



## FINDINGS OF FACT

The Board issues the following findings of fact:<sup>1</sup>

### I. Background

1. Superclub Ibiza, LLC, t/a Ibiza, holds a Retailer's Class CN License (nightclub) at premises 1222 1st Street, N.E. *ABRA Licensing File No. 074456*, CAP Summary. Ibiza has been issued a Certificate of Occupancy that permits it an occupancy of 1,375 people *Certificate of Occupancy*, Permit No. CO 165776 (May 2, 2008).
2. According to the regulations, a public hall is defined as any business where "... a ball, dance, exhibition, lecture, concert, or convention is conducted for profit or gain" that has a capacity greater than 400 people. 19 DCMR §§ 1600.1-1600.2 (West Supp. 2015).
3. In its most recent renewal application, Ibiza filed an executed Settlement Agreement with the Department of Consumer and Regulatory Affairs. *ABRA Licensing File No. 074456*, Renewal Application (notarized on October 1, 2013). The DCRA Settlement Agreement ordered Ibiza to obtain a Public Hall License in order to "... continue any operations at the establishment." *Id.* at Settlement Agreement, 1 (Apr. 18, 2014). As part of the agreement, the DCRA issued Ibiza a temporary Public Hall License on April 18, 2014. *Id.* The agreement further stipulated that the DCRA retained the right to suspend or revoke the Public Hall License in accordance with 19 DCMR § 1602.1. *Id.* at § 3.
4. On September 19, 2014, the DCRA notified the ownership that "... Ibiza has failed to obtain a Public Hall License." *Notice of Breach of the April 18, 2014 Settlement Agreement Between the Department of Consumer and Regulatory Affairs and Superclub Ibiza, LLC*, 1 (Sept. 19, 2014). The DCRA then informed Ibiza that the DCRA Settlement Agreement "... has been effectively terminated and Ibiza is operating without the proper license." *Id.* The DCRA order obtained by the Board shows that service of the notice was provided to David Cox on behalf of Ibiza. *Id.* (Personal Service Stamp).
5. The DCRA's records reveal the following information: (1) the establishment held a Basic Business Public Health: Food Establishment license endorsement from July 1, 2011 to June 30, 2013; yet, the establishment did not hold this endorsement between July 1, 2013 and April 17, 2014; (3) a Basic Business Entertainment Services license for a public hall was issued to Ibiza for the period of April 18, 2014 to July 7, 2014; yet, the establishment did not hold this endorsement between the period of July 8, 2014, to the present. *Certification*, DCRA, Business Licensing Division (Mar. 17, 2015) (Superclub Ibiza LLC).

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<sup>1</sup> The Board incorporates Case Report Nos. 14-251-00308 and 15-251-00004 and all of the exhibits described in those reports by reference.

## II. October 18, 2014 (Case No. 14-251-00308)

6. On October 18, 2014, ABRA Investigator Mark Brashears arrived at Ibiza as part of the Noise Task Force. *Case Report No. 14-251-00308*, 2. At this time, Ibiza was hosting an 18 and over party, which featured a performance by the rap artist “Future.” *Id.* The establishment charged a \$20 cover and the performance lasted from 10:00 p.m. until 3:00 a.m. *Id.* The owner estimated that there were 1100 people inside the establishment on this date. *Id.*

## III. December 14, 2014 (Case No. 15-251-00004)

7. On December 14, 2014, around 1:15 a.m., ABRA Investigator Mark Brashears and Supervisory Investigator Craig Stewart were on patrol when they noticed a large unruly crowd in front of Ibiza. *Case Report No. 15-251-00004*, 2. The investigators noted that the establishment’s bouncers were yelling at crowd members attempting to force their way inside the establishment. *Id.*

8. Upon entering the establishment, the investigators observed overcrowding inside the establishment. *Id.* They noted that the density of the crowd made it difficult to walk through the establishment. *Id.* Indeed, the stairwell was packed with people loitering and drinking full-sized champagne bottles. *Id.*

9. During the investigation, the investigators obtained statements from the ownership and employees. *Id.* The owner, Mr. Troung, informed the investigators that Ibiza was using an exit door as an entry for “VIP’s.” *Id.* at 3. The owner further told the investigator that his attorney informed him that the establishment’s occupancy had not been reduced. *Id.* at 4. A security member informed the investigators that he believed approximately 1,500 people were inside the establishment. *Id.* at 3.

10. The investigators were soon joined by the Metropolitan Police Department (MPD) District Watch Commander Lt. Randy Griffin. *Id.* at 3. MPD determined that the unruly crowd was blocking Patterson Street, N.E. *Id.* Two additional ABRA investigators that reported to the scene noted that fifty MPD officers had responded to the front of the establishment in order to control the crowd. *Id.* at 3. Pictures taken on the date of the incident show the crowd walking through the middle of the street. *Id.* at Exhibit 4.

11. During the investigation, Fire Investigators Kenny Kittrell and Anne Guglik reported to Ibiza. *Id.* at 3. The report of the fire investigators indicates that they determined that individual rooms inside the establishment were overcapacity and that the establishment’s exits were not clear. *Id.*

12. Investigator Brashears noted that Ibiza’s security plan contained the following requirements: (1) Ibiza is required to store camera footage for up to 72 days; (2) security personnel are required to wear a visible name tag; (3) an employee observing illegal narcotic use shall contact a supervisor and call for back up before initiating contact with the customer; (4) the establishment shall use clickers to count patrons entering and exiting the establishment; and (5)

security shall call the police when illegal activity is observed. *Id.* at 5-6. Nevertheless, he observed the following violations: the ownership admitted that its security camera system only stores footage for up to 30 days; security did not wear name tags; and the establishment failed to use a clicker at the VIP entrance created by Mr. Troung; and the establishment failed to call the police. *Id.* at 5-6.

## CONCLUSIONS OF LAW

13. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public . . .” D.C. Official Code § 25-829(a).

### **I. IBIZA CANNOT OPERATE A PUBLIC HALL WITHOUT A PUBLIC HALL LICENSE.**

14. Ibiza has lacked a Public Hall License since January 8, 2014, and formally notified that it lacked a Public Hall License since September 19, 2014; nevertheless, the ownership blatantly continued operating without this required license.

15. Under § 25-823(1), a licensee shall not violate “. . . any of the provisions of this title, the regulations promulgated under this title, or any other laws of the District . . .” D.C. Official Code § 25-823(1).

16. Section 2851 of Title 47 of the D.C. Official Code requires all businesses to refrain from operating without all necessary business licenses and endorsements. D.C. Official Code § 47-2851.02(a). Title 47 also provides for the following endorsements to the business license: “Entertainment” and “Public Health: Food Establishment Retail.” Section 2820(b) of Title 47 provides that “owners . . . of buildings in which . . . balls, dances, . . . or entertainments of any description . . . are conducted, for profit or gain, shall pay a license fee of \$500 per annum . . .” D.C. Official Code § 47-2820(b). Section 2820(e) further states that “[a]ny license issued pursuant to this section shall be issued as an Entertainment endorsement to a basic business license under the basic business license system . . .” D.C. Official Code § 47-2820(e)

17. Under Section 1600.2 of Title 19 of the D.C. Municipal Regulations, a “public hall” is defined as any place where “. . . a ball, dance, exhibition, lecture, concert, or convention is conducted for profit or gain.” 19 DCMR § 1600.2 (West Supp. 2015). The operation of a public hall requires a Public Hall License issued by the Director of the DCRA unless the establishment has a capacity of four hundred (400) or fewer occupants and holds a Retailer’s Class C or D License issued by this Board. 19 DCMR § 1600.1 (West Supp. 2015).

#### **a. Ibiza qualifies as a public hall under § 1600.1.**

18. Ibiza’s Certificate of Occupancy indicates that it has a capacity of 1,375 people. *Supra*, at ¶ 1. The establishment is licensed as a nightclub by this Board and offers concerts, dancing,

and “entertainments.” *Supra*, at ¶¶ 2, 6; § 47-2820(b). The DCRA has also made the determination that Ibiza qualifies and requires a Public Hall License. *Supra*, at ¶¶ 3-4. Consequently, Ibiza is required to comply with the Public Hall License requirements.

**b. Ibiza has lacked the proper licenses authorizing its operations since July 8, 2014.**

19. Ibiza initially obtained a temporary Public Hall License as part of a DCRA Settlement Agreement. *Supra*, at ¶ 3. According to DCRA’s records, Ibiza has lacked a Public Hall License since July 8, 2014. *Supra*, at ¶ 5. Furthermore, on September 19, 2014, the DCRA formally notified Ibiza that the DCRA Settlement Agreement issuing the Public Hall License had been terminated and that it was operating without the proper licenses. *Supra*, at ¶ 4.

**c. Ibiza has intentionally, knowingly, and willfully operated without the proper licenses required by the DCRA.**

20. Not only does the Board determine that Ibiza violated the law, the Board finds that these violations are intentional, knowing, and willful. There is no other reasonable explanation when the record shows that Ibiza was served with notice that its Public Hall License had been terminated on September 19, 2014. *Supra*, at ¶ 4. Upon receiving this notice, the ownership was well aware that its operations on October 18, 2014, and December 14, 2014, violated the business license laws of the District of Columbia. *Supra*, at ¶¶ 6, 8-9. Consequently, it is clear that the ownership of Ibiza is “thumbing its nose” at the law and has made a business choice to operate in violation of the law.

**d. Permitting Ibiza to intentionally violate the law and failure to hold a Public Hall License poses an immediate and irreparable harm to the public.**

21. The Board finds that the continued operation of Ibiza without the necessary permits causes irreparable harm to the public by allowing the establishment to maintain a continuing nuisance and threatens the safety and welfare of the public.

22. In this case, it has been shown that Ibiza is intentionally and knowingly operating without the required licenses and permits issued by DCRA, which constitutes an intentional violation of § 25-823(1). All violations of Title 25 are deemed nuisances pursuant to § 25-805. D.C. Official Code § 25-805; *see also Com. ex rel. Preate v. Danny's New Adam & Eve Bookstore*, 625 A.2d 119, 122 (1993) (It is well-settled that even a lawful business may be enjoined from operation if it is shown that, under the particular circumstance, its operation constitutes a public nuisance); *Camp v. Warrington*, 227 Ga. 674, 674, (1971) (“where it is made to appear with reasonable certainty that irreparable harm and damage will occur from the operation of an otherwise lawful business amounting to a continuing nuisance, equity will restrain the construction, maintenance or operation of such lawful business.”). In this case, permitting Ibiza to continue operating without the required licenses would allow it to maintain and benefit from the operation of a continuing nuisance.

23. Furthermore, the Board is convinced that Ibiza's continued operation threatens the health, safety, and welfare of the public. A Public Hall License may be denied for any of the following reasons: (1) the ownership's criminal convictions; (2) "[t]he activities . . . associated with the public hall have created or will create a nuisance or a threat to the public health, public safety, or the peace, order, or quiet of the surrounding community"; (3) "[t]he activities . . . associated with the public hall have had or will have a significant adverse effect on the residential parking needs and vehicular and pedestrian safety of the surrounding neighborhood"; (4) the premises fail to comply with the zoning, building, or fire code; or (5) the applicant has allowed or permitted illegal activity or otherwise failed to prevent violence. 19 DCMR § 1602.1 (West Supp. 2015). Because Ibiza lacks a Public Hall License, it cannot be said that these factors have been considered. Therefore, allowing Ibiza to continue operating and hosting large, and potentially intoxicated crowds, without a Public Hall License, presents an unacceptable risk to Ibiza's employees, its patrons, MPD and other first responders, and the surrounding community.

24. For this reason, the Board orders Ibiza to cease operations until it obtains all permits and licenses required by the DCRA.

25. Separate and apart from the above, the Board addresses the security plan and crowd control issues identified by ABRA Investigator Mark Brashears below.

## **II. IBIZA IS ORDERED TO COMPLY WITH ITS SECURITY PLAN.**

26. The Board further orders Ibiza to comply with the provisions of its security plan. Under § 25-823(6), Ibiza must comply with the terms of its security plan. D.C. Official Code § 25-823(6). Despite clear requirements in the establishment's security plan, Investigator Brashears found that Ibiza does not have an adequate video retention system; does not have its security display name tags; fails to maintain an accurate count of patrons or use a clicker at all entrances; and fails to call the police when required. *Supra*, at ¶ 14. The Board notes that the security plan requirement ensures that the establishment remains safe for patrons. Therefore, the Board orders Ibiza to cease and desist operating in violation of its security plan.

## **III. IBIZA IS ADVISED THAT IT IS ILLEGAL FOR ITS CROWDS TO ENTER THE PUBLIC STREET.**

27. Finally, the Board advises Ibiza that it cannot continue to allow or permit its patrons to enter the public street. Under Section 2304.1 of Title 18 of the D.C. Municipal Regulations, "[b]etween adjacent intersections controlled by traffic control signal devices or by police officers, pedestrians shall not cross the roadway at any place except in a crosswalk." 18 DCMR § 2304.1 (West Supp. 2015). Furthermore, "[n]o pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb, except in a crosswalk. 18 DCMR § 2304.3 (West Supp. 2015). Finally, "[w]here sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. 18 DCMR § 2305.2 (West Supp. 2015). In this case, the record shows that Ibiza's patrons were blocking and standing in the public street. *Supra*, at ¶ 12. Consequently, this type of behavior

violates Title 18 of the D.C. Municipal Regulations, interferes with the use of the public streets, and cannot be permitted to continue.

### ORDER

Therefore, the Board, on this 18th day of March 2015, hereby orders Superclub Ibiza, LLC, t/a Ibiza, to immediately **CEASE AND DESIST** all operations until it obtains all required DCRA-issued licenses and permits, including all basic business licenses and the Public Hall License. Without the required DCRA permits, Ibiza has discontinued operations in accordance with D.C. Official Code § 25-791; therefore, Ibiza is ordered to surrender its license to the Board for safekeeping. In the alternative, ABRA is hereby authorized to seize the license and place it in safekeeping. The Board shall not lift this portion of the Order until Ibiza submits all required licenses to the Board and the Board issues a final written Order. At that time, the Board will determine the extent to which Ibiza is authorized to operate.

**IT IS FURTHER ORDERED** that Ibiza's shall cease and desist

- (1) Allowing or permitting its crowd to enter, block, or stand in the public street in violation of Title 18 of the D.C. Municipal Regulations; and
- (2) Operating in violation of its security plan, including its security camera footage retention policy; its security uniform name tag policy; its policy on calling MPD; its policy related to the use of a clicker at all entrances and exits.

**IT IS FURTHER ORDERED**, pursuant to D.C. Official Code § 25-115(c) and 23 DCMR § 1003.1, that ABRA shall no longer issue temporary licenses and one-day substantial change licenses for 1222 1st Street, N.E.

**IT IS FURTHER ORDERED**, pursuant to D.C. Official Code § 25-801(e), that ABRA refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance).<sup>2</sup>

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<sup>2</sup> The nuisance provision states,

(a) Any building, ground, or premises where an alcoholic beverage is manufactured, sold, kept for sale, or permitted to be consumed in violation of this title shall be a nuisance.

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the Corporation Counsel in the Civil Branch of the Superior Court of the District of Columbia against any person conducting or maintaining such nuisance or knowingly permitting such nuisance to be conducted or maintained.

D.C. Official Code § 25-805.

The Board further **ADVISES** Ibiza's ownership that due to the Board's findings of an intentional and willful violation of the law in this Order, all of its future license applications may be subject to challenge under D.C. Official Code § 25-301(a)(1) (character and fitness) whether related to Ibiza or another establishment. Furthermore, the Board advises Ibiza that it reserves the right to convert this matter into a summary suspension or summary revocation, should the Board deem it necessary to do so.

ABRA shall serve notice by certified mail or personal delivery to Ibiza's counsel of record.

District of Columbia  
Alcoholic Beverage Control Board



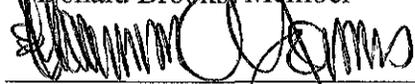
Ruthanne Miller, Chairperson



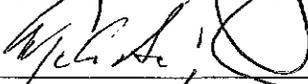
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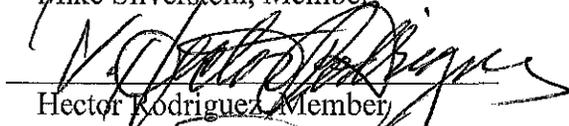
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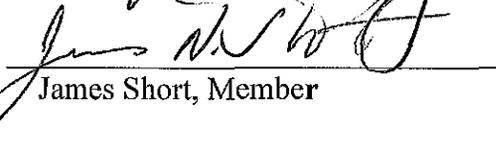
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, 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 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).