

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

In the Matter of:)
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Da Luft DC, Inc.)
t/a Da Luft Restaurant & Lounge)
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Holder of a)
Retailer's Class CR License)
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at premises)
1242 H Street, N.E.)
Washington, D.C. 20002)
)

Case Nos.: 15-251-00081
15-251-00081(a)
15-251-00081(b)
15-251-00081(c)

License No.: ABRA-087780
Order No.: 2015-259

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Murray Kivitz, Esq., on behalf of Da Luft DC, Inc. t/a Da Luft
Restaurant & Lounge

Christine Gephardt, Assistant Attorney General, on behalf of the
District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER LIFTING SUSPENSION

INTRODUCTION

The Alcoholic Beverage Control Board (Board) lifts the summary suspension ordered on Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge (Respondent or Da Luft) on April 23, 2015. *See In re Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge*, Board Order No. 2015-210, 1-5 (D.C.A.B.C.B. Apr. 23, 2015). As a result, the Board concludes that the Respondent's conduct no longer constitutes an imminent danger to the public pursuant to District of Columbia (D.C.) Official Code § 25-826. The Board further concludes that the summary suspension placed on the Respondent's liquor license shall be lifted effective 6:00 p.m. on May 21, 2015.

Procedural History

This case arises from a Notice of Summary Suspension (Notice) issued by the Board in the matter of Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge (Respondent) located at 1242 H Street, N.E., Washington, D.C. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice in Case Number 15-251-00081 on the Respondent on April 15, 2015. *ABRA Show Cause File No., 15-251-00081*, Service Form. The Notice sets forth grounds for a summary suspension, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Pursuant to the Notice, the Board ordered the suspension of Respondent's license in accordance with D.C. Official Code § 25-826 (2008) and 25-827(a) (2005). The suspension was based upon an investigation conducted by Alcoholic Beverage Regulation Administration (ABRA) Investigator Felicia Dantzler as the result of receiving the PD-251, CCN #15050751 incident report from the Metropolitan Police Department (MPD). D.C. Official Code § 25-827 (2001).

Additionally, the Board's suspension of the Respondent's license was based upon the written request of the Chief of Police Cathy L. Lanier, MPD, dated April 11, 2015, 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 residents and visitors in the District of Columbia. Notice of Summary Suspension, 2-4 (April 14, 2015).

On April 23, 2015, the Board held a Summary Suspension Hearing pursuant to D.C. Official Code § 25-826. At this Hearing, the Respondent and the Government presented an Offer in Compromise (OIC), to settle the charges set forth in the Notice. The Board accepted the OIC, and further determined that the Respondent must adhere to additional conditions, set forth in Board Order No. 2015-210 before the Board would find that the Respondent no longer posed an imminent danger to the public pursuant to D.C. Official Code § 25-826.

In response to Board Order No. 2015-210, on April 28, 2015, the Respondent submitted a package of required materials in an attempt to comply with the additional

conditions set forth in the Order. The Board closely reviewed these materials and concluded that the Respondent did not comply with Provisions (1), (3), (4), (7), (8), (9), and (11) of Board Order No. 2015-210. *In re Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge*, Board Order No. 2015-210, 2-4 (D.C.A.B.C.B. Apr. 23, 2015). Additionally, the Board found that the Respondent failed to fully adhere to terms (1) and (14) of the OIC entered into by the Respondent and the Government. *Offer in Compromise*, 1-3. The Board then gave the Respondent a directive to cure these deficiencies on April 30, 2015. Email from Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration to Tobi Solaja, on behalf of Da Luft Restaurant and Lounge (Apr. 30, 2015, 12:30 EST).

On that same day, Ms. Solaja responded with additional materials for the Board's consideration. Email from Tobi Solaja, on behalf of Da Luft Restaurant and Lounge to Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration (Apr. 30, 2015, 4:32 EST). The Board reviewed the materials submitted and found that there were significant discrepancies between the Respondent's representations of the security camera system and that of ABRA Investigators Felicia Dantzler and Earl Jones, as documented in Investigative Reports 15-251-00081, and 15-251-00081(a). Additionally, the Board concluded that the Respondent did not meet the conditions set forth in its Security Plan.

On May 5, 2015, the Respondent submitted materials to address the discrepancies communicated from the Board. Email from Tobi Solaja, on behalf of Da Luft Restaurant and Lounge to Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration (May 5, 2015, 5:27 EST). At this time, the Respondent also filed a Motion requesting the Board to reconsider its finding that a summary suspension of its license is still warranted. *Letter Requesting Reconsideration*, 1-2. In its letter, the Respondent argues that it has complied with the conditions set forth in Board Order 2015-210 and requests that the Board allow the Respondent to resume its operations as soon as possible. *Id.*

On May 6, 2015, the Board concluded that several items that were required of the Respondent after its April 23, 2015 submission were still not addressed. More specifically, the Board ordered ABRA Investigators Dantzler and Jones to perform an on-scene evaluation of the security camera system to determine compliance with Board Order No. 2015-210. This evaluation was conducted and completed on May 6, 2015. *Investigative Report 15-251-00081(b)*, 1-5. Further, the Respondent was required to address the deficiencies in the security training of all of its employees as required in Board Order No 2015-210. *In re Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge*, Board Order No. 2015-210, 3 ¶ 8 (D.C.A.B.C.B. Apr. 23, 2015). On May 8, 2015, Ms. Solaja submitted additional materials for the Board's consideration in response to the Board's May 6, 2015 directive. Email from Tobi Solaja, on behalf of Da Luft Restaurant and Lounge to Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration (May 8, 2015, 4:51 EST).

On May 13, 2015, after review of the Respondent's submission, the Board concluded that the Respondent still had not complied with its May 6, 2015 directive to the establishment. Email from Janea Raines, Assistant General Counsel, Alcoholic Beverage Regulation Administration to Tobi Solaja, on behalf of Da Luft Restaurant and Lounge (May 14, 2015, 11:27 EST). Thus, the Board required an amended floor plan diagram to show accurate placement of the security cameras and the line of sight provided by each camera. In addition, the Board required the Respondent to notify ABRA of the scheduled training course for five employees who did not receive the security training as required in the Order. *In re Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge*, Board Order No. 2015-210, 3 ¶ 8 (D.C.A.B.C.B. Apr. 23, 2015). To ensure compliance, the Board ordered that ABRA Investigator Earl Jones return to the establishment to attend and evaluate the security training that was held at the establishment on May 15, 2015. Investigator Jones attended the training and reported his findings to the Board. *Investigative Report 15-251-00081(c)*.

After a careful review and consideration of the materials submitted by the Respondent and the satisfactory determination that the Respondent has completed actions in compliance with the terms of its Security Plan, Offer-in-Compromise and Board Order No. 2015-210, the Board finds that the Respondent no longer poses an imminent danger to the public pursuant to (D.C.) Official Code § 25-826.

Accordingly, the Respondent may resume its operations effective at 6:00 p.m. on May 21, 2015.

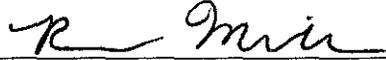
ORDER

Therefore, the Board, on this 20th day of May, 2015, hereby **AMENDS** Board Order No. 2015-210 and hereby **LIFTS THE SUSPENSION** of the Retailer's Class CR License held by Da Luft DC, Inc. t/a Da Luft Restaurant & Lounge, effective 6:00 p.m. on May 21, 2015.

IT IS FURTHER ORDERED that this matter proceed to the Show Cause Hearing scheduled for a date to be determined.

A copy of this Order shall be delivered to the Respondent and to the Government.

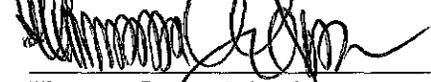
District of Columbia
Alcoholic Beverage Control Board



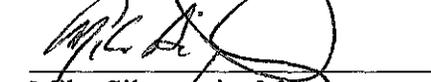
Ruthanne Miller, Chairperson



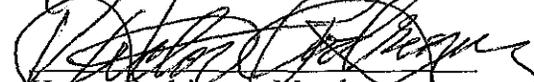
Nick Alberti, Member



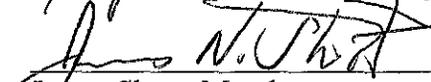
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) 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).