

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

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In the Matter of:	)	
	)	
Mimi & D, LLC	)	License No.: 86037
t/a Mood	)	Case Nos.: 11-CMP-00001
	)	11-CMP-00470
	)	11-CMP-00511
	)	
	)	Order No.: 2012-344
	)	
Holder of a Retailer's Class CT License	)	
at premises	)	
1318 9th Street, N.W.	)	
Washington, D.C. 20008	)	

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Mimi & D, LLC, t/a Mood, Respondent

Abeba Beyane, Owner, on behalf of the Respondent

Kwamina Williford, Esq., Holland & Knight LLP, on behalf of the Respondent

Michael Stern, Esq., Assistant Attorney General,  
on behalf of the District of Columbia

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

Martha Jenkins, Esq., General Counsel  
Alcoholic Beverage Regulation Administration

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

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## INTRODUCTION

We find that on December 30, 2011, Mimi & D, LLC, t/a Mood, (Respondent) violated §§ 25-446, 25-823(5), and 25-823(6) of Title 25 of the District of Columbia (D.C.) Official Code, by misreporting the altercation that occurred inside the establishment in an attempt to hinder the investigation of Alcoholic Beverage Regulation Administration (ABRA) investigators; and violating its security plan by failing to operate a security camera with the capability to save images on December 30, 2011. We further find that the Respondent failed to cure two separate violations of the noise provisions of its Voluntary Agreement on September 2, 2011, and October 29, 2011. We dismiss the controlled substance charge filed under § 25-822(2)(A), because the Government failed to show that the Respondent “knowingly permitted” the use of marijuana inside the establishment. In total, we levy a \$7,000 fine on the Respondent and suspend the Respondent’s liquor license for a total of twenty days. Ten of the suspension days shall be stayed, so long as the Respondent does not commit any additional violations within one (1) year from the date of this Order.

### *Procedural Background*

On February 18, 2012, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 8, 2012, on the Respondent located at premises 1318 9th Street, N.W., Washington, D.C. 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: You interfered with an investigation [in violation of] D.C. Official Code § 25-823(5) (2001);
- Charge II: You failed to follow your security plan filed with the Alcoholic Beverage Regulation Administration [in violation of] D.C. Official Code § 25-823(6) (2001);
- Charge III: You permitted, in the licensed establishment, the use of a controlled substance identified in the CSA, to wit, [marijuana], pursuant to 21 U.S.C. § 812 [in violation of] 25-822(2)(A) (2001);
- Charge IV: You violated paragraph 6 of the Voluntary Agreement (“VA”) [on September 2, 2011], which you entered on March 10, 2008, by allowing music to be played at the licensed establishment at volumes that were audible by occupants in their adjacent residential property, in violation of D.C. Official Code § 25-446 . . . ;
- Charge V: You violated paragraph 6 of the Voluntary Agreement (“VA”) [on October 29, 2011], which you entered on March 10, 2008, by allowing music to be played at the licensed establishment at volumes that were audible by occupants in their adjacent residential property, in violation of D.C. Official Code § 25-446 . . . ;

*ABRA Show Cause File No. 11-CMP-00470*, Notice of Status Hearing and Show Cause Hearing (Feb. 8, 2012).

The parties came before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on March 28, 2012. The matter proceeded to a Show Cause Hearing on June 13, 2012, where the Government sought to prove the charges through substantial evidence. We further note that both parties agreed to rely on the transcript from the Respondent's Summary Suspension Hearing on January 13, 2012, for Charges I, II, and III. *Transcript (Tr.)*, January 13, 2012 at 5-6.

## FINDINGS OF FACT

The Board having considered the 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:

### I. Background

1. The Respondent holds a Retailer's Class CT License, ABRA License Number 86037. See *ABRA Licensing File No. 86037*. The establishment's premises are located at 1318 9th Street, N.W., Washington, D.C. See *ABRA Licensing File No. 86037*.

### II. Detective Jackson

2. On December 30, 2011, Metropolitan Police Department (MPD) Detective Anita Jackson received a report that a stabbing had occurred near the Respondent's establishment, and that the victims were transported to Howard University Hospital Emergency Room. *Tr.*, 1/13/12, at 79-81, 89-90. Upon receiving the report, Detective Jackson traveled to Howard University Hospital to interview the victims. *Tr.*, 1/13/12, at 89-90. Upon arriving at the hospital, at around 1:30 a.m., Detective Jackson spoke with Shaun Griffin, a patron of the establishment, and Jason Thomas, a promoter. *Tr.*, 1/13/12, at 90, 107. Marquis King, a contract performer that worked for Mr. Thomas, was at the hospital as a victim as well, however, he could not speak to Detective Jackson due to the severity of his injuries. *Tr.*, 1/13/12, at 90-91.

3. Mr. Griffin told Detective Jackson that he was inside the establishment at 12:50 a.m. when a fight broke out near the establishment's bar by the front entrance. *Tr.*, 1/13/12, at 91, 113-16. The fight involved two performers and their entourages. *Tr.*, 1/13/12, at 94, 113. Mr. Griffin stated that he witnessed security break up the fight and push the combatants outside. *Tr.*, 1/13/12, at 91. After the incident, the establishment resumed normal operations; however, Mr. Griffin observed Marquis King enter the establishment and approach him. *Tr.*, 1/13/12, at 91, 113.

4. Mr. King told Mr. Griffin that he had been stabbed outside the establishment. *Tr.*, 1/13/12, at 91, 109. Mr. Griffin then noticed that Mr. King's abdomen was bleeding and his intestines were hanging out. *Tr.*, 1/13/12, at 114, 122. He then proceeded to escort Mr. King out

of the establishment by holding his arm and helping him walk, while Mr. King held his side. *Tr.*, 1/13/12, at 114, 122.

5. At this time, Mr. Thomas told Detective Jackson that he was standing in the curb in front of the establishment's entrance, near his car. *Tr.*, 1/13/12, at 90, 102. He soon observed Mr. Griffin exit the establishment with Mr. King. *Tr.*, 1/13/12, at 90. Mr. Thomas observed that Mr. King's abdomen was bleeding profusely, and then realized that he had been stabbed and was bleeding as well. *Tr.*, 1/13/12, at 90. Mr. Thomas and Mr. King then entered Mr. Griffin's vehicle, and Mr. Griffin drove them both to the hospital. *Tr.*, 1/13/12, at 90, 108-09.

6. At the hospital, Detective Jackson was advised that both Mr. King and Mr. Thomas had suffered severe injuries that required surgery. *Tr.*, 1/13/12, at 91-92, 125. According to Mr. King's doctor, Mr. King received a punctured liver and punctured intestine. *Tr.*, 1/13/12, at 92. Mr. Thomas reported that he had been stabbed in the lower back and had received a punctured spleen. *Tr.*, 1/13/12, at 91. Both Mr. Thomas and Mr. King survived, but they both had to recuperate in the hospital for approximately a week after their surgeries. *Tr.*, 1/13/12, at 93.

7. In the course of her investigation, Detective Jackson also spoke to Marlon Brown who was present at the establishment when the stabbing occurred. *Tr.*, 1/13/12, at 100. Mr. Brown, who suffered a concussion, only recalls standing near the front of the establishment and being punched in the mouth. *Tr.*, 1/13/12, at 100-101. Detective Jackson observed that Mr. Brown's mouth was bleeding during their conversation. *Tr.*, 1/13/12, at 123-24.

### **III. Officer Wilcox**

8. After midnight, on December 30, 2011, MPD Officer Olivia Wilcox received a report that a stabbing had occurred at the Respondent's establishment. *Tr.*, 1/13/12, at 214-15, 217. Officer Wilcox and her partner arrived quickly, because they were only a block away from the establishment when she received the call. *Tr.*, 1/13/12, at 235, 260.

9. Upon arriving at the establishment, she observed puddles of blood in the street and blood spatter on the sidewalk approximately four to five feet from the establishment's entrance. *Tr.*, 1/13/12, at 215, 235, 242. Officer Wilcox observed that after she arrived, patrons were still exiting the premises. *Tr.*, 1/13/12, at 259-60.

10. She then entered the interior of the establishment, and observed that the establishment's front entrance was not locked. *Tr.*, 1/13/12, at 262-63. Officer Wilcox also observed broken glass on the floor near the establishment's couch. *Tr.*, 1/13/12 at 216, 222. In addition, she saw dark stains on a couch inside the establishment, but she could not identify the substance. *Tr.*, 1/13/12, at 225, 230, 249.

11. Officer Wilcox also observed that the establishment's staff were in the process of cleaning the establishment. *Tr.*, 1/13/12, at 219. Specifically, the Respondent's staff were sweeping the floors, wiping down tables, and picking up items off of the floor. *Tr.*, 1/13/12 at 224. Officer Wilcox asked the Respondent to cease cleaning the establishment while she searched for evidence. *Tr.*, 1/13/12, at 230.

#### **IV. Supervisory Investigator Craig Stewart**

12. In the early morning of December 30, 2011, ABRA Supervisory Investigator Craig Stewart received a call from MPD that a double stabbing had occurred at the establishment. *Tr.*, 1/13/12, at 383. In response to the call, Supervisory Investigator Stewart gathered a team of ABRA investigators and responded to the establishment by car. *Tr.*, 1/13/12, at 384.

13. Upon arriving at the Respondent's establishment around 2:00 a.m., Supervisory Investigator Stewart observed blood on the street and sidewalk in front of the establishment. *Tr.*, 1/13/12, at 385, 405, 439; Case Report No. 12-251-00001, Exhibit No. 2. One of the large puddles of blood was approximately 23 feet from the establishment's entrance. *Tr.*, 1/13/12, at 386. Supervisory Investigator Stewart also noted that there was blood on the sidewalk close to the establishment's front door. *Tr.*, 1/13/12, at 388, 443-44.

14. Supervisory Investigator Stewart, with other ABRA investigators, entered the establishment, and interviewed the establishment's owner, Abeba Beyene, in her office. *Tr.*, 1/13/12, at 392. Supervisory Investigator Stewart noted that there were no patrons inside the establishment at this time. *Tr.*, 1/13/12, at 405.

15. He first asked Ms. Beyene to describe what occurred at the establishment. *Tr.*, 1/13/12, at 392-93. Ms. Beyene, who appeared agitated, said "nothing" and claimed she did not know what happened. *Tr.*, 1/13/12, at 392-93, 401, 464. Further, an employee of the Respondent was present in the room, and he suggested that the blood outside the establishment was "cranberry juice." *Tr.*, 1/13/12, at 431.<sup>1</sup>

16. Supervisory Investigator Stewart then left the establishment and proceeded to the hospital in order to continue the investigation. *Tr.*, 1/13/12, at 396. After Supervisory Investigator Stewart left, Investigator Parker took over the investigation at the establishment. *Tr.*, 1/13/12, at 396.

#### **V. Investigator Parker**

17. ABRA Investigator Vincent Parker arrived at the Respondent's establishment at approximately 2:00 a.m. at the direction of Supervisory Investigator Stewart. *Tr.*, 1/13/12, at 449. Upon arriving at the establishment, Investigator Parker observed police officers standing near the establishment and crime scene tape blocking off the area in front of the establishment. *Tr.*, 1/13/12, at 450.

18. During the investigation, Investigator Parker listened to Supervisory Investigator Stewart interview Ms. Beyene. *Tr.*, 1/13/12, at 453. Investigator Parker heard Ms. Beyene state that no

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<sup>1</sup> We note that in the District of Columbia "party-admissions," such as those made by Ms. Beyene, Mr. Bond, and her employees during the investigation, fall under an exception to the hearsay rule, and are not considered hearsay. *Comford v. U.S.*, 947 A.2d 1181, 1185 (D.C. 2008) (saying that the District of Columbia has adopted the substance of Rule 801(d)(2) of the Federal Rules of Evidence).

incidents occurred inside the establishment and that she did not witness any incidents occur. *Tr.*, 1/13/12, at 453.

19. Investigator Parker also interviewed the head of the Respondent's security, Otis Bond. *Tr.*, 1/13/12, at 458, 547. Mr. Bond told Investigator Parker that patrons were smoking inside the establishment at 12:40 a.m. *Tr.*, 1/13/12, at 459. Mr. Bond stated that he asked the patrons to leave, and "a brief commotion ensued." *Tr.*, 1/13/12, at 459, 483. Mr. Bond then told Investigator Parker that after the patrons were escorted out of the establishment, he saw a man in front of the establishment screaming obscenities and threats. *Tr.*, 1/13/12, at 459. He then stated that he shut the establishment's door. *Tr.*, 1/13/12, at 459.

20. As part of his investigation, Investigator Parker also interviewed Mr. Thomas. *Tr.*, 1/13/12, at 463. Mr. Thomas told Investigator Parker that he was standing outside the establishment at approximately 12:50 a.m. *Tr.*, 1/13/12, at 463. Mr. Thomas then told Investigator Parker that he ended up in the middle of two groups of individuals having a brief fight. *Tr.*, 1/13/12, at 463. A few minutes later, Mr. King and Mr. Griffin emerged from the establishment. *Tr.*, 1/13/12, at 463. He immediately noticed that Mr. King had been stabbed, and then realized that he had been stabbed as well. *Tr.*, 1/13/12, at 463.

## **VI. Shanti Williams**

21. Shanti Williams was employed by the Respondent as a security guard in the early morning of December 30, 2011. *Tr.*, 1/13/12, at 308. On that day, Ms. Williams was posted at the establishment's front door. *Tr.*, 1/13/12, at 308. Ms. Williams claims there was no altercation inside the establishment. *Tr.*, 1/13/12, at 329.

22. Ms. Williams observed Officer Wilcox and her partner arrive at the establishment around 1:00 a.m. *Tr.*, 1/13/12, at 324.

## **VII. Abeba Beyene**

23. Abeba Beyene owns Mood. *Tr.*, 1/13/12, at 542. Ms. Beyene was present at the establishment on the night of December 29, 2011, going into the morning of December 30, 2011. *Tr.*, 1/13/12, at 551. On that night, the Respondent hosted a private party, featuring a private "open mic" night. *Tr.*, 1/13/12, at 553, 628. Ms. Beyene testified that she opened the establishment at 10:00 p.m. *Tr.*, 1/13/12, at 558-59. In total, only 53 patrons attended the event. *Tr.*, 1/13/12, at 554.

24. Ms. Beyene testified that she was working as a bartender inside the establishment on the night of the stabbing. *Tr.*, 1/13/12, at 559. According to Ms. Beyene, she observed three male patrons smoking cigarettes inside the establishment. *Tr.*, 1/13/12, at 559. She then stated that she signaled to one of her security guards to deal with the patrons that she observed smoking. *Tr.*, 1/13/12, at 559. Nevertheless, Ms. Beyene claims that she did not observe security escort the patrons outside the establishment. *Tr.*, 1/13/12, at 561-62, 668 (So did I [see security] escort them out? No. But that's the understanding I have . . . . And at that time I didn't stand there to watch what happened.")

### **VIII. Security Plan**

25. The establishment's security plan on December 30, 2011, stated,

The MOOD will have in place a CCTV system with the capacity to broadcast an image on a monitor or toggle view different images on four screens simultaneously. The basee [sic] of the system has the capability to save images to a hard drive that can be reproduced onto a computer disk.

*ABRA Show Cause File No. 12-251-00001*, Security Plan, 11; *Tr.*, 1/13/12, at 478.

### **IX. Security Camera Footage**

26. During Supervisory Investigator Stewart's interview of Ms. Beyene, he requested that the establishment provide its security footage for December 30, 2011. *Tr.*, 1/13/12, at 394. Ms. Beyene responded that the camera system did not work. *Tr.*, 1/13/12, at 403, 454, 528.

27. After Supervisory Investigator Stewart left the establishment, Investigator Parker continued to question Ms. Beyene about the camera system. *Tr.*, 1/13/12, at 454. Ms. Beyene called the individual that was responsible for the camera system, and Investigator Parker received instructions on how to manipulate the system. *Tr.*, 1/13/12, at 455. Nevertheless, Investigator Parker was unable to retrieve the security footage from that night. *Tr.*, 1/13/12, at 456, 526. The individual promised to get in touch with Investigator Parker at a later date, but Investigator Parker never received a follow-up phone call or other communication. *Tr.*, 1/13/12, at 456.

28. On January 3, 2012, Ms. Beyene met with Investigator Parker in ABRA's hearing room in order to deliver the establishment's security footage. *Tr.*, 1/13/12, at 457. Nonetheless, the footage provided by Ms. Beyene only contained footage from October 23, 2011, and did not contain any footage recorded on December 30, 2011. *Tr.*, 1/13/12, at 457. Ms. Beyene explained that her surveillance system had ceased recording on October 23, 2011, after she attempted to record footage from the system around that time. *Tr.*, 1/13/12, at 457, 470; see also *Tr.*, 1/13/12, at 661-65.

### **X. Controlled Substance**

29. Officer Wilcox also reported that she smelled the "the scent of marijuana in the air" after she entered the establishment. *Tr.*, 1/13/12, at 216. Nevertheless, she admitted that she did not see anyone in or near the establishment smoking marijuana. *Tr.*, 1/13/12 at 228. Officer Wilcox also stated that Ms. Beyene told her partner that her security had ejected patrons from the establishment for smoking marijuana. *Tr.*, 1/13/12 at 261-62.

## XI. Voluntary Agreement

30. The Respondent entered into a Voluntary Agreement on March 10, 2008, with ANC 2F. *ABRA Show Cause File No. 11-CMP-00354, Voluntary Agreement*. Section 6 of the Voluntary Agreement states,

**Noise and Privacy.** Applicant will comply with Title 25, Section 725 of the D.C. code, make architectural improvements to the property, and take all necessary actions to ensure that music, noise and vibrations from the establishment are not audible within any adjacent residential properties. Applicant will also take all necessary steps to ensure that the music, noise and vibrations are not disruptive to the adjacent residential property occupants' reasonable use of outdoor areas of their property. Should any sound, noise, or music be heard in any residential premises, Applicant will take immediate remedial action. If necessary, Applicant will take reasonable steps to reduce noise emanating from the establishment from the opening of the entry and exit doors.

Id. at § 6.

31. Section 16 of the Voluntary Agreement further states,

**Notices and Enforcement Before ABC Board.** In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days unless the violation be of such a nature that more immediate action is required, in which case, the period for opportunity to cure shall be reduced to a reasonable time commensurate with the violation (Such 30-day or shorter period is hereinafter referred to as the "cure period"). A material violation of this Agreement or its ABC license by Applicant, which has not been cured within the cure period, shall constitute cause for seeking a Show Cause Order from the ABC Board.

Id. at § 16.

## XII. Noise Complaint: September 2

32. Martin Smith lives at 1326 Naylor Court, N.W., in a freestanding house. *Tr.*, June 13, 2012, at 52-53; Government Exhibit C, F. His property is approximately 100 feet away from the establishment. *Tr.*, 6/13/12 at 54. Mr. Smith further noted that his property is separated from the Respondent's establishment by two structures and a vacant lot. *Tr.*, 6/13/12 at 85.

33. On September 2, 2011, Mr. Smith heard the Respondent's music in his home even though he kept his windows shut, and he felt vibrations from the noise inside his residence. *Tr.*, 6/13/12 at 57-58, 90. On that same day, at 11:37 a.m., he emailed a noise complaint to Ms. Beyene and ABRA Investigator Jabriel Shakoor. Government Exhibit A(1); *Tr.*, 6/13/12 at 56. He noted that the noise coming from the establishment sounded louder than the sounds created by his television. *Tr.*, 6/13/12 at 92. Investigator Shakoor further confirmed that he heard a low level

of noise in Mr. Smith's home on September 2, 2011, when he visited Mr. Smith's residence. *Tr.*, 6/13/12 at 121.

34. After Mr. Smith made his complaint, he did not believe the establishment had made any efforts to ameliorate the noise, because the level of noise he heard in his home during the cure period did not abate. *Tr.*, 6/13/12 at 64, 109. For example, Mr. Smith heard noise from the Respondent's establishment in his home on September 30, 2011, October 7, 2011, and October 14, 2011. *Tr.*, 6/13/12 at 101-02. Finally, on October 15, 2011, after the thirty-day cure period expired, Mr. Smith once again heard loud noises generated by the establishment in his home even though his windows were closed. *Tr.*, 6/13/12 at 62-63, 67-68, 90.

35. Mr. Smith also noted that he participated in a sound test at the establishment around Halloween. *Tr.*, 6/13/12 at 67-68, 92-95. Nevertheless, the test did not result in a reduction in the noise he hears in his home. *Tr.*, 6/13/12 at 67-68, 92-95.

### **XIII. Noise Complaint: October 29**

36. George Danilovics lives in a condominium in the Nine condominium building located at 1316 Naylor Court, N.W. *Transcript (Tr.)*, June 13, 2012 at 25-26. The Nine is located directly south of the Respondent's establishment. *Tr.*, 6/13/12 at 26. Mr. Danilovics's condominium is located on both the third and fourth floor of the Nine, and his unit does not share a wall with the Respondent's establishment. *Tr.*, 6/13/12 at 26; Government Exhibit D, F.

37. On October 29, 2011, at 1:49 a.m., Mr. Danilovics sent an email to the Respondent's business email address, Ms. Beyene, and ABRA Investigator Shakoor. *Tr.*, 6/13/12 at 28, 32; Government Exhibit B. The email informed Ms. Beyene that the establishment's "dance club music and bass" was audible in his unit in violation of the Voluntary Agreement. Government Exhibit B. Mr. Danilovics further described the noise as louder than his television set at a normal volume, and he noted that he could hear the lyrics of the music played by the establishment. *Tr.*, 6/13/12 at 29-30, 37. Mr. Danilovics observations on October 29, 2012, were confirmed by Investigator Shakoor, who visited Mr. Danilovics home and heard heavy bass sounds and the establishment's music inside the residence.. *Tr.*, 6/13/12 at 131, 133.

38. Mr. Danilovics made similar complaints on the night of December 4, 2011, going into December 5, 2011. *Tr.*, 6/13/12 at 30. Specifically, he heard music and bass sounds from the establishment in his residence on that date, as well as amplified human voices from the establishment's microphone. *Tr.*, 6/13/12 at 33. Mr. Danilovics noted that the music that day was the loudest he had heard all year inside his home. *Tr.*, 6/13/12 at 34.

39. Mr. Danilovics did not make additional complaints regarding the establishment, because he believed he could not make additional complaints during the cure period.<sup>2</sup> *Tr.*, 6/13/12 at 46. Mr. Danilovics did not know whether the noise problem continued during the month of

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<sup>2</sup> We note that Investigator Shakoor never instructed the complainants that they could not make noise complaints during the thirty-day grace period; instead, he only instructed complainants that according to the Voluntary Agreement there is no violation unless the establishment fails to cure the breach of the agreement within thirty days after receiving notification of the violation. *Tr.*, 6/13/12 at 161.

November, because he was not home during the weekends in November, and he stayed at a friend's house on Thursdays in order to ensure that he could obtain sufficient sleep for important meetings on Fridays. *Tr.*, 6/13/12 at 40-41, 44-45, 49. Finally, Mr. Danilovics noted that an ABRA Investigator did not come into his unit to observe the noise after October 29, 2011. *Tr.*, 6/13/12 at 34-35.

40. Investigator Shakoor also commented that Ms. Beyene regularly cooperates with ABRA investigations. *Tr.*, 6/13/12 at 142. He further noted that Ms. Beyene has lowered the volume of the establishment's music when requested. *Tr.*, 6/13/12 at 142. Nevertheless, Investigator Shakoor opined that, unless the establishment ceased offering disc jockey entertainment, the establishment would continue to create noise issues for the neighbors based on the close proximity of the establishment to residences. *Tr.*, 6/13/12 at 143.

### CONCLUSIONS OF LAW

41. The Board has the authority to fine, 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). D.C. Code § 25-830; 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 § 25-447 (West Supp. 2012).

42. We find that on December 30, 2011, the Respondent violated §§ 25-446, 25-823(5), and 25-823(6) of Title 25 of the D.C. Official Code, by (1) misreporting the altercation that occurred inside the establishment; (2) violating its security plan by failing to have a camera system in operation with the capability to save recorded footage on December 30, 2011; and (3) failing to cure two separate violations of the noise provisions of its Voluntary Agreement on September 2, 2011, and October 29, 2011. Lastly, we dismiss the controlled substance charge filed under § 25-822(2)(A), because the Government failed to show that the Respondent "knowingly permitted" the use of marijuana inside the establishment.

#### I. Charge I

43. We find that Ms. Beyene, Mood's owner, interfered with ABRA's investigation of the stabbing that occurred on December 30, 2011, by misreporting the fight that occurred inside the establishment.

44. Under § 25-823(5), it is a violation for a licensee to ". . . interfere[] with an investigation." D.C. Code § 25-823(5) (West Supp. 2012).

45. Resolving the factual issues related to Charge I comes down to a credibility contest between the Government and the Respondent's witnesses. We resolve this contest in favor of the Government, because the evidence in the record discredits the contradictory testimony offered by Ms. Beyene and Ms. Williams. In addition, we are convinced that there is sufficient evidence in

the record to conclude independently that on December 30, 2011, Ms. Beyene misreported the altercation to ABRA investigators.

46. Ms. Williams and Ms. Beyene's assertions that nothing happened inside the establishment before Officer Wilcox are demonstrably inconsistent with the reliable and credible evidence in the record. We are entitled to find testimony unreliable and lacking credibility when there is a "specific and legitimate reason[] for doing so . . ." Jones v. District of Columbia Dept. of Employment Services, 41 A.3d 1219, 1222 (D.C. 2012). In this case, Ms. Williams testified that the establishment was closed, but this is contradicted by Officer Wilcox's testimony that patrons were still leaving the establishment when she arrived on the scene. Compare Tr., 1/13/12, at 356, 339 with Tr., 1/13/12, at 259-60. Ms. Williams also testified that she did not observe any blood outside the establishment, but we do not find this claim plausible when the blood outside the establishment was only four to five feet away from the establishment's front entrance. Compare Tr., 1/13/12, at 321, 343 with Tr., 1/13/12, at 215, 235, 242. Lastly, Ms. Williams stated that no one was smoking marijuana or cigarettes inside the establishment; nevertheless, Officer Wilcox's testimony that she smelled marijuana smoke inside the establishment, as well as testimony by Ms. Beyene that patrons were smoking cigarettes inside the establishment, refutes this claim. Compare Tr., 1/13/12, at 344-45, 602 with Tr., 1/13/12, at 216, 261-62.

47. We also cannot credit Ms. Beyene's testimony regarding the time before Officer Wilcox arrived, based on Ms. Beyene inconsistent testimony regarding two key facts. Ms. Beyene claimed that the establishment closed at 12:30 a.m.; nevertheless, the record shows that Officer Wilcox and her partner arrived around 1:00 a.m. and observed patrons exiting the establishment, which rebuts Ms. Beyene's claim. Compare Tr., 1/13/12, at 559, 630, 639 with Tr., 1/13/12, at 259-60, 324, 559. We also note that Mr. Bond's statement that the establishment ejected patrons at 12:40 a.m. further refutes Ms. Beyene's claim that the establishment closed at 12:30 a.m. Supra, at ¶ 19. In addition, Ms. Beyene claimed that the establishment's door was locked after the last customers left the premises; nevertheless, Officer Wilcox's testimony that the establishment's front door was unlocked disproves Ms. Beyene's statement. Compare Tr., 1/13/12, at 567 with Tr., 1/13/12, at 262-63. Therefore, based on the inconsistencies in Ms. Williams and Ms. Beyene's testimony, we find their testimony about the events preceding Officer Wilcox's arrival unreliable and lacking credibility.<sup>3</sup>

48. Having resolved that the contradictory testimony provided by the Respondent is unreliable, we agree with the Government's view that a fight occurred inside the establishment, and that Ms. Beyene misrepresented the incident to ABRA's investigators.

49. We conclude that a fight occurred inside the establishment on December 30, 2011, around 12:50 a.m. Supra, at ¶ 3. While we do not know whether the fight occurred before or after Mr. Bond began ejecting patrons, there is sufficient credible evidence in the record to determine that a fight occurred between two performers and their entourages near the

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<sup>3</sup> In paragraph 22, we credited Ms. Williams's testimony that she observed Officer Wilcox and her partner arrive at the establishment around 1:00 a.m. Supra, at ¶ 22. We credit this testimony, because we find it unlikely that Ms. Williams would misrepresent this fact.

establishment's bar. Supra, at ¶ 3. First, multiple victims reported fighting, both inside and outside the establishment. Supra, at ¶¶ 2, 3, 7, 20. We find these statements credible, because Mr. Griffin, Mr. Thomas, and Mr. Brown made them independently of each other, and they provide a satisfactory explanation for why large amounts of blood were found in front of the establishment, and nowhere else on the street. Second, Mr. Griffin's statement that Mr. King entered the establishment with an abdominal wound is credible, because the establishment's front door was unlocked. Supra, at ¶¶ 3-4, 10. Third, we are convinced that Officer Wilcox did not find Mr. King's blood inside the establishment, which should have been present if he entered the establishment, because the Respondent's staff cleaned the premises before Officer Wilcox arrived. Supra, at ¶ 11.

50. Therefore, because we conclude that a fight occurred inside the establishment, we find that Ms. Beyene's claim to Supervisory Investigator Stewart that nothing happened inside the establishment is untrue, and a deliberate attempt to mislead ABRA investigators as to the location of the stabbing. Supra, at ¶¶ 15, 18. The Board views misrepresenting an incident to ABRA investigators during an investigation as a serious offense, because it may lead to the perpetrators of violent acts escaping justice, and wastes valuable government resources as ABRA investigators pursue false leads. Consequently, we find that Ms. Beyene's misrepresentation of the events on December 30, 2011, constitutes interference with an investigation in violation of § 25-823(5).

## II. Charge II

51. We further find that the establishment violated its security plan on December 30, 2011, by failing to operate a camera system with the capability to save footage onto a computer disk while the establishment was open for business.

52. 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 MOOD will have in place a CCTV system with the capacity to broadcast an image on a monitor . . . . The base[] of the system has the capability to save images to a hard drive that can be reproduced onto a computer disk." Supra, at ¶ 25. We note that we treat the language of a security plan as if it were a contract; therefore, we determine the security plan's meaning based on "what a reasonable person in the position of the [licensee and a hypothetical protestant] would have thought the disputed language meant." See Tsintolas Realty Co. v. Mendez, 984 A.2d 181, 190 (D.C. 2009). We further note that "ambiguous language in a contract is generally construed against the drafter, at least where the parties were relatively equal in bargaining [power]." Id. at 191.

53. We note that the term "in place" is an idiom that, among other definitions, means either (A) "now in effect or being used"; or (B) "ready for use." Cambridge Dictionary of American Idioms (2003) (see "in place"). In this case, the distinction is important, because if we accept definition (A), then the establishment has an obligation to have a security camera system with the capability to save footage to a computer disk in operation while the establishment is open. In effect, under this definition, we would interpret the Respondent's security plan as saying, "The Mood will *use* a CCTV system . . . ." See Supra, at ¶ 25. On the other hand, if we accept definition (B), then the establishment would merely have to own a camera system with the

capabilities described in the security plan, and have no obligation to have the camera system functioning while open for business. Under this interpretation, then, we would interpret the Respondent's security plan as saying, "The Mood will have *ready for use* a CCTV system . . . ." See Supra, at ¶ 25. Under these circumstances, it is clear that the language governing the Respondent's security camera system leaves open various and differing interpretations.

54. Resolving this ambiguity, we find definition (A) controlling, meaning that we interpret the Respondent's security plan as requiring it to use a security camera system with the capability to save images while the establishment is open for business. We note that language in a security plan is chosen by the licensee; therefore, ambiguities in the language should be construed against the licensee. Furthermore, definition (A) makes more sense than definition (B), because the use of a camera system that cannot save images does not add to the establishment's security, and renders the system effectively useless.

55. As such, on December 30, 2011, the Respondent's security plan mandated that the licensee have a camera system in operation that had the capability to save images to a computer disk. Nevertheless, as Investigator Parker reported, the camera system had ceased recording on October 23, 2011, almost two months before the incident on December 30, 2011. Supra, at ¶ 28. Therefore, we find that the Respondent violated the terms of its security plan in violation of § 25-823(6), because the camera system in use on the night of the stabbing did not have the capability to save recorded images.

### III. Charge III

56. We further find that the Government failed to substantiate that the Respondent knowingly permitted the use of marijuana inside the establishment.

57. Under § 25-822, "The Board shall revoke the license of a licensee [where] [t]he licensee knowingly permitted, in the licensed establishment . . . the use of any controlled substance identified in the [Controlled Substances Act (CSA)]." D.C. Code § 25-822(2) (West Supp. 2012). Marijuana is a drug identified by the CSA. 21 U.S.C.A. §§ 802(16), 812 (West Supp. 2012). We also note that the term knowingly is further defined as meaning "consciously, voluntarily and on purpose, not mistakenly, accidentally or inadvertently." In re D.S., 747 A.2d 1182, 1185 (D.C. 2000).

58. In order to prove a violation of § 25-822, the Government must show that the Respondent knowingly permitted the use of marijuana inside the establishment—not just that marijuana was used. Here, while we credit Officer Wilcox's testimony that an unknown person smoked marijuana inside the establishment, this does not show that the establishment had the requisite *mens rea*. Supra, at ¶ 29.

59. In order to prove a violation under the "knowingly permitted" standard, the Government must not only show that someone used marijuana inside the establishment, but that the establishment or its employees consciously or voluntarily permitted its use inside the establishment. The record shows that, at worst, security ejected patrons smoking marijuana inside the establishment without calling the police—an action that we cannot classify as

consciously or voluntarily permitting the use of marijuana inside the establishment. Supra, at ¶ 29; see also Tr., 6/13/12 at 174. For this reason, we find that there is insufficient evidence to show that the establishment knowingly permitted the use of marijuana inside the establishment in violation § 25-822. Therefore, we dismiss Charge III.

#### IV. Charge IV and V

60. Lastly, we conclude that the Respondent committed two separate violations of § 6 of its Voluntary Agreement by producing sounds that were audible in nearby residences on September 2, 2011, and October 29, 2011, and failing to cure those violations within the 30-day cure period. Indeed, our interpretation of the Respondent's Voluntary Agreement is no different than when we recently announced our interpretation of the agreement in earlier show cause proceedings against the Respondent in May and February of 2012. See generally In re Matter of Mimi & D, LLC, t/a Mood, Case No. 11-CMP-00175, Board Order No. 2012-050 (D.C.A.B.C.B. Feb. 1, 2012); In re Matter of Mimi & D, LLC, t/a Mood, Case No. 11-CMP-00354, Board Order No. 2012-214 (D.C.A.B.C.B. May 23, 2012).

61. The Respondent is well-aware that it must comply with the terms of its Voluntary Agreement. D.C. Code § 25-446(c) (West Supp. 2012); Mood, Board Order No. 2012-050, at ¶ 17; Mood, Board Order No. 2012-214, at ¶ 27. The Respondent's Voluntary Agreement is akin to a contract; therefore, we use principles of contract law to interpret it. Id.; North Lincoln Park Neighborhood Ass'n v. District of Columbia Alcoholic Beverage Control Bd., 727 A.2d 872, 875 (D.C. 1999); Letter from Peter J. Nickles, Attorney General, Office of the Attorney General of the District of Columbia, to Fred Moosally, General Counsel, Alcoholic Beverage Regulation Administration 3-4 (Dec. 18, 2008).

62. Here, § 6 of the Respondent's Voluntary Agreements obligates the Respondent to "take all necessary actions to ensure that music, noise, and vibrations from the establishment are not audible within any adjacent residential properties." Voluntary Agreement, at § 6. Section 16 then adds, "In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days." Id. at § 16.

63. As we stated previously,

Section 6 of the [Respondent's] Voluntary Agreement is clear that music and vibrations from Mood's sound system shall not be audible in adjacent residences. There is no other way to interpret § 6's mandate that the Respondent "take all necessary action to ensure that . . . noise and vibrations from the establishment are not audible within any adjacent residential properties" or that the Respondent "take immediate remedial action" if such noise is heard in a neighboring residence.

Mood, Board Order No. 2012-050, at ¶ 20; see also Mood, Board Order No. 2012-214, at ¶ 29.

64. Following our previous interpretation, the music heard by Mr. Smith inside his residence on September 2, 2011, violates § 6 of the Voluntary Agreement. Supra, at ¶ 33. The record in

this matter then shows that Mr. Smith triggered the thirty-day cure period by notifying Ms. Beyene of the problem by sending an email to her on the same day. *Id.* Nevertheless, as the record demonstrates, the Respondent did not cure the problem. *Supra*, at ¶ 34. As reported by Investigator Shakoor and Mr. Smith, the establishment continued to generate music and noise that could be heard in Mr. Smith's residence as of October 15, 2011, after the 30-day cure period expired. *Id.*

65. Likewise, the music heard by Mr. Danilovics in his condominium unit on October 29, 2011, also violates § 6 of the Voluntary Agreement. *Supra*, at ¶ 37. The record shows that Mr. Danilovics triggered the thirty-day cure period by notifying Ms. Beyene of the problem by sending her an email on the same day. *Id.* Nevertheless, the Respondent did not resolve the problem, and music from the establishment could be heard in Mr. Danilovics residence on December 4, 2011, after the thirty-day cure period had expired. *Supra*, at ¶ 38.

66. We also note that we reject the Respondent's argument that § 6 of the Respondent's creates any type of reasonableness test. *Tr.*, 6/13/12 at 191-92. The Respondent's "Voluntary Agreement is quite clear: the Respondent may not generate noise that is audible in a neighboring residence." *Mood*, Board Order No. 2012-214, at ¶ 32. For this reason, we find that, the Government has conclusively shown that the Respondent was in violation of § 6 of the Voluntary Agreement on September 2, 2011, and October 29, 2011, and failed to cure the violation within the thirty-day cure period provided by § 16 of the agreement.

67. Finally, we find that escalating fines and suspension days are warranted in this case, based on the Respondent's previous history of violations and the failure of the Respondent to resolve its recurring violations of its Voluntary Agreement.

### ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 19th day of September 2012, finds that the Respondent, Mimi & D, LLC, t/a Mood, violated D.C. Official Code §§ 25-446, 25-822(2)(A), 25-823(5), 25-823(6). The Board hereby **ORDERS** that, in total, the Respondent shall pay a fine of \$7,000 within sixty (60) days from the date of this Order. The Respondent's liquor license shall be suspended for a total of twenty (20) days. The Respondent shall serve ten (10) suspension days. The remaining ten (10) days shall be stayed provided that the Respondent does not commit any additional violations within one (1) year from the date of this Order. Our determination regarding each charge is as follows:

- (1) The Respondent shall pay a fine of \$1,500 for the violation described in Charge I no later than sixty (60) days from the date of this Order. The Respondent shall receive five (5) stayed suspension days for this violation;
- (2) The Respondent shall pay a fine of \$2,000 for the violation described in Charge II no later than sixty (60) days from the date of this Order. The Respondent shall receive five (5) stayed suspension days for this violation;
- (3) We dismiss Charge III;

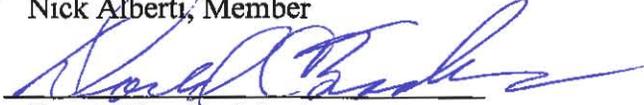
- (4) The Respondent shall pay a fine of \$1,500 for the violation described in Charge IV no later than sixty (60) days from the date of this Order. The Respondent shall serve five (5) suspension days for this violation;
- (5) The Respondent shall pay a fine of \$2,000 for the violation described in Charge V no later than sixty (60) days from the date of this Order. The Respondent shall serve five (5) suspension days for this violation; and
- (6) The Respondent's suspension shall begin the morning of October 26, 2012, at midnight, and end on the morning of November 5, 2012, at midnight.

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

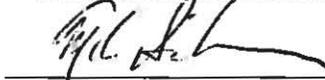
District of Columbia  
Alcoholic Beverage Control Board



Nick Alberti, Member

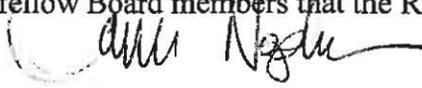


Donald Brooks, Member



Mike Silverstein, Member

I concur with the decision rendered by the majority of the Board as it relates to Charges I, II, III, and V. Nevertheless, I disagree with my fellow Board members that the Respondent is liable for the violation described in Charge IV.



Calvin Nophlin, Member

I concur with the Board's decision rendered by the majority of the Board as it relates to Charges II, III, IV, and V. Nevertheless, I dissent to the Board's position regarding Charge I.



Ruthanne Miller, Chairperson

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).