

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

In the Matter of:)	
)	
The Fab Lounge, Inc.)	License Number: 70719
t/a The Fab Lounge)	Case Number: 09-251-00064
)	Order Number: 2010-570
Holder of a Retailer's Class CT License)	
at premises)	
1805 Connecticut Avenue, N.W.)	
Washington, D.C. 20009)	

BEFORE: Nick Alberti, Acting Chairperson
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member

ALSO PRESENT: The Fab Lounge, Inc., t/a The Fab Lounge, Respondent

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

Andrew Kline, on behalf of the Respondent

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

On July 16, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated July 1, 2009, on The Fab Lounge, Inc., t/a The Fab Lounge (Respondent), at premises 1805 Connecticut Avenue, N.W., Washington, D.C., charging the Respondent with the following violation:

- Charge I: The Respondent allowed the sale or delivery of alcohol to a minor in violation of D.C. Code § 25-781(a) (2001) for which the Board may take the proposed action pursuant to D.C. Code § 25-823 (2001).
- Charge II: The Respondent allowed the sale or delivery of alcohol to a minor in violation of D.C. Code § 25-781(c) for which the Board may take the proposed action pursuant to D.C. Code § 25-823.

- Charge III: The Respondent, through its agent, did not take reasonably necessary actions to ensure whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age in violation of D.C. Code § 25-781 for which the Board may take the proposed action pursuant to D.C. Code § 25-823.
- Charge IV: On October 9, 2008, the Respondent failed to obtain an entertainment endorsement from the Board to be eligible to have entertainment, a cover charge, or offer facilities for dancing in violation of 23 DCMR § 1000 (2008) and D.C. Code § 23-113 (2001) for which the Board may take the proposed action pursuant to D.C. Code § 25-823.
- Charge V: On October 30, 2008, the Respondent failed to obtain an entertainment endorsement from the Board to be eligible to have entertainment, a cover charge, or offer facilities for dancing in violation of 23 DCMR § 1000 and D.C. Code § 23-113 for which the Board may take the proposed action pursuant to D.C. Code § 25-823.
- Charge VI: The Respondent made a substantial change in the operation of the establishment by providing for or expanding an area which live entertainment would be performed by employees of the establishment, patrons, contract employees, or self-employed individuals, such as dancers or disc-jockeys, without first filing an application with the Board, in violation of D.C. Code §§ 25-404(a) (2001) and 25-762(b)(4) (2001) for which the Board may take the proposed action pursuant to D.C. Code § 25-823.
- Charge VII: The Respondent failed to conspicuously post its ABC license in violation of D.C. Code § 25-711 for which the Board may take the proposed action pursuant to D.C. Code § 25-823.
- Charge VIII: The Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose in violation of D.C. Code § 25-823 for which the Board may take the proposed action pursuant to D.C. Code § 25-823.
- Charge IX: On March 6, 2008, the Respondent failed to obtain an entertainment endorsement from the Board to be eligible to have entertainment, a cover charge, or offer facilities for dancing in violation of 23 DCMR § 1000 and D.C. Code § 23-113 for which the Board may take the proposed action pursuant to D.C. Code § 25-823.

The matter proceeded to a Show Cause Hearing where the Government and the Respondent presented evidence through the testimony of witnesses, the submission of documentary evidence, and the Findings of Fact and Conclusions of Law submitted by both

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

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated July 1, 2009. *See* (Alcoholic Beverage Regulation Administration (ABRA) Show Cause File Number 09-251-00064). The Respondent holds a Retailer's Class CT License and is located at 1805 Connecticut Avenue, N.W., Washington, D.C. *See* (ABRA Licensing File No. 70719).
2. The Show Cause Hearing in this matter was held on September 15, 2010. The Notice to Show Cause, dated July 1, 2009, charges the Respondent with the violations enumerated above. *See* (ABRA Show Cause File Number 09-251-00064).
3. On February 24, 2010, the Government and the Respondent agreed to an offer in compromise. *See* (ABRA Show Cause File Number 09-251-00064). As a result, Charges I, II, III, IV, V, VI, VII, and IX were dismissed, leaving only Charge VIII to be decided by the Board. *See* (ABRA Show Cause File Number 09-251-00064). The Respondent agreed to pay a fine of \$3,000 no later than March 24, 2010, and have its license suspended for two days from March 1, 2010, to March 2, 2010. *See* (ABRA Show Cause File Number 09-251-00064). The Board takes administrative notice that the fine was paid on March 18, 2010, and the suspension was served.
4. The Government presented its case through the testimony of three witnesses, Tracy Renken, Judith Vitela, and ABRA Investigator Ileana Corrales. *Transcript (Tr.)*, 9/15/10 at 6. The Government also submitted Case Report 09-251-00064. *See* (ABRA Show Cause File Number 09-251-00064).
5. The Government called Ms. Tracy Renken to testify. *Tr.*, 9/15/10 at 7. Ms. Renken testified that she works for Trinity University as the Director of Athletics and serves as the women's basketball coach. *Tr.*, 9/15/10 at 7.
6. Ms. Renken stated that she patronized the Respondent's establishment on February 7, 2009, and entered the establishment around 10:00 p.m. *Tr.*, 9/15/10 at 8, 15. Ms. Renken testified that she had approximately one to two drinks at the establishment. *Tr.*, 9/15/10 at 8, 14. She testified that she left her cell phone unattended on the Respondent's bar for 15 to 20 seconds and quickly noticed that it was missing. *Tr.*, 9/15/10 at 8-9.
7. Ms. Renken testified that approximately 15 minutes later a friend of hers noticed that another female patron had a phone similar to Ms. Renken's phone. Upon learning this, Ms. Renken testified that her friend asked the patron if she had Ms. Renken's phone. *Tr.*, 9/15/10 at 9. Ms. Renken testified that she and Ms. Vitela spoke in a non-confrontational manner. *Tr.*, 9/15/10 at 9-10.

8. Ms. Renken testified that the patron denied having her phone; however, her friend called Ms. Renken's phone and the phone in the patron's possession activated in response. *Tr.*, 9/15/10 at 10. The patron appeared to store the phone in her shirt. *Tr.*, 9/15/10 at 10. Ms. Renken testified that the patron then "walked away to the front of the bar in response." *Tr.*, 9/15/10 at 10.

9. According to Ms. Renken, she and Ms. Vitela attempted to return to their seats at the front of the bar in order to discuss what to do about the phone. *Tr.*, 9/15/10 at 10-11. When Ms. Renken and her friend reached the front of the bar, Ms. Renken's friend tried to get the patron's attention with a gesture. *Tr.*, 9/15/10 at 41. However, in response, a friend of the patron pushed her friend's face and Ms. Renken's face and "a little scuffle ensued" as a result. *Tr.*, 9/15/10 at 11. Ms. Renken testified that the patron's friend and Ms. Renken's friend interlocked with each other and knocked over a chair during the scuffle. *Tr.*, 9/15/10 at 33. She testified that people at the bar broke up the scuffle. *Tr.*, 9/15/10 at 11.

10. Ms. Renken testified that she informed one of the establishment's security personnel that her friend was pushed and that the patron had her phone. *Tr.*, 9/15/10 at 11, 16-17. Ms. Renken stated that she told the employee that when her friend called her phone, the phone in the women's shirt lit up. *Tr.*, 9/15/10 at 18. According to Ms. Renken, the establishment's security took no action in response to her statements. *Tr.*, 9/15/10 at 18, 57.

11. Approximately 45 minutes after the scuffle, Ms. Renken testified that, while sitting at the bar, she later observed the patron appear to leave the establishment. *Tr.*, 9/15/10 at 12, 18. Instead, according to Ms. Renken, the patron came up behind her. *Tr.*, 9/15/10 at 12. Ms. Renken testified that she turned around and told her that "I know you have my phone" and then turned back to face the bar. *Tr.*, 9/15/10 at 12. A few seconds later, she stated that she was hit by a shoe and started to bleed profusely. *Tr.*, 9/15/10 at 12. Ms. Renken only knows that she was hit by a shoe because someone told her. *Tr.*, 9/15/10 at 19.

12. Ms. Renken stated that after unsuccessfully trying to stop the bleeding with napkins, she went to the bathroom approximately a minute after being hit. *Tr.*, 9/15/10 at 13, 20. She stated she had napkins pressed to her head and her face was covered in blood while she walked to the restroom. *Tr.*, 9/15/10 at 64. When she reached the bathroom, Ms. Renken did not enter because the patron and her friend were in there. *Tr.*, 9/15/10 at 13. According to Ms. Renken, she soon went into a backroom where a man put a towel over her head to try and stop the bleeding. *Tr.*, 9/15/10 at 13. Ms. Renken's friend then called 9-1-1 and requested an ambulance. *Tr.*, 9/15/10 at 13-14. She also believed that her friend informed the establishment's bouncer that the patron who assaulted her was in the bathroom. *Tr.*, 9/15/10 at 61.

13. Ms. Renken testified that the patron who she believed stole her phone left the establishment without being questioned or stopped by the Respondent's security

employees. *Tr.*, 9/15/10 at 14. Ms. Renken testified that she did not know if the establishment called the police or an ambulance. *Tr.*, 9/15/10 at 35.

14. Ms. Renken also testified that none of the bartenders came to her assistance after she was hit and security did not come to her assistance while she was at the bar. *Tr.*, 9/15/10 at 19. Ms. Renken admitted that the bartenders may not have been aware that she was assaulted. *Tr.*, 9/15/10 at 66. She stated that after reaching the bathroom, a man took her to a back area of the establishment. *Tr.*, 9/15/10 at 21. Ms. Renken stated that she was unsure if the man was an employee of the Respondent; however, he was a different person than the security person who came after the scuffle. *Tr.*, 9/15/10 at 22. Furthermore, she noted that neither the man nor any of the Respondent's employees asked her any questions about the assault. *Tr.*, 9/15/10 at 22, 54. She stated that paramedics escorted her out of the establishment 15 minutes later and she received four to five stitches at the hospital. *Tr.*, 9/15/10 at 23. Ms. Renken stated that she was interviewed by a detective in the ambulance. *Tr.*, 9/15/10 at 24. According to Ms. Renken, the patron who assaulted her was never arrested. *Tr.*, 9/15/10 at 63.

15. Ms. Renken testified that there were approximately 60 to 70 people in the establishment at the time of the attack. *Tr.*, 9/15/10 at 30, 46. She believed that she left the establishment around 1:30 a.m. and noted that "last call" had been announced. *Tr.*, 9/15/10 at 30. Ms. Renken stated that she had patronized the establishment about three times and never experienced any illegal behavior in the past. *Tr.*, 9/15/10 at 31.

16. Ms. Renken testified that the establishment had a bouncer who checks identification at the door of the establishment. *Tr.*, 9/15/10 at 47.

17. Ms. Renken testified that she did not initially notify security because she wanted to resolve the problem peacefully with the patron. *Tr.*, 9/15/10 at 48.

18. Ms. Renken testified that the establishment's response to her situation was inadequate. *Tr.*, 9/15/10 at 50. She complained that the bouncer at the establishment's door is located six feet from the bathroom and should have noticed that she was bleeding profusely. *Tr.*, 9/15/10 at 49. Further, she complained that the establishment should have questioned the patron who hit her and not allow the patron to leave the club. *Tr.*, 9/15/10 at 50.

19. Ms. Renken admitted that she did not speak to the bouncer when she went to the bathroom. *Tr.*, 9/15/10 at 79.

20. The Government then called Judith Vitela to testify. *Tr.*, 9/15/10 at 82. Ms. Vitela stated that she is a student at Trinity University. *Tr.*, 9/15/10 at 82. Ms. Vitela testified that she witnessed Ms. Renken lose her phone. *Tr.*, 9/15/10 at 83. She stated that when she went to bathroom later, she noticed a heavyset woman with a phone similar to Ms. Renken's phone. *Tr.*, 9/15/10 at 84. Ms. Vitela testified that she called the phone twice and noticed that the patron's phone responded to her calls and lit up. *Tr.*, 9/15/10 at 84. She testified that the woman stored the phone in her shirt. *Tr.*, 9/15/10 at 84. Ms. Vitela

stated that she asked Ms. Renken to come with her to talk to the patron and determine if patron had Ms. Renken's phone. *Tr.*, 9/15/10 at 85.

21. Ms. Vitela testified that Ms. Renken and she asked the patron if she had Ms. Renken's phone but the patron denied it, even though Ms. Vitela dialed the Ms. Renken's phone and the phone in the patron's possession responded. *Tr.*, 9/15/10 at 85. Ms. Vitela told the patron that she was going to contact security and began to search for the establishment's security personnel. *Tr.*, 9/15/10 at 85. She stated that she found an employee and told her that a patron had Ms. Renken's phone. *Tr.*, 9/15/10 at 86.

22. Ms. Vitela stated that the patron and her friend appeared to hide in a different part of the bar. *Tr.*, 9/15/10 at 86. Ms. Vitela stated that she and Ms. Renken went to the front of the bar and she told the patron that she had contacted security and knew she had the phone. *Tr.*, 9/15/10 at 86.

23. In response, Ms. Vitela stated that the patron's friend pushed her face and began pulling her hair. *Tr.*, 9/15/10 at 86. Ms. Vitela testified that people pulled her and the patron's friend apart. *Tr.*, 9/15/10 at 86. Ms. Vitela stated that after the fight she told Ms. Renken to "forget about the phone. Pay the insurance fee that you have to pay and that's it. Let's just call it a night." *Tr.*, 9/15/10 at 87.

24. Ms. Vitela stated that she and Ms. Renken ordered drinks at the bar. *Tr.*, 9/15/10 at 87. Ms. Vitela testified that while they were sitting at the bar she noticed her friend get hit and found herself pushed to the floor by the patron's friend. *Tr.*, 9/15/10 at 87.

25. Ms. Vitela testified that someone picked her up and she went outside to call 9-1-1. *Tr.*, 9/15/10 at 88. She then testified that she told the bouncer at the front door what happened. *Tr.*, 9/15/10 at 88, 112. Ms. Vitela then stated that she saw the patron and her friend go downstairs. *Tr.*, 9/15/10 at 88, 116. Ms. Vitela testified that the bouncer did not stop the patron or get help after she told them that they assaulted Ms. Renken and were walking down the steps. *Tr.*, 9/15/10 at 95-96, 112. Ms. Vitela noted that the bouncer did not leave his chair or say anything to her. *Tr.*, 9/15/10 at 114. Ms. Vitela testified that the bouncer she spoke to was wearing a black shirt. *Tr.*, 9/15/10 at 96, 112. Ms. Vitela followed the patron and her friend down the stairs and watched them leave and walk down the street. *Tr.*, 9/15/10 at 116. Ms. Vitela testified that she found her friend with a towel over her head and watched her be escorted to an ambulance. *Tr.*, 9/15/10 at 89. Ms. Vitela could not say what time the incident occurred. *Tr.*, 9/15/10 at 105. Ms. Vitela testified that she gave a statement to the police. *Tr.*, 9/15/10 at 119.

26. Ms. Vitela testified that Ms. Renken and she remained in the establishment in order to "salvage. . . the rest of [their] night." *Tr.*, 9/15/10 at 108-09. Ms. Vitela stated that the stolen phone and scuffle did not trouble her enough to make her leave the establishment. *Tr.*, 9/15/10 at 109.

27. Ms. Vitela testified that she had visited the establishment on one prior occasion and did not witness any illegal activity during her visit. *Tr.*, 9/15/10 at 110.

28. Ms. Vitela stated that the Respondent's employees never gave her a warning or asked her to leave the establishment. *Tr.*, 9/15/10 at 111. She stated that the staff never told her to stop fighting and being disorderly. *Tr.*, 9/15/10 at 111.

29. Ms. Vitela stated that after the incident, she noticed that patrons were still in the establishment and drinking. *Tr.*, 9/15/10 at 122. She also noted that the music was still playing. *Tr.*, 9/15/10 at 122.

30. The Government called ABRA Investigator Ileana Corrales to testify. *Tr.*, 9/15/10 at 127-28. Investigator Corrales stated that she wrote an investigative report regarding the assault at Respondent's establishment. *Tr.*, 9/15/10 at 129. In order to write her report, Investigator Corrales interviewed Ms. Renken and the Respondent's owner, Mr. Frez Teame. *Tr.*, 9/15/10 at 131. Investigator Corrales believed that Ms. Renken's testimony did not contradict any statements she made when Investigator Corrales interviewed her. *Tr.*, 9/15/10 at 134.

31. Investigator Corrales testified that she interviewed the Respondent's owner, Mr. Frez Teame, on March 6, 2009, at the establishment. *Tr.*, 9/15/10 at 135. The Investigator stated that the owner was aware of the incident involving Ms. Renken. *Tr.*, 9/15/10 at 135. The owner stated that he was the person who met Ms. Renken near the bathroom and offered her the towel for her wounds. *Tr.*, 9/15/10 at 136.

32. Investigator Corrales stated that the establishment did not have a security plan and did not have security cameras. *Tr.*, 9/15/10 at 136. According to the Investigator, on February 7, 2010, the establishment had two security guards on duty. *Tr.*, 9/15/10 at 136. She stated that, on the night in question, Mr. Frez Teame told her that one security guard was responsible for checking identification at the door and the other security guard was roaming the establishment. *Tr.*, 9/15/10 at 136-37. She stated that the owner told her that the establishment does not pat down or wand patrons or perform searches before patrons enter the establishment. *Tr.*, 9/15/10 at 137-38. Furthermore, the owner could not tell the Investigator the name of the victim or any witnesses and did not know about the scuffle before Ms. Renken was assaulted. *Tr.*, 9/15/10 at 138-39.

33. The Respondent presented its case through the testimony of three witnesses: Mr. Daniel Teame, Mr. Marcus Joseph, and Mr. Frez Teame. *Tr.*, 2/3/10 at 18. The Respondent submitted a diagram of the establishment as evidence. *Tr.*, 9/15/10 at 278.

34. The Respondent called Mr. Daniel Teame to testify. *Tr.*, 9/15/10 at 143. Mr. Teame stated he is Mr. Frez Teame's brother and serves as the establishment's manager. *Tr.*, 9/15/10 at 143. Mr. Teame stated that he has worked at the establishment for three years. *Tr.*, 9/15/10 at 143. Mr. Teame states that he has many duties, including bartending and security. *Tr.*, 9/15/10 at 144.

35. Mr. Teame stated that he was present the night Ms. Renken was assaulted. *Tr.*, 9/15/10 at 144. Mr. Teame stated that he was working as a bartender that night. *Tr.*,

9/15/10 at 145. Mr. Teame stated that Mr. Joseph was the bouncer sitting by the front door and checking identification on February 7, 2009. *Tr.*, 9/15/10 at 153.

36. According to Mr. Teame, on the night in question, a woman approached him at the bar and stated that she had lost her phone. *Tr.*, 9/15/10 at 146. He stated that she appeared upset. *Tr.*, 9/15/10 at 176. He stated that the women's companion stated that another patron had stolen the phone. *Tr.*, 9/15/10 at 146. Mr. Teame stated that the patron the women accused of stealing her phone denied stealing the phone. *Tr.*, 9/15/10 at 147. Mr. Teame stated that the women accusing the patron of stealing the phone stated: "You know what? It's just a phone. That's it." *Tr.*, 9/15/10 at 147. Mr. Teame stated that he offered to call the police but the women rejected his offer. *Tr.*, 9/15/10 at 148. Mr. Teame then continued working. *Tr.*, 9/15/10 at 147. Mr. Teame stated he would have called the police had the women wanted him to. *Tr.*, 9/15/10 at 148. Mr. Teame stated that none of the women mentioned that they had been pushed or shoved. *Tr.*, 9/15/10 at 148.

37. Mr. Teame stated he informed his brother of the conversation he had with the women. *Tr.*, 9/15/10 at 149. He stated that he was informed that the conversation with the women occurred around midnight and 12:30 a.m. *Tr.*, 9/15/10 at 160, 177. Mr. Teame stated that a half hour later he spoke with the women again. *Tr.*, 9/15/10 at 160.

38. Mr. Teame stated that the establishment had a disc-jockey playing hip-hop and pop music. *Tr.*, 9/15/10 at 161. He testified that the establishment closed at 3:00 a.m. on February 7, 2009. *Tr.*, 9/15/10 at 177.

39. Mr. Teame stated that he did not have security training. *Tr.*, 9/15/10 at 162. Mr. Teame stated he did not create an incident report regarding the assault that occurred on February 7, 2009, and did not discuss the incident with the police or ABRA investigators. *Tr.*, 9/15/10 at 162. Mr. Teame stated that the Respondent has no security cameras and did not have any installed on February 7, 2009. *Tr.*, 9/15/10 at 163.

40. Mr. Teame stated that he only observed Ms. Renken after she was assaulted and did not see the actual incident occur. *Tr.*, 9/15/10 at 163. Furthermore, he stated that he did not know that there was any disturbance in the establishment at all. *Tr.*, 9/15/10 at 164, 172. Mr. Teame stated he is aware that an ambulance came to the establishment but did not know the reason on the night in question. *Tr.*, 9/15/10 at 173. As a result, he did not realize that Ms. Renken was hit in the head. *Tr.*, 9/15/10 at 182. In addition, he further testified that on February 7, 2009, that there were two other bartenders working at the bar with Mr. Teame and they did not report any security incidents. *Tr.*, 9/15/10 at 188.

41. Mr. Teame states that Ms. Vitela never told him how she knew that the patron had her friend's phone and that the phone in the patron's possession activated when she called her friend's number. *Tr.*, 9/15/10 at 171.

42. Mr. Teame stated that Mr. Frez Teame and Mr. Joseph were responsible for resolving security situations. *Tr.*, 9/15/10 at 184. Mr. Teame stated that, in his experience, there have not been a lot of security incidents in the establishment. *Tr.*, 9/15/10 at 185.

43. The Respondent then called Mr. Joseph to testify. *Tr.*, 9/15/10 at 190. He stated that he has worked security at liquor serving establishments for the past four years. *Tr.*, 9/15/10 at 190-91. Mr. Joseph stated that he did not have formal security training but received on the job training with his previous employers. *Tr.*, 9/15/10 at 207-09. He stated that his job at the Respondent's establishment requires him to check identification and checking bags for weapons. *Tr.*, 9/15/10 at 191. However, he stated that this is not done routinely and usually only reserved for any big bags patrons try to bring into the establishment. *Tr.*, 9/15/10 at 212. Mr. Joseph stated his duties are confined to the door, the inside of the establishment, and the outside of the establishment. *Tr.*, 9/15/10 at 192. He stated that he wears black pants and a black shirt when working, which is different from what the bartenders wear. *Tr.*, 9/15/10 at 222. Mr. Joseph states that he occasionally roams the room to ensure that everything is fine. *Tr.*, 9/15/10 at 193. He also stated that from his position by the door he can see the entire establishment. *Tr.*, 9/15/10 at 194.

44. Mr. Joseph stated that he first saw Ms. Renken and Ms. Vitela when they entered the establishment on February 7, 2009. *Tr.*, 9/15/10 at 195. He stated that he saw Ms. Vitela later when she approached him and told him that another patron had stolen her friend's phone and placed it in her blouse. *Tr.*, 9/15/10 at 196. Mr. Joseph stated that he approached the person who Ms. Vitela accused of stealing Ms. Renken's phone and asked her if she stole the phone and had it in her blouse. *Tr.*, 9/15/10 at 196. In response, he testified that the patron denied stealing the phone and opened her blouse to demonstrate that she did not have the phone. *Tr.*, 9/15/10 at 196. He then asked her why she got into a scuffle with Ms. Vitela. *Tr.*, 9/15/10 at 197. According to Mr. Joseph, the patron stated that Ms. Vitela and Ms. Renken started the fight. *Tr.*, 9/15/10 at 197.

45. Mr. Joseph then asked Ms. Renken and Ms. Vitela if they wanted him to call the police and they declined the offer. *Tr.*, 9/15/10 at 197-98.

46. Mr. Joseph stated that he took no action in regards to the previous fighting because Ms. Renken and Ms. Vitela appeared to drop the matter. *Tr.*, 9/15/10 at 198. Mr. Joseph believed that there would be no "further friction" between the women. *Tr.*, 9/15/10 at 199. He admitted that neither Ms. Renek, Ms. Vitela, or he called Ms. Renek's phone when he approached the patrons accused of stealing the phone. *Tr.*, 9/15/10 at 254.

47. Mr. Joseph stated that at 2:30 a.m. the establishment began turning on the lights. *Tr.*, 9/15/10 at 200. Mr. Joseph stated that he was downstairs when he observed the patrons accused of stealing the phone leave the establishment. *Tr.*, 9/15/10 at 201. After the patrons left, Ms. Vitela approached him and told him that "[t]hose girls hit my friend with a shoe." *Tr.*, 9/15/10 at 201. Mr. Joseph stated that he went downstairs in response. *Tr.*, 9/15/10 at 238. He stated that he saw Ms. Renken being treated in the back room. *Tr.*, 9/15/10 at 239-40.

48. Mr. Joseph stated he was at the establishment after 3:00 a.m. *Tr.*, 9/15/10 at 203. He observed an ambulance at the establishment after 3:00 a.m. *Tr.*, 9/15/10 at 203.

49. Mr. Joseph stated that he did not see Ms. Renken because he was downstairs when she went to the bathroom. *Tr.*, 9/15/10 at 221. Mr. Joseph stated that on February 7, 2009, he did not call the police or an ambulance. *Tr.*, 9/15/10 at 222. Mr. Joseph stated that the first employee of the establishment to inform him that an incident occurred was Mr. Frez Teame. *Tr.*, 9/15/10 at 232. Mr. Joseph stated that he was unaware an incident occurred until he was notified by Ms. Vitela between 2:30 a.m. and 3:00 a.m. *Tr.*, 9/15/10 at 237.

50. Mr. Joseph stated that the establishment did not employ a female security guard. *Tr.*, 9/15/10 at 213. He admitted that the establishment did not have a written security plan in February 2009. *Tr.*, 9/15/10 at 213. He stated that the establishment does not have video cameras and did not utilize radios. *Tr.*, 9/15/10 at 223. Mr. Joseph stated that on February 7, 2009, he did not submit a written report to Mr. Frez Teame but informed him verbally. *Tr.*, 9/15/10 at 225. Mr. Joseph stated that Mr. Frez Teame is the head of security at the establishment. *Tr.*, 9/15/10 at 226. Mr. Joseph added that he did not think radios would have prevented the incident from occurring and are not necessary because the establishment is so small that security can always maintain visual contact. *Tr.*, 9/15/10 at 251-52. He further added that security cameras and a security log would not have prevented the assault from occurring. *Tr.*, 9/15/10 at 252.

51. Mr. Joseph stated that Mr. Frez Teame sometimes tracks security incidents in the establishment in a written log. *Tr.*, 9/15/10 at 236. Mr. Joseph stated that he discusses security at the establishment with Mr. Freze Teame on most nights after the establishment closes. *Tr.*, 9/15/10 at 235. Mr. Joseph stated that if a person is injured, the establishment would call 9-1-1, obtain information from all the parties, and then provide that information to the police. *Tr.*, 9/15/10 at 236-37.

52. Mr. Joseph was unaware that Mr. Daniel Teame had spoken to Ms. Renken and Ms. Vitela earlier in the evening. *Tr.*, 9/15/10 at 249.

53. Mr. Joseph admitted that security cameras deter crime. *Tr.*, 9/15/10 at 255. He also admitted that taking down patron names and getting information from patrons regarding an incident demonstrates the establishment takes security seriously. *Tr.*, 9/15/10 at 256.

54. The Respondent then called Mr. Frez Teame to testify. *Tr.*, 9/15/10 at 258. Mr. Frez Teame stated that the Respondent has been open for five years. *Tr.*, 9/15/10 at 259. He stated that the establishment is a small bar, which has a bar that is about eight by six feet. *Tr.*, 9/15/10 at 259-60, 274. He stated that the establishment is about 18 square feet. *Tr.*, 9/15/10 at 274. He stated that 99 percent of the clientele at the Respondent's establishment are women and are "very peaceful." *Tr.*, 9/15/10 at 260. He stated that the incident involving Ms. Renken is the first time an assault occurred on the premises. *Tr.*, 9/15/10 at 261.

55. On February 7, 2009, Mr. Frez Teame testified that his establishment did not have a security plan or incident log. *Tr.*, 9/15/10 at 262. Since the assault, Mr. Frez Teame began keeping an incident log based on the advice of the ABRA Investigator. *Tr.*, 9/15/10 at 263.

56. Mr. Frez Teame stated that he did not have much information regarding the assault. *Tr.*, 9/15/10 at 164. The majority of his knowledge about the incident came from Mr. Daniel Teame. *Tr.*, 9/15/10 at 264. Mr. Frez Teame stated that around 2:30 a.m. he provided first aid to Ms. Renken when he saw her with blood on her face. *Tr.*, 9/15/10 at 264. Mr. Frez Teame stated that he was standing by the door when he saw Ms. Renken. *Tr.*, 9/15/10 at 264. He stated that he requested an ambulance even after Ms. Renken rejected his offer to call an ambulance. *Tr.*, 9/15/10 at 170. He stated that at the time he did not know how Ms. Renken was injured. *Tr.*, 9/15/10 at 271.

57. Mr. Freze Teame stated that the establishment's procedure is to eject patrons who engage in fighting. *Tr.*, at 9/15/10 at 265-66. Mr. Frez Teame stated that when an altercation occurs he has the manager turn on the lights, turn off the music, and eject the people fighting. *Tr.*, 9/15/10 at 266. Mr. Frez Teame stated that he discusses security issues with staff that manifest themselves during the course of business. *Tr.*, 9/15/10 at 268. Mr. Frez Teame stated that he received CHIPS security training and received training in the Army. *Tr.*, 9/15/10 at 289.

58. Mr. Frez Teame stated that he was aware that an ambulance and police officers arrived around 3:00 a.m. *Tr.*, 9/15/10 at 272. He stated that the police did not interview him. *Tr.*, 9/15/10 at 272.

59. Mr. Frez Teame stated that the establishment's policy is to eject and ban people who fight in the establishment. *Tr.*, 9/15/10 at 291. Nevertheless, because the pushing and shoving did not appear "that bad" he supported his employee's decision not to eject the women. *Tr.*, 9/15/10 at 291-92.

CONCLUSIONS OF LAW

60. 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. Code § 25-830 (2001) and 23 D.C.M.R. 800, *et seq.* (2008)

61. The Board will briefly summarize the arguments presented by both parties. The Government argued that the Board should find the Respondent liable for violating § 25-823(2). According to the Government, it is sufficient that the establishment did not have a plan to deal with issues regarding stolen property. The Government also notes that Respondent did not respond adequately to the victim's complaints and ignored the scuffle that occurred between the parties before the assault and battery with the shoe. In turn, the Respondent argues that the Board should not find it liable for violating § 25-823(2). The Respondent argues that its management and employees acted reasonably and argues that it should not be held responsible for a dispute between customers. Finally, the Respondent argues that the Government has not demonstrated that its method of operation posed a continuing danger to the public.

62. The Board finds that the Government has proven the charge against the Respondent. The Respondent violated § 25-823(2) by allowing “the licensed establishment to be used for any unlawful or disorderly purpose.” D.C. Code § 25-823(2) (2001).

63. Both parties have presented the Board with a number of court decisions that interpret the language of § 25-823(2). Courts have affirmed the Board’s authority to find licensee liable for violating § 25-823(2) where a licensee’s “method of operation, continued over time, harbor[s] sufficient danger of mischievous consequences sooner or later. . . .” Am-Chi Restaurant, Inc. v. Simonson, 396 F. 2d 686, 688 (D.C. Cir. 1968). Thus, under § 25-823(2), a licensee can be held responsible for the unlawful acts of third parties. Levelle, Inc. v. District of Columbia Alcoholic Beverage Control Board, 924 A.2d 1030, 1036 (D.C. 2007). The Board has also previously found that “a single incident can be sufficient [to find a violation of § 25-823(2)] where the single incident deals with existing patterns and practices at an establishment.” *Board Order No. 2008-262, para. 18.*

64. In Am-Chi Restaurant, the court affirmed the Board’s decision to find the licensee liable for allowing its premises to be used for an unlawful purpose under D.C. Code 25-118 (1967), which was re-codified at D.C. Code § 25-823 (2001). Am-Chi Restaurant, Inc., 396 F. 2d at 686. There, a female employee of the licensee was propositioning clients for prostitution and proposing the purchase of drinks at inflated prices from another employee who “was an open part of that operation.” *Id.* at 688. According to the court, even though the licensee did not know about the illegal activities, the Board could still find the licensee liable because it is enough that the “atmosphere provided by the employer was at least conducive to the initiating” of the unlawful behavior. *Id.*

65. In Levelle, the court affirmed the Board’s revocation of the Licensee’s Retailer’s Class CR License based on a violation of § 25-823(2). Levelle, Inc., 924 A.2d at 1039. According to the court, the Board’s decision was proper where the Board concluded that “various incidents were attributable to the lack of training and supervision of petitioner’s security staff, the failure of petitioner to maintain a sufficient number of security personnel, the inadequacy of petitioner’s security plan, petitioner’s failure to fully enforce its security procedures, and petitioner’s failure to properly communicate with police about incidents.” *Id.* at 1037.

66. In 4934, Inc., the Board suspended the petitioner’s liquor license under D.C. Code § 25-118 (1973), which contained language similar to the language found in D.C. Code § 25-823(2). 4934, Inc. v. Washington, 375 A.2d 20, 20-22 (D.C. 1977); *compare* D.C. Code § 25-118 (1973) *with* D.C. Code § 25-823(2). There, the employee was charged for violating a District of Columbia law that prohibited patently offensive behavior by engaging in an obscene dance. *Id.* at 21, 23. According to the court, there was evidence that the behavior was not a “continuous course of conduct” because police observed the location frequently and did not find violations, the dancer was previously warned about obscene behavior, and the dancer was reprimanded for deviating from management’s instructions. *Id.* at 22. Further, the court overturned the Board’s suspension because the underlying behavior was not unlawful. *Id.* at 23-24.

67. Contrary to the Respondent's assertions, the Board finds that the establishment's response to a scuffle between patrons and accusations that a patron stole personal property unreasonable. Indeed, according to Ms. Vitela's testimony, the establishment did not even warn the parties not to fight after the staff became aware that a scuffle occurred. Thus, the Board finds that the assault on Ms. Renken is a direct consequence of the Respondent's informal security procedures, which lacked sufficient consistency to guarantee the safety of its patrons.

68. The Respondent's own testimony indicates the gaps in its security procedures. On one hand, Mr. Freze Teame asserted that the establishment's procedure is to eject patrons who are fighting yet stated that he does not oppose employees ignoring minor incidents of pushing and shoving. *Compare Tr.*, at 9/15/10 at 265-66 *with Tr.*, 9/15/10 at 291-92. Yet, the Board notes that had Mr. Joseph notified Mr. Freze Teame of the scuffle, the establishment could have monitored the patrons rather than leave them to their own devices. The Board received no indication from Mr. Freze Teame that he expects his employees to report minor incidents so that the rest of the establishment's employees are on notice to monitor certain patrons who may cause problems.

69. The Board further notes that neither Mr. Daniel Teame or Mr. Joseph obtained or tried to obtain Ms. Renken, Ms. Vitela or the accused patrons' identification information when they spoke with them before the assault with the shoe. The Board notes that had the establishment obtained the accused patron's identification information earlier in the evening she would likely have been hesitant to strike Ms. Renken with her shoe. Further, the information would have helped MPD bring the suspect into custody. The Board finds that this is a critical failure on the part of the establishment because obtaining patrons' identification information not only helps the police resolve these types of disputes but puts patrons on notice that their actions can be traced back to them. The fact that two of the Respondent's employees failed to obtain this information demonstrates that this is a consistent practice at the establishment.

70. Therefore, as in Levelle, the Board finds the Respondent's security procedures were so lacking and inadequate to merit finding a violation of § 25-823(2) because the Respondent's security procedures are a direct reflection on the Respondent's method of operation. Indeed, similar to Am-Chi Restaurant, even though the Respondent did not cause the dispute between Ms. Renken and the patron who assaulted her, the Respondent's inadequate security procedures created an atmosphere that allowed individuals to engage in disorderly behavior without consequences.

71. Finally, the Board distinguishes 4934, Inc., from the present case. The obscene behavior in 4934, Inc., was the result of an employee who did not follow management's instructions. Unlike 4934, Inc., here, the Board's holding is based on the security procedures proffered by the Respondent and the Respondent's belief that its actions in this matter were appropriate. Furthermore, the Board notes that 4934, Inc., is further distinguishable because the obscene behavior by the dancer was found lawful; whereas, here, there is no doubt that the assault committed against Ms. Renken was illegal. As such, 4934, Inc., does not control the Board's decision.

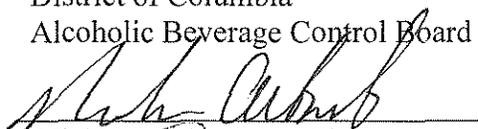
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 18th day of November, 2010, finds that the The Fab Lounge, Inc., t/a The Fab Lounge, at premises 1805 Connecticut Avenue, N.W., Washington, D.C., holder of a Retailer's Class CR License, violated D.C. Code § 25-832(2).

The Board hereby **ORDERS** that:

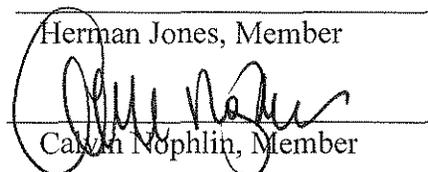
1. The Respondent shall pay a fine in the amount of \$2000 by no later than thirty (30) days from the date of this Order. The Respondent shall receive a suspension of its license for ten (10) days; two (2) days to be served and eight (8) days stayed for one year, provided that the Respondent does not commit any ABC violations;
2. The served suspension days shall run from December 16, 2010, to December 17, 2010;
3. The Respondent shall submit a new security plan in compliance with D.C. Code § 25-402 (2001) for review by the Board within 30 days and shall be required to comply with its terms under D.C. Code § 25-113 (2001).

District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Acting Chairperson


Donald Brooks, Member

Herman Jones, Member


Calvin Nophlin, Member

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 (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).