

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

In the Matter of:	)	
	)	
Jasper Ventures, LLC	)	License No.: 72225
t/a K Street	)	Case Nos.: 10-CMP-00540
	)	10-251-00282
Holder of a Retailer's Class CN License	)	Order No.: 2012-121
at premises	)	
1301 K Street, N.W.	)	
Washington, D.C. 20005	)	

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

**ALSO PRESENT:** Jasper Ventures, LLC, t/a K Street, Respondent  
  
Emanuel Mpras, Esq., Petitioner  
  
Matthew August LeFande, Esq., on behalf of the Petitioner  
  
Andrew Kline, 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

**ORDER DENYING PETITIONER'S MOTION TO INTERVENE**

In his concurrence in Jasper Ventures, Alcoholic Beverage Control Board (Board) Member Silverstein expressed his opinion that the "appropriate authorities" should investigate whether Ki Jun Sung's allegations regarding allegedly inappropriate actions by attorney Emanuel Mpras, Esq., were true. In re Jasper Ventures, LLC, t/a K Street, Board

Order No. 2011-403, 10 (D.C.A.B.C.B. Oct. 12, 2011). Upon learning of Mr. Sung's testimony and Board Member Silverstein's concurrence, Mr. Mpras filed a Motion to Intervene (Motion). In his Motion, Mr. Mpras claims that the Board should grant him standing as a party under § 2-509, because Board Member Silverstein has defamed his professional reputation (even though he does not cite the defamatory portion of the concurrence in his Motion). We deny the Motion, because (1) the Alcoholic Beverage Regulation Administration (ABRA) is an inappropriate forum to litigate and respond to allegations of defamation; (2) Mr. Mpras is not a party to this show cause proceeding, nor entitled to the rights of a party; and (3) the record in this matter is closed.

### **Background**

This matter comes before the Board on the April 4, 2012, Motion to Intervene (Motion) submitted by Emanuel Mpras, Esq., to intervene in Case Numbers 10-CMP-00540 and 10-251-00282, based on his assertion that Board Member Silverstein's concurrence repeats defamatory remarks that impugn his personal and professional character. On April 24, 2012, Jasper Ventures, LLC, t/a K Street, (Respondent), replied to the Motion. The Respondent notes simply that the appropriate forum for Mr. Mpras's complaints are the civil courts, and that Mr. Mpras's sole interest in his professional reputation does not make him a party to this proceeding. Mr. Mpras replied to the Respondent's opposition, noting that the opposition was untimely and that the Board should address Mr. Mpras's concerns on remand. We note that the timeliness of the Respondent's reply has no bearing on the Board's decision to grant the Motion, because the decision to grant intervention rests solely within the Board's discretion under § 1701.4, and because Mr. Mpras failed to submit a Certificate of Service under § 1716.1(c) with his Motion. 23 DCMR §§ 1701.4, 1716.1(c) (West Supp. 2012).

The present Motion follows lengthy show cause proceedings that began in January 2011. Specifically, on January 14, 2011, and March 19, 2011, the Board served Notices of Status Hearing and Show Cause Hearing (Notices), dated January 5, 2011, and March 16, 2011, respectively, on the Respondent, at premises 1301 K Street, N.W., Washington, D.C. The Notices contained three charges related to Case Numbers 10-CMP-00540 and 10-251-00282. In the Notice for Case Number 10-CMP-00540, the Government charged the Respondent with failing to allow ABRA investigators and Metropolitan Police Department officers to enter the establishment without delay under District of Columbia Official Code § 25-823(5). In the Notice for Case Number 10-251-00282, the Government charged the Respondent with failing to have an ABC-licensed manager on the premises while the establishment served alcoholic beverages, and violating the establishment's security plan.

The Board held the Show Cause Hearing related to the charges on June 22, 2011. At the hearing, the Board dismissed the charges appearing in Case Number 10-251-00282, which were dismissed on the motion of the Government. *Transcript (Tr.)*, June 22, 2011 at 5. Thus, only the Respondent's alleged violation of § 25-823(5), which is not listed in the schedule of civil penalties, remained at issue. See 23 DCMR § 800 (West Supp. 2012). We note that neither the Government nor the Respondent called or subpoenaed Mr. Mpras

to appear as a witness; thus, the Board had to decide the matter without Mr. Mpras's testimony.

On October 12, 2011, the Board sustained the § 25-823(5) charge filed by the Government. The Board ordered the Respondent to pay a fine of \$6,000.00, and suspended the Applicant's license for seven days, with four days stayed for one year, provided the Respondent did not commit any additional violations. In re Jasper Ventures, LLC, t/a K Street, Board Order No. 2011-403, at 8-9. In determining the penalty, the Board incorrectly determined that because § 25-823(5) was not classified under the penalty schedule as a primary or secondary tier violation, we could not count the violation as a primary tier violation. Id. at ¶ 31.

Board Member Silverstein also provided the following concurrence that was not adopted by the rest of the Board. In its entirety, the concurrence reads as follows:

I concur with the majority's findings that the Respondent was in violation of the charges set forth in the Notice to Show Cause.

I write separately to address other matters that came to light during the Show Cause Hearing. Specifically, the involvement of a former MPD Reserve Officer in this matter troubles me greatly. The video of the incident and sworn testimony, if true, show that a Reserve Officer led other MPD officers into the establishment and played a leading role—if not the leading role—in the visit to the K Street Lounge. Supra, at para. 12-16.

This Reserve Officer is also a lawyer who appears on a regular basis before this Board. Supra, at para. 19. The involvement of an attorney who practices before the Board in an investigation of his client's competitors could give rise to an appearance of a possible conflict of interest.

But there is an additional allegation that must be addressed. In sworn testimony, the licensee stated that this former reserve officer subsequently offered his services as defense counsel IN THIS CASE. Supra, at para. 19; Tr., 6/22/11 at 165. This uncorroborated testimony, if true, would take this matter to a far more serious level.

But it is not the province of this Board to enforce the Rules of Professional Conduct. This Member must leave to the appropriate authorities the question whether the conduct in this matter should be reviewed. However, I bring this matter to light because such possible conflicts of interest should not be overlooked, nor should anyone believe this Board is ignoring such matters or covering them up.

Id. at 10.

The Respondent then appealed the Board's ruling, and the Government filed a Motion for Reconsideration (Motion), asking us to reconsider how we treat unlisted offenses. Before the District of Columbia Court of Appeals, the Respondent consented to

remand the case back to the Board so that it could consider the Government's Motion. Respondent's Consent Mot. to Remand, 1-2. The District of Columbia Court of Appeals granted the Respondent's request, and remanded the matter back to the Board. In re Jasper Ventures, LLC, t/a K Street v. D.C. Alcoholic Beverage Control Bd., No. 11-AA-1310, 1-2 (D.C. 2011). On February 22, 2012, the Board held a Remand Hearing limited to the issue raised by the Government's Motion for Reconsideration.

On April 25, 2012, we determined that unlisted violations should be treated as primary tier violations for the purposes of determining an appropriate fine, but will not be considered a primary tier violation for the purposes of mandatory revocation under D.C. Code § 25-830. In re Jasper Ventures, LLC, t/a K Street, Board Order No. 2012-121, 1-2 (D.C.A.B.C.B. Apr. 25, 2012). We then changed the Respondent's suspension days to begin on June 21, 2012. Id. at 6.

### **Discussion**

We deny the Motion for several reasons. First, the ABRA is an inappropriate forum to litigate and respond to allegations of defamation; instead, such claims rightfully belong in the civil courts. Second, the only parties in the Show Cause proceedings related to Case Numbers 10-CMP-00540 and 10-251-00282 are the District of Columbia and the Respondent—not Mr. Mpras. Third, the record in this matter is closed, and may not be supplemented by a non-party at this time.

#### **I. Inappropriate Forum**

First and foremost, Title 25 of the District of Columbia Official Code empowers the Board to regulate the sale and distribution of alcohol—not serve as a forum to address claims of defamation. Under the law, “The Board may, in its discretion, permit interested persons other than parties, as defined in this chapter, to intervene in a proceeding for such general or limited purpose as the Board may specify.” 23 DCMR § 1701.4 (West Supp. 2012). Allowing Mr. Mpras reopen the record in this matter for the sole purpose of defending his reputation is beyond the scope of the Board's statutorily created purpose. If Mr. Mpras feels that he has been defamed, then the proper forum is the civil courts of the District of Columbia—not the ABRA. Therefore, as a matter of our discretion, we deny the request, because we find it inappropriate.

#### **II. Non-party**

Second, we reject Mr. Mpras's claim that he is entitled to party status under § 2-509.

Under § 2-509(b),

Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of

the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

D.C. Code § 2-509(b) (West Supp. 2012). The parties to a show cause proceeding are the “respondent” and the “District of Columbia.” 23 DCMR § 1701.1 (West Supp. 2012).

In this matter, the Government initiated a show cause action against the Respondent. Mr. Mpras neither represents the Government nor has interest in the Respondent’s license. As such, in accordance with § 1701.1, he is not entitled to participate in the present matter as a party under § 2-509(b).

### III. Closed Record

Third, we reject Mr. Mpras’s efforts to reopen the record in this matter.

Under the law of the case doctrine, “once the court has decided a point in a case, that point becomes and remains settled unless or until it is reversed or modified by a higher court.” Lenkin Co. Management v. District of Columbia Rental Housing Com’n, 677 A.2d 46 (D.C. 1996) citing Kritsidimas v. Sheskin, 411 A.2d 370, 371 (D.C.1980).

The previous Remand Hearing held by the Board was solely limited to the legal issue of whether the violation of § 25-823(5) counted as a primary tier violation. The Findings of Fact upon which the Board relied have not been challenged by either party; therefore, under the law of the case doctrine, the facts of this case are settled, and we are not at liberty to reopen the record.<sup>1</sup>

### ORDER

Therefore, for the foregoing reasons, the Board, on this 16th day of May 2012, hereby **DENIES** the Motion for Intervention filed on behalf of Mr. Mpras. ABRA shall deliver copies of this Order to the Government, the Respondent, and Mr. Mpras’s counsel.

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<sup>1</sup> We emphasize that nothing in this Order should be construed as waiving the District of Columbia, the Alcoholic Beverage Control Board, or Board Member Silverstein’s right to immunity from suits based on judicial acts taken during the adjudication of a contested case. District of Columbia v. Pizzuli, 917 A.2d 620, 626 (D.C. 2007) (“[J]udicial immunity may be granted to public officials other than judges” when the official “exercise[s] discretion comparable to that exercised by a judge . . . .”)

District of Columbia  
Alcoholic Beverage Control Board



Nick Alberti, Member

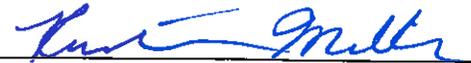


Donald Brooks, Member

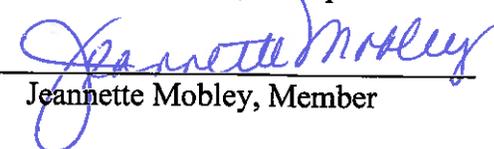


Herman Jones, Member

We abstain from deciding this matter, because we were not present when this matter was originally heard by the Board.

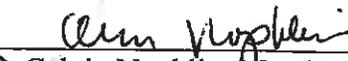


Ruthanne Miller, Chairperson

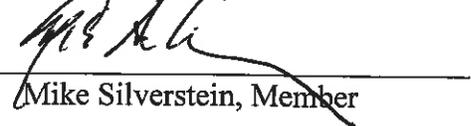


Jeannette Mobley, Member

We recuse ourselves from consideration of this Motion.



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, 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).