

capacity and attempting to conduct identification checks at the establishment, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1).

In addition, on March 19, 2011, the Board served a Notice, dated March 16, 2011, on the Respondent, charging the Respondent, in Case No. 10-251-00282, with the following violations:

- Charge I: The Respondent violated D.C. Official Code § 25-823(3) by failing to have an owner or ABC-licensed manager present while alcoholic beverages were being served at the establishment, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1).
- Charge II: The Respondent violated D.C. Official Code § 25-823(6) by failing to follow the establishment's security plan, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1).

We note that the Government has dismissed the charges found in Case No. 10-251-00282 because the Government's witness is unavailable to testify. *Transcript (Tr.)*, June 22, 2011 at 5. We also note that Board Member Nophlin has recused himself from all matters related to this case because he witnessed the events that form the basis of the charges against the establishment. Finally, the Respondent has submitted Proposed Findings of Fact and Conclusions of Law, which have been added to this matter's record.

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

FINDINGS OF FACT

1. In Case No. 10-CMP-00540, the Board issued a Notice, dated January 5, 2011, and, in Case No. 10-2251-00282, the Board issued a Notice, dated March 19, 2011. See ABRA Show Cause File Nos. 10-CMP-00540, 10-251-00282. The Respondent holds a Retailer's Class CN License and is located at 1301 K Street, N.W., Washington, D.C. See ABRA Licensing File No. 72225.
2. The Show Cause Hearing in this matter was held on June 22, 2011, and the Notices charge the Respondent with violating §§ 25-823(3), 25-823(5), and 25-823(6).
3. On July 16, 2010, ABRA Supervisory Investigator Jermaine Matthews was assigned to a combined ABRA and MPD team. *Tr.*, 6/22/11 at 11-12. The team was formed to perform identification checks at various ABC-licensed establishments in the District of Columbia. *Tr.*, 6/22/11 at 11-12, 27-28. Officer Mpras, Detective Carter, and Sergeant Batchel were members of the team. *Tr.*, 6/22/11 at 31, 83.

4. The team visited establishments that were on a list emailed to Supervisory Investigator Matthews by MPD Assistant Chief Diane Grooms. *Tr.*, 6/22/11 at 12, 44. The Respondent's establishment was visited because it appeared on the list. *Tr.*, 6/22/11 at 12.
5. On July 17, 2010, between 12:30 a.m. and 12:45 a.m., the team arrived at the establishment. *Tr.*, 6/22/11 at 13. Ki Jun Sung is a partial owner of the establishment and was present at the establishment on July 17, 2010, when the team arrived at the establishment. *Tr.*, 6/22/11 at 82. Mr. Sung observed the team pass him in the street and Mr. Sung saw "out of the corner of [his] eye . . . [that] they were police officers with badges around their necks." *Tr.*, 6/22/11 at 83.
6. The establishment has two lines to enter the establishment. *Tr.*, 6/22/11 at 152. One line has a sign that indicates that it is for customers with table reservations, while another line has a sign indicating that it is the general entry line. *Tr.*, 6/22/11 at 152. As indicated by Mr. Sung, the establishment first has its security staff check customers' identification before allowing them to approach the table host and enter the establishment. *Tr.*, 6/22/11 at 158. The table host's duties are to identify table customers after their identification is checked and escort the customers to their table. *Tr.*, 6/22/11 at 151. The establishment's table hosts are not part of the establishment's security team and do not read the establishment's security plan. *Tr.*, 6/22/11 at 155.
7. When the team approached the establishment's entrance, there was no queue in the table reservation line, and there were approximately 20 people in the general entry line. *Tr.*, 6/22/11 at 152. Mr. Sung was standing at the eastern portion of the establishment, inside the establishment's ropes, when the team approached the Respondent's table host. *Tr.*, 6/22/11 at 83.
8. Supervisory Investigator Matthews, along with the MPD officers, approached the table host and identified himself as an ABRA investigator seeking to enter the establishment for the purposes of checking the identification of the establishment's patrons. *Tr.*, 6/22/11 at 14. The establishment's table host told the team that they must wait; however, Investigator Matthews informed the table host that he was required to give the team access to the establishment. *Tr.*, 6/22/11 at 14. Mr. Sung was unable to hear what was said between the team and the establishment's table host. *Tr.*, 6/22/11 at 138-39.
9. In pertinent part, we recount the video footage recorded by the establishment's camera that is located inside the establishment and shows the area immediately outside the establishment's entrance, the establishment's glass-door entrance, and a short hallway leading to another glass door. *Respondent's Exhibit No. 1*, 00:00-07:15. We note that the recording begins when the team began interacting with the establishment's table host. The recording does not show the activities of Mr. Sung or the team before either party appears in the video footage submitted by the Respondent. See generally *Respondent's Exhibit No. 1*, 00:00-07:15.
10. The video begins with a woman, who is wearing a white shirt and a large black belt, opening the establishment's door, entering the premises, and then opening and walking

through the second set of glass doors. *Respondent's Exhibit No. 1*, 00:00-00:12. Immediately after the woman in white enters the second glass door, a female patron opens the establishment's door and enters with her female friend. *Respondent's Exhibit No. 1*, 00:12-00:16. The female patrons wipe their feet on the establishment's carpet, and one of the patrons opens the establishment's second glass door, and both enter the establishment. *Respondent's Exhibit No. 1*, 00:14-00:23.

11. Simultaneously, outside of the establishment's entrance, the footage shows two females walking in front of the establishment's door and head towards the street. *Respondent's Exhibit No. 1*, 00:19-00:24. In addition, a female patron, with what appears to be a white purse, is standing directly to the left of the establishment's entrance. *Respondent's Exhibit No. 1*, 00:19-00:31.

12. The video further shows an employee of the establishment, outside of the establishment, sidestep into the view of the camera from the right and stand in front of one of the establishment's double glass doors. *Respondent's Exhibit No. 1*, 00:25-00:28. According to the establishment's footage, the employee then steps in front of the double glass doors and raises his arms. *Respondent's Exhibit No. 1*, 00:25-00:28. The employee is facing Officer Mpras, who walks into view of the camera as the employee steps in front of the doors. *Respondent's Exhibit No. 1*, 00:28; *Tr.*, 6/22/11 at 85. The employee, facing Officer Mpras, is shown on camera following Officer Mpras's movements, while the employee has his arms raised, not more than a foot away from Officer Mpras. *Respondent's Exhibit No. 1*, 00:26-00:29. Officer Mpras subsequently approaches the door and places his hand on the door's handle, as the establishment's employee, facing Officer Mpras, raises his arms in front of Officer Mpras, close to the officer's shoulders. *Respondent's Exhibit No. 1*, 00:28-00:30. After the employee raises his arms, Officer Mpras is observed opening the establishment's door, and the employee then waves his left arm in front of the opening, in front of Officer Mpras. *Respondent's Exhibit No. 1*, 00:29-00:32.

13. The footage then shows that the employee is confronted by an MPD officer wearing a blue polo t-shirt and another officer wearing a light colored shirt and khakis before the employee can take any further action. *Respondent's Exhibit No. 1*, 00:31-00:33. The officer in the blue polo t-shirt can be seen detaining the employee and shining his flashlight on the employee's person. *Respondent's Exhibit No. 1*, 00:30-00:35. A member of the establishment's security staff appears into the view of the camera, to the right, and another security member can be seen coming from behind the officer in the blue polo t-shirt. *Respondent's Exhibit No. 1*, 00:35-00:40. The officer in the blue polo t-shirt then pushes the employee that tried to intercept Officer Mpras to the right, and, while still in camera view, grabs the employee's shoulder, and then appears to berate the employee. *Respondent's Exhibit No. 1*, 00:34-00:48.

14. The employee's body language indicates that he was impeding the team's progress into the establishment. The employee that stepped into the view of the camera had his arms raised and his hands out, as if to say "halt!" *Respondent's Exhibit No. 1*, 00:25-00:32. Furthermore, based on the positioning of the employee, it is clear that he was tracking

Officer Mpras's movements and moving in time with Officer Mpras's movements. *Respondent's Exhibit No. 1*, 00:25-00:32. As such, based on the employee's body language and movements, we find that the employee was attempting to prevent Officer Mpras from entering the establishment.

15. After the officer in the blue polo t-shirt confronts the establishment's employee, Officer Mpras enters the establishment. *Respondent's Exhibit No. 1*, 00:33. Mr. Sung then appears in the video footage, coming from the left, and pushes himself past the security staff member standing behind the officer with the blue polo t-shirt. *Respondent's Exhibit No. 1*, 00:37-00:42. The video then shows Mr. Sung speaking with Officer Mpras and the officer in the light colored shirt. *Respondent's Exhibit No. 1*, 00:42-00:46. Officer Mpras makes a statement to Mr. Sung and can be observed pointing outside the establishment, to the right. *Respondent's Exhibit No. 1*, 00:45-00:46.

16. After the officers and Mr. Sung finish speaking, the officer in the light colored shirt, who is clearly wearing his badge around his neck, is the first to enter the second glass door. *Respondent's Exhibit No. 1*, 00:59. He is followed by Mr. Sung. *Respondent's Exhibit No. 1*, 01:00; *Tr.*, 6/22/11 at 17, 36. Mr. Sung is followed by Officer Mpras, who is also clearly wearing his badge around his neck. *Respondent's Exhibit No. 1*, 00:59-01:01. Officer Mpras is followed by Investigator Matthews, who is not wearing his badge. *Respondent's Exhibit No. 1*, 01:03. Investigator Matthews is followed by Board Member Nophlin. *Respondent's Exhibit No. 1*, 01:03. Board Member Nophlin is followed by the officer wearing the blue polo t-shirt, who can be seen wearing his MPD badge around his neck. *Respondent's Exhibit No. 1*, 01:05. The officer wearing the blue polo t-shirt is followed by an officer wearing a yellow polo t-shirt and a Washington National baseball cap. *Respondent's Exhibit No. 1*, 01:10. The MPD officer in yellow is wearing his badge around his neck before he enters the establishment. *Respondent's Exhibit No. 1*, 00:57. The officer in yellow is followed by an officer wearing a t-shirt that has the number 20 emblazoned on it. *Respondent's Exhibit No. 1*, 01:10-01:12, 01:24. Finally, an MPD officer, wearing a white shirt and his badge around his neck, enters the establishment, along with another ABRA investigator who is not wearing a badge around his neck. *Respondent's Exhibit No. 1*, 01:13-01:15.

17. Bobby Palladino is the operating partner of the Respondent's establishment and was working at the establishment on July 17, 2010. *Tr.*, 6/22/11 at 96-97. Mr. Palladino confirmed that after the team entered the establishment, Mr. Sung, two MPD officers, and Supervisory Investigator Matthews entered the establishment's office. *Tr.*, 6/22/11 at 100-01. Mr. Palladino did not hear the conversation that Mr. Sung had with the team in the office; instead, he entered the venue to observe and assist with the establishment's operations. *Tr.*, 6/22/11 at 102-04.

18. Supervisory Investigator Matthews states that the establishment's doormen delayed the team from entering the establishment for approximately two to three minutes. *Tr.*, 6/22/11 at 29.

19. Board Member Nophlin accompanied the team during its investigation. *Tr.*, 6/22/11 at 13. The Government called Board Member Nophlin as a witness, but the Board sustained the Respondent's objection to having Board Member Nophlin testify. *Tr.*, 6/22/11 at 192-94. The Board also notes that Officer Mpras is also employed as a private attorney and represents clients before this Board. *Tr.*, 6/22/11 at 31-32. Mr. Sung testified that Officer Mpras, in his capacity as a private attorney, offered Mr. Sung legal services after the events of July 16, 2010, occurred. *Tr.*, 6/22/11 at 165. According to Mr. Sung, Officer Mpras did not make any promises. *Tr.*, 6/22/11 at 165.

20. The Board's records indicate that the Respondent has one prior primary tier violation. *ABRA Show Cause File No. 10-CMP-00540, Investigative History; ABRA Show Cause Files Nos. 12596, 12595(a), 12624, Tr.*, 11/12/2008 at 13. The establishment was previously accused of operating after its Board-approved hours; allowing unlawful and disorderly conduct to occur in the establishment; assaulting an ABRA investigators on the establishment's premises; and denying entry to MPD officers seeking admission into the establishment. *ABRA Show Cause File No. 10-CMP-00540, Investigative History; see also ABRA Show Cause File Nos. 12624, 12596, 10713, 9520.* The establishment settled these charges as part of an offer-in-compromise and, as part of the settlement, paid a \$4,000.00 fine and was levied a three day suspension, with one day stayed pending no further ABC violations. *Investigative History.*

CONCLUSIONS OF LAW

21. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Official Code § 25-830 and 23 DCMR § 800, *et seq.*

22. Regarding Case No. 10-CMP-00540, the question presented to the Board is whether the Respondent delayed or otherwise interfered with the entry of the team pursuant to D.C. Official Code § 25-823(5). We answer this question affirmatively, because the Government has proven through substantial evidence that an employee of the establishment delayed and interfered with the team's entrance into the establishment. *See* 23 DCMR § 1718.3 (2008).

23. The law states that it is a violation for a "licensee [to] fail[] or refuse[] to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises . . . or otherwise interferes with an investigation" D.C. Code § 25-823(5) (Supp. 2011). We note that the application of this statute is not limited to the actions of a licensee's security staff, but may be applied to the actions of any of the licensee's employees.

24. We find the Respondent in violation of § 25-823(5) based on the video footage submitted into evidence. The footage shows that the establishment's employee was attempting to impede Officer Mpras as he walked to the establishment's front entrance.

Supra, at para. 12-14. Furthermore, based on the manner in which Officer Mpras and the employee entered the camera's view, we can infer that the employee was attempting to block Officer Mpras before they both entered the view of the camera. Supra, at para. 11-12. Had the employee not been detained by the officer in the blue polo t-shirt, the employee would have undoubtedly blocked Officer Mpras from entering the establishment. Supra, at para. 13-14. According to Supervisory Investigator Matthews, the incident in front of the establishment delayed entry into the establishment for approximately two to three minutes, and the footage shows that the team's progress into the establishment was stopped as they dealt with the employee blocking their path. Supra, at para. 13, para. 15, para. 18. As such, based on these facts, the Respondent, through its employee, did not allow Officer Mpras and the team to inspect the establishment's premises without delay.

25. The Respondent has proffered that the Board should not find the Respondent liable, because the establishment's employees were uncertain and unaware of the official status of the team and that the delay was for a minimal amount of time. *Respondent's Proposed Findings of Fact and Conclusions of Law*, para. 2-4, para. 6. We disagree.

26. First, we do not find credible the contention that the establishment's employees, including the employee seen in the video, did not realize that MPD officers were seeking entrance into the establishment. As testified by Mr. Sung, he observed that the team was composed of police officers, because they were wearing badges around their neck. Supra, at para. 5. Further, the video footage shows Officer Mpras wearing his badge, in plain view of the employee, who at all times was facing Officer Mpras. Supra, at para. 12. As a result, there is no credible evidence that the employee in the video did not know that Officer Mpras was an MPD officer.

27. Second, it is irrelevant that the delay was for only a few minutes. Section 25-823(5) states that MPD officers are entitled to enter an ABC-licensed establishment "without delay." § 25-823(5). Under the plain meaning of the statute, it does not matter whether the delay is extensive or momentary; rather, the issue is whether there is a delay. Such a strict interpretation of § 25-823(5) is warranted, because creating loopholes for establishments to skirt this important law is a threat to public safety. Specifically, such delays could lead to unnecessary confrontations between the police and employees and potentially delay police response times to emergencies that may occur inside ABC-licensed establishments. As such, we reject the Respondent's attempt to rebut the Government's evidence.

28. Based on our finding that the establishment violated § 25-823(5), the Respondent shall pay a fine in the amount of \$6000.00 and shall receive a suspension of its license for seven (7) days; three (3) days to be served and four (4) days stayed for one year, provided that the Respondent does not commit any further ABC violations. We find that this penalty is justified based on the seriousness of the offense committed by the Respondent and because of the similarity of the current charges to previous charges settled by the Respondent.

29. The Respondent has also argued that a violation of § 25-823(5) can only be fined as a primary tier violation but should not count towards the number of primary tier violations that an establishment has accumulated. We agree.

30. Section 25-823, which is not listed in the Board's penalty schedule, states that when a licensee violates § 25-823(5), "The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if . . . [t]he licensee fails or refuses to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation" D.C. Code §§ 25-823, 25-823(5) (2001); see generally 23 DCMR § 800, *et seq.* (2008). Title 25 of the D.C. Official Code then states that: "The Board may fine for a violation not listed on the schedule consistent with the primary tier violation penalties" D.C. Code § 25-830(f) (2001).

31. We interpret § 25-830(f) to require violations that are not identified in the penalty schedule found in Title 23 of the D.C. Municipal Regulations to be fined as if the violation was a primary tier violation. However, such violations cannot be included in the tally of the licensee's total number of primary tier violations. As such, pursuant to § 25-823, the Board may impose a primary tier level fine, suspend, and revoke the ABC-license of a licensee that violates § 25-823(5), but the Board will not count such a violation in the establishment's official count of primary tier violations.

32. As a final note, the Board recognizes that its interpretation of § 25-830(f) departs from the Board's decision in Morton's of Chicago, which held that such violations count towards an establishment's tally of primary tier violations. Morton's of Chicago/Washington Square, Inc., t/a Morton's of Chicago, Board Order No. 2010-462, 2 (D.C.A.B.C.B. Sept. 15, 2010). It is our view that counting violations that are not listed in the penalty schedule as primary tier violations is not supported by the law. As such, the Board will not count the Respondent's violation of § 25-823(5) in the establishment's tally of primary tier violations and rejects its prior holding in Morton's of Chicago.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of October 2011, finds that the Respondent, Jasper Ventures, LLC, t/a K Street, violated D.C. Official Code § 25-823(5). The Board hereby **ORDERS** that:

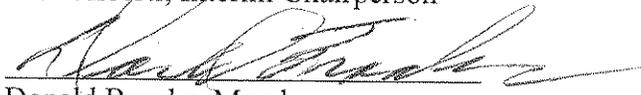
- (1) the charges found in Case No. 10-251-00282 are dismissed;
- (2) the Respondent shall pay a fine in the amount of \$6000.00 by no later than thirty (30) days from the date of this Order;
- (3) the Respondent shall receive a suspension of its license for seven (7) days; three (3) days to be served and four (4) days stayed for one (1) year, provided that the Respondent does not commit any further ABC violations; and

(4) the suspension days shall be served from Thursday, October 27, 2011, to Saturday, October 29, 2011.

Copies of this Order shall be sent to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson


Donald Brooks, Member

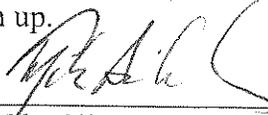
I concur with the majority's findings that the Respondent was in violation of the charges set forth in the Notice to Show Cause.

I write separately to address other matters that came to light during the Show Cause Hearing. Specifically, the involvement of a former MPD Reserve Officer in this matter troubles me greatly. The video of the incident and sworn testimony, if true, show that a Reserve Officer led other MPD officers into the establishment and played a leading role—if not the leading role—in the visit to the K Street Lounge. Supra, at para. 12-16.

This Reserve Officer is also a lawyer who appears on a regular basis before this Board. Supra, at para. 19. The involvement of an attorney who practices before the Board in an investigation of his client's competitors could give rise to an appearance of a possible conflict of interest.

But there is an additional allegation that must be addressed. In sworn testimony, the licensee stated that this former reserve officer subsequently offered his services as defense counsel IN THIS CASE. Supra, at para. 19; *Tr.*, 6/22/11 at 165. This uncorroborated testimony, if true, would take this matter to a far more serious level.

But it is not the province of this Board to enforce the Rules of Professional Conduct. This Member must leave to the appropriate authorities the question whether the conduct in this matter should be reviewed. However, I bring this matter to light because such possible conflicts of interest should not be overlooked, nor should anyone believe this Board is ignoring such matters or covering them up.


Mike Silverstein, 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 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) (2004).