

total for the violations, which shall be paid within sixty (60) days from the date of this Order. We also shall attach twenty (20) stayed suspension days to the Respondent's license, which shall go into effect if the Respondent is found to be in violation of the alcoholic beverage control laws in the next year.

Procedural Background

This case comes before us as a result of the Notice of Status Hearing and Show Cause Hearing (Notice), dated January 25, 2012, which the Alcoholic Beverage Regulation Administration (ABRA) served on the Respondent on February 3, 2012.

The Notice charged the Respondent with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

- Charge I: [On November 27, 2011,] [y]ou allowed the licensed establishment to be used for an unlawful or disorderly purpose [in violation of District of Columbia Official Code § 25-823(2)];
- Charge II: [On November 27, 2011,] [y]ou violated Section 3 of the Full Recap Section of your Security Plan which requires that Security staff will be on site with a count meter [under District of Columbia Official Code § 25-823(6)];
- Charge III: [On June 18, 2011,] [y]ou allowed the licensed establishment to be used for an unlawful or disorderly purpose [in violation of District of Columbia Official Code § 25-823(2)];
- Charge IV: [On June 24, 2011,] [y]ou violated Section 3 of your Security Plan, which requires that you maintain an incident log [under District of Columbia Official Code § 25-823(6)];
- Charge V: [On June 24, 2011,] [y]ou violated Section 4, Paragraph B, of your Security Plan, which requires you to contact the Metropolitan Police Department or other emergency assistance in the event of an incident affecting customer safety [under District of Columbia Official Code § 25-823(6)];
- Charge VI: [On June 24, 2011,] [y]ou violated Paragraph 1 of your Security Plan, which requires that you issue glow-in-the-dark wristbands to those under the age of twenty-one (21) [under District of Columbia Official Code § 25-823(6)];
- Charge VII: You stored alcoholic beverages upon premises other than the licensed establishment without prior approval of the Board in violation of [District

of Columbia] Official Code § 25-754(a) and . . . § 205.2 [of Title 23 of the District of Columbia Municipal Regulations;

Charge VIII: You failed to keep and maintain on the premises for a period of three (3) years adequate books and records showing all sales, purchase invoices, and dispositions, in violation of [District of Columbia] Official Code § 25-113(j)(3)(A) . . . , [and §§ 1204 and 1208 of the District of Columbia Municipal Regulations].

ABRA Show Cause File No. 11-251-00212, Notice of Status Hearing and Show Cause, 2-6 (January 25, 2012).

The parties came before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on March 14, 2012. The matter then proceeded to a Show Cause Hearing on April 25, 2012.

FINDINGS OF FACT

The Board having considered the substantial evidence contained in the record, the testimony of witnesses, the arguments of the parties, and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a Retailer's Class CR License, ABRA License Number 75074. See ABRA Licensing File No. 75074. The establishment's premises are located at 1337 Connecticut Avenue, N.W., Washington, D.C. See id.
2. The Respondent and the Government stipulated to the following facts related to Charge I:

On Sunday, November 27, 2011, at approximately 2:34 [a.m.], members of the Metropolitan Police Department ("MPD") were summoned to your establishment because gunshots were heard in the area. Once the police arrived[,] they found three gunshot victims as well as two stabbing victims. A third stabbing victim drove himself to George Washington Hospital where another member of MPD saw him and was informed about the situation at your establishment. One of the victims who was shot in the back died of these wounds. Another victim was stomped and beaten unconscious once outside of your establishment.

These injuries occurred on an evening when your establishment hosted "Black Out Thanksgiving" which was run by an outside promoter, Mel Productions. This event consisted of a DJ providing hip hop music with no dress code and a cover charge to enter. According to witnesses who were present at the establishment that night, several fights broke out in the establishment. At approximately 2:15 [a.m.], as the result [of these] fights, the staff ended the event, turned on the lights and told all the patrons to leave. The patrons were escorted out of the club and according to a member of the security detail some of the patrons were carrying drinks as they exited the club. Once outside the club, the fights continued and included gun shots and stabbings. The main fight occurred in

the middle of the street where a patron was beaten unconscious while being stomped on. One patron who was stabbed in his stomach outside of the club came back into the club and collapsed on one [of the] club's sofas. A member of the security detail called 911. According to witnesses who were outside of the club, the sidewalk and street were covered with blood.

Statement of Stipulated Facts, 2¹

3. The Respondent and the Government stipulated to the following facts related to Charge II:

On November 27, 2011[,] during the subsequent investigation about the events that occurred that morning at your establishment, ABRA Investigator Jabriel Shakoor questioned your manager Jatinder Singh about the number of people who were at your establishment on November 26, 2011. Mr. Singh and the head of Security for that evening[] admitted that they did not have control of the count meter[,] since the promoter controlled the patron count meter. Section 3 of your Security plan . . . states, “. . .[] Security staff will be on staff with a count meter so as to close doors when approaching capacity should that ever happen.”

Statement of Stipulated Facts, 3.

4. The Respondent and the Government stipulated to the following facts related to Charge III:

On Saturday, June 18, 2011, at approximately 2:50 a.m., ten to fifteen patrons of Heritage India Brasserie and Lounge (“Heritage India”) assaulted four patrons of Cafe Citron, causing a large fight to break out in front of Heritage India.

At approximately 2:30 a.m., several patrons were ejected from Heritage India as a result of an altercation inside the establishment. By 2:45 a.m., ten to fifteen Heritage India patrons had gathered outside the entrance to the establishment. At approximately 2:50 [a.m.], a group [of patrons] exited Cafe Citron and walked toward Cafe Citron's valet stand. As the Cafe Citron patrons passed Heritage India, the Heritage India patrons directed lewd comments at the female Cafe Citron patrons and grabbed at them. When one of the male Cafe Citron patrons verbally confronted the Heritage India patrons, he was struck . . . in the face with a closed fist. At that point, a large brawl broke out, which spilled into the street. The Cafe Citron patron was dragged to the middle of the street, where he was repeatedly punched and kicked. He was transported to George Washington Hospital for treatment. Another patron of Cafe Citron was also punched in the face.

Statement of Stipulated Facts, 3.

¹ The stipulation of facts reviewed by the Board was a marked up copy of the Notice that starts on page 2 of the original Notice. See generally, Statement of Stipulated Facts. When referring to pages in the stipulation of facts we refer to the page number listed on the page, even though page 2 is actually page 1 of the document.

5. The Respondent and the Government stipulated to the following facts related to Charge IV:

On Friday, June 24, 2011, an Alcoholic Beverage Regulation Administration (“ABRA”) investigator, Jabriel Shakoor, interviewed the establishment’s ABC Manager, Jatinder Singh regarding the incident at you[r] establishment referenced in Charge III. Mr. Singh stated that no incidents were reported for the night of Saturday, June 18, 2011. When Investigator Shakoor asked to view the establishment’s incident log, Mr. Singh stated that the establishment did not keep an incident log. Section 3 of the establishment’s Security Plan reads: “The Licensee shall create an Incident Log. The log will be kept at a convenient location near the cash register. The log will provide for the recordation of all incidents and shall record the name of the involved individuals, the nature of the incident, and the time of the incident.”

Statement of Stipulated Facts, 4.

6. The Respondent and the Government stipulated to the following facts related to Charge V:

During Investigator Shakoor’s visit on Friday, June 24, 2011, regarding the incident at your establishment referenced in Charge III, Mr. Singh stated that he became aware of the altercation only after the police arrived. The leader of the security team stated that security did not respond to the incident. Thus, no one at the establishment contacted MPD or other emergency assistance when the altercation broke out. Section 4, Paragraph B, of the establishment’s Security Plan mandates that, in the event of an incident affecting customer safety or security, the “[m]anager and/or service personnel will contact MPD, call 911, or medical emergency assistance.”

Statement of Stipulated Facts, 4.

7. The Respondent and the Government stipulated to the following facts related to Charge VI:

Paragraph 1 of the establishment’s Security Plan reads: “Those under 21 entering for a dance/entertainment event will be tagged with wristbands that will glow in the dark to show that they are under age.” Investigator Shakoor’s visit on Friday, June 24, 2011 coincided with such an event. Investigator Shakoor observed that glow-in-the-dark wristbands were not in use. When questioned, Mr. Singh stated that the establishment did not use glow-in-the-dark wristbands.

Statement of Stipulated Facts, 4.

8. The Respondent and the Government stipulated to the following facts related to Charge VII:

On Thursday, May 5, 2011, at approximately 1:40 p.m., two Alcoholic Beverage Regulation Administration (“ABRA”) investigators, Jermaine Matthews and Erin Mathieson, visited the establishment to conduct a regulatory inspection. Mr. Singh, led the investigators to a basement storage room containing alcoholic beverages and provided them with alcoholic beverage invoices. After the investigators finished their review, Mr. Singh escorted them back to the first floor. At that time, Investigator Matthews noticed a bottle of Negro Model[o] beer unaccounted for by the invoices. Mr. Singh stated that the beer was part of an old order from Premium Distributors and that he would attempt to locate the invoice. When asked whether any other alcoholic beverages were present in the establishment, Mr. Singh indicated a walk-in refrigerator in the kitchen. In the refrigerator, the investigators observed one case of Negro Model[o] Beer and four cases of Corona Beer unaccounted for by the invoices. Mr. Singh stated that these cases were likewise part of an old order from Premium Distributors. The investigators advised Mr. Singh that they would return at a later date to view the invoices.

Another ABRA investigator, Vincent Parker, visited the establishment later that evening. Mr. Singh showed him an invoice from Premium Distributors dated May 5, 2011.

On Thursday, May 12, 2011, Investigator Mathieson returned to the establishment. Mr. Singh produced the invoice from Premium Distributors dated May 5, 2011. In addition, Mr. Singh informed Investigator Mathieson that the establishment stored alcoholic beverages off . . . premises at 1320 18[th] Street, N.W.

On Monday, May 16, 2011, Investigator Matthews contacted Premium Distributors. An employee confirmed that Premium Distributors made a delivery to Heritage India on May 5, 2011, but could not provide the time of delivery due to a scanner malfunction. Investigator Matthews then contacted the supervisor of Premium Distributors’ drivers, who informed Investigator Matthews that the delivery occurred after 4:00 p.m.

Investigator Matthews determined that the shipment from Premium Distributors arrived after he and Investigator Mathieson reviewed the establishment’s invoices on May 5, 2011. The investigators entered Heritage India at approximately 1:40 p.m. and exited at approximately 2:38 p.m. The shipment arrived after 4:00 p.m. Thus, Mr. Singh failed to provide the investigators with invoices for the Negro Modelo and Corona beer observed during the inspection.

Statement of Stipulated Facts, 5-6.

9. The Respondent and the Government stipulated to the following facts related to Charge VII:

On Thursday, May 5, 2011, at approximately 1:40 p.m., two Alcoholic Beverage Regulation Administration (“ABRA”) investigators, Jermaine Matthews and Erin Mathieson, visited the establishment to conduct a regulatory inspection. [Mr.] Singh led the investigators to a basement storage room containing alcoholic beverages and provided them with alcoholic beverage invoices. After the investigators finished their review,

[Mr.] Singh escorted them back to the first floor. At that time, Investigator Matthews noticed a bottle of Negro Modelo beer unaccounted for by the invoices. [Mr.] Singh stated that the beer was part of an old order from Premium Distributors and that he would attempt to locate the invoice. When asked whether any other alcoholic beverages were present in the establishment, Mr. Singh indicated a walk-in refrigerator in the kitchen. In the refrigerator, the investigators observed one case of Negro Modelo Beer and four cases of Corona Beer unaccounted for by the invoices. Mr. Singh stated that these cases were likewise part of an old order from Premium Distributors. You were unable to produce the invoices showing the purchase of the one case of Negro Modelo and four cases of Corona Beer.

Statement of Stipulated Facts, 6.

CONCLUSIONS OF LAW

10. The Board has the authority to levy fines, as well as suspend or revoke the license of a licensee who violates any provisions of Title 25 of the District of Columbia Official Code or Title 23 of the District of Columbia Municipal Regulations. D.C. Code §§ 25-830, 25-823(1) (West Supp. 2012); see also 23 DCMR § 800, *et. seq.* (West Supp. 2012). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine “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. Code §§ 25-830, 25-447 (West Supp. 2012).

11. We find the Respondent liable for the violations described in Charges I, II, IV, V, VII, and VIII. We dismiss Charges III and VI. We address each charge in the order of their appearance in the Notice.

I. Charge I

12. We first find that the Applicant permitted its establishment to be used for unlawful and disorderly conduct in violation of § 25-823(2) when it ejected belligerent patrons in a manner that ensured that fighting would continue outside the establishment, and allowed patrons to leave the establishment with drinks in their possession in violation of the open container law. See D.C. Code § 25-1001(a)(1) (West Supp. 2012).

13. Under § 25-823(2), a licensee may not allow “the licensed establishment to be used for any unlawful or disorderly purpose.” D.C. Code § 25-823(2) (West Supp. 2012). In order to prove a violation of §25-823(2), the Government must show that the licensee’s “method of operation, continued over time, harbor[s] sufficient danger of mischievous consequences sooner or later. . . .” Am-Chi Restaurant, Inc. v. Simonson, 396 F. 2d 686, 688 (D.C. Cir. 1968). Further, under § 25-823(2), a licensee can be held responsible for the unlawful acts of third parties. Levelle, Inc. v. District of Columbia Alcoholic Beverage Control Board, 924 A.2d 1030, 1036 (D.C. 2007). We also note that in the District of Columbia, an individual may not possess an alcoholic beverage in an open container in a street or alley. § 25-1001(a)(1).

14. The Respondent's negligent security practices on November 27, 2011, led directly to the tragic shooting and stabbing that occurred outside the establishment that night. There is no indication in the facts that the Respondent's security attempted to separate belligerent patrons or eject combatants separately; instead, the facts show that the Respondent's security merely dumped everyone in the establishment into the streets. *Supra*, at ¶ 2. Furthermore, the facts show that the Respondent's security did nothing to prevent patrons from leaving the establishment and entering the public streets with open containers of alcoholic beverages, which violates the District of Columbia's prohibition on open containers. *See* § 25-1001.² Under these circumstances, we are convinced that had the Respondent's security acted appropriately and responsibly, then the extreme violence that occurred outside the Respondent's establishment would not have occurred.

II. Charge II

15. As readily admitted by the Respondent, it violated Section 3 of its Security Plan by failing to have security operate a count meter while the establishment was open for business. *Transcript (Tr.)*, April 25, 2012 at 23. It is a violation for a licensee to fail to follow its security plan. D.C. Code § 25-823(6) (West Supp. 2012). Here, the Respondent's security plan states, "Security staff will be on site with a count meter – so as to close doors when approaching capacity – should that ever happen. *ABRA Show Cause File No. 11-251-00212*, Security Plan, pg. 4, § 3; *supra*, at ¶ 3. Nevertheless, despite this provision, both Mr. Singh and his head of security admitted that the Respondent's promoter possessed the count meter, not the establishment's security during the evening of November 26, 2011, going into the morning of November 27, 2011. *Supra*, at ¶ 3. Therefore, we find that the Respondent violated Section 3 of its Security Plan.

III. Charge III

16. We dismiss Charge III, because we find there is insufficient evidence in the record to substantiate the alleged violation of June 18, 2011. Under § 25-823(2), a licensee may not allow "the licensed establishment to be used for any unlawful or disorderly purpose." D.C. Code § 25-823(2) (West Supp. 2012). In order to show a violation of § 25-823(2), the Government has the burden of showing that the licensee's "method of operation, continued over time, harbor[s] sufficient danger of mischievous consequences sooner or later. . . ." *Am-Chi Restaurant, Inc. v. Simonson*, 396 F. 2d at 688. Here, the Respondent's security could not have predicted that the ejected patrons would fight random people exiting a neighboring establishment. *Supra*, at ¶ 4. Therefore, we dismiss Charge III, because we cannot impute the fight that occurred on June 18, 2011, to the Respondent's method of operation.

IV. Charge IV

17. The Respondent admits that it violated the portion of its Security Plan that requires it to maintain an incident log. It is a violation for a licensee to fail to follow its security plan. § 25-823(6). Here, the Respondent's security plan states, "The Licensee shall create an Incident Log.

² Thus, we characterize the events described in Charge I as "an obvious situation that gives rise to a violation of law." *Tr.*, 4/25/12 at 21.

The log will be kept at a convenient location near the cash register. The log will provide for the recordation of all incidents and shall record the name of the involved individuals, the nature of the incident, [and] the time of the incident.” Security Plan, pg. 2, § 3; supra, at ¶ 5. Nonetheless, despite the terms of the Respondent’s Security Plan, Mr. Singh admitted that the establishment did not maintain an incident log. Under these circumstances, the Respondent is in violation of its Security Plan.

V. Charge V

18. We find that the Respondent violated Section 4 of its Security Plan on June 18, 2011, by not contacting the police when its security was aware that patrons it ejected were fighting with patrons from a neighboring establishment in front of the Respondent’s establishment.

19. It is a violation for a licensee to fail to follow its security plan. § 25-823(6). Here, Section 4 of the Respondent’s Security Plan states, “In the event of an incident affecting customer safety or security, 911 will be called immediately. Personnel will make every effort to isolate parties and customers until authorities are in location Manager and/or service personnel will contact MPD, call 911, or medical emergency assistance. Security Plan, pg. 3, § 4; supra, at ¶ 6.

20. Here, the leader of the Respondent’s security team stated that security did not respond to the fight between the ejected patrons and the patrons from the neighboring establishment. Supra, at ¶¶ 4, 6. Based on the extremely violent nature of the fight, a reasonable person would expect the Respondent’s employees to be aware that a fight was occurring directly outside the establishment; especially, when the patrons had been ejected only twenty minutes earlier. Supra, at ¶ 4. Based on this fact, we can infer that the Respondent’s security knew of the fight involving its patrons, but chose not to respond. Therefore, we find that the Respondent violated Section 4 of its Security Plan.

VI. Charge VI

21. We dismiss Charge VI, because we find there is insufficient evidence in the record to substantiate the alleged violation of the Respondent’s Security Plan on June 24, 2011. The Respondent is obligated to follow its security plan. § 25-823(6). Here, the Respondent’s Security Plan mandates that the Respondent distribute glow-in-the-dark wristbands to patrons under the age of 21. Security Plan, pg. 1, § 1; supra, at ¶ 7. There is no evidence that patrons under 21 years of age were present at the establishment on June 25, 2011. Supra, at ¶ 7. Therefore, there is insufficient evidence in the record to substantiate Charge VI.

VII. Charge VII

22. We further find that the Respondent violated § 25-754(a), by storing beverages outside of its licensed establishment. Under § 25-754(a), “Alcoholic beverages shall not be . . . kept for sale . . . other than at the licensed establishment” without the approval of the Board. D.C. Code § 25-754(a). Here, Mr. Singh admitted that the establishment had a portion of the establishment’s alcoholic beverages at 1320 18th Street, N.W., even though the establishment’s

license only applies to 1337 Connecticut Avenue, N.W. Supra, at ¶¶ 1, 8. For this reason, we find that the Respondent engaged in the off-site storage of alcoholic beverages without permission from the Board in violation of § 25-754(a).

VIII. Charge VIII

23. Finally, we find that the Respondent failed to maintain adequate books and records. Under the law, all restaurant license holders must “keep and maintain on the premises for a period of 3 years adequate books and records showing all sales, purchase invoices, and dispositions.” D.C. Code §25-113(j)(3)(A) (West Supp. 2012); see also 23 DCMR §§ 1204, 1208 (West Supp. 2012). Here, an ABRA Investigator observed Negro Modelo and Corona beer in the Respondent’s refrigerator, which the Respondent could not account for in its alcoholic beverage invoices. Supra, at ¶ 9. Therefore, we find that the establishment failed to maintain adequate books and records that show all of the Respondent’s alcoholic beverage purchases.

24. We also reject the Respondent’s argument that Charges VII and VIII are the same, and that the Government is double charging it for the same incident. *Tr.*, 4/25/12 at 27. Charge VII is about the Respondent admitting that it stored alcoholic beverages at an improper location, while Charge VIII is about the Respondent’s failure to keep adequate books and records, which are entirely separate issues.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 1st day of August 2012, finds that the Respondent, Shamiana, LLC t/a Heritage India Brassiere & Lounge, violated District of Columbia Official Code §§ 25-113(j)(3)(A), 25-823(2), 25-823(6), 25-754(a) and §§ 205.2, 1204, and 1208 of Title 23 of the District of Columbia Municipal Regulations. The Board hereby **ORDERS** that

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$4,000 no later than sixty (60) days from the date of this Order. The Respondent shall receive a suspension of its license for ten (10) days, with all ten day (10) days stayed for one (1) year, provided that the Respondent does not commit any further ABC violations;
- (2) For the violation described in Charge II, the Respondent shall pay a fine of \$4,000 no later than sixty (60) days from the date of this Order. The Respondent shall receive a suspension of its license for ten (10) days, with all ten day (10) days stayed for one (1) year, provided that the Respondent does not commit any further ABC violations;
- (3) Charge III is dismissed;
- (4) For the violation described in Charge IV, the Respondent shall pay a fine of \$2,000 no later than sixty (60) days from the date of this Order;
- (5) For the violation described in Charge V, the Respondent shall pay a fine of \$2,000 no later than sixty (60) days from the date of this Order;

(6) Charge VI is dismissed;

(7) For the violation described in Charge VII, the Respondent shall pay a fine of \$2,000 no later than sixty (60) days from the date of this Order; and

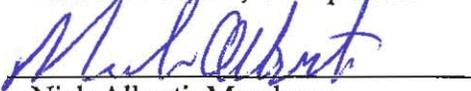
(8) For the violation described in Charge VIII, the Respondent shall pay a fine of \$2,000 no later than sixty (60) days from the date of this Order.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

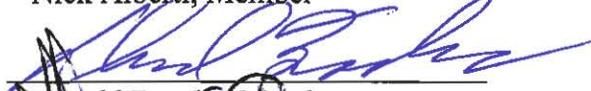
District of Columbia
Alcoholic Beverage Control Board



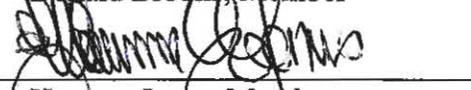
Ruthanne Miller, Chairperson



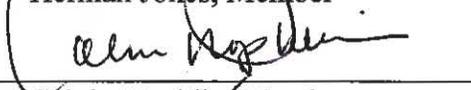
Nick Alberti, Member



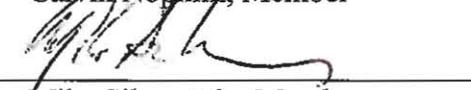
Donald Brooks, Member



Herman Jones, 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, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).