

INTRODUCTION

This case arises from a Notice of Status and Show Cause Hearing (“Notice”), which the Alcoholic Beverage Control Board executed on November 14, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 2420 18th Street, N.W., Washington, D.C., on November 18, 2013.

Procedural Background

The Notice charged the Respondent with violating its Settlement Agreement, which if proven true, would justify imposition of a fine, suspension, or revocation of the Respondent’s ABC license.

Specifically, the Notice in Case No. 13-CMP-00319, charged the Respondent with the following violation:

Charge I: [On Saturday, May 25, 2013,] the Respondent failed to adhere to the Settlement Agreement not to promote or participate in bar or pub “crawls” or “tours”, or any similar event, in violation of §25-446, for which the Board may take proposed action pursuant to D.C. Official Code §25-823 (6)(2001).

ABRA Show Cause File No., 13-CMP-00319, Notice of Status and Show Cause Hearing, 2 (November 14, 2013).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on January 15, 2014. The OAG and the Respondent did not enter into an Offer in Compromise (OIC). As a result, the parties proceeded to a Show Cause Hearing. The parties appeared at the Show Cause Hearing on May 1, 2014.

I. Issue for the Board’s Consideration

The issue in this matter is whether the Respondent failed to adhere to the Settlement Agreement not to promote or participate in “pub crawls.” Pursuant to D.C. Official Code §25-823(6), the Board may revoke or suspend and fine a Respondent for violation of a Settlement Agreement.

FINDINGS OF FACT

At the conclusion of the Show Cause Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board’s official file, makes the following findings:

I. Background

1. The Respondent holds a Retailer's Class CR License, ABRA License No. 86876. *See ABRA Licensing File No. 86846.* The establishment is located at 2420 18th Street, N.W., Washington, D.C., 20009. *Id.*
2. The Respondent entered into a Settlement Agreement (formerly known as a Voluntary Agreement) with the Kalorama Citizens Association dated October 22, 2002 whose terms attached to the license. An Amendment dated May 4, 2011 was approved by the Board on January 16, 2013 and is incorporated into the Settlement Agreement. *See ABRA Show Cause File 13-CMP-00319, Exhibit 2.*
3. The Respondent's Settlement Agreement provides in §7 that it will not promote or participate in bar or pub "crawls" or "tours" or any similar event. *See ABRA Show Cause File 13-CMP-00319, Exhibit 2.*

II. ABRA Investigator Abyie Ghenene

4. On Saturday May 25, 2013, Investigator Abyie Ghenene investigated the Respondent in response to a complaint submitted to ABRA. *Transcript (Tr.)*, 05/01/14 at 7.
5. Mr. Ghenene testified that Respondent has a Settlement Agreement that prohibits it from participating in or promoting bar/pub crawls, tours or any similar events. *Tr.* 05/01/14 at 11, 35; *ABRA Show Cause File 13-CMP-00319, Exhibit 2.*
6. Mr. Ghenene, acting undercover, registered for the Zombie Pub Crawl. *Tr.* 05/01/14 at 6-7. He followed the instructions given during registration and went to the National Mall around 7:30 p.m. where he received a flyer that listed the participating establishments, directions, a map and a green wristband that entitled him to drink specials at participating bars and taverns. *Tr.* 05/01/14 at 7, 9, 13.
7. After reviewing the materials, Mr. Ghenene discovered that the Respondent was listed as one of the participants in the Zombie Pub Crawl. *Tr.* 05/01/14 at 9, 19, 37, 40.
8. At approximately 10:20 p.m., Mr. Ghenene arrived in Adam's Morgan where he observed a poster advertising the Zombie Pub Crawl in the Respondent's front window. *Tr.* 05/01/14 at 12. The poster read, "Zombies Welcome." *Tr.* 05/01/14 at 12, 37.
9. Additionally, Mr. Ghenene observed that the other bars and taverns that were participating in the Zombie Pub Crawl displayed the same or similar handwritten posters prominently in the front windows of their establishments. *Tr.* 05/01/14 at 21, 27-28. He was able to identify participating establishments by the posters displayed in their front windows. *Tr.* 05/01/14 at 21.

10. Mr. Ghenene entered one of the establishments, while wearing the green wristband, and asked about the Zombie Fest or Zombie Walk specials. *Tr.* 05/01/14 at 21, 24. He then purchased and was served a discounted drink. *Tr.* 05/01/14 at 21, 24.

11. Mr. Ghenene attempted to enter the Respondent's establishment in an undercover capacity while wearing the green wristband issued by the organizers of the Zombie Pub Crawl. *Tr.* 05/01/14 at 12, 30. He had investigated the establishment before the night of May 25, 2013 and was immediately recognized as an ABRA investigator by the establishment's doorman. *Tr.* 05/01/14 at 12. Mr. Ghenene did not enter into the establishment. *Tr.* 05/01/14 at 12.

12. Mr. Ghenene left Bistro 18 and chose not to further the investigation. *Tr.* 05/01/14 at 14,17. He then contacted ABRA Investigator Felicia Dantzler and requested that she take pictures of the establishment's exterior. *Tr.* 05/01/14 at 14.

13. Mr. Ghenene did not speak with any employee or patron of Bistro 18 on the night of May 25, 2013 about the Zombie Pub Crawl or the "Zombies Welcome" poster in the front window. *Tr.* 05/01/14 at 16, 17.

III. ABRA Investigator Felicia Dantzler

14. On the night of May 25, 2013, Investigator Dantzler was in the Adam's Morgan neighborhood for an unrelated event. *Tr.* 05/01/14 at 43. At approximately 10:28 p.m., Mr. Ghenene contacted Investigator Dantzler and asked her to go to Bistro 18 and take photographs of the exterior front window. *Tr.* 05/01/14 at 43, 49, 56.

15. Investigator Dantzler took a photograph of Respondent's exterior front window which displayed a poster that read "Zombies Welcome." *Tr.* 05/01/14 at 44, 50-51. She observed several individuals in the surrounding area dressed as zombies. *Tr.* 05/01/14 at 48, 55, 57.

16. Investigator Dantzler testified that while she was photographing the front window, someone inside Bistro 18 removed the "Zombies Welcome" poster. *Tr.* 05/01/14 at 45, 47, 51-52.

17. Investigator Dantzler did not enter Bistro 18; nor did she speak with any employees or patrons. *Tr.* 05/01/14 at 46, 47.

18. Investigator Dantzler testified that the individual inside the establishment removed the "Zombie Welcome" poster because he knew that the Respondent was in violation of ABRA regulations. *Tr.* 05/01/14 at 47.

19. Investigator Dantzler has been inside the establishment on prior occasions to conduct investigations on behalf of ABRA. *Tr.* 05/01/14 at 52-53. She testified that she was not surprised

that the individual that removed the poster recognized her as an ABRA investigator. *Tr.* 05/01/14 at 53.

IV. Sami Ghulais

20. Sami Ghulais is the owner of Bistro 18. *Tr.* 05/01/14 at 61. He purchased the bar with the understanding that a Settlement Agreement was attached to the ABC license. *Tr.* 05/01/14 at 72, 74, 97-98. Mr. Ghulais testified that he did not have the assistance of legal counsel during the purchase. *Tr.* 05/01/14 at 72, 73, 74. He asserts that he was “tricked” into entering into the Settlement Agreement. *Tr.* 05/01/14 at 73.

21. Mr. Ghulais testified that Bistro 18 agreed to, and was listed as a participant in the Zombie Pub Crawl. *Tr.* 05/01/14 at 62, 95, 101. A week before the event, the organizer gave him a “Zombies Welcome” poster that was displayed in the front window of his establishment. *Tr.* 05/01/14 at 70, 83, 90, 94.

22. On Friday May 24, 2013 at 11:37 a.m., Mr. Denis James, President of the Kalorama Citizens Association (KCA), e-mailed Mr. Ghulais and informed him that the Settlement Agreement prohibited Bistro 18 from participating in the pub crawl. *Tr.* 05/01/14 at 62, 105; *ABRA Show Cause File 13-CMP-0031, Exhibit 1.* Mr. Zakaria Ibrahim, a former manager of Bistro 18, also informed Mr. Ghulais that participating in the pub crawl was prohibited. *Tr.* 05/01/14 at 64.

23. On May 25, 2013 at approximately 10:00 a.m., Mr. Ghulais read Mr. James’ e-mail. *Tr.* 05/01/14 at 106. At approximately 5:00 p.m., when Mr. Ghulais arrived at the establishment, he called the organizer to cancel the event and deleted all drink specials from the point of sale (POS) system. *Tr.* 05/01/14 at 62, 63, 65, 69, 71, 106, 108. He is the only person authorized to make changes to the POS system. *Tr.* 05/01/14 at 96, 108.

24. Mr. Ghulais informed all of the employees of the cancellation. *Tr.* 05/01/14 at 63, 65, 80, 106. However, he forgot to remove the sign posted in the front window. *Tr.* 05/01/14 at 70, 79, 81, 83, 85. At approximately 10:00 p.m., he told the doorman to remove the sign. *Tr.* 05/01/14 at 79-85, 118. The doorman did not see Investigator Dantzler taking a photograph of the sign before he removed it. *Tr.* 05/01/14 at 84, 117.

25. Mr. Ghulais testified that he was not aware of the restriction in the Settlement Agreement regarding pub crawls because he had not read the details of the Agreement and had never signed it. *Tr.* 05/01/14 at 63. Additionally, he testified that he expected an ABRA Investigator to come to his establishment once he posted the sign in the front window. *Tr.* 05/01/14 at 70. According to Mr. Ghulais, he waited for an ABRA Investigator to explain the restrictions in the Settlement Agreement to him, but an Investigator never showed up. *Tr.* 05/01/14 at 70, 84, 117, 120.

26. The organizer informed Mr. Ghulais that it was too late to remove Bisto 18 from the list of participants, but he could refuse to offer drink specials to the Zombie Pub Crawl participants.

Tr. 05/01/14 at 63, 71, 106-107. Mr. Ghulais testified that he did not sell discounted drinks to anyone that entered his established dressed as a zombie. *Tr.* 05/01/14 at 66, 71, 80.

27. Mr. Ghulais testified that Bistro 18 did not make a profit from participating in the pub crawl. *Tr.* 05/01/14 at 68. He offered a sales report dated May 1, 2014, that reflected the total gross sales for the evening of May 25, 2013 as \$3,078. *Tr.* 05/01/14 at 68. The sales reports can be printed at any time. *Tr.* 05/01/14 at 96, 109. However, the sales information cannot be altered after the transaction is completed. *Tr.* 05/01/14 at 111. Notwithstanding happy hour drink specials, no discounted drinks were reflected in the sales report. *Tr.* 05/01/14 at 68-69, 70, 114.

V. Zakaria Ibrahim

28. Mr. Ibrahim testified on behalf of the Respondent. *Tr.* 05/01/14 at 123. He is a former manager of Bistro 18 and long-time friend of Mr. Ghulais. *Tr.* 05/01/14 at 65, 124. He described himself as Mr. Ghulais' legal consultant and advisor. *Tr.* 05/01/14 at 125.

29. On May 24, 2013, Mr. Ibrahim was copied in an e-mail from Dennis James, President of KCA, to Mr. Ghulais regarding Bistro 18's participation in the pub crawl. *Tr.* 05/01/14 at 64, 106, 125, 144. The e-mail reminded the parties that pub crawls were prohibited pursuant to the terms of the Settlement Agreement. *Tr.* 05/01/14 at 64, 106, 125.

30. Mr. Ibrahim was aware that pub crawls were prohibited under the terms of the Settlement Agreement. *Tr.* 05/01/14 at 135. He did not know that Mr. Ghulais had agreed to participate in the pub crawl. *Tr.* 05/01/14 at 136-137. At approximately 2:00 p.m., on May 25, 2013, Mr. Ibrahim called Mr. Ghulais and informed him that participating in the pub crawl was a violation of the Settlement Agreement. *Tr.* 05/01/14 at 126, 144, 146. He advised Mr. Ghulais to contact the organizer to cancel the event. *Tr.* 05/01/14 at 127.

31. At approximately 10:45 p.m., Mr. Ibrahim was inside the establishment and observed the "Zombies Welcome" sign posted in the front window. *Tr.* 05/01/14 at 128, 154. He was also there when the sign was removed. *Tr.* 05/01/14 at 154. At that time, Mr. Ibrahim noticed that there weren't any customers, specifically any dressed as zombies, inside the bar. *Tr.* 05/01/14 at 130, 134. He then spoke with the bartenders and the doorman about the cancelled event and subsequently dismissed two bartenders for the night. *Tr.* 05/01/14 at 129-130.

32. Mr. Ibrahim testified that he was expecting to see an ABRA Investigator at the establishment because Mr. James informed him that ABRA was aware that Bistro 18 was participating in the pub crawl. *Tr.* 05/01/14 at 128, 130. Mr. Ibrahim did not see Investigators Ghenene and Dantzler at the establishment. *Tr.* 05/01/14 at 153.

33. Mr. Ibrahim testified that he does not have the access code that would allow him to alter information stored in the POS system. *Tr.* 05/01/14 at 157, 160. Mr. Ghulais has the access code and Mr. Ibrahim would have to get his permission before accessing the system. *Tr.* 05/01/14 at

157. Mr. Ibrahim does not have the authority to alter previously entered information. *Tr.* 05/01/14 at 157, 160.

VI. Sarah Hagos

34. Sara Hagos testified on behalf of the Respondent. *Tr.* 05/01/14 at 162. She has worked as a server and bartender at Bistro 18 for three (3) years. *Tr.* 05/01/14 at 163, 166. Ms. Hagos worked on the night of May 25, 2013. *Tr.* 05/01/14 at 163. She testified that Bistro 18 was supposed to participate in the Zombie Pub Crawl but Mr. Ghulais cancelled the event. *Tr.* 05/01/14 at 164. Additionally, she did see any patrons enter the establishment dressed as zombies. *Tr.* 05/01/14 at 167.

35. According to Ms. Hagos, after reporting to work on the evening of May 25, 2013, she accessed the POS system and noticed that the drink specials for the pub crawl, entered the previous night, had been deleted. *Tr.* 05/01/14 at 164, 171, 173. The bar did not offer drink specials to participants of the pub crawl. *Tr.* 05/01/14 at 164.

36. Ms. Hagos testified that she saw the “Zombies Welcome” sign posted in the front window when she reported to work that evening at 5:00 p.m. *Tr.* 05/01/14 at 166. She also testified that she noticed when the sign was removed. *Tr.* 05/01/14 at 167. 35.

37. Ms. Hagos did not see Investigators Ghenene and Dantzler at the establishment on the night of the event. *Tr.* 05/01/14 at 165. She testified that business was relatively slow that evening compared to typical Saturday nights. *Tr.* 05/01/14 at 167. Consequently, two (2) of the four (4) bartenders on-duty were dismissed early after the pub crawl was cancelled. *Tr.* 05/01/14 at 168-169.

CONCLUSIONS OF LAW

38. The Board has the authority to fine, suspend or revoke the license of a Respondent who violates any provision of Title 25 of the D.C. Official Code pursuant to D.C. 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 it determines “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).

38. The Board is tasked with enforcing the Respondent’s Settlement Agreement. D.C. Code §25-446(c) (West Supp. 2011). The Board interprets the Agreement according to the principles of contract law and thus the Board looked to the Settlement Agreement’s terms. *North Lincoln Park Neighborhood Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 727 A.2d 872 (D.C. 1999).

39. As such, pursuant to D.C. Official Codes §§25-446 and 25-823(6), the Board finds the Respondent guilty of failure to adhere to a Settlement Agreement not to promote or participate in pub crawls.

40. The Board credits the testimony of Investigators Ghenene and Dantzler. The Board finds that the Government has shown through substantial evidence that the Respondent violated the terms of its Settlement Agreement by promoting and participating in a pub crawl.

41. The Settlement Agreement states that the Respondent “agrees to not promote or participate in bar or pub ‘crawls’ or ‘tours’ or any similar event.” *ABRA Show Cause File 13-CMP-00319, Exhibit 2, §7.*

42. Nevertheless, on May 25, 2013, ABRA received a complaint that the Respondent was participating in a pub crawl.

43. Section 7 of the Settlement Agreement is clear that Respondent agrees not to participate in pub crawls. In light of the clear language of the Settlement Agreement, the promotion materials and the advertisement witnessed by Investigators Ghenene and Dantzler is evidence of Respondent’s violation of § 7 of the Settlement Agreement. *Supra* at 6, 7, 15.

44. The Respondent took affirmative steps which indicated its intent to participate in the pub crawl, despite its claim to the contrary. Specifically, Respondent registered for the Zombie Pub Crawl, held on Saturday, May 25, 2013. Respondent publicized its participation in the event by agreeing to have its trade name published in printed materials and on the official web site that advertised the Zombie Pub Crawl. *Supra* at para. 6, 7.

45. Moreover, one (1) week before the Zombie Pub Crawl was scheduled to occur, the Respondent accepted a neon green poster-sized sign which read “Zombies Welcome” from the organizer of the pub crawl and subsequently displayed the poster prominently in the front window of its establishment. The poster remained displayed until 10:00 p.m. that evening. *Supra* at para. 21.

46. The Board is not persuaded by the Respondent’s claim that it notified the promoter and removed himself from the list of participating establishments. This argument is undermined by the fact that Investigator Dantzler witnessed the promotion poster after the timeframe the owner claims he withdrew the establishment’s participation. As such, because the establishment promoted and participated in the pub crawl, it is liable for violating the Settlement Agreement. *Supra* at 8. Therefore, we find the Respondent guilty of the violation described in the Notice

47. This is Respondent’s eight (8th) secondary tier violation in a three year period. *ABRA Licensing File No. 86876, Investigative History* (See Case #13-CMP-00035, Case #12-CMP-00734, Case #12-CMP-00663, Case #12-AUD-00041, Case #12-CMP- 00019, Case #11-CMP-00457, Case #11-CMP-00413, Case #11-CMP-00331, Case # 11-CMP-00324). Pursuant to § 802.1(D), a licensee that is convicted of more than four secondary tier violations in a five year

period shall be fined according to the fine schedule provided for primary tier violations. 23 DCMR § 802.1(D).

48. For the foregoing reasons, Respondent must pay a total fine within the range of four-thousand dollars (\$4,000.00) and six-thousand dollars (\$6,000.00), because an eighth secondary tier violation is fined as a third level primary tier violation. 23 DCMR § 801.1(c)

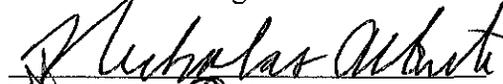
ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED**, on this 30th day of July 2014, by the Board, that Sami Restaurant, LLC t/a Bistro 18, is in violation of D.C. Official Code §§25-446 and 25-823 (6) in Case No. 13-CMP-00319.

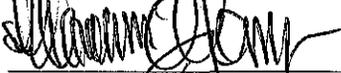
IT IS FUTHERED ORDERED that the Respondent pay a total fine of five-thousand dollars (\$5,000.00), which the Respondent must pay within thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

IT IS FUTHERED ORDERED that Respondent shall have its ABC license suspended for three (3) days; all stayed which shall not go into effect unless the Board finds that the Respondent committed a violation within one (1) year from the date of this Order.

District of Columbia
Alcoholic Beverage Control Board



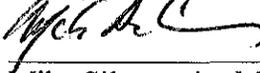
Nick Alberti, Member



Herman Jones, Member



Hector Rodriguez, Member

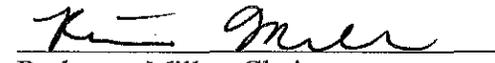


Mike Silverstein, Member

I concur with the majority's decision regarding the establishment's liability based on the uncontroverted evidence that the Respondent displayed the pub crawl poster in its window before and during most of the pub crawl. Paragraph 7 of the Settlement Agreement states that "Applicant agrees not to promote or participate in bar or pub "crawls" or "tours" or any similar event." The agreement does not define "promote" or "participate." However, in the context of the Settlement Agreement, it is reasonable to conclude that "promote or participate" encompasses advertising or publicizing the event by displaying the "Zombies Welcome" poster in the front window of the establishment.

However, the evidence also shows that Respondent cancelled the establishment's participation in the event once he learned that participation would be in violation of the Agreement (Testimony of Mr. Ghulais); that no participants were seen at the establishment; and that the establishment did not sell any special drinks. (Testimony of Sara Hagos).

In light of these facts, I dissent from the financial penalty imposed by the majority and find that a WARNING is warranted.



Ruthanne Miller, Chairperson

I concur with the majority of the Board's decision regarding the establishment's liability. Nevertheless, I dissent as to the penalty selected by the majority.



Donald Brooks, Member

Pursuant to 23 DCMR §1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic

Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).