

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

In the Matter of:)	
)	
Jasper Ventures, LLC)	License No.: 72225
t/a K Street)	Case No.: 10-CMP-00714
)	Order No.: 2012-238
Holder of a Retailer's Class CN License)	
at premises)	
1301 K Street, N.W.)	
Washington, D.C. 20005)	

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

ALSO PRESENT: Jasper Ventures, LLC, t/a K Street, Respondent

Christopher Manning, Esq., of the firm Manning Sossamon, PLLC,
on behalf of the Respondent

Michael Stern, Senior 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**

Summary

We find that the Respondent violated § 25-823(6) on November 6, 2010, by failing to eject patrons engaged in a fight in accordance with its security plan. As a penalty, the Board is levying a fine of \$6,000.00 for the offense, suspending the Respondent's license from August 13, 2012, to August 27, 2012, and staying five additional suspension days for one year, so long as the Respondent does not commit any violations of Title 25 of the District of Columbia Official Code during that time.

Procedural Background

On May 28, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated May 25, 2011, on Jasper Ventures, LLC, t/a K Street (Respondent), at premises 1301 K Street, N.W., Washington, D.C. The Notice charged the Respondent, in Case No. 10-CMP-00714, with the following violation:

Charge I: You failed to comply with [a] section of your Security Plan in that you failed to protect patrons and failed to keep separate patrons involved in an altercation in violation of D.C. Official Code § 25-823(6) (2001)

ABRA Show Cause File No. 10-CMP-00714, Notice of Status Hearing and Show Cause Hearing.

The parties attended a Show Cause Status Hearing before the Alcoholic Beverage Control Board (Board) on July 6, 2011. The Show Cause Hearing occurred on February 1, 2012. Finally, the Respondent has submitted Proposed Findings of Fact and Conclusions of Law, which have been added to this matter's record.

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:

1. On November 6, 2010, the Respondent's security plan stated, "WHEN BREAKING UP INCIDENTS, SEPARATE THE GROUPS IMMEDIATELY ONE GROUP OUTSIDE [sic], THE OTHER GROUP STAYS INSIDE. REMEMBER, THE MIDDLE DOORS ARE AVAILABLE AS AN EMERGENCY MEANS OF EGRESS. Let the staff at the front know who has been escorted out and who is not allowed back into the venue." *Government Exhibit No. 2.*

2. Haoua Marina Posely was at the Respondent's establishment in the early morning hours of November 6, 2010. *Transcript (Tr.)*, February 1, 2012 at 31. She patronized the establishment with a group of her friends, which included Denver Mundle. *Tr.*, 2/1/12 at 31.

3. Ms. Posely observed a group of people fighting one person inside the establishment between 1:00 a.m. and 1:30 a.m. *Tr.*, 2/1/12 at 32. She noted that neither Denver Mundle, any of the people she attended the establishment with, nor herself were involved in the altercation. *Tr.*, 2/1/12 at 33. She observed that the participants in the scuffle went outside the establishment, and the establishment continued operating. *Tr.*, 2/1/12 at 33-34.

4. Approximately two hours later, a second fight began inside the establishment involving Mr. Mundle. *Tr.*, 2/1/12 at 35. The establishment's security footage of the premise's interior shows that, at the time, patrons were clearing out of the establishment and the establishment was ending its operations. K Street Surveillance Video, AVI20101108_2008, at 03:26-04:36 [K Street Video 3].
5. The security footage shows Mr. Mundle emerge from the top-right of the screen, near the establishment's bar. *Id.* at 04:30-04:38. Mr. Mundle has his hair in dreadlocks, and is wearing a plaid shirt, black jeans, and black and white Nike sneakers. *Id.* at 04:41. As Mr. Mundle passes a small black leather couch, a male patron emerges from the top-left portion of the video, near a white pillar. *Id.* at 04:39.
6. The male patron—identifiable by the distinct gray beanie he is wearing on his head—then jumps on the couch and begins speaking to and gesturing at Mr. Mundle. *Id.* at 04:42; 04:52. Mr. Mundle continues to walk towards the exit, heading towards the lower left portion of the screen. *Id.* at 04:45. Mr. Mundle passes a velvet rope, and he turns to look at the man standing on the couch. *Id.* at 04:47.
7. Suddenly, a second male patron—wearing a dark gray sweater with a light gray stripe and a cigarette on his ear—rushes out from the lower left portion of the screen. *Id.* at 04:51-04:52. The male patron in gray then strikes Mr. Mundle in the face with a closed fist. *Id.* The force of the blow knocks Mr. Mundle to the ground. *Id.* at 04:51.
8. The patron in gray then stands over Mr. Mundle, but is restrained from behind by one of the Respondent's security members dressed in a black suit. *Id.* at 04:52. The security member pulls the patron back as Mr. Mundle grabs the patron's shirt, and he stands back up. *Id.* at 04:53. The footage further shows Ms. Posely knocked to the ground by a patron who loses his balance, as a crowd surrounds the security member pulling the patron in gray out of camera view. *Tr.*, 2/1/12 at 35; K Street Video 3, at 04:54-04:57.
9. Simultaneously, as the patron in gray initiated the assault against Mr. Mundle, the patron wearing the beanie stepped down from the couch, and approached Mr. Mundle as he was on the ground. K Street Video 3, at 04:52-04:54. As Mr. Mundle arose, and grabbed the patron in gray's shirt, the patron wearing the beanie swiped at Mr. Mundle with an empty beer bottle. *Id.* at 04:54-04:56. Mr. Mundle was not hit by the bottle, because he moved out of the patron's reach. *Id.* at 04:57.
10. As Mr. Mundle backed away, one of the Respondent's security members grabbed him and escorted him from the establishment. *Id.* at 04:57-04:58. In addition, the footage shows a security member restrain the patron wearing the beanie in a bear hug, and, then, he takes him in the same direction that Mr. Mundle was led. *Id.* at 04:58-05:02.
11. At this time, Bobby Palladino was inside the establishment working as general manager. *Tr.*, 2/1/12 at 150-51. Mr. Palladino observed the assault against Mr. Mundle inside the establishment, and he contacted the police using the establishment's radio. *Tr.*, 2/1/12 at 168-69.

12. The Respondent's security footage of the establishment's exterior, then, shows people pour out of one of the establishment's doors. K Street Security Surveillance Video, AVI20101108_1959, at 04:52 [K Street Video 2]. At the same time, one of the line barriers near the establishment's door is knocked askew as people standing outside the door make room for the emerging patrons. Id. at 04:52-04:54. The video then shows Mr. Mundle emerge from the door, as an unidentifiable individual attempts to maintain a grip on Mr. Mundle's arm. Id. at 04:54-04:55.

13. Upon being ejected from the establishment, Mr. Mundle loses his balance and falls to the ground. Id. at 04:56-04:57. As Mr. Mundle stands up, the footage shows one of the establishment's security members remove the patron in the gray shirt from the same door from which Mr. Mundle emerged. Id. at 04:58. A security member then pushes the patron in the gray shirt to the left, which completely pushes the line barrier to the side. Id. at 04:59-05:00. The establishment's security and the patron in the gray shirt then step out of view of the camera. Id. at 05:00. Upon standing, a female police officer approaches Mr. Mundle. Id. at 04:58. A crowd of people then push him away from the establishment, towards a red sports-utility vehicle near the curb. Id. at 04:57-5:04.

14. Simultaneously, as Mr. Mundle is pushed towards the curb, the patron wearing the beanie appears through the same door from which Mr. Mundle emerged. Id. at 05:05. The patron passes the establishment's door and stumbles to the ground in front of two of the establishment's security staff. Id. at 05:06. The security members help the patron wearing the beanie stand up, and the patron begins walking towards Mr. Mundle. Id. at 05:07-05:11.

15. As the patron wearing the beanie walks towards Mr. Mundle, the footage shows Mr. Mundle pointing at the patron. Id. at 05:11-05:14. Mr. Mundle then leans towards the patron, and begins to break free from the other patrons holding him back. Id. at 05:14. Mr. Mundle and the patron wearing the beanie appear to push each other, and then the patron strikes Mr. Mundle in the face. Id. at 05:14-05:16.

16. Mr. Mundle and the patron wearing the beanie then engage in a melee, which causes several other members of the crowd surrounding Mr. Mundle to engage in a brawl. Id. at 05:30-05:42; K Street Surveillance Video, AVI20101108_1947, at 05:14-05:18 [K Street Video 1]; K Street Video 2, 05:30-05:42. The footage then shows Mr. Mundle and the patron wearing the beanie fight wildly in the center of the sidewalk. K Street Video 2, at 05:17-05:21. The fight quickly becomes even more chaotic when several members of the crowd swarm around Mr. Mundle and the patron wearing the beanie. Id. at 05:21. Then, the combatants, along with other participants in the fight, knock into a heat lamp, tipping it over, and continue to fight until three police officers begin separating everyone. K Street Video 1, at 05:21-05:33.

17. As a result of the fight, Mr. Mundle suffered a number of injuries. *Tr.*, 2/1/12 at 87-89. Most seriously, Mr. Mundle broke his jaw, which required medical personnel to wire

his jaw shut for four months. *Tr.*, 2/1/12 at 89. In addition, Mr. Mundle needed an operation to fix his hand. *Tr.*, 2/1/12 at 88.

CONCLUSIONS OF LAW

18. The Board has the authority to suspend or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1). 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 DCMR § 800, *et seq.* (West Supp. 2012).

19. The question presented to the Board in this matter, is whether the Respondent violated its security plan in violation of § 25-823(6) by ejecting all of the patrons involved in a fight out of the same door, and failing to keep some of the combatants inside of the establishment. We answer this question affirmatively, based on the substantial evidence contained in the record.

20. Under § 25-823(6), the Respondent is obligated to comply with the terms of its security plan. D.C. Code § 25-823(6) (West Supp. 2012). In this case, the Respondent's security plan obliges security employees working for the Respondent to separate combatants, and only eject one of the conflicting groups at a time from the establishment, while keeping the other combatants inside the establishment. Supra, at ¶ 1.

21. Nevertheless, as demonstrated by the Government, on November 6, 2010, the Respondent failed to comply with the establishment's separation policy. After the patron in gray assaulted Mr. Mundle, security restrained Mr. Mundle and the patron in gray, and escorted them out of the same door. Supra, at ¶¶ 8, 10, 13. Furthermore, the video footage also shows that the patron wearing the beanie, who was observed by security swiping at Mr. Mundle with a bottle, was ejected from the establishment through the same door, shortly after Mr. Mundle's ejection was completed. Supra, at ¶¶ 9-10. Once Mr. Mundle and the patron wearing the beanie observed each other outside the establishment, they quickly resumed their fight, and instigated the wild brawl outside the Respondent's establishment. Supra, at ¶¶ 14-16.

22. The Respondent attempts to excuse its failure to follow its security plan, by claiming that it was following the instructions of the Metropolitan Police Department (MPD). According to Mr. Palladino, a MPD officer told him over the radio to bring the combatants outside. *Tr.*, 2/1/12 at 168-69.

23. Yet, we find this excuse unconvincing. Mr. Palladino's testimony is unreliable and uncorroborated hearsay. As Mr. Palladino admitted on the record, MPD did not explicitly instruct him to bring all of the warring parties outside at the same time. *See Tr.*, 2/1/12 at 287. We are simply not persuaded by the uncorroborated, paraphrased orders of an unnamed and unidentified MPD officer. *See supra* at ¶ 11; *Tr.*, 2/1/12 at 156-57, 174, 244-45; *see also Wisconsin Ave. Nursing Home v. District of Columbia Com'n on Human Rights*, 527 A.2d 282, 288 (D.C. 1987) (citations omitted) (Among the factors to consider

in evaluating the reliability of hearsay evidence [is] whether the . . . testimony is corroborated . . .); V.K. v. Child and Family Services Agency, 14 A.3d 628, 634 (D.C. 2011) citing Jadallah v. District of Columbia Dept. of Employment Services, 476 A.2d 671, 676 (D.C. 1984) (“We have admonished repeatedly that ‘when the party relying on hearsay statements is in a position to call the declarants to the stand . . . the practice of relying exclusively on hearsay . . . should be heavily weighted against the sponsoring party.’”) Moreover, there is no evidence in the record or video that the security members who ejected Mr. Mundle and his attackers were aware of Mr. Palladino’s alleged conversation with MPD. The video clearly shows that security quickly reacted to the fight, and ejected the three combatants. As a result, without any interfering instructions, by default, the establishment’s security should have relied on the establishment’s security plan, which required them only to eject one group of combatants at a time.

25. In closing, the Board finds the wild and chaotic fight that occurred outside of K Street unacceptable. What makes matters worse is that this situation was completely avoidable—if only the Respondent had followed its own security plan. If it had, Mr. Mundle would likely have left K Street with only a bruised ego, rather than a broken jaw.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 13th day of June 2012, finds that the Respondent, Jasper Ventures, LLC, t/a K Street, violated D.C. Official Code § 25-823(6). The Board hereby **ORDERS** that

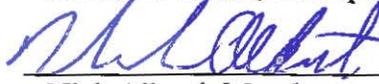
- (1) The Respondent shall pay a fine in the amount of \$6,000.00 by no later than sixty (60) days from the date of this Order;
- (2) The Respondent shall receive a suspension of its license for twenty (20) days; fifteen (15) days to be served and five (5) days stayed for one (1) year, provided that the Respondent does not commit any further ABC violations; and
- (3) The suspension days shall be served from Monday, August 13, 2012, through Monday, August 27, 2012.

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

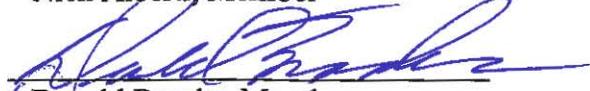
District of Columbia
Alcoholic Beverage Control Board



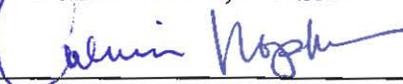
Ruthanne Miller, Chairperson



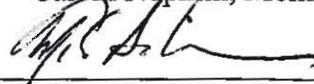
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Donald Brooks, Member



Calvin Nophlin, Member



Mike Silverstein, Member

I concur with the majority's finding that the establishment violated § 25-823(6). Nevertheless, I write separately to express my dissent as to the penalty selected by the majority of the Board. It is my view that the Respondent should receive a greater suspension based on the severity of the offense, and the Respondent's unfortunate history of similar violations.

Herman Jones, 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, 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, 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).