

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

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| In the Matter of:                       | ) |                        |
| Vertigo, Inc.                           | ) | License No.: 82430     |
| t/a Sultra Lounge/Viet-Thai             | ) | Case No.: 12-CMP-00105 |
| Holder of a Retailer's Class CR License | ) | Order No.: 2013-114    |
| at premises                             | ) |                        |
| 2406 18th Street, N.W.                  | ) |                        |
| Washington, D.C. 20009                  | ) |                        |

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Vertigo, Inc., t/a Sultra Lounge/Viet-Thai, Respondent  
  
Christopher Wells, Owner, on behalf of the Respondent  
  
Fernando Rivero, 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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This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on June 6, 2012. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2406 18th Street, N.W., Washington, D.C., on June 13, 2012.

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

- Charge I: You made a substantial change of operation without approval as required by D.C. Official Code § 25-762(b) . . . , for which the Board may take . . . action pursuant to D.C. Official Code § 25-823(1) . . . .
- Charge II: You failed to follow the terms of your license, a Board Order, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6).

*ABRA Show Cause File No.*, 12-CMP-00105, Notice of Status Hearing and Show Cause Hearing, 2 (May 6, 2012).

Both the Government and Respondent appeared at the Show Cause Status Hearing on August 1, 2012. The parties then proceeded to a Show Cause Hearing and argued their respective cases on January 30, 2013. At the beginning of the hearing, the Government dismissed Charge II with the permission of the Board. *Transcript (Tr.)*, January 30, 2013 at 2.

### FINDINGS OF FACT

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

1. The Respondent holds a Retailer's Class CR License, ABRA License Number 82430. See *ABRA Licensing File No. 82430*. The establishment's premises are located at 2406 18th Street, N.W., Washington, D.C. See *ABRA Licensing File No. 82430*.
2. Alcoholic Beverage Regulation Administration (ABRA) Investigator Tyrone Lawson has monitored and visited many establishments on 18th Street, N.W. *Tr.*, 1/30/2013 at 9. On January 26, 2012, Investigator Lawson received a complaint about loud music coming from the Respondent's establishment. Id. at 11; Government Exhibit No. 2 (Exhibit 1). In response to the complaint, Investigator Lawson visited the Respondent's establishment to investigate the complaint. Id. Upon arriving at the establishment, Investigator Lawson spoke to Christopher Wells, the establishment's owner, as well as the establishment's ABC Manager. Id. at 12. Investigator Lawson then conducted a regulatory inspection of the establishment, but he did not find any violations. Id. at 13.
3. Following the investigation, Investigator Lawson reviewed the establishment's hours of operation, alcoholic beverage service, and entertainment. Id. Investigator Lawson specifically told Mr. Wells that the establishment's entertainment hours ended forty-five minutes before the hours of operations ended on Fridays and Saturdays. Id. at 13, 40.
4. The Respondent's license sets the establishment's hours of operation and the sale, service, and consumption of alcoholic beverages for 5:30 p.m. to 12:00 a.m. on Sunday; 5:30 p.m. to 1:00 a.m. on Monday through Tuesday; 5:30 p.m. to 1:30 a.m. on Wednesday through Thursday; and 5:30 p.m. to 2:45 a.m. on Friday and Saturday. Government Exhibit No. 1. In addition, the Respondent's license sets the establishment's hours of entertainment for 5:30 p.m. to 12:00 a.m. on Monday; 8:00 p.m. to 1:00 a.m. on Monday and Tuesday; 8:30 a.m. to 11:30

p.m. on Wednesday; 10:00 p.m. to 1:00 a.m. on Thursday; and 11:00 p.m. to 2:00 a.m. on Friday and Saturday. Id.

5. On Saturday, January 28, 2012, Investigator Lawson, accompanied by ABRA Investigator Roxanna Maisel, returned to the Respondent's establishment around 2:50 a.m. Id. at 17. Investigator Maisel entered the establishment first while Investigator Lawson parked the car they arrived in. Id. at 17-18. Investigator Lawson watched Investigator Maisel walk to the door and show her identification to the doorman. Id. at 18.

6. After dropping Investigator Maisel off, Investigator Lawson parked the car, and he proceeded to walk to the establishment. Id. Upon approaching the establishment's entrance, Investigator Lawson observed Mr. Wells screaming and yelling, and heard him accuse Investigator Maisel of being intoxicated. Id. at 18, 37. Investigator Lawson found these accusations to be unfounded, because he had been working with Investigator Maisel for at least seven and half hours and did not observe any of the behavior described by Mr. Wells. Id. at 18, 45-46. Investigator Lawson noted that he in fact smelled alcohol on Mr. Wells's breath. Id. at 19.

7. Investigator Maisel informed Mr. Wells that she had observed a disc jockey playing inside the establishment, which violated the Respondent's hours of operation. Id. at 20; see also Government Exhibit No. 2 (Exhibit 3). Investigator Lawson observed that he could hear music playing inside the establishment while he spoke to Mr. Wells. Id. at 20-21. He also observed patrons in the bar area on the first floor. Id. at 42. Investigator Lawson and Investigator Maisel then left the establishment. Id. at 20.

8. On Sunday, January 29, 2012, Investigator Lawson and Investigator Maisel returned to the establishment around 2:15 a.m. Id. at 21. Investigator Lawson watched Investigator Maisel exit the car, approach the establishment, and show her identification to the establishment's doorman. Id. Investigator Lawson parked the car twenty-five yards away from the establishment, and he proceeded to walk to the establishment. Id. at 21.

9. Upon entering the establishment, Mr. Wells complained to Investigator Lawson that Investigator Maisel had returned to the establishment. Id. at 22. Mr. Wells repeated his accusation that Investigator Maisel was intoxicated the previous night, and he also accused Investigator Maisel of pushing his doorman. Id. Mr. Wells also accused Investigator Maisel of sticking up her middle finger at Mr. Wells the previous day; however, Mr. Wells could not explain why he did not complain about this on the day the alleged insult occurred. Id. at 23. Investigator Lawson recalls Investigator Maisel denying these allegations during the investigation. Id. at 22.

10. Investigator Maisel reported to Investigator Lawson that she observed a disc jockey playing music and people dancing on the second floor in violation of the establishment's hours of entertainment. Id. at 23. Pictures of the second floor taken on January 29, 2012, show a disc jockey standing in front of a laptop and turntable while wearing headphones. Government Exhibit No. 2 (Exhibits 4-7); see also id. at 43-44, 148. In addition, the pictures show patrons standing near the disc jockey equipment. Id. (Exhibits 4, 7). Investigator Lawson saw the

pictures taken by Investigator Maisel when they returned to ABRA's offices. *Tr.*, 1/30/13 at 43-44. Finally, while Investigator Lawson was inside the establishment he heard music and observed patrons dancing in the establishment's lounge area. *Id.* at 64.

11. Investigator Maisel and Investigator Lawson left the establishment after finding the violation and reported their findings to ABRA Supervisory Investigator Craig Stewart. *Id.* at 26. ABRA Supervisory Investigator Craig, Investigator Lawson, and Investigator Maisel then returned to the Respondent's establishment by car. *Id.* at 26. Supervisory Investigator Stewart exited the vehicle while Investigator Lawson parked the vehicle. *Id.* at 26.

12. Investigator Lawson proceeded to walk to the establishment from the car. *Id.* Upon entering the establishment, Investigator Lawson overheard Supervisory Investigator Stewart instruct Mr. Wells that he could not interfere with ABRA investigations. *Id.* at 27. The investigators then left the establishment. *Id.*

13. Mr. Wells admitted that the source of the music heard by Investigator Lawson on January 28, 2012, and January 29, 2012, was from the laptop shown in the pictures taken by Investigator Maisel. *Id.* at 112-13, 173. Mr. Wells also testified that he instructs his disc jockeys not to interact with the system after 2:00 a.m. and to only play streaming music or CDs. *Id.* at 120-21. Mr. Wells further testified that he instructed the disc jockey on the second floor to stop playing after 2:00 a.m. *Id.* at 127. In addition, Mr. Wells testified that he instructed his disc jockeys not to take requests after 2:00 a.m. *Id.* at 166.

14. Mr. Wells testified that he began the process of changing his establishment's hours on January 30, 2012. *Id.* at 79; Respondent Exhibit No. 3.

### CONCLUSIONS OF LAW

15. 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 (West Supp. 2013); 23 DCMR § 800, *et seq.* (West Supp. 2013). 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. 2013).

16. We find the Respondent guilty of Charge I, because the actions of the employee shown in the photographs submitted by the Government show the establishment offering disc jockey entertainment in violation of its entertainment hours.

17. Under our substantial change law, the Respondent must seek the approval of the Board before it makes a substantial change to its operations, which includes "[e]xtend[ing] the hours of operation." D.C. Code § 25-762(a)-(b), (b)(13) (West Supp. 2013). In addition, we note that the law defines entertainment as "live music or any other live performance by an actual person, including . . . disc jockeys." D.C. Code § 25-101(21(A)) (West Supp. 2013); *see also* 23 DCMR § 199 (West Supp. 2013) (Entertainment).

18. We discussed how the law currently defines a disc jockey in Buddha Bar. In re Washington Restaurants, LLC, t/a Buddha Bar, Board Order No. 2012-166, 3 (D.C.A.B.C.B. May 23, 2012). There, we stated that an employee playing prerecorded music CDs and standing inside a disc jockey booth constituted a disc jockey. Id. at 2, 3. We further advised that merely creating the appearance that an employee is a disc jockey is sufficient to qualify an employee as a disc jockey. Id. at 3.

19. Here, Investigator Lawson advised the Respondent on January 26, 2013, that his hours of entertainment ended at 2:00 a.m. on Fridays and Saturdays. Supra, at ¶¶ 3-4. Nevertheless, on January 29, 2013, Investigator Maisel took pictures of disc jockey equipment and an individual standing in front of a laptop computer and turntable while wearing headphones. Supra, at ¶ 10. We credit this evidence, because Investigator Lawson knew when Investigator Maisel took the photos and saw the photos on the night that Investigator Maisel took them. Id. In addition, Investigator Lawson heard music inside the establishment and witnessed patrons dancing in the lounge area. Id. Therefore, as we discussed in Buddha Bar, the establishment created the appearance of having a disc jockey, which qualifies the employee as a disc jockey under the law. Therefore, we find that the Government has proven through substantial evidence that the Respondent offered disc jockey entertainment after its licensed hours of entertainment expired.

20. In addition, we emphasize that we do not credit the Respondent's complaint regarding Investigator Maisel.<sup>1</sup> The testimony provided by Investigator Lawson demonstrates that the accusations against Investigator Maisel are untrue, and that Mr. Wells was unnecessarily hostile towards Investigator Maisel during the investigation. Therefore, we conclude that his complaints are without merit.

21. The substantial change violation charged by the Government is a primary tier violation according to Title 25's civil penalty schedule. § 25-762(b)(13); 23 DCMR § 800. We determine the appropriate penalty by counting the number of prior primary tier violations committed by the Respondent by "looking to the date of the incident in the current matter," and then determining the number of violations the licensee has committed within the requisite time period. In re Asefu Alemayehu, t/a Yegna, Case No. 11-CMP-00321, Board Order No. 2013-049, 4 (D.C.A.B.C.B. Feb. 27, 2013). We note that the fine range for a second primary tier violation within a two-year period is \$2,000 to \$4,000. 23 DCMR § 801.1(B) (West Supp. 2013). Here, the Respondent committed the current violation on January 29, 2012. Supra, at ¶ 8. The Respondent's investigative history shows that we previously convicted the Respondent of a primary tier violation on March 8, 2011. This means that the current violation is the Respondent's second primary tier violation within a two-year period.

## ORDER

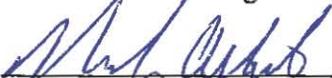
Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 8th day of May 2013, finds that Vertigo, Inc., t/a Sultra Lounge/Viet-Thai, violated D.C. Official Code § 25-762(b)(13). The Board hereby orders the Respondent to pay a \$2,000 fine, which the Respondent must pay within thirty (30) days from the date of this Order. In addition, the Respondent shall have its license suspended for three (3) days; one (1) day to be served, and

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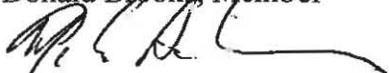
<sup>1</sup> We note that Investigator Maisel no longer works for ABRA.

two (2) days to be stayed. The stayed suspension days shall go into effect if the Respondent commits any violations within a one-year period, starting from the date of this Order. The Respondent's suspension shall occur on July 26, 2013. The ABRA shall deliver copies of this Order to the Government and the Respondent.

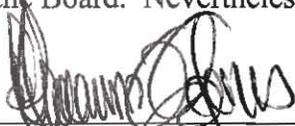
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Nick Alberti, Member

  
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Donald Brooks, Member

  
\_\_\_\_\_  
Mike Silverstein, Member

I concur with the decision of the majority of the Board. Nevertheless, I dissent as to the penalty chosen by the majority.

  
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Herman Jones, Member

I dissent with the decision reached by the majority of the Board.

  
\_\_\_\_\_  
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).