

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

In the Matter of:

Kabin Group, LLC
t/a Kabin

Holder of a
Retailer's Class CT License

at premises
1337 Connecticut Avenue, N.W.
Washington, D.C. 20036

Case No.: 17-251-00134
License No.: 91276
Order No.: 2018-094

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Kabin Group, LLC, t/a Kabin, Respondent

Kamran Ali, on behalf of the Respondent

Amy Schmidt, 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 Kabin Group, LLC, t/a Kabin, (hereinafter "Respondent" or "Kabin") in violation of D.C. Official Code § 25-823(a)(2) on July 2, 2017, for using excessive force and failing to contact the police during an ejection that likely resulted in a patron having his leg broke. The Board fines Kabin \$2,000 and imposes five stayed

suspension days for the offense. The Board further orders Kabin under D.C. Official Code § 25-447(f) to ensure that its security cameras clearly show all areas accessible to the public, including Kabin's exterior stairwell. The Board further reminds licensees that they have an affirmative obligation to report known incidents of violence and crime to the police under the law, including any incident that merits the use of force against patrons.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on November 27, 2017. *ABRA Show Cause File No. 17-251-00134*, Notice of Status Hearing and Show Cause Hearing, 2 (Nov. 27, 2017). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1337 Connecticut Avenue, N.W., Washington, D.C., on December 10, 2017. *ABRA Show Cause File No. 17-251-00134*, Service Form. The Notice charges the Respondent with one violation, 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 violation:

Charge I: **[On July 2, 2017,] [y]ou allowed the licensed establishment to be used for an unlawful or disorderly purpose**

Notice of Status Hearing and Show Cause Hearing, 2-5.

Both the Government and Respondent appeared at the Show Cause Status Hearing on January 10, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on February 7, 2018.

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. Background

1. Kabin holds a Retailer's Class CT License at 1337 Connecticut Avenue, N.W., Washington, D.C. *ABRA License No. 91276* .

II. ABRA Investigator Mark Wilkinson

2. On July 5, 2017, ABRA Investigator Mark Wilkinson was assigned to investigate a report from the Metropolitan Police Department that on July 2, 2017, an assault had occurred at Kabin during the early morning hours. *Transcript (Tr.)*, February 7, 2018 at 13-15. As part of his investigation, the investigator contacted the establishment and retrieved video footage related to

the incident. *Id.* at 15. He also spoke to Adriana Estor and Fernando Quiroz, who were the patrons involved in the incident. *Id.* at 31-32.

3. At the hearing, Investigator Wilkinson described the video while it was viewed by the Board. *Id.* at 17. The video footage begins by showing Kabin's interior on the date of the incident. *Id.* At the beginning, Mr. Quiroz's girlfriend, Ms. Estor, is seen leaving the scene. *Id.* 17, 51-52. At this time, the video shows an altercation involving Mr. Quiroz and Thad Rush, Kabin's security manager. *Id.* at 5, 17-18. The video does not clearly show what precipitated the altercation. *Id.* at 20, 35, 38. Nevertheless, the video shows Mr. Rush throwing Mr. Quiroz to the ground. *Id.* at 19.

4. The video then shows the crowd watch as Kabin's security drags Mr. Quiroz headfirst out of the nightclub to the stairwell while Mr. Quiroz is on his knees. *Id.* at 21, 39, 46. At the top of the stairwell, Mr. Quiroz and Ms. Estor are talking with Mr. Rush and security. *Id.* at 22, 52. Ms. Estor is standing behind Dante Burgess, a security member. *Id.* at 30, 54. Mr. Quiroz is standing with his back to the wall near the top of the steps while Mr. Rush is blocking his access to the stairwell and facing Mr. Quiroz. *Id.* at 23, 53, 55. During this time Mr. Quiroz's hands are initially down by his side or clasped. *Id.* at 55. Mr. Quiroz then attempts to move his arm away from Mr. Rush. *Id.* The video then shows Mr. Rush grab Mr. Quiroz by his left arm and pull him down the stairs, which contained about 12 stairs. *Id.* at 56, 58. The video shows Mr. Quiroz stumble down the stairs to the landing. *Id.* at 56-57.

5. The video then shows that after Mr. Quiroz falls down the stairs, security continues to force him down the stairs and outside onto the sidewalk running by Connecticut Avenue, N.W. *Id.* at 24-25, 59. Outside, the video shows Kabin's security pick up Mr. Quiroz from the ground and drag him away from the premises and outside of the view of the camera. *Id.* at 27, 64-65. During this time, Mr. Quiroz appeared to be in medical duress based on his inability to move one of his arms. *Id.* at 42.

6. Investigator Wilkinson is aware that someone called the police and called for emergency medical services, but he is not aware of the identity of the caller. *Id.* at 27-28, 47. Investigator Wilkinson found no evidence that Kabin or its agents called the police or emergency medical services in response to the incident. *Id.* at 49.

7. As part of the investigation, Investigator Wilkinson collected written statements from Kabin's staff explaining their version of the events. *Id.* at 28-30, 33. In a statement submitted to the investigator, Mr. Rush indicated that Mr. Quiroz attempted to shove him and that, in response, Mr. Rush dodged the shove, grabbed him, and threw him to the ground. *Id.* at 28. He then indicated that Mr. Quiroz continued to attempt to attack Mr. Rush and security. *Id.* at 29. Mr. Rush further indicated that at the stairs, Mr. Rush made Mr. Quiroz stand up and motioned for him to move towards the steps. *Id.* He then indicates that Mr. Quiroz refused to go down the stairs. *Id.* Mr. Rush indicated in his statement that security and Mr. Rush assisted him down the steps. *Id.* Mr. Rush further indicated to the investigator that Mr. Quiroz tore his shirt and attempted to kick him. *Id.* Dante Burgess, in a separate statement, accuses Mr. Quiroz of becoming physically aggressive and of striking a security staff member. *Id.* at 30. Nevertheless,

Investigator Wilkinson could not find any video footage that supported the contention that Mr. Quiroz was the aggressor or refused to leave. *Id.* at 31.

8. Medical personnel interviewed by Investigator Wilkinson believed that Mr. Quiroz broke his right leg after falling down the stairs. *Id.* at 25, 44. Nevertheless, Investigator Wilkinson cannot confirm the exact moment in time when Mr. Quiroz broke his leg. *Id.* at 66.

III. Kamran Ali

9. Kamran Ali serves as Kabin's general manager. *Id.* at 5, 140. On the night of the incident, there were approximately 125 people inside the establishment. *Id.* at 145. Two security were stationed downstairs, four were stationed upstairs, and two were stationed at the door. *Id.* at 146. During the night, Mr. Ali asked Mr. Rush to escort a group of people outside the establishment after they would not stop smoking. *Id.* at 136.

IV. Thad Rush

10. Mr. Rush testified during the hearing that he initially encountered Mr. Quiroz when he told him to stop smoking inside Kabin. *Id.* at 69. In response, he indicated that he believed Mr. Quiroz attempted to shove past him and was attacking him. *Id.* at 70, 77-78. In response, Mr. Rush admitted that he "took" Mr. Quiroz "to the ground." *Id.*

11. After taking Mr. Quiroz to the ground, Mr. Rush told him to stop, but Mr. Quiroz kept "flailing" and "kicking." *Id.* Mr. Rush and his security then grabbed Mr. Quiroz and removed him from the establishment. *Id.*

12. In the corner at the top of the stairs, Mr. Rush indicated that he believed Mr. Quiroz was intoxicated. *Id.* at 71. He then told Mr. Quiroz that he had to leave. *Id.* at 72. Nevertheless, when Mr. Rush and the other security tried to pull him into a hold, he believed Mr. Quiroz was going to hit him. *Id.* at 72. As a result, Mr. Rush pulled him down the stairs. *Id.* at 72, 84. At the landing, Mr. Rush and security continued to physically escort Mr. Quiroz from the premises as he resisted. *Id.*

13. At the bottom of the steps, after escorting Mr. Quiroz from the establishment, Mr. Rush indicated that he and Mr. Quiroz fell to the ground. *Id.* at 73. Mr. Rush indicated that he fell on top of Mr. Quiroz at this time. *Id.* at 74. He further indicated that Mr. Quiroz was kicking him and holding on to his shirt. *Id.* at 74. After a brief moment, Mr. Rush managed to extricate himself from Mr. Quiroz's grip with the help of Kabin's security. *Id.* at 74, 85-86. Mr. Rush admitted that during this process he punched Mr. Quiroz to get away from him. *Id.* at 118.

14. After Mr. Rush walked away, Kabin's outdoor security picked up Mr. Quiroz and walked him to the curb down the street. *Id.* Mr. Rush then indicated that an ambulance was called; however, he is unaware of who made the call. *Id.* at 75. Mr. Rush further indicated that he would not always call the police in a situation like the one involving Mr. Quiroz. *Id.* at 81. Moreover, at no time during the incident, did he instruct his staff to call MPD. *Id.* at 98, 108, 125.

CONCLUSIONS OF LAW

15. 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. Official Code § 25-823(a)(1). D.C. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2018). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board 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. Official Code § 25-447.

I. Standard of Proof

16. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2018). 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).

17. In administrative hearings, “duly admitted and reliable hearsay may constitute substantial evidence.” *Compton v. District of Columbia Bd. Psychology*, 858 A.2d 470,476 (D.C. 2004). “The weight ... given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility.” *Id.* at 477. When weighing hearsay evidence, the court has advised that administrative agencies should carefully scrutinize hearsay evidence that lacks “extrinsic corroboration.” *James v. D. C Dep’t of Employment Servs.*, 632 A.2d 395, 398 (D.C. 1993). In this case, the Board accepts the hearsay testimony of Investigator Wilkinson and Mr. Rush regarding the video footage because the Board was able to assess its accuracy and credibility as they testified. *Tr.* 2/7/18 at 17-42, 69-118.

II. Kabin violated § 25-823(a)(2) on July 2, 2017, when its security manager used excessive force to eject a patron and Kabin and its agents failed to contact the police.

18. The Board finds Kabin in violation of § 25-823(a)(2) based on an employee’s use of excessive force and failing to call the police on July 2, 2017

19. Under § 25-823(a)(2), it is a violation for the “licensee [to] allow[] the licensed establishment to be used for any unlawful or disorderly purpose.” D.C. Code § 25-823(a), (2). Under part § 25-823(b), “A single incident of assault, sexual assault, or violence shall be sufficient to prove a violation of subsection (a)(2) of this section; provided, that the licensee has engaged in a method of operation that is conducive to unlawful or disorderly conduct.” D.C. Code § 25-823(b). In *Levelle*, the court indicated that to sustain a violation of § 25-823(a)(2), the facts should not just discuss “. . . what occurred, but also about how the club’s regular method of operating caused or contributed to the incidents.” *Levelle, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 924 A.2d 1030, 1037 (D.C. 2007). The court further noted that the “failure to properly communicate with police about incidents” is “. . . the type[] of omission[] that [is] conducive to an unlawful and disorderly environment” *Id.*

20. The Board further notes that under D.C. law simple assault is a “misdemeanor” that does not require that any actual injury be incurred and requires only general intent to perform the assaultive act. *In re D.P.*, 122 A.3d 903, 908 (D.C. 2015); *see also* D.C. Code § 22-404.

21. Kabin is liable for the actions of its employees and agents. In this case, during an ejection, Mr. Rush, Kabin’s security manager, threw Mr. Quiroz onto the ground, dragged him out of the establishment, pulled him down the stairs, and punched him, which constitutes an assault. *Supra*, at ¶¶ 3-4. The Board notes that throughout the ejection, there is no evidence that Mr. Quiroz was actively resisting or attacking security when security was not touching him. *Id.* As a result, Kabin and its agents had sufficient opportunity to deescalate and contact the police before relying on the use of force.

22. Under these circumstances, this type of response is an excessive, unreasonable, and unnecessary amount of force to get a patron to leave the premises. Moreover, any situation that results in security throwing someone to the ground, dragging them out of the establishment, pulling them down the stairs, and punching them, is serious enough to require the licensee or their agents to report the incident to police. As a result, because Kabin’s security manager used excessive force and no agent of Kabin contacted the police, the Board has sufficient evidence to find a nexus between Kabin’s method of operation and the incident.

23. In this type of situation, not reporting an incident involving the use of excessive force by Kabin amounts to hiding crime and violence. Moreover, this method of operation encourages and allows later retaliation by a subdued or ejected patron, because without police intervention, the patron has an opportunity to return to the establishment (with or without a weapon) and retaliate. Consequently, for these reasons, the Board finds sufficient evidence to sustain Charge I.

III. Penalty

24. This offense represents the Respondent’s first primary tier violation. The fine range for such an offense ranges from \$1,000 to \$2,000 and the Board may impose suspension days. D.C. Official Code § 25-823(a); 23 DCMR § 801.1(a) (West Supp. 2018). The Board imposes a \$2,000 fine and five stayed suspension days. In accordance with § 25-447(f), the Board also orders Kabin to provide sufficient security camera coverage to show all areas accessible to the public, including the exterior stairwell. The Board finds that these conditions are in the best interest of the neighborhood because it will encourage security to act appropriately throughout the establishment and improve the safety of the establishment. D.C. Code § 25-447(f).

ORDER

Therefore, the Board, on this 14th day of March 2018, finds that Kabin Group, LLC, t/a Kabin, guilty of violating § 25-823(a)(2). The Board imposes the following penalty on Kabin:

- (1) For the violation described in Charge I, Kabin shall pay a \$2,000 fine. The Respondent shall also receive five (5) stayed suspension days for this offense, which shall go into

effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.

- (2) Under D.C. Official Code § 25-447(f), the Board further orders Kabin as a **CONDITION** of licensure to ensure that its security cameras clearly show all areas of the establishment accessible to patrons, including the exterior stairwell. Kabin will be deemed in violation of this Order if there are any blind spots where patrons on the premises have access to a location but cannot be seen on the establishment's security footage. The license holder is exempted from providing security camera footage related to the interior of any bathroom under this condition.

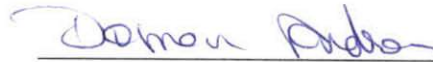
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

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

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.

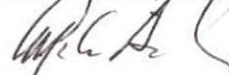
District of Columbia
Alcoholic Beverage Control Board




Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



Donald Isaac, Sr., Member



Bobby Cato, Member

I concur as to the finding of liability by the Board; nevertheless, I dissent from the Board's decision to impose suspension days.

Rema Wahabzadah, 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).