

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

In the Matter of:)
)
 Roger Marquez,)
 t/a El Limone)
)
 Holder of a Retailer's)
 Class CR License)
 at premises)
 201 Upshur Street, N.W.)
 Washington, D.C. 20011)
)

License Number: 71576
Case Number: 10-251-00210
Order Number: 2012-019

BEFORE: Nick Alberti, Acting Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Roger Marquez, Owner, on behalf of the Respondent

Stephen O'Brien, Esq., on behalf of the Respondent

Maureen Zaniel, Senior Assistant Attorney General,
Office of the Attorney General, District of Columbia

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

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On September 23, 2010, the Alcoholic Beverage Regulation Administration (ABRA), pursuant to D.C. Official Code § 25-823, and D.C. Official Code § 25-826 (a) (2001) served a Notice for Summary Revocation (Notice) on Roger Marquez, t/a El Limone (Respondent), located at premises 201 Upshur Street, N.W., Washington, D.C. 20011. The grounds for the revocation, as set forth by the Government, were as follows:

On or about Wednesday September 22, 2010, in violation of D.C. Official Code § 48-904.01 (2001), the Respondent possessed with the intent to distribute a controlled substance, cocaine, within the licensed establishment. On that date, Metropolitan Police Department (MPD) officers executed a search warrant at the licensed establishment. During the search, MPD seized from inside the Respondent's establishment, among other things, fifty-seven ziploc bags containing white powder, with a total weight of more than 37 grams, which field tested positive for cocaine. At that time, the Respondent directed MPD where to find the drugs. More than \$4,000.00 in U.S. currency was also seized. The Respondent was arrested and charged with possession with intent to distribute cocaine. At or around the time of the execution of the search warrant, two employees of the establishment, Elen Evelyn Argueta and Jamie Ascencio, were arrested pursuant to arrest warrants for possession with intent to distribute a controlled substance, cocaine.

Additionally, there were successive sales of controlled substances from inside the Respondent's establishment and in the alley adjacent to the establishment. The Respondent knowingly permitted the establishment to be used to facilitate the distribution of a controlled substance in violation of D.C. Official Code § 25-822 (2001).

On or about August 14, 2010, an employee of the Respondent's establishment, Ms. Argueta, sold to an undercover MPD officer one hundred dollars worth of powder cocaine with a total weight of 3.3 grams. The employee retrieved the cocaine from the back kitchen area. The substance was field tested positive for cocaine. On or about August 18, 2010, the same employee sold to the undercover MPD officer one hundred dollars worth of powder cocaine with a total weight of 3.4 grams. The employee retrieved the cocaine from the back kitchen area. The substance was field tested positive for cocaine. At that time she stated she sold cocaine to help pay the bills of the restaurant.

On or about August 20, 2010, the MPD undercover officer attempted to purchase four (4) one hundred dollar (\$100) bags of cocaine at the Respondent's establishment. The same female employee stated that she could not provide that much, but she arranged for another employee of the establishment, Mr. Ascencio, to bring cocaine for the undercover officer. The employee arrived at the establishment, and then he sold the four (4) one hundred dollar (\$100) bags to the undercover officer in the alley adjacent to the Respondent's establishment. Each bag contained a white rock like substance with a combined total weight of 13 grams. The substance was field tested positive for cocaine. It was later determined that Mr. Ascencio is a cook at the Respondent's establishment.

After an investigation of the above described incidents, the Board determined pursuant to D.C. Official Code § 25-826 (2001) that further alcoholic beverage operations under the above-captioned license presented an imminent danger to the health and safety of the public, mandating the summary revocation of the ABC license.

By letter dated September 29, 2010, Counsel for the Respondent notified the Board that the owner, Roger Marquez, had been charged criminally in the Superior Court of the District of Columbia. In order to avoid concerns of self-incrimination, the

Respondent waived the requirement to hold the Summary Revocation Hearing in forty-eight (48) hours and requested the Board to stay the hearing until a time convenient to both the Government and the Respondent. The parties came before the Board for a Summary Revocation Hearing on November 9, 2011, in accordance with 23 DCMR 1610, where the Government and the Respondent presented evidence through the testimony of witnesses and the submission of documentary evidence.

The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and the documents comprising the Board's official files, makes the following:

FINDINGS OF FACT

1. The Board issued a Notice of Summary Revocation, dated September 23, 2010, to the Respondent. *See* Summary Revocation File No. 10-251-00210. The Respondent holds a Class CR Retailer's License and is located at 201 Upshur Street, N.W., Washington, D.C. 20011. *See* ABRA Licensing File No. 71576.
2. The Board held a Summary Revocation Hearing on November 9, 2011. *See* Summary Revocation File No. 10-251-00210. The Notice Summary Revocation, dated September 23, 2010, set forth the allegations described above. *See* Show Cause Case File No. 10-251-00210).
3. Counsel for the Government presented its only witness, Officer Robert Edelen of the Metropolitan Police Department (MPD). Officer Edelen is assigned to the Vice Unit within the 4th MPD Command District (4D). *Transcript, November 9, 2011*, (hereinafter "*Tr.*"), at 16-17. He has been in the 4D Vice Unit for six years. *Tr.* at 17.
4. MPD took an interest in the Respondent when a confidential source informed Officer Edelen that narcotics were being sold from the licensed establishment. *Tr.* at 20. Two weeks after the source's disclosure, four individuals were shot in front of the establishment, leading MPD to believe there was some credibility to the confidential information. *Tr.* at 20. Following the shootings, MPD opened its investigation into the restaurant's activities. *Tr.* at 20.
5. Officer Edelen testified that an undercover MPD police officer made numerous purchases of narcotics from the restaurant. *Tr.* at 20. Four of these purchases were prosecuted. *Tr.* at 20. One of the purchases was made at the rear of the restaurant, although the actual sale itself was brokered inside the restaurant. *Tr.* at 21.
6. Officer Edelen served as the Case Agent for the investigation. *Tr.* at 21. The preliminary groundwork of the investigation involved identifying all of the individuals who were owners, managers and employees of the restaurant, and who MPD had targeted for the investigation. *Tr.* at 21. As the Case Agent, Officer Edelen was on the scene during the narcotics transaction. *Tr.* at 22. He was responsible for briefing the arresting

officers who were serving as the perimeter and security officers for the undercover agent. *Tr.* at 21. Officer Edelsen was also responsible for recording the confiscated property that resulted from the narcotics purchases. *Tr.* at 22.

7. Officer Edelen was located in different places around the restaurant, but he was always within 150 feet, when the narcotics purchases were made. *Tr.* at 22. On two occasions he was sitting in the vehicle across the street from the restaurant where he could observe the undercover agent enter and exit the establishment. *Tr.* at 22. Officer Edelen testified that all of the narcotics transactions were conducted in Spanish. *Tr.* at 23.

8. Officer John Ayllon is a certified Spanish speaker for MPD and he was also present during the undercover investigation. *Tr.* at 23. Additionally, because the narcotic purchases were recorded, Officer Ayllon was tasked with transcribing the recordings into a computer program so that Superior Court of the District of Columbia received the transcriptions in English. *Tr.* at 23.

9. On August 14, 2010, MPD's undercover agent purchased narcotics from Evelyn Argueta, an employee of the restaurant. *Tr.* at 24. The undercover agent was seated at the bar facing the entrance that led into the kitchen. *Tr.* at 25. The undercover agent asked Ms. Argueta for some "Columbian Coffee" which was the code expression for narcotics. *Tr.* at 25. Ms. Argueta entered the kitchen and returned 30 seconds later with a napkin that she handed to the undercover agent. *Tr.* at 25. The napkin contained narcotics. *Tr.* at 25. The narcotics tested positive for cocaine. *Tr.* at 25. Once the sale transaction was completed, Officer Edelen returned to the station where he downloaded the camera recording of the transaction. *Tr.* at 26.

10. On August 18, 2008, a second narcotics purchase was made at the restaurant between an undercover agent and Ms. Argueta. *Tr.* at 26. Again, an undercover agent requested "Columbian Coffee" and Evelyn produced a napkin containing the narcotics. *Tr.* at 27. The undercover agent paid for her meal and the drugs, and left the restaurant. *Tr.* at 27. The substance recovered from the napkin tested positive for cocaine. *Tr.* at 27. This transaction was also recorded by surveillance cameras, and it was consistent with the narcotics purchase that occurred on August 14, 2010. *Tr.* at 27-28. Officer Edelen testified that the recorded evidence from the camera clearly shows Ms. Argueta selling the narcotics. *Tr.* at 28.

11. Officer Edelsen testified that Ms. Argueta was the seller in both transactions and that various amounts of drugs were purchased by the undercover agents on different occasions. *Tr.* at 26-27. Officer Edelen believed Ms. Argueta to be a manager of the restaurant and she also advised Officer Edelen that she was a co-owner of the establishment. *Tr.* at 28, 53, 100. Inquiries into government agency records by Officer Edelen all demonstrated that Mr. Marquez is the owner of the restaurant. *Tr.* at 54.

12. On August 20, 2010, an MPD undercover agent made a third purchase of narcotics where Ms. Argueta brokered the sale. *Tr.* at 28. Ms. Argueta agreed to sell a

larger quantity of cocaine to the undercover agent. *Tr.* at 29. Ms. Argueta could not facilitate the large quantity, so she brokered the sale through Jamie Ascencio, a cook at the restaurant, and he sold the narcotics during this purchase transaction. *Tr.* at 29. Officer Ayllon was also present during this sale of narcotics. *Tr.* at 29.

13. On September 21, 2010, MPD executed a search warrant on the Respondent's establishment. *Tr.* at 30, 89. Prior to entering the restaurant, MPD set up a surveillance of the location in order to watch Ms. Argueta and Mr. Ascencio leave the restaurant. *Tr.* at 30. Once the two parties left the restaurant, they were arrested separately and transported to the 4D police station. *Tr.* at 30, 73. Officer Ayllon debriefed Ms. Argueta and Mr. Ascencio upon their arrival at the station. *Tr.* at 74, 84. Officer Edelen testified that when Ms. Argueta was arrested, she stated that she was engaged in the sale of narcotics in order to help pay the restaurant's bills. *Tr.* at 31-32, 95, 100. She implicated Mr. Ascencio, but she did not implicate Mr. Marquez. *Tr.* at 95-96.

14. Ms. Argueta later pled guilty to the three charges of unlawful distribution of a controlled substance and was sentenced to a suspended sentence of 16 months of incarceration and supervised probation. *Tr.* at 33-37; Government's Exhibit No. 7 and No. 8. Mr. Ascencio was also convicted for his role in the distribution of a controlled substance on August 20, 2010. *Tr.* at 38-39; Government's Exhibit No. 9.

15. When MPD attempted to enter the restaurant following the arrests of Ms. Argueta and Mr. Ascencio, they witnessed Roger Marquez coming out of the back door of the establishment. *Tr.* at 30-31, 40-41, 54-55, 74. MPD was entering the restaurant in order to search it for evidence, such as proceeds from the sale of narcotics, and ledgers documenting the sale of narcotics. *Tr.* at 41. Mr. Marquez advised MPD that he was the owner of the restaurant. *Tr.* at 41.

16. Members of MPD witnessed Mr. Marquez and Ms. Argueta together at the restaurant on several occasions and once at a laundry mat in Hyattsville, MD. *Tr.* at 42, 44, 93-94. This information was obtained from surveillance conducted on the restaurant at times other than the occasions during the narcotic transactions. *Tr.* at 42. MPD set up the surveillance during a six to eight week period in order to attempt to identify other buyers of the narcotics, and to identify the source of the cocaine supply. *Tr.* at 42-43, 92. Officer Edelen did not witness Mr. Marquez during any of the purchase transactions between the undercover agent and Ms. Argueta, but he did observe Mr. Marquez enter the restaurant about twice a week while the establishment was under surveillance. *Tr.* at 43, 92-93. Officer Edelen was advised by Mr. Marquez and Ms. Argueta separately that they were married at one point, and were now separated, but he never saw a marriage certificate. *Tr.* at 44, 55-58.

17. Officer Edelen testified that when he approached Mr. Marquez, Mr. Marquez appeared surprised. *Tr.* at 44, 62. Mr. Marquez asked Officer Edelen why MPD was conducting a search warrant and Officer Edelen stated to Mr. Marquez that [Mr. Marquez] knew why MPD was there, and Mr. Marquez replied "yes, he did". *Tr.* at 44, 62-63, 70-71. Officer Edelen advised Mr. Marquez that Ms. Argueta had been arrested

for distribution of cocaine, and he asked Mr. Marquez if there was anything illegal in the establishment. *Tr.* at 44-45. Mr. Marquez directed and accompanied MPD to the back office, and gestured toward one particular corner. *Tr.* at 44-45, 64-66, 96-98. Mr. Marquez told Officer Edelen that if Ms. Argueta were to have anything in the restaurant, she usually kept it in the back office. *Tr.* at 45-46, 66.

18. MPD recovered drug paraphernalia where Mr. Marquez believed the narcotics to be located, and they recovered narcotics about 10 feet from the location of the paraphernalia on a shelf in a storage closet. *Tr.* at 46, 66-67, 85-87, 98-99. The paraphernalia consisted of 10 or 12 small, plastic bags that were consistent with the bags used to pre-package the narcotics purchased during the undercover investigations. *Tr.* at 46, 66, 86. The narcotics recovered inside the restaurant tested positive for cocaine. *Tr.* at 47. The quantity of drugs recovered was 57 ziplock bags. *Tr.* at 47; Government's Exhibit No. 2. Officer Edelsen testified that based upon his experience as an officer with the Vice Unit, 57 bags of controlled substance are consistent with the intent to distribute, rather than just possess the narcotics. *Tr.* at 47.

19. Mr. Marquez was arrested and charged, but he was not convicted. *Tr.* at 50-51, 69-70. Officer Edelen testified that during the investigation, MPD did not observe Mr. Marquez's involvement in the handling, possession, or distribution of the narcotics. *Tr.* at 68, 78. Nor did Officer Edelen observe Mr. Marquez present during any of the four undercover narcotics purchase operations. *Tr.* at 68, 71. MPD was not aware that Mr. Marquez was present at the restaurant on the night they executed the search warrant. *Tr.* at 72, 74. MPD did not have any understanding of what Mr. Marquez's involvement was when they planned and executed the search warrant on the establishment, nor was he a target of MPD's investigation. *Tr.* at 77-78.

20. Officer Edelen testified that MPD became interested in Mr. Marquez's possible involvement because the recovered drugs were never concealed in any fashion, and so they believed that Mr. Marquez knew or should have known of the drugs existence in his restaurant. *Tr.* at 79-80. Additionally, Officer Edelen believed that Mr. Marquez was aware of the existence of the drugs due to Mr. Marquez's demeanor when MPD executed the search warrant. *Tr.* at 81-82. Officer Edelen stated that Mr. Marquez never denied that he didn't know why MPD was there that night, and he didn't deny that he knew there were narcotics on the premises. *Tr.* at 81-82. Officer Edelen stated that he never believed that Mr. Marquez was involved in the distribution or selling of the drugs, but he did believe that Mr. Marquez was well aware of what was going on. *Tr.* at 83. Officer Edelen was accompanied by Officer Alex Cepeda who served as the Spanish translator during the execution of the search warrant. *Tr.* at 84, 102.

21. Mr. Marquez, owner of the restaurant, served as a witness for the Respondent. *Tr.* at 104-105. Mr. Marquez testified that he is the sole owner of El Limone and that he and Ms. Argueta were never married. *Tr.* at 105. He was born in El Salvador and arrived in the United States when he was 18 years old. *Tr.* at 106. He graduated from Bell Multicultural High School in 1994, and worked in restaurants while attending the University of the District of Columbia. *Tr.* at 107. He has worked as a waiter, a

bartender, and as an assistant manager. *Tr.* at 108, 135-136. All of the customers were English speaking and he did not have any difficulty in communicating with them. *Tr.* at 137. Mr. Marquez testified that he understands and speaks English fluently. *Tr.* at 137.

22. Mr. Marquez had a goal of owning his own restaurant, and he opened El Limone in 2007 with his savings of \$80,000.00. *Tr.* at 109. Ms. Argueta was his live-in girlfriend for seven years, and she worked at El Limone from the time it opened for business in 2007. *Tr.* at 110, 122, 130. Mr. Marquez stated that people in the neighborhood believed that he and Ms. Argueta were husband and wife and he acknowledged that press coverage of the restaurant's opening stated that they were married. *Tr.* at 129-130. He and Ms. Argueta separated as a couple in 2008, but she continued to work in the restaurant as a cook. *Tr.* at 110-111.

23. In February 2009, Mr. Marquez worked as a waiter at Sette Osteria six nights a week, while tending to the management of his own restaurant after 10:00 p.m. *Tr.* at 114-115, 138-140. Mr. Marquez managed the books, and handled the product and inventory ordering for El Limone. *Tr.* at 115-116, 131, 154, 160-161. He also helped with the customers and the cooking. *Tr.* at 153. Ms. Argueta accepted delivery of the ordered product, but that she never gave him any money to cover the restaurant's bills. *Tr.* at 116, 131.

24. On the night MPD executed the search warrant, Mr. Marquez was working at Sette Osteria in the early evening and arrived at El Limone around 10:30 pm. *Tr.* at 116. Ms. Argueta was present when he arrived, but she left five minutes later. *Tr.* at 117. After his arrival, he called the various companies that supply the restaurant's product, and watched soccer on the TVs located in the restaurant. *Tr.* at 117.

25. Around 1:00 am, Mr. Marquez heard a knock on the door and saw a MPD patrol car. *Tr.* at 118. He stated that about 15 police officers tried to enter his establishment as he was unlocking the gate on the back door. *Tr.* at 118. He was handcuffed immediately, and MPD did not tell him why they were there. *Tr.* at 119. He told Officer Edelen that he did not know why MPD was at the restaurant and he did not know what they were looking for. *Tr.* at 120. He stated that he was surprised when he learned that MPD had found drugs at the restaurant. *Tr.* at 132. He was not aware that his restaurant was being used to receive, sell, or distribute narcotics. *Tr.* at 154.

26. Mr. Marquez informed Officer Edelen that he knew Ms. Argueta, and that he was aware that she had a prior conviction for selling drugs. *Tr.* at 121-122, 124, 128, 155. When he was asked if he knew whether she had anything illegal in the restaurant, he told MPD that all of her things were stacked on a shelf. *Tr.* at 121. He thought her things consisted of shoe boxes and other personal effects, and he was unaware that she had drugs in the restaurant. *Tr.* at 121, 124, 155-156. Mr. Marquez did not search Ms. Argueta's personal property that she kept at the restaurant. *Tr.* at 157-158.

27. Mr. Marquez did not witness MPD search the restaurant, and he was not aware of what they recovered. *Tr.* at 125. Mr. Marquez stated that Ms. Argueta was never

involved with drugs while they were living together or while she was working at the restaurant. *Tr.* at 122-123, 127.

28. Mr. Marquez was transported to the MPD 4D station where he was locked up overnight. *Tr.* at 125-126, 148. He was released the next afternoon. *Tr.* at 126, 148. He was charged with possession and distribution of narcotics. *Tr.* at 126. He was then informed by his lawyer that the charges were dismissed two days after the arrest. *Tr.* at 126.

29. Mr. Marquez testified that there are three employees at El Limone; Suzie, Evelyn and Jamie. *Tr.* at 137-138, 141, 169-170. He was responsible for hiring the waitress, Suzie, but that Ms. Argueta hired Mr. Ascencio as the dishwasher. *Tr.* at 133. Mr. Marquez told Ms. Argueta that he did not like Mr. Ascencio and that she should not hire him, but Ms. Argueta insisted that Mr. Ascencio was a good worker. *Tr.* at 134. Lillian Turcios was the ABC licensed manager when Mr. Marquez was not at the restaurant. *Tr.* at 141-143.

30. Mr. Marquez testified that the proceeds from his restaurant in the first two years of operating were about \$100,000.00 per year, and he considered this to be a profitable amount. *Tr.* at 144. In 2009, his proceeds were about \$70,000.00 and at this point, he was breaking even. *Tr.* at 145. He was able to pay for his supplies and make payroll, but there wasn't any additional profit. *Tr.* at 145. He had no debt in 2010 and he was able to pay all of his creditors, taxes and utilities. *Tr.* at 147. His taxes were \$2,000 in 2009 and at \$2,360 in 2011. *Tr.* at 164. He needs about \$10,000 a month in revenue to break even. *Tr.* at 168. Mr. Marquez stated that his fixed monthly expenses averaged about \$5,000. *Tr.* at 166. He paid \$2.77 an hour for the waitress and \$8.25 an hour for the dishwasher. *Tr.* at 167. He paid Evelyn \$400 per week. *Tr.* at 174. He stated that the reason Evelyn had \$2,000 in cash at the time of her arrest was because she was going to buy supplies. *Tr.* at 174-175. He also paid Suzie and Jamie in cash. *Tr.* at 175.

31. Mr. Marquez testified that if he is given the chance to keep his ABC license and re-open his business, he intends to be present, work, and manage his restaurant full-time. *Tr.* at 162.

CONCLUSIONS OF LAW

32. 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).

33. The Board bases its factual findings on the substantial evidence contained in the record. 23 DCMR § 1718.3 (2008). 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).

34. In the present case, the Board finds that the Government has shown through substantial evidence that the Respondent has violated provisions of Title 25 of the District of Columbia Official Code by knowingly permitting the illegal sale, or the negotiations for sale of a controlled substance or drug paraphernalia in the licensed establishment. Moreover, the Board finds that the serious nature of the Respondent's violations warrants revocation.

35. Specifically, the Board finds credible the testimony of Officer Edelen who testified that MPD conducted an undercover narcotics investigation on four different occasions that yielded two arrests, and the confiscation of multiple grams of cocaine and drug paraphernalia from the licensed premises. This investigation involved the surveillance of the licensed establishment over a six to eight week period of time.

36. The Board also finds that the investigation involved the sale and distribution of narcotics to an MPD undercover officer by Ms. Argueta, who was not only an employee of the Respondent, but who identified herself to Officer Edelen as a co-owner of the establishment. Additionally, the Board finds credible the Government's evidence of press reports that stated the Respondent and Ms. Argueta were married and Officer Edelen's testimony that Mr. Marquez and Ms. Argueta indicated the same. At best, Mr. Marques and Ms. Argueta lived together for two years, and she continued to work for him at the establishment at the time of her arrest.

37. The Board does not find Mr. Marquez's testimony credible, and it is not persuaded by Mr. Marquez's repeated denial of any knowledge of the criminal activity in his establishment. On the contrary, the Board credits the testimony of Officer Edelen, a six year veteran of the 4D Vice Unit, when he testified that although there was no admission by Mr. Marquez of any knowledge, the Respondent's demeanor and actions during the execution of the search warrant led Officer Edelen to believe that Mr. Marquez knew that his employees were engaged in criminal activity.

38. Mr, Marquez may not have had direct involvement of the sale and distribution of drugs from his establishment, but the Board finds that he had knowledge of the criminal activity. The Board relies on §25-822(2) which provides that successive sales or negotiations for sale, over a continuous period of time constituting a recognizable pattern of activity shall be deemed evidence of knowing permission. Here, MPD conducted a lengthy undercover investigation over a continuous period of time that resulted in multiple successful narcotics purchases on multiple nights.

39. Thus, the Board finds that Mr. Marquez knowingly permitted a situation where the sale of controlled substances was taking place in his establishment. The Board attributes this knowledge to the findings of fact that Mr. Marquez was active in the management of the business, he was present at the restaurant multiple nights of the week, he had a relationship with Ms. Agueta beyond the employer/employee relationship, he

was aware of Ms. Argueta's prior criminal convictions for selling drugs, he knew where to point or gesture to MPD in search of Ms. Aguerta's property, and he acknowledged that he understood why MPD was executing the search warrant.

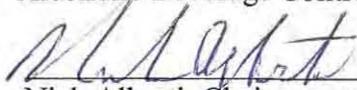
40. The Board can only conclude that Mr. Marquez had knowledge of the criminal activity conducted in his establishment, and he cannot now conveniently turn a blind eye or disavow any knowledge simply because his employees were finally caught. Because Mr. Marquez knowingly permitted his employees to commit acts in violation of the statutes, he is just as responsible as if he had actively participated in the narcotics sales transactions himself. The Board finds that the Respondent's complete disregard for the laws governing his license establishes that no penalty other than revocation will suffice to prevent further violations. Thus, the Board concludes that the appropriate remedy in this case is the revocation of Respondent's Retailer's Class CR license.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED**, on this 8th day of February, 2012, that the Retailer's License Class "CR," issued to Roger Marquez t/a El Limone, be and is hereby **REVOKED**.

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

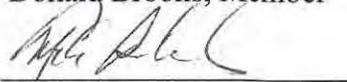
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Chairperson



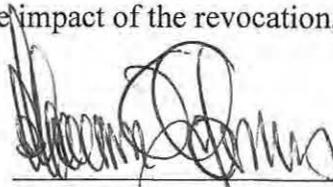
Donald Brooks, Member



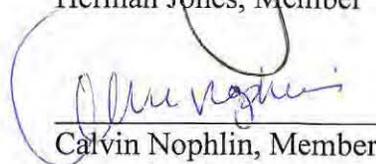
Mike Silverstein, Member

We write separately to express our disagreement with the majority decision. We cannot join in the majority's findings of fact and conclusion of law ordering a revocation of the license. We concur that this case is about a licensee whose licensed establishment was used to further the sale and distribution of narcotics in the District of Columbia. But with respect to certain other findings, we cannot conclude as the majority did, that the licensee *knowingly permitted* the use of his licensed premises for this unlawful conduct. There is enough discrepancy between Officer Edelen's and Mr. Marquez's versions of what transpired at the time Mr. Marquez's property was being searched by MPD, that we cannot totally discount Mr. Marquez's testimony. As such, we are not convinced that the Government sufficiently established, nor do we believe the record supports, a finding that Mr. Marquez had knowledge that two of his employees were using his licensed establishment to store, sell and distribute narcotics.

Given our concerns, and the significance of the impact of the revocation, we respectfully dissent.



Herman Jones, Member



Calvin Nophlin, Member

Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001) and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).