

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

In the Matter of:)	
)	
2408 Wisconsin Avenue, LLC)	License No.: 79644
t/a Mason Inn (formerly Gin & Tonic))	Case No.: 11-251-00054
)	Order No.: 2012-122
Holder of a Retailer's Class CR License)	
at premises)	
2408 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	

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

ALSO PRESENT: 2408 Wisconsin Avenue, LLC, t/a Mason Inn (formerly Gin & Tonic),
Respondent

Andrew Kline, on behalf of the Respondent

Louise Phillips, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

This matter comes before the Alcoholic Beverage Control Board (Board) on the Respondent's Motion for Reconsideration (Motion), submitted on April 17, 2012. The Respondent proposes to submit a different incident report that proves it complied with its security plan. We deny this Motion, because the Respondent was aware of the issues under adjudication, and already had an opportunity to submit such evidence at the Show Cause Hearing on November 30, 2011.

On September 24, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 14, 2011, on

2408 Wisconsin Avenue, LLC, t/a Mason Inn, (Respondent) at premises 2408 Wisconsin Avenue, N.W., Washington, D.C. The Notice charged the Respondent with violating §§ C(1) and F(1) of its security plan. The charge related to § C(1) was later dismissed, but we went on to find the Respondent liable for violating § F(1).

In regards to the violation of § F(1), the Notice informed the Respondent that it was being charged with failing to follow its security plan in violation of § 25-823(6). *ABRA Show Cause File No. 11-251-00054*, Notice of Status and Show Cause Hearings, 2. The Notice then cited § F(1) of the Respondent's security plan, which states "Every incident shall be recorded as soon after the incident as possible and must be on the day it occurs." *Id.* The last sentence of the Notice then stated, "Therefore, the establishment is in violation of their Security Plan Agreement for failing to provide documentation of their incident log."

In its Motion, the Respondent argues that it was not aware that the authenticity of its Incident Report was in question and that it was under the impression that it was being charged with failing to provide its security plan to the Alcoholic Beverage Regulation Administration (ABRA). *Mot. to Recon.*, ¶ 6. The Respondent further proposes to submit an email describing the incident to the establishment's owners on February 13, 2012. *Id.*

We reject the Respondent's arguments based on the reasoning provided by the Government in its opposition submitted on May 4, 2012. We agree with the Government that this evidence is not admissible after the close of the record where the email was in the Respondent's possession at the time of the hearing. *Dist. Opp. to Resp. Mot. to Recon.*, 2-3; 23 DCMR § 1719.4 (West Supp. 2012).

As § 1719.4 states,

If a petition is based in whole or in part on a new matter, that matter shall be set forth in an affidavit and be accompanied by a statement that the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for decision.

23 DCMR § 1719.4 (West Supp. 2012).

It is clear that statement at the end of the Notice was based on the facts that the Government had at the time the Notice was issued. The Respondent was well aware that the issue was whether it complied with § F(1) of its security plan; thus, the Respondent was well aware that the Board would examine whether it had produced an incident report on the day of the incident. Under these circumstances, had the Respondent exercised due diligence before the hearing, it would have ensured that the email was submitted to the Board during the Hearing.

Indeed, the email now being proffered by the Respondent raises further questions about the credibility of the Respondent's evidence. During the Show Cause Hearing the Respondent specifically stated that the handwritten incident report was the establishment's incident report and kept on the establishment's computer. *Dist. Opp. To Resp. Mot. to Recon.*, 1; *see also Transcript (Tr.)*, November 30, 2011 at 109. The Respondent did not provide the Board with

any testimony that the establishment's staff created another incident report through email. Dist. Opp. To Resp. Mot. to Recon., 1; *Tr.*, 11/30/12 at 107-08. As a result, the present Motion appears to be a bald attempt to change the Respondent's testimony after the fact, which is not the function of a Motion for Reconsideration.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 23rd day of May 2012, **DENIES** the Motion to Reconsider submitted by 2408 Wisconsin Avenue, LLC, t/a Mason Inn (formerly Gin & Tonic). ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



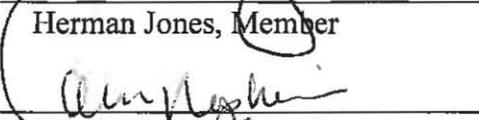
Nick Alberti, Member



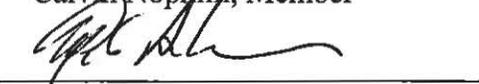
Donald Brooks, Member



Herman Jones, Member



Calvin Noplin, 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).