

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

_____)	
In the Matter of:)	
Bar 9, LLC)	License No. 71156
t/a DC 9)	Case No. 10-251-220
)	Order No. 2010-609
Holder of a Retailer's License)	
Class CN at premises)	
1940 9th Street, N.W.)	
Washington, D.C. 20001)	
)	
Respondent)	
_____)	

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Andrew Kline and Scott Rome,
on behalf of the Respondent, Bar 9, LLC, t/a DC 9

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

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER ON SUMMARY SUSPENSION STATUS**

On October 19, 2010, the Alcoholic Beverage Control Board (Board), pursuant to D.C. Official Code §§ 25-826 (2008) and 25-827(a) (2005), ordered the suspension of the Retailer's License Class CN held by Bar 9, LLC, t/a DC 9 (Respondent). The suspension was based upon an investigation conducted by Alcoholic Beverage Regulation Administration (ABRA) Investigator Erin Mathieson as the result of receiving

the PD-251, CCN #101 incident report received from the Third District of the Metropolitan Police Department (MPD) pursuant to D.C. Official Code § 25-804(b) (2001).

Additionally, the Board's suspension of the Respondent's license was based upon the written request of Chief of Police Cathy L. Lanier, MPD, dated October 15, 2010, pursuant to D.C. Official Code § 25-827(a), which included a determination made by Chief Lanier that the establishment presented an imminent danger to the health and safety of residents and visitors in the District of Columbia.

On Wednesday, October 20, 2010, the Respondent requested a Summary Suspension Hearing pursuant to D.C. Official Code § 25-826(c), which was held on November 1, 2010. At the conclusion of the hearing, the Board issued from the bench, on the record, and through a formal articulation of the decision and vote, its 6-0 decision to keep the Respondent's license in summary suspension status for another thirty (30) days based upon the evidence presented at the Summary Suspension Hearing. At the conclusion of the hearing, the Respondent requested that the Board stay its decision, which the Board denied. The Board's articulated decision was reduced to writing in Order No. 2010-551, dated November 5, 2010.

Additionally, the Board scheduled a Summary Suspension Status Hearing for December 1, 2010, to consider additional testimony and evidence for purposes of determining whether the license should be suspended beyond December 1, 2010.

On November 8, 2010, pursuant to D.C. Official Code § 25-443(d)(1), the Respondent filed a Motion for Reconsideration based on newly discovered evidence, the dismissal of the criminal charges against the former employees of the Respondent and the compliance by the Respondent with all requests of the Board. The Government opposed the Motion for Reconsideration and the Board set the matter for a Motions Hearing on November 17, 2010. At that hearing, the Board denied the Motion for Reconsideration on the record by a 6-0 vote and further determined that the Respondent's license should remain suspended until December 1, 2010, as was originally determined at the November 1, 2010, Summary Suspension Hearing.

At the December 1, 2010 Summary Suspension Status Hearing, the Board continued the suspension of the license until December 15, 2010, in addition to placing a number of conditions on the reopening of the licensed establishment. The Board considered, in making its decision, the evidence addressed at the hearing, the testimony of ABRA Investigator Erin Mathieson, the arguments of counsel, the exhibits admitted in the hearing, and the documents comprising the Board's official file. The Board's decision is reduced to writing by this Order.

FINDINGS OF FACT

1. The Respondent holds a Retailer's Class CN License and is located at 1940 9th Street, N.W. (ABRA Licensing File No. 71156). The Respondent's license has been suspended since October 19, 2010, when the Board, pursuant to D.C. Official Code § 25-826(a), issued the Notice of Summary Suspension to the Respondent, based upon an investigation conducted by ABRA Investigator Erin Mathieson as a result of a PD-251 incident report received from MPD's Third District pursuant to D.C. Official Code § 25-804(b) (2001). (*See* Summary Suspension File No. 10-251-220).

2. The Board held a Summary Suspension Hearing on November 1, 2010. (*See* Summary Suspension File No. 10-251-220). On November 1, 2010, the Board issued from the bench, on the record, and through articulation of the decision and vote, its 6-0 decision to keep the Respondent's license in a summary suspension status and to schedule a further Summary Suspension Status Hearing for December 1, 2010. (*See* Summary Suspension File No. 10-251-220). The Board also issued a written Order setting forth its Findings of Fact and Conclusions of Law on November 5, 2010. (*See* Board Order No. 2010-551).

3. At the December 1, 2010 Summary Suspension Status Hearing, the Government presented its case through the testimony of one witness, ABRA Investigator Erin Mathieson. *Transcript (Tr.)*, 12/1/10 at 4. The Government also submitted the Supplemental Case Report written by Investigator Mathieson, which included numerous exhibits attached to the report. (*See* Summary Suspension Case Report No. 10-251-220(a) and Government Exhibits 1-20); *Tr.*, 12/1/10 at 19-25.

4. Investigator Mathieson testified that subsequent to the Summary Suspension Hearing held on November 1, 2010, she conducted a second investigation at DC 9 on November 16, 2010. (*See* Summary Suspension File No. 10-251-220(a)); *Tr.*, 12/1/10 at 5-6. The purpose of her investigation was to conduct a basic overview of the camera system that was installed by the establishment following the October 15, 2010, incident. *Tr.*, 12/1/10 at 7. Investigator Mathieson viewed the monitor located in the office, which confirmed that there are now a total of 16 cameras located throughout the establishment. *Tr.*, 12/1/10 at 7. She was assisted in her review of the camera system by Josh Copeland, a DC 9 employee, who also provided her with a layout of the location of the cameras and their directional viewpoint angles. *Tr.*, 12/1/10 at 7. Investigator Mathieson compared the footage on the monitor screen to the hard-copy layout and labeled the cameras and viewing angles accordingly. *Tr.*, 12/1/10 at 7.

5. Investigator Mathieson then walked through the establishment to view the positioning of each of the cameras. *Tr.*, 12/1/10 at 8. Additionally, she requested that Mr. Copeland record her entry into the establishment and her walk-through so that she could trace her steps and ensure that it was captured on each camera angle. *Tr.*, 12/1/10 at 8.

6. Investigator Mathieson then described the diagram layout of the 16 cameras and the angles captured by each camera: Cameras No. 1 and No. 2 are located on the outside of the establishment and have a view of the east sidewalk area; Camera No. 3 provides a direct view of the front door so that patrons can be seen arriving and departing; Camera No. 4 is positioned to cover the bar area and part of the front door on the first floor; Camera No. 5 is positioned to cover the bathroom area on the first floor; Camera No. 6 is positioned to cover the stairwell area; Camera No. 7 is located on the third floor and covers the stairwell area that leads to the rooftop; Camera No. 8 is positioned to view the second floor landing as well as the back door; Camera No. 9 is positioned to view the second floor bar as well as the standing room and the dance floor area; Camera No. 10 is positioned with a view of the rear bathroom on the second floor; Camera No. 11 is located at the top of the stairwell leading to the rooftop and has a view of the entrance to the roof; Camera No. 12 is positioned to view the front bar and rooftop area; Camera No. 13 has a view of the emergency exit on the roof; Camera No. 14 is a view of the emergency fire escape on the second floor; Camera No. 15 is positioned at the rear exit near the kitchen door that leads into the alley; and Camera No. 16 has a view of the alley located behind the establishment. *Tr.*, 12/1/10 at 9-11.

7. During her investigation, Investigator Mathieson took a number of photographs that she used to compare to the video footage of her walk-through and the hard-copy diagram. *Tr.*, 12/1/10 at 12. She was able to determine that there were three areas of the establishment that were not adequately captured by the 16 installed cameras. *Tr.*, 12/1/10 at 12, 27. Specifically, on the first floor, there were several booths, a cigarette machine, and an ATM machine that were not visible from any of the cameras. *Tr.*, 12/1/10 at 12. Additionally, on the second floor, the stage area that supports the bands and other live performances was also not covered by any of the cameras. *Tr.*, 12/1/10 at 13. There is also an office door on the second floor located between the bar and bathroom that is not visible to the camera positioned in that area. *Tr.*, 12/1/10 at 13.

8. Investigator Mathieson then conducted a third investigation of the licensed establishment on December 1, 2010. *Tr.*, 12/1/10 at 13. She again met with Mr. Copeland as well as a representative from the security camera company, Nards Entertainment. *Tr.*, 12/1/10 at 14-15, 27. Nards Entertainment was present to install two additional cameras, bringing the total number of cameras for the establishment to 18. *Tr.*, 12/1/10 at 15, 27-28. Investigator Mathieson testified that the monitor is currently configured to show 16 images but can be configured to show the full 18 if the images are reduced in size. *Tr.*, 12/1/10 at 15, 28. The system also offers the capability for the operator to flip through each camera angle to view all 18 cameras at any given time. *Tr.*, 12/1/10 at 15. Even if not all 18 cameras are viewable on the monitor at the same time, the footage is still recorded on the security system's hard drive. *Tr.*, 12/1/10 at 29.

9. Investigator Mathieson testified that at the December 1, 2010 visit, it was agreed that Camera No. 4 would be adjusted slightly to capture the cigarette machine, the ATM machine, and the full front of the establishment. *Tr.*, 12/1/10 at 15-16. Nards Entertainment also installed Camera No. 17 for the second floor to capture the booth area that is not currently captured by any one of the original 16 cameras. *Tr.*, 12/1/10 at 16.

Additionally, Camera No. 18 was installed to capture the stage area as well as a small area in front of the stage to allow the establishment to monitor anyone jumping from the floor onto the stage. *Tr.*, 12/1/10 at 16. Investigator Mathieson also testified that Camera No. 10 was moved back several feet so that the camera angle includes the manager's office, the entrance to the bathroom, and the emergency exit. *Tr.*, 12/1/10 at 16. Cameras No. 17 and 18 were being installed during Investigator Mathieson's visit, and thus not yet operational, so she was not able to view any footage or recordings. *Tr.*, 12/1/10 at 18. Investigator Mathieson agreed that the 18 cameras provided sufficient coverage for the establishment and that the quality of the system is one of the best she has seen in her years as an ABRA investigator. *Tr.*, 12/1/10 at 28-30. The system allows the operator to zoom in on any image captured by a camera and the image will still remain clear. *Tr.*, 12/1/10 at 30.

10. The Government argued that the purpose of the Summary Suspension Status Hearing was to analyze the status of the establishment with regard to the threat of imminent harm to the public and the community. *Tr.*, 12/1/10 at 31. The Government stated that, given the steps taken by DC 9 to install a comprehensive camera system and to employ other security measures, the threat of imminent harm has been remedied. *Tr.*, 12/1/10 at 31-32.

11. The Government, in agreement with the Licensee, set forth additional conditions to resolve the suspension of the license. *Tr.*, 12/1/10 at 32. These conditions include, among other things, that the owner, William Spieler, will cease his employment with the establishment; the employees associated with the incident will cease their employment with the establishment; the security personnel will undergo extensive security training conducted by an outside security expert, complete with a training manual, refresher courses and written certification; a new security plan compliant with the D.C. Official Code will be submitted to ABRA; the camera system must include night vision cameras with the ability to record, save and be reproduced for MPD and ABRA for a minimum of 30 days; the security plan will address how to handle certain incidents, the maintenance of an incident log and the prohibition against detaining patrons unless one's personal safety or the safety of a third person is threatened; and criminal background checks will be conducted on security personnel. *Tr.*, 12/1/10 at 32-36. The Government also proposed a total suspension of the license for 60 days, with 51 days served and nine days stayed for one year. *Tr.*, 12/1/10 at 36.

CONCLUSIONS OF LAW

12. The Board has the authority to "summarily revoke, suspend, fine, or restrict" a license to sell alcoholic beverages in the District of Columbia if the Board determines after an investigation that the operations of the licensee present "an imminent danger to the health and safety of the public." D.C. Code § 25-826(a) (2008). At this time, the Board finds that the Respondent's remedial actions, coupled with additional conditions imposed by the Board as set forth below, warrant the lifting of the suspension of the Respondent's Retailer's Class CN License effective December 15, 2010.

13. The Board is in agreement with the Government that the facts and exhibits evidenced by the testimony of Investigator Mathieson presented at the December 1, 2010, Summary Suspension Status Hearing are sufficient to demonstrate that the Respondent no longer poses an imminent danger to the health and safety of the public. As the Government noted, steps taken by DC 9 following the incident and the initial Summary Suspension Hearing, such as installing a comprehensive camera system and employing other security measures, ensures that the threat of imminent harm has been remedied.

14. The Board credits the two subsequent investigative visits undertaken by Investigator Mathieson to ensure the installation and operability of the new 18 camera security system. Additionally as represented by the Respondent's counsel, the training of the security personnel has already been completed and the certificates are filed with ABRA along with a new and improved Security Plan. The Board is assured by the testimony of Investigator Mathieson and the documents submitted by the Government, that the Respondent understands that the safety of patrons, members of the public, as well as the Respondent's own personnel, is of paramount importance.

ORDER

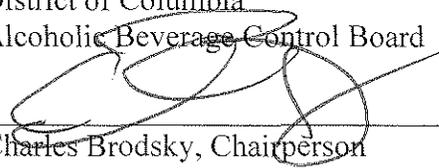
THEREFORE, it is hereby **ORDERED** on this 29th day of December 2010, that the suspension of the Retailer's License Class CN, issued to Bar 9 LLC, t/a DC 9, be and hereby is **LIFTED** effective December 15, 2010.

It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Respondent and shall become a condition of the lifting of the suspension:

- 1) The Respondent shall cease its employment relationship with William Spieler until the next scheduled Status Hearing.
- 2) The Respondent shall cease its employment relationship with the Security Personnel associated with the incident at the licensed establishment and at any licensed establishment owned by Joe Englert until the next scheduled Status Hearing.
- 3) The Respondent shall ensure that its Security Personnel receive extensive training from an outside expert complete with manual, certification, and regular ongoing refresher courses.
- 4) The Respondent shall file with ABRA an updated and revised Security Plan which will include but is not limited to, provisions regarding how to handle violent incidents and that Security Personnel will no longer detain patrons.

- 5) The Respondent shall upgrade its security camera system to include night vision, increased storage capacity, and retaining video for no fewer than 30 days.
- 6) The Respondent shall conduct criminal background checks for all Security Personnel.
- 7) The Respondent shall ensure the creation and maintenance of a security log.
- 8) The Respondent shall contract with MPD to secure a Reimbursable Detail for no fewer than two officers and no less than the hours of operation on any given night the club is open through January 19, 2011.
- 9) The license shall be suspended for sixty (60) days with all days served through December 15, 2010.
- 10) The Respondent shall return for a Summary Suspension Status Hearing on January 19, 2011 at 11:30 a.m., at which time the Board will receive additional information for purposes of determining further action.

District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson

Mital Gandhi, Member

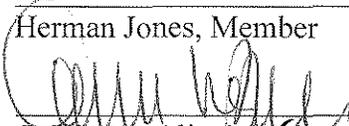


Nick Alberti, Member

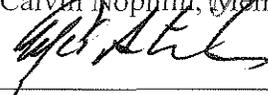


Donald Brooks, Member

Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, 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, 1250 U Street N.W., Suite 300, 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).