she was of legal age before being hired as a nude dancer by a licensee. *Club 99, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 457 A.2d 773, 774 (D.C. 1982). In that case, the Board held the licensee guilty of allowing unlawful or disorderly conduct by violating the District's child labor laws. *Id.* In that case, the court noted that the offense was a strict liability offense and that an employer's "good faith" reliance was no defense. *Id.* Similar to the reasoning in *Club 99*, § 25-823(5) is a strict liability offense, which means that a licensee can be held directly liable for the lies and misrepresentations of its employees and agents made on its behalf.

19. During closing arguments, the Respondent asked rhetorically whether management is responsible for asking whether its manager's licenses are current. *Tr.*, 9/16/15 at 173. If one reads § 25-301(a)(6), all licensed establishments must be managed by the owner of a "Board-licensed manager"; therefore, the answer is clearly "yes." D.C. Official Code § 25-301(a)(6). If the Respondent had followed its legal duty, it would not just have reminded Mr. Laosebikan to renew his license, it would have checked whether he had done so or examined the identification before allowing him to manage the establishment. *Tr.*, 9/16/15 at 180. Therefore, even if "good faith" were a defense, it would not be applicable to this case.

20. On a final note, because the submission of a false identification to an investigator by the Respondent's manager is sufficient to satisfy Charge III, the Board does not address the question of whether Mr. Ijiti falsely represented his status of an owner and president. Instead, the Board merely advises the Respondent to resolve the ownership issues identified during the show cause hearing.

II. Penalty

21. The Respondent's investigative history shows that it was previously convicted of a secondary tier offense on April 23, 2015 and admitted to a primary tier offense on April 23, 2014. *Investigative History*, Da Luft Restaurant & Lounge, ABRA License No. 087780 (October 14, 2015). Therefore, the current charges shall be treated as second level offenses. 23 DCMR § 801.1(b) – 802.1(B) (West Supp. 2015).

ORDER

Therefore, the Board, on this 21st day of October 2015, finds that Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, guilty of the charges described in Charges II, III, and IV. The Board imposes the following penalty on Da Luft Restaurant & Lounge:

(1) Charge I is **DISMISSED**.

(2) For the violation described in Charge II, Da Luft Restaurant & Lounge shall pay a \$500 fine.

- (3) For the violation described in Charge III, Da Luft Restaurant & Lounge shall pay a \$4,000 fine. The Respondent shall also receive two (2) stayed suspension days, which shall go into effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.
- (4) For the violation described in Charge IV, Da Luft Restaurant & Lounge shall pay a \$500 fine.
- (5) The Respondent is **ADVISED** that the facts presented to the Board indicate that it also likely violated D.C. Official Code § 25-405 by transferring 60 percent of the ownership to Mr. Ijiti without the permission of the Board. Therefore, the Respondent should endeavor to file an appropriate transfer application immediately and without delay, or face an additional enforcement action.
- (6) The Respondent is further **ADVISED** that the corporate minutes presented to the Board indicate that it also likely violated 23 DCMR 601.1 by failing to disclose the change in the Respondent's corporate officers by June 16, 2015. Therefore, the Respondent should endeavor to file the appropriate applications and correct any deficiencies immediately and without delay.
- (7) Nothing in this order waives the right of the Board to enforce any additional violations outside of the notice identified in the record of this proceeding; especially, if such violations and ownership issues have not been properly remedied by the Respondent.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed one primary tier violation (Charge III) and two secondary tier violations (Charges II and IV).

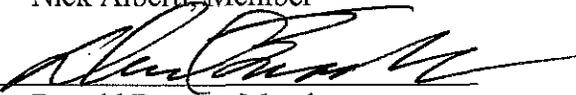
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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


Hector Rodriguez, Member


James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, NW, 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, 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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) (2004).