

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

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In the Matter of:	)		
	)		
Edgar L. Cunningham	)		
t/a G Spot Tavern	)		
	)	Case No.	11-251-00390
Holder of a Retailer's	)	License No.	ABRA-85208
Class CT License	)	Order No.	2012-349
at premises	)		
5413 Georgia Avenue, N.W.	)		
Washington, D.C. 20011	)		
	)		
Licensee	)		
_____	)		

**BEFORE:**

Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Edgar L. Cunningham, on behalf of the Respondent

Maureen Zaniel, Senior Assistant Attorney General  
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

On April 5, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated March 28, 2012, on Edgar L. Cunningham, t/a G Spot Tavern (Respondent), at premises 5413 Georgia Avenue, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee failed to comply with its Security Plan in violation of D.C. Official Code § 25-823(6), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Board held a Show Cause Status Hearing on May 2, 2012. There was no settlement of the matter and it proceeded to a Show Cause Hearing on June 6, 2012. The Board having considered the evidence, the testimony of the 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 March 28, 2012, to the Respondent. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-251-00390. The Respondent holds a Retailer's Class CT license and is located at 5413 Georgia Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-85208.

2. The Show Cause Hearing was held on June 6, 2012. *See* ABRA Show Cause File No. 11-251-00390. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 11-251-00390.

3. The Respondent filed a Security Plan with ABRA dated August 17, 2011. *ABRA Show Cause File No. 12-251-00390, Security Plan*. Page 4 of the Security Plan states,

Altercations and Patron Ejection. If a customer attacks a member of the Security Staff during a fight, at anytime, the Security is only permitted to use enough force in self defense to stop the attack. Once the attack has been stopped, any continued attacks will be investigated by the Head of Security and MPD will be notified if necessary.

4. Page 4 of the Security Plan, under Incidents and Accidents, further states,

Injuries and Accidents – All injuries will be handled by the Head of Security. All incidents will be documented in the log book.

5. Investigator Felecia Martin arrived at the establishment on the morning of December 10, 2011, to conduct an investigation of the incident reported to her by the Metropolitan Police Department (MPD). *Transcript (Tr.)*, 6/6/12 at 7; Government's Exhibit No. 1. Upon her arrival at 2:30 A.M., Investigator Martin observed that the house lights were on, there was no music playing, and there were five people inside the establishment. *Tr.*, 6/6/12 at 7.

6. Investigator Martin described the establishment as devoid of furniture with a bar located at the rear, and a pool table located in the middle of the room. *Tr.*, 6/6/12 at 8. The interior is small enough that Investigator Martin could see from one end of the room to the other. *Tr.*, 6/6/12 at 8. The bar is three to four feet high from the floor, and it is Investigator Martin's opinion that anyone on the backside of the bar could see over the bar and across the room. *Tr.*, 6/6/12 at 9.

7. Investigator Martin spoke to an MPD officer on the scene who advised her that a male patron sexually assaulted a female patron when he placed his hand under her skirt and touched her. *Tr.*, 6/6/12 at 10. MPD Officer Julie Keavney informed Investigator Martin that she requested video footage of the incident from the owner, Mr. Cunningham, but that he did not provide it. *Tr.*, 6/6/12 at 11.

8. Investigator Martin observed the owner, Edgar Cunningham, on the premises as well as Darryl Boone, the establishment's head of security. *Tr.*, 6/6/12 at 12. Mr. Boone was wearing dark blue police attire, dark blue cargo pants, and a bullet proof vest. *Tr.*, 6/6/12 at 11, 50.

9. Mr. Cunningham informed Investigator Martin that he was behind the bar, and he did not witness the entire incident because his view was obstructed. *Tr.*, 6/6/12 at 12-13, 69. He also informed Investigator Martin that the establishment did not maintain an incident log book, and that he did not call the police at the time of the incident. *Tr.*, 6/6/12 at 13-14, 45.

10. Investigator Martin conducted a second investigation later that same day. *Tr.*, 6/6/12 at 14-15. She requested a copy of the Respondent's security camera video footage, but Mr. Cunningham indicated that the establishment was unable to transfer the footage to a disc due to electronic difficulties. *Tr.*, 6/6/12 at 15-16. Because Investigator Martin was concerned about losing the video footage, she copied the footage to her government issued cell phone camera. *Tr.*, 6/6/12 at 16, 18.

11. The original video footage was recorded onto one single screen from six to eight different cameras. *Tr.*, 6/6/12 at 7. The video footage showed the different views and angles from the cameras, and it also showed the area where the incident took place. *Tr.*, 6/6/12 at 7. Investigator Martin observed on the video, two men talking to one another, when one of the men reached out to the female patron, and squeezed her buttocks with his hand. *Tr.*, 6/6/12 at 19. Investigator Martin transferred the video footage from her cell phone to her work computer. *Tr.*, 6/6/12 at 20.

12. Investigator Martin recounted the video footage as it was being shown to the Board during the Show Cause hearing. *Tr.*, 6/6/12 at 24; Government Exhibit No. 3. The female victim is wearing a black dress, and is dancing with other females. *Tr.*, 6/6/12 at 24-25. The male suspect is wearing a baseball cap and is standing in front of the bar. *Tr.*, 6/6/12 at 24-26. The video shows the suspect grabbing the victim's buttocks, and portions of the victim's hair lying on the floor. *Tr.*, 6/6/12 at 26-28.

13. The video footage also shows Mr. Cunningham's face and arm, and a view of the establishment's security personnel escorting the victim out of the establishment. *Tr.*, 6/6/12 at 28-29, 31, 46-47, 63. Mr. Cunningham came around from behind the bar, and approached the area where the incident happened. *Tr.*, 6/6/12 at 33. Security did not escort the suspect out of the bar, but the police eventually removed him from the premises. *Tr.*, 6/6/12 at 47.

14. The victim attempted to re-enter the establishment, and was intercepted by Mr. Boone just inside the doorway. *Tr.*, 6/6/12 at 54. Mr. Boone escorted the victim outside of

the establishment a second time. *Tr.*, 6/6/12 at 55, 77. Because of the sexual nature of the offense, and in accordance with police protocol, Investigator Martin did not interview the victim. *Tr.*, 6/6/12 at 55

15. Investigator Martin interviewed the Respondent's head of security, Mr. Boone. *Tr.*, 6/6/12 at 41. Mr. Boone informed Investigator Martin that he had never received a copy of the establishment's Security Plan. *Tr.*, 6/6/12 at 42. The Security Plan provides that the head of security keep a copy of the Security Plan in his possession. *Tr.*, 6/6/12 at 42.

16. Mr. Boone had no knowledge of the Security Plan requirement to maintain the incident log. *Tr.*, 6/6/12 at 43. Investigator Martin also spoke to Mr. Cunningham about the requirement to maintain an incident log. *Tr.*, 6/6/12 at 43. Mr. Cunningham informed Investigator Martin that Mr. Boone is responsible for maintaining the required documents. *Tr.*, 6/6/12 at 44.

17. Mr. Cunningham represented to the Board that he has maintained an incident log since he opened the establishment for business in 2010. *Tr.*, 6/6/12 at 57-58. He was not aware of the full extent of the incident until he watched the video footage with Investigator Martin. *Tr.*, 6/6/12 at 59, 64, 78. When he became aware of the altercation, he tried to stop it by reaching over the bar with his arm. *Tr.*, 6/6/12 at 59. When he could not get the parties' attention, he came out from behind the bar. *Tr.*, 6/6/12 at 70, 74.

18. Mr. Cunningham told the parties to stop, and called Mr. Boone over to handle the situation. *Tr.*, 6/6/12 at 59, 65. He did not call the police because the police were already located outside his establishment. *Tr.*, 6/6/12 at 60. When the victim was escorted out, the police immediately entered the establishment. *Tr.*, 6/6/12 at 60. The suspect was arrested that night. *Tr.*, 6/6/12 at 60, 65, 78.

19. The incident log was at Mr. Cunningham's home on the night of the incident. *Tr.*, 6/6/12 at 60. Mr. Cunningham recorded the incident in the log on the night of the incident, December 10, 2011. *Tr.*, 6/6/12 at 61. He now keeps the incident log at the establishment. *Tr.*, 6/6/12 at 61. He was not aware that the incident log had to be kept on the premises. *Tr.*, 6/6/12 at 62.

20. Mr. Cunningham indicated that Mr. Boone is familiar with the security plan, and other security procedures employed by the establishment. *Tr.*, 6/6/12 at 62. He does not know why Mr. Boone did not have a copy of the security plan on the night of the incident. *Tr.*, 6/6/12 at 62.

21. There were two employees on duty on the night of the incident, Mr. Cunningham and Mr. Boone. *Tr.*, 6/6/12 at 68. Mr. Cunningham normally has three employees when the establishment is operating, but his bartender, Terrell Harris, had left earlier that night, so Mr. Cunningham had to work behind the bar, instead of managing the floor. *Tr.*, 6/6/12 at 81-83.

22. Mr. Cunningham was wearing a black button-up shirt that night, and Mr. Boone was wearing a security badge. *Tr.*, 6/6/12 at 79-80. The establishment's procedures entail

Mr. Boone addressing matters on the floor as they arise, and then Mr. Cunningham will come from behind the bar if assistance is needed to intervene further. *Tr.*, 6/6/12 at 76.

### CONCLUSIONS OF LAW

23. 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. Official Code § 25-830 and 23 DCMR § 800, *et seq.* 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 §§ 25-830, 25-447 (West Supp. 2012).

24. Regarding the violations set forth above, the Board finds that the Government has proven through substantial evidence that the Respondent failed to follow its Security Plan on December 10, 2011, with respect to documenting the incident in a log, and failing to call the police at the time of the incident.

25. The Respondent’s Security Plan requires that all incidents will be documented in the log book. It is a violation for a licensee to fail to follow its security plan. § 25-823(6). The record in this matter presents conflicting testimony. On the night of the incident, the Respondent admits to Investigator Martin that he does not maintain an incident log, yet during the hearing, the Respondent testified that he had recorded the incident in a log kept at his home. The Board does not find the Respondent’s hearing testimony credible and finds that under these circumstances, the Respondent violated § 25-823(6) by not documenting the incident in its log book as required by the Security Plan.

26. Additionally, the Respondent’s Security Plan also requires that MPD will be notified if necessary. It is a violation for a licensee to fail to follow its security plan. § 25-823(6). Here, the Respondent admitted to Investigator Martin that he did not call the police as required by the establishment’s Security Plan. Therefore, the Board finds the Respondent in violation of § 25-823(6).

27. Based on the Board’s finding that the establishment violated § 25-823(6), the Respondent shall pay a fine in the amount of \$4,000.00 and shall receive a suspension of its license for ten (10) days; five (5) days to be served and five (5) days stayed for one year, provided that the Respondent does not commit any further ABC violations. The Board also finds that the Respondent’s level of security personnel is inadequate. Accordingly, the Board requires that the Respondent employ a second security person during its hours of operation and that the number of security personnel be reflected in the Respondent’s Security Plan.

**ORDER**

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of September 2012, finds that the Respondent, Edgar L. Cunningham, t/a G Spot Tavern, violated § 25-823(6) of the District of Columbia Official Code. The Board hereby **ORDERS** that

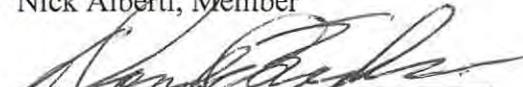
1. The Respondent is liable for Charge I and shall pay a fine of \$4,000.00 by no later than thirty (30) days from the date of this Order;
2. The Respondent shall receive a suspension of its license for ten (10) days; five (5) days to be served, and five (5) days stayed for one year, provided that the Respondent does not commit any additional ABC violations;
3. The served suspension days shall run from Wednesday, September 26, 2012, through Sunday, September 30, 2012;
4. The Respondent shall employ a second security personnel during its hours of operation, and it shall amend its Security Plan to reflect the employment of the second security personnel. The amended Security Plan shall be filed with ABRA by no later than thirty (30) days from the date of this Order.

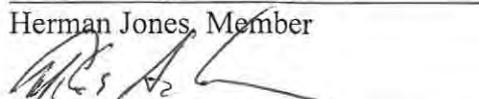
The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

District of Columbia  
Alcoholic Beverage Control Board

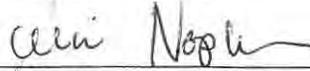
  
Ruthanne Miller, Chairperson

  
Nick Alberti, Member

  
Donald Brooks, Member

Herman Jones, Member  
  
Mike Silverstein, Member

I concur with the majority's decision as to its finding of guilt, but I dissent as to the penalty selected by the majority of the Board.



Calvin Nophlin, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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).