

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

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In the Matter of:)
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Green Island Heaven and Hell, Inc.) Case Nos.: 18-CMP-00208
t/a Green Island Café/Heaven & Hell) 18-251-00219
Holder of a) License No.: ABRA-74503
Retailer's Class CT License) Order No.: 2019-683
at premises)
2327 18th Street, N.W.)
Washington, D.C. 20009)
)

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell,
Respondent

Robert P. Newman, Counsel, on behalf of the Respondent

Jessica Krupke, 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, (hereinafter "Respondent" or "Green Island Café/Heaven & Hell") illegally outsourced security at the establishment to a third party and violated the terms of its security plan in violation of D.C. Official Code §§ 25-797 and 25-

823(a)(6). In light of these violations, and its history of prior violations, the Respondent shall pay a fine of \$90,000 and serve a 90 day suspension.

Procedural Background

This case arises from a Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 25, 2018. *ABRA Show Cause File No. 18-CMP-00208, 18-251-00219*, Notice of Status Hearing and Show Cause Hearing, 2 (May 15, 2019). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2327 18th Street, N.W., Washington, D.C., on May 15, 2019. *ABRA Show Cause File No. 18-CMP-00208, 18-251-00219*, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violations:

- Charge I:** [On August 17, 2018,] [y]ou failed to maintain ownership and control of the licensed establishment in violation of D.C. Code § 25-797 (a) and (b)
- Charge II:** [On August 17, 2018,] [y]ou violated the terms of your . . . Security Plan [by] failing to have security guards at the establishment's entrance and inside of the establishment [in violation of] D.C. Code § 25-823(a)(6)
- Charge III:** [On August 17, 2018,] [y]ou knowingly allowed a patron to exit the establishment with an alcoholic beverage in an open container in violation of D.C. Code § 25-113(a)(1)(A)(ii)
- Charge IV:** [On August 17, 2018,] [y]ou violated the terms of your November 16, 2011 Board-approved Settlement Agreement by allowing a patron to exit the establishment with an alcoholic beverage in an open container
- Charge V:** [On November 11, 2018,] [y]ou violated the terms of your . . . Security Plan [in violation of] D.C. Code § 25-823(a)(6)

Both the Government and Respondent appeared at the Show Cause Status Hearing for the above mentioned cases on June 26, 2019. The parties proceeded to a consolidated Show Cause Hearing and argued their respective cases on August 7, 2019.

FINDINGS OF FACT

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. Facts Pertaining to the License.

1. The Respondent holds a Retailer's Class CT License at 2327 18th Street, N.W., Washington, D.C. *ABRA License No. 74503*.
2. The Respondent's Security Plan contains the following language in the section titled "Front Door Security Staff": "The first line of defense is the front door staff. Two (2) Security personnel should always be positioned in the main entrance. The front door staff checks IDs to ensure that people seeking entrance are of legal age (21)." *Security Plan*, at 3 (See page 3, paragraph 1) (*Government Exhibit No. 9*). The Respondent's Security Plan also contains the following language in the section titled "Inside Security Staff":

The next and final line of defense in the inside security staff (floor men). The inside security staff should be positioned throughout the property, particularly at all exists [sic], bars and at the dance floors. The job of the inside security staff is to monitor the crowd to ensure that no one becomes unruly.

Security Plan, at 5 (page 5, second to last paragraph).

The Security Plan further states in the section titled "Incident Reports":

Whenever an incident occurs inside or outside the establishment, security personnel involved must fill out an incident report. This report must include all the proper and correct information. Management must then review and approve the report for accuracy and then record the document in the security log.

Security Plan, at 7 (page 7, paragraph 1).

3. The Respondent's Settlement Agreement indicates in Section 1.5 that "Alcoholic beverages shall not be carried by patrons from the upper levels (first and second floor) out the main entrance of 2327 18th Street, NW onto areas that are not licensed." *In re Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell*, Case No. 10-PRO-00178, Board Order No. 2010-469, Settlement Agreement, § 1.5 (D.C.A.B.C.B. Nov. 16, 2011) (*Government Exhibit No. 10*).

II. Facts Provided by ABRA Investigator Kevin Puente Regarding August 17, 2018.

4. ABRA Investigator Kevin Puente visited the Respondent's establishment on August 17, 2018 sometime around 10:00 p.m. *Transcript (Tr.)*, August 7, 2019 at 11, 34-35, 56. On that day, he was monitoring establishments in the Adams Morgan neighborhood with ABRA Supervisory Investigator Mark Brashears. *Id.* at 12. While in the neighborhood, the investigative team observed two people operating a table outside the Respondent's establishment and collecting money. *Id.* The table was in front of the steps of the establishment and on public property. *Id.* at 14, 16.

5. After observing the individuals at the table collect money, the investigators contacted the Metropolitan Police Department (MPD) for support. *Id.* at 13. After MPD Sergeant Christian Tobin and other officers arrived, the investigative team approached the establishment. *Id.*

6. Upon approaching the table, a member of the investigative team asked the people sitting at the table if they were the Respondent's employees. *Id.* The patrons at the table indicated that that they worked for a promoter. *Id.* They further indicated that they were solely present to collect money and permit admittance into the establishment. *Id.* Investigator Puente further observed that the individuals had containers of Heineken and Corona beer on the table. *Id.* at 13. The bottles had been opened. *Government Exhibit No. 3.* They further indicated that the bottles came from inside the establishment. *Id.* at 36. While standing at the table, Investigator Puente also observed that patrons were walking inside without anyone checking their identifications. *Id.* at 18. He noted that based on prior visits to the establishment security typically wore all black clothing, but did not see anyone he recognized as security. *Id.* at 38-39, 57.

7. After ending their interview, the investigative team then entered the establishment. *Id.* at 18. While entering, Investigator Puente observed no security personnel or other persons present at the door. *Id.* at 19, 284. Upon entering the first floor, Investigator Puente observed a live band and people drinking; nevertheless, he observed no security present. *Id.* The team then went to the second floor. *Id.* On the second floor, he observed the owner and got his attention. *Id.* at 19-20. The investigative team and the owner, Mehari Woldemariam, then went outside to discuss the situation. *Id.* at 20.

8. Outside, the investigators asked him about the people with alcohol outside the establishment, the lack of security, and allowing third parties to take over the establishment. *Id.* at 20-21. During this time, at least two other people were able to enter the establishment without anyone checking their identifications. *Id.* at 21-22. During the conversation, they also observed a female patron exit the establishment with a beer bottle in her hand, which MPD took away from the patron as she walked down the street. *Id.* at 23, 50. Nevertheless, the owner had his back to the establishment as the female patron exited and it does not appear that he observed the patron leave. *Id.* at 51, 58.

III. Facts Provided by ABRA Investigator Kevin Puente Regarding November 11, 2018.

9. Investigator Puente also previously visited the establishment on November 11, 2018. *Id.* at 24. On that day, he received a report from MPD regarding claims that a patron was poisoned inside the establishment. *Id.* at 25. At the establishment, the owner admitted that he grabbed a bottle containing "solution" and accidentally served it to a customer. *Id.* at 26. In response, Investigator Puente asked for an incident report regarding the incident; however, the owner could not provide it. *Id.* at 26.

IV. Facts Provided by William Wiggins.

10. William Wiggins works as an "independent contractor" and promoted and helped organize the party held at the Respondent's establishment on August 17, 2018. *Id.* at 73, 113.

He described himself as an “outside promoter” and not an employee of the Respondent. *Id.* at 81, 93-94, 99, 103. On that night, the establishment was holding an event for local bands. *Id.* at 74. The people at the table interviewed by the investigative team were the party organizers. *Id.* at 117. He noted that he was specifically paid for “helping to facilitate and organize” the event on August 17, 2018, and he was not “paid to be security at the party.” *Id.* at 84. As part of the event, he helped the band set up, helped them coordinate with the establishment, and stood at the front of the establishment during the event. *Id.* at 75. He also indicated that during the event he checked patron identifications at the door, and that the Respondent was aware of his activity. *Id.* at 75-77. He noted that he does not wear black like a regular security person at the establishment when he works there. *Id.* at 82. He also admitted that no other security was present at the door. *Id.* at 90, 92.

V. Facts Provided by James Dominique Perry.

11. James Dominique Perry works as lead security at the Respondent’s establishment. *Id.* at 138. He admitted that security is generally only present from 10:00 p.m. until 3:00 a.m. on Friday and Saturday. *Id.* at 138-39. He indicated that when present security is generally assigned to the door and each level of the establishment. *Id.* at 139. He further indicated that security wears black or clothing indicating that a person is with security and that such clothing is mandatory. *Id.* at 140, 156. He also indicated that bartenders check patron identification in addition to providing security. *Id.* at 142.

12. Mr. Perry indicated that security starts at 10:00 p.m. because that is when club activity generally begins. *Id.* at 140, 149. He further admitted that on occasion the Respondent will host special events at the establishment that start before 10:00 p.m. *Id.* at 149. Mr. Perry indicated that for these events the owner will take responsibility for ensuring security is present. *Id.* at 150. Mr. Perry further indicated that the establishment regularly allows outside parties to bring their own security. *Id.* at 164.

13. Mr. Perry was not present at the establishment on August 17, 2018. *Id.* at 162.

VI. Facts Provided by Mehari Weldelemariam.

14. Mehari Weldelemariam owns the establishment. *Id.* at 194. He admitted that during dinner hours from 8:00 p.m. to 10:00 p.m. the establishment regularly does not provide security because there is not enough business during those hours. *Id.* at 200-01. He indicated that during these hours the establishment will check identifications at tables or the bar or provide additional security if there is an event. *Id.* at 201-02, 206, 251.

15. On August 17, 2018, the establishment hosted a music event. *Id.* at 206-07. At the event, he called one security person to attend the event, who arrived at 9:45 p.m. *Id.* at 207, 228. Another three security members arrived after 11:00 p.m. *Id.* at 229. He further permitted people associated with the event to set a table up to check identifications. *Id.* at 209. The persons at the table checking identifications were not employees. *Id.* at 268. He believed the table was set up on his property. *Id.* at 211. He further indicated that the establishment’s bartender served

alcohol to the persons at the table. *Id.* at 223. He also admitted that Mr. Wiggins was at the door during the event checking identifications. *Id.* at 272.

16. Mr. Weldemariam indicated that he believed that he did not have to follow the security staffing provisions of his security plan until 10:00 p.m. *Id.* at 232. Nevertheless, he admitted that his security plan does not provide any start time for identification checking. *Id.* at 251-52.

17. Mr. Weldemariam admitted that on November 11, 2018, that he accidentally served a customer a drink with “chemical cleaning fluid” in it because it looked like “sour mix.” *Id.* at 239. In response, he called 911 and offered to call an ambulance. *Id.* at 240-41. He also testified that he filled out an incident report related to the poisoning incident but did not provide it to the investigator or present it at the hearing. *Id.* at 241, 244-45.

CONCLUSIONS OF LAW

18. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1).

I. Standard of Proof

19. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2019). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep’t of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children’s Defense Fund v. District of Columbia Dep’t of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

II. The Respondent Violated D.C. Official Code §§ 25-797(a) and (b).

20. First, the Respondent unlawfully allowed a third party to provide and control security at the establishment in violation of D.C. Official Code §§ 25-797(a) and (b). Under D.C. Code § 25-797,

(a) The holder of an on-premises retailer’s license. . . may rent out or provide the licensed establishment for use by a third party or promoter for a specific event; provided, that the licensee maintains ownership and control of the licensed establishment for the duration of the event, including modes of ingress or egress, and the staff of the establishment, including bar and security staff.

(b) Under no circumstances shall a licensee permit the third party or promoter to be responsible for providing security or maintain control over the establishment’s existing security personnel.

(c) A violation of this section shall constitute a primary tier violation under section 25-830(c)(1).

D.C. Code § 25-797(a)-(c). Specifically, on August 17, 2018, the Respondent permitted non-employee third parties to check identifications and control ingress and egress into the establishment, which indicates that the Respondent completely abdicated responsibility over security and admittance at the establishment's entrance. *Supra*, at ¶¶ 6, 8, 10. Therefore, under these circumstances, the Board sustains Charge I.

III. The Respondent Violated the Terms of Its Security Plan by Failing to Have Required Security Guards in Violation of D.C. Official Code § 25-823(a)(6).

21. Second, the Respondent engaged in a number of violations of its security plan. Under § 25-823(a)(6), a licensee is obligated to comply with the terms of its security plan. D.C. Code § 25-823(a)(6). Under the terms of the Respondent's security plan, the Respondent is required to have two security personnel stationed at the main entrance at all times. *Supra*, at ¶ 2. These staff are also required to check the identifications of patrons. *Id.*

22. Nevertheless, on August 17, 2018, the Respondent did not station two security personnel at its main entrance. *Supra*, at ¶¶ 7, 10. Moreover, Investigator Puente witnessed several patrons enter without having their identifications checked. *Supra*, at ¶¶ 6, 8.

23. The Board is not persuaded by the Respondent's argument that no violation of the security plan occurred because it did not apply to "restaurant time." *Id.* at 307. The language of the security plan contains no such exception. Moreover, a music event was underway on August 17, 2018, at the time Investigator Puente visited the establishment, which renders the argument irrelevant and inapplicable to the facts at issue. *Supra*, at ¶¶ 7, 10. Under these circumstances, the Board sustains Charge II.

IV. Charge III is Dismissed for Lack of Evidence and Issues a Warning for Charge IV.

24. Under D.C. Official Code § 25-113(a)(2)(A)(ii), "It shall be a secondary tier violation for an on-premises retailer's class C or D licensee, to knowingly allow a patron to exit the licensed establishment with an alcoholic beverage in an open container." D.C. Code § 25-113(a)(2)(A)(ii). Licensees are also obligated to follow the terms of their settlement agreements. D.C. Code § 25-823(a)(6). In this case, the Respondent's settlement agreement prohibits patrons from leaving the establishment with an alcoholic beverage. *Supra*, at ¶ 3.

25. The Board is not persuaded that the Government established a violation of § 25-113(a)(2)(A)(ii) on August 17, 2018, but finds a violation of the settlement agreement. Specifically, in the case of the female patron seen exiting the establishment, the owner was engaged in a conversation with the investigative team when she left the premises with alcohol; therefore, it has not been established that the Respondent or his staff had sufficient knowledge to constitute a violation. *Supra*, at ¶ 8. In the case of the patrons sitting at the table at the entrance, the Government did not sufficiently establish knowledge when the Respondent believed that the patrons were in the sidewalk café area. *Supra*, at ¶ 15. Moreover, the beer possessed by the patrons at the table did not violate the settlement agreement because it was brought by the establishment's bartender, not carried out by the patrons as contemplated by the settlement

agreement. *Supra*, at ¶¶ 3, 15. In the case of the actions by the female patron, the same facts constitute a violation of the settlement agreement, because a violation of the settlement agreement is a strict liability offense. Nevertheless, the Board will issue a warning for Charge IV in light of the circumstances surrounding the offense.

V. The Respondent Violated the Terms of its Security Plan by Failing to Produce an Incident Report in Violation of D.C. Official Code § 25-823(a)(6)

26. Finally, the Respondent failed to produce an incident report related to the poisoning incident in accordance with its security plan. Under § 25-823(a)(6), a licensee is obligated to comply with the terms of its security plan. D.C. Code § 25-823(a)(6). Under the terms of the Respondent's security plan, the Respondent has an obligation to "fill out an incident report" and "record the document in the security log." *Supra*, at ¶ 3. In this case, a medical incident occurred on November 11, 2018, that resulted in the owner calling emergency services. *Supra*, at ¶ 17. While the Respondent claims he filled out an incident report, the Board does not credit this statement because the Respondent has never shown it to ABRA or the Board, which merits an adverse inference that the report does not exist. *Supra*, at ¶ 17. Therefore, for these reasons, the Board sustains Charge V.

VI. Penalty

27. The present violations constitutes three fourth level primary tier violations based on the Respondent's history of violations. 23 DCMR §§ 800, 801.1(b) (West Supp. 2019). The penalty for a fourth level violation gives the Board the option to revoke the license or impose a mandatory fine of "no less than \$30,000" in conjunction with a 30 day consecutive suspension for each offense. 23 DCMR § 801.1(d) (West Supp. 2019). In this case, the Board finds that a fine and suspension constitute an adequate penalty.

ORDER

Therefore, the Board, on this 9th day of October 2019, finds Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, guilty of violating D.C. Official Code §§ 25-797 and 25-823(a)(6). In total, the Respondent shall pay a fine of \$90,000 and serve a ninety (90) day suspension. The Board imposes the following penalty on Green Island Café/Heaven & Hell:

- (1) Charge III is dismissed;
- (2) The Respondent shall receive a **WARNING** for the violation described by Charge IV;
- (3) For the violation described by Charge I, the Respondent shall pay a fine of \$30,000 and serve a mandatory suspension of 30 days;
- (4) For the violation described by Charge II, the Respondent shall pay a fine of \$30,000 and serve a mandatory suspension of 30 days; and

(5) For the violation described by Charge V, the Respondent shall pay a fine of \$30,000

IT IS FURTHER ORDERED that the 90 day suspension of the Respondent's license shall start on November 1, 2019, and end at 11:59 p.m. on January 29, 2020.

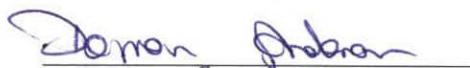
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within sixty (60) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be deemed primary tier violations.

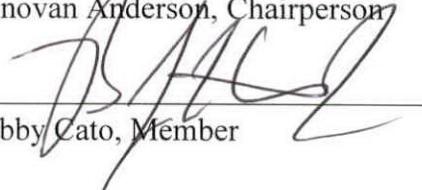
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



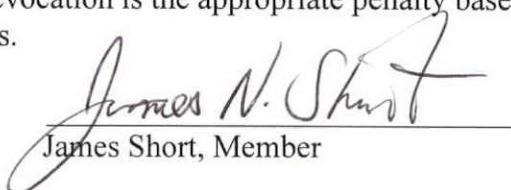
Bobby Cato, Member

Rema Wahabzadah, Member



Rafi Aliya Crockett, Member

I concur with the majority's opinion regarding liability, but dissent as to the selected penalty. Instead of a fine and suspension, I believe revocation is the appropriate penalty based on the Respondent's long history of prior violations.



James N. Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 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, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).