

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

In the Matter of:	)	
	)	
Delta Elite, Inc.,	)	License Number: 001182
t/a Delta Elite	)	Case Number: 12-251-00090
	)	Order Number: 2013-252
	)	
Holder of a Retailer's Class CN License	)	
at premises	)	
3734 10th Street NE	)	
Washington, D.C. 20017	)	

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

ALSO PRESENT: Walter Adams, II, Assistant Attorney General, on behalf of the  
District of Columbia

Enrique Lyon, on behalf of the Respondent

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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**PROCEDURAL BACKGROUND**

On September 22, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 6, 2012, on Delta Elite, Inc., t/a Delta Elite (Respondent), at premises 3734 10th Street N.E., Washington, D.C. 20017, charging the Respondent with the following violations:

- Charge I: The Respondent failed to follow its Security Plan concerning the ejection of fighting patrons in violation of D.C. Official Code § 25-823(6). The date of this alleged incident was February 15, 2012.
- Charge II: The Respondent failed to follow its Security Plan concerning the correct number of security personnel in violation of D.C. Official Code § 25-823(6). The date of this alleged violation was February 15, 2012.
- Charge III: The Respondent failed to follow its Security Plan concerning its surveillance system in violation of D.C. Official Code § 25-823(6). The date of this alleged violation was February 15, 2012.

### FINDINGS OF FACT

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

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated September 6, 2012. (*See Alcoholic Beverage Regulation Administration Show Cause File Number 12-251-00090*). The Respondent holds a Retailer's Class CN License and is located at 3734 10th Street N.E., Washington, D.C. 20017.
2. The Show Cause Hearing in this matter was held January 23, 2012. The Respondent was charged with three violations. Charge I alleges that Respondent failed to follow its Security Plan concerning the ejection of fighting patrons in violation of D.C. Official Code § 25-823(6). Charge II alleges that the Respondent failed to follow its security plan concerning the correct number of security personnel in violation of D.C. Official Code § 25-823(6). Charge III alleges that the Respondent failed to follow its security plan concerning its surveillance system in violation of D.C. Official Code § 25-823(6).
3. The Government presented its case through the testimony of several witnesses, the first of which was Metropolitan Police Department (MPD) Officer Richard Antoine. *Transcript, 1/23/13* at 11. Officer Antoine was assigned to monitor the establishment due to a number of recent incidents that had occurred while the establishment was open. *Tr.* at 12-14. Officer Antoine stated that while he was in his marked police car he observed around 15-20 females leaving the establishment scuffling with one another and that the altercation continued outside of the front entrance. *Tr.* at 14-15. Officer Antoine requested back-up due to the large number of patrons participating in the altercation. *Tr.* at 15. Once the other officers arrived, order was restored. *Tr.* at 15-16. Officer Antoine stated that no arrests were made and no patrons were transported to the hospital. *Tr.* at 20. Officer Antoine had previously stated to ABRA investigators that he was extremely concerned about the recent violence at the establishment, specifically because the establishment is

located across the street from an elementary school and adjacent to Catholic University.  
*Case Report, 3/2/12 at 2.*

4. The next witness was ABRA Investigator Earl Jones. Investigator Jones stated that after he interviewed Officer Antoine and the establishment's security chief, who confirmed the altercation (*Tr. At 40-46*) he interviewed the owner, who at first stated that there was no altercation inside. *Tr. At 47.* Once informed that the MPD had witnessed a group leaving the establishment while scuffling with one another, the owner admitted that there had been an altercation on the dance floor between two female patrons. According to Investigator Jones, the owner stated that security separated the two and escorted them outside through the same door, whereupon their friends followed them outside, where the altercation continued. *Tr. at 47.* Investigator Jones further testified that the owner stated to him that four security personnel were on duty at the time of the altercation, as required by the Security Plan. *Tr. at 48.* Investigator Jones also testified that he was unable to review the altercation on the security tape because the altercation occurred outside of camera range. *Tr. at 49-50.* Additionally, Investigator Jones testified that the owner admitted that the establishment's security system was inadequate and that it only records a maximum of three hours and then records over the previous footage. *Tr. at 51-52.* Investigator Jones testified that the footage was very grainy and difficult to view. *Tr. at 68.* He further testified that there were only three or four total tapes in the surveillance room. *Tr. at 70.*

5. Investigator Jones further testified that the establishment's Security Plan requires that persons who are arguing or fighting inside of the establishment are required to be removed one at a time, with each person subsequently released only when the previously released person is safely away from the establishment. *Tr. at 53.* Investigator Jones stated that, according to his investigation, rather than participants being released separately, both participants in the altercation were let out at the same time. *Tr. at 73.* He also testified that the Security Plan required the establishment to have four special police officers at all times, two inside and two outside the establishment, in addition to two trained security personnel located on the inside of the establishment to monitor patrons, but that only two security personnel were on duty at the time of the altercation. *Tr. at 58.* Finally, Investigator Jones testified that the Security Plan required the surveillance system to be capable of recording events when the establishment was open and that all recordings were to be maintained for thirty days but that this did not appear to be the case. *Tr. at 60.*

6. Enrique Lyon, identified as the owner of the establishment testified on behalf of the Respondent. Mr. Lyon testified that the altercation occurred outside of the establishment, not inside. *Tr. at 77.* He also stated that on the day of the altercation, the establishment had the proper number of security personnel, that the security system was a good system that he himself had installed and that the system was set to record a total of five hours of surveillance footage that evening. *Tr. at 78.* Mr. Lyon further stated that the patrons were not detained and escorted from the establishment at different times, as required by the Security Plan, but that they were allowed to leave on their own at the same time. *Tr. at 80-81.* Finally, Mr. Lyon admitted that there were only two security personnel on duty at the time of the altercation, in addition to two staff members, whereas the Security Plan requires

a total of four security personnel at all times that the establishment is open for business. *Tr.* at 82.

## CONCLUSIONS OF LAW

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 and 23 D.C.M.R. 800, *et seq.* However, the District of Columbia Court of Appeals has recently determined that, in order for the Board to determine that a licensee allowed unlawful and disorderly conduct to occur in its establishment or that it violated its security plan, the Government must show that the “incidents in question have a demonstrable connection to the operation of the establishment. *1900 M Restaurant Association, Inc., t/a Rumors Restaurant v. District of Columbia Alcoholic Beverage Control Bd.*, 2012 WL 5950582 at 6 (D.C. 2012). Moreover, in order to show such a connection, the substantial evidence in the record must demonstrate that the licensee engaged in “a continuous course of conduct” that encourages, causes, or contributes “to the unlawful or disorderly conduct at issue.” *Id.* In the absence of such evidence, the Government must show that “the licensee’s method of operation created an environment that fostered or was conducive to the unlawful or disorderly conduct that inevitably took place.” *Id.*

The Board finds, as to Charges I, II and III that there is sufficient credible evidence to establish that the Respondent failed to abide by its Security Plan in violation of D.C. Code § 25-823(6). Testimony indicates that, at a minimum, Respondent’s security guards released all participants involved in an inside altercation out of the same door at the same time, in violation of the requirement in the Security Plan that participants be separated and be let out at different times in order to prevent a rekindling of altercations outside of the establishment. Furthermore, testimony corroborates that the establishment did not provide the number of security guards required by the Security Plan, either inside or outside of the establishment. Finally, testimony corroborates the charge that the establishment violated the Security Plan by not following the requirements for recording and retention of security footage.

The Government asked that the Board impose, in total, a fine of \$4,000 and a suspension of four days, two days served and two days stayed for one year. The Board does not find that the incident warrants the penalties requested by the Government. The Board finds credible evidence that Respondent violated its Security Plan in violation of D.C. Code § 25-823(6). Because this constituted an isolated incident of unlawful and disorderly conduct and does not demonstrate a “continuous course of conduct” or a “method of operation,” the Board is without authority to impose a penalty for this violation. In lieu of ordering a monetary penalty, the Board, pursuant to D.C. Official Code § 25-201(a), warns Respondent that a deviation from its Security Plan in the manner admitted to by Respondent and proven by the Government is not acceptable behavior and will not be tolerated in the future. The express purpose of this warning is to put the Respondent on

notice that the Board would have sufficient evidence to find a “continuous course of conduct” or “method of operation” should the behavior highlighted in this Order continue or repeat in any fashion in the future.

## **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 19th day of June, 2013, finds that the Respondent, Delta Elite, Inc., t/a Delta Elite, holder of a Retailer’s Class CN License, violated D.C. Code § 25-823(6). The Board hereby **ORDERS** that:

1. Charge I: The Board issues a Warning for this Charge.
2. Charge II: The Board issues a Warning for this Charge.
3. Charge III: The Board issues a Warning for this Charge.
4. Respondent shall, no later than July 31, 2013, upgrade its security camera system to provide adequate coverage of all interior and exterior areas that are accessible to patrons of the establishment. Following the upgrade, an ABRA investigator will conduct a review of the system and report his or her findings the Board. The Board will review the supplemental investigative report to determine whether the cameras achieve adequate coverage of the interior and exterior of the establishment. Additionally, Respondent will, no later than July 31, 2013, ensure that the security camera system is operational whenever the establishment is open for business and preserve all security footage for a minimum of thirty (30) days. Respondent will also ensure that all security footage is made available to MPD and ABRA within forty-eight (48) hours of a request to review security footage.
5. Respondent shall, no later than July 31, 2013, submit to ABRA for its review an amended Security Plan that incorporates (1) procedures for how the establishment will handle assaults, fights or verbal altercations that occur on or near the premises, including procedures for escorting out unruly patrons; (2) procedures for notifying MPD of incidents inside and outside of the premises; (3) procedures for preserving a crime scene; (4) the number and type of security personnel that will be employed and on-duty whenever the establishment is open for business; (5) a description of the duties of all security personnel; and (6) the location where individual security personnel will be stationed, either inside or outside of the establishment.

The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Government and to the Respondent.

District of Columbia  
Alcoholic Beverage Control Board

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Ruthanne Miller, Chairperson

  
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Nick Alberti, Member

  
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Donald Brooks, Member

  
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Herman Jones, Member

  
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Mike Silverstein, Member

Under 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under 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 under 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).