

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

<b>In the Matter of:</b>	)	
	)	
LMW, LLC	)	Case Number: 12-CMP-00603
t/a Little Miss Whisky's Golden Dollar	)	License Number: 79090
	)	Order Number: 2013-597
Holder of a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
1104 H Street, N.E.	)	
Washington, D.C. 20002	)	
	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Mike Silverstein, Member

**ALSO PRESENT:** LMW, LLC, t/a Little Miss Whisky's Golden Dollar, Respondent  
  
Matthew LeFande, on behalf of the Respondent  
  
Christine L. Gephardt, 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 LMW, LLC, t/a Little Miss Whisky's Golden Dollar, (Respondent) violated § 3(d) of its Settlement Agreement by participating in a pub crawl on October 18, 2012. The Board levies a \$500 fine for the violation.

***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 15, 2013. *ABRA Show Cause File No.*, 12-CMP-00603, Notice of Status Hearing and Show Cause Hearing, 2-3 (May 15, 2013). The

ABRA served the Notice on the Respondent, located at premises 1104 H Street, N.E., Washington, D.C., on May 23, 2013. *ABRA Show Cause File No.*, 12-CMP-00603, Service Form. The Notice charges the Respondent with two violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

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

Charge I: [On October 18, 2012,] [y]ou[] participated in a pub crawl without prior Board approval, in violation of 23 DCMR [§] 712 for which the Board may take the proposed action . . . .

Charge II: [On October 18, 2012,] [y]our establishment violated its Voluntary Agreement ("VA") by participating in a pub crawl without Board approval, in violation of D.C. Official Code § 25-446 . . . .

Notice of Status Hearing and Show Cause Hearing, 2-3.

Both the Government and Respondent appeared at the Show Cause Status Hearings for this matter on June 19, 2013. The Respondent submitted a Motion to Dismiss on July 22, 2013. The Government submitted a response on July 31, 2013. The Respondent then replied to the Government's response. The parties proceeded to a Show Cause Hearing where they argued their respective cases on October 2, 2013, and the Board heard oral arguments on the Motion to Dismiss.

On October 9, 2013, the Board issued a written Order dismissing the Respondent's Motion to Dismiss. In re LMW, LLC, t/a Little Miss Whiskey's Golden Dollar, Case No. 12-CMP-00603, Board Order No. 2013-440, 5 (D.C.A.B.C.B. Oct. 9, 2013).<sup>1</sup> During opening arguments, the Government made an oral motion to dismiss Charge I, which we grant in this Order. *Transcript (Tr.)*, 10/2/13 at 49.

The Respondent filed Proposed Findings of Fact and Conclusions of Law, which the Board includes in this matter's record.

Having dispensed with these preliminary matters, the Board now addresses the charges on their merits.

### FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

---

<sup>1</sup> The Order contains a clerical error on page 5 indicating that this Order was signed on October 2, 2013. Instead, the Order was actually signed and issued on October 9, 2013. The Board will issue an amendment to Board Order No. 2013-440 in this Order in accordance with this footnote.

1. The Respondent holds a Retailer's Class CT License, ABRA License Number 79090. See ABRA Licensing File No. 79090. The establishment's premises are located at 1104 H Street, N.E., Washington, D.C. Id.
2. The Respondent entered into a Settlement Agreement with Advisory Neighborhood Commission (ANC) 6A, which the Board approved on July 31, 2008. In re LMW, LLW t/a Little Miss Whiskey's Golden Dollar, Board Order No. 2008-240 (D.C.A.B.C.B. Jul. 31, 2008). According to section 3(d) of the agreement, the "Applicant agrees not to promote or participate in a bar or pub 'crawls' or any other event of this nature." Id. at Settlement Agreement, § 3(d).
3. Brian Molloy currently works for a private law firm, and formerly served as an investigator for the Alcoholic Beverage Regulation Administration (ABRA) from July 2012 to June 2013. Tr., 10/2/13 at 53. While serving as an ABRA investigator, Mr. Molloy was in the H Street, N.E., neighborhood in an undercover capacity on October 18, 2012, along with ABRA Investigator Brian Owens. Id. at 54, 82. ABRA initiated the investigation, because another investigator received an online tip and saw internet advertisements that indicated that a pub crawl was going to occur in the neighborhood on that date. Id. According to the complainant, some of the establishments participating in the pub crawl had settlement agreements in place that prevented their participation in the event. Id. at 81.
4. The online advertisement indicated that an "H Street Zombie Takeover" was going to occur on October 18, 2012, from 7:00 p.m. to 11:00 p.m., in the area covering the 1100 through 1300 block of H Street, N.E. Id. at 56, 58; Government Exhibit No. 1, 1. The event was hosted by BrightestYoungThings.com. Government Exhibit No. 1.
5. The advertisement indicated that six licensed establishments in the neighborhood were offering drink specials as part of the event. Id. at 2. The "SPECIALS" described on the poster for the event were as follows: Rock and Roll Hotel, at 1354 H Street, N.E., offered "\$3 PBR, \$4 rail drinks, \$6 PBR + shot of rail whiskey"; SOVA, at 1359 H Street, N.E., was offering "Zombie Irish coffee" with a "free shot of Bulleit in it"; Church and State, at 1236 H Street, N.E., offered "\$7 Sloth or a Wrath"; Little Miss Whiskeys, at 1104 H Street, N.E., offered "\$3 Stroh's, \$4 DAB tallboys + BYT DJs 7PM-11PM"; The Queen Vic, at 1206 H Street, N.E., offered "\$4 Zombie Punch from 7PM-10PM"; and Red Palace, at 1212 H Street, N.E., offered "\$7 for a can of PBR and a shot of Bulleit or Bulleit Rye until 11:00." Government Exhibit No. 1, 2.
6. Another portion of the online materials advertised additional food and drink specials at other H Street, N.E., establishments. Id. Further, the materials also advertised that the Respondent's establishment was offering "1 FREE shot of Bulleit Bourbon (to the brain)." Id. The advertisement encouraged patrons to dress up like zombies and informed patrons that a make-up artist would be available to perform "optional touch-ups and teach . . . correct zombie posture." Id. The advertisement also stated, "Pick up your coupon book for all the sweet deals below." Id.
7. Both Mr. Molloy and ABRA Investigator Brian Owens began investigating the event around 7:30 p.m. Id. at 81-82. Both investigators approached the event's check-in

location staffed by Brightest Young Things employees at 906 H Street, N.E., and bought a participation ticket. Id. at 82, 99. The event organizers gave Mr. Molloy and Investigator Owens a wristband to identify themselves as participants in the event, a coupon book, which allowed them to get discounts at various participating establishments, and zombie makeup. Id. The coupon book contained coupons for the Respondent's establishment that allowed them to obtain the specials listed in the online advertisement. Id. at 83; Government Exhibit No. 1. Employees at the check-in site indicated that approximately fifty to sixty people were participating in the event. Id. at 102.

8. The investigators entered various establishments during the evening and did not enter the Respondent's establishment until 9:30 p.m. Id. at 84. Upon approaching the Respondent's establishment, a doorman checked the identifications and wristbands possessed by the investigators. Id. at 85. Once inside, the investigators approached the Respondent's bar. Id. At the bar, the investigators presented a coupon ticket to the Respondent's bartender, which the establishment honored. Id. at 85, 113

9. The bartender presented the investigators with a Stroh's and a free shot of bourbon.<sup>2</sup> Id. at 85. The investigators paid \$3 for the Stroh's and walked away from the bar. Id. The investigators then put their drinks down and left the establishment. Id. After leaving the Respondent's establishment, the investigators then reported their findings to another group of investigators participating in the investigation. Id. at 85.

10. Mr. Molloy visited all of the establishments participating in the event that had settlement agreements on file with ABRA. Id. at 111. He noted that the participating establishments were within "easy walking distance" of each other and it was easy to visit all of the establishments participating in the event. Id. at 86. At no point during the investigation, did Mr. Molloy rely upon a vehicle or public transportation to get to the other establishments. Id. Mr. Molloy noted that the other establishments he visited offered the specials listed in the online advertisement. Id. at 115.

11. Mark Thorp, the owner of the Little Miss Whisky's Golden Dollar, testified on behalf of the Respondent. Id. at 128, 131. He admitted that he knowingly participated in the event organized by Brightest Young Things. Id. at 147. Mr. Thorp further admitted that he was aware that at least five other establishments were participating in the event organized by Brightest Young Things. Id. at 139, 140, 148. He also knew that the participating establishments were "in proximity" to his establishment and located on H Street, N.E. Id. at 140.

12. Mr. Thorp described the price of alcoholic beverages at his establishment. Id. at 133. He stated that the offer of \$3 for Stroh's and \$4 for DAB tallboys are the normal prices for those beverages. Id. at 132. According to Mr. Thorp, he "advertise[d] regular prices as if they were specials." Id. at 145.

13. Mr. Thorp further stated that Diageo, the producer of Bulleit, provided free product for the establishment to dispense to customers. Id. at 133. Mr. Thorp admitted that his

---

<sup>2</sup> Mr. Molloy also later added, "At any establishment where we got one free shot, we also asked [for] another free shot and they said something to the effect of not for free or only if you pay for it. That was a routine practice when the special was a free shot." *Tr.*, 10/2/13 at 104.

bartender distributed the free product to customers on the day of the event. *Id.* at 139. A shot of Bulleit Bourbon is normally valued at \$8.00 per shot at the establishment. *Id.* at 156.

## CONCLUSIONS OF LAW

14. 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 Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine “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.

15. The Board agrees with the Government that the Respondent engaged in a pub crawl in violation of the terms of its Settlement Agreement on October 18, 2012.

16. Under D.C. Official Code § 25-446, the Respondent’s Settlement Agreement is enforceable by the Board. D.C. Official Code § 25-446(c). In this case, § 3(d) of the Respondent’s Settlement Agreement states, “Applicant agrees not to promote or participate in a bar or pub ‘crawls’ or any other event of this nature.” *Supra*, at ¶ 2.

17. The Board interprets the terms of a settlement agreement as if it were a contract. North Lincoln Park Neighborhood Ass’n v. District of Columbia Alcoholic Beverage Control Bd., 727 A.2d 872, 875 (D.C. 1999). When interpreting a settlement agreement, the Board presumes that when parties to a settlement agreement incorporate a term found in Title 25 of the D.C. Official Code (Title 25) or Title 23 of the D.C. Municipal Regulations (Title 23), the parties intend to adopt that meaning of the term provided by the District’s alcoholic beverage control laws—unless otherwise indicated by the agreement. Restatement (Second) of Contracts § 202(3)(b) (1981) (“Unless a different intention is manifested . . . technical terms and words of art are given their technical meaning when used in a transaction within their technical field.”)

18. Here, the parties used a form of the term “pub crawl” in their agreement. *Supra*, at ¶ 2. Under Title 23, a “pub crawl” is “defined as an organized group of establishments within walking distance which offer discounted alcoholic drinks during a specified time period.” 23 DCMR § 712.1. Thus, the Respondent is forbidden from participating in a pub crawl under the terms of its Settlement Agreement.

19. Nevertheless, the record shows that the Respondent participated in the pub crawl hosted by Brightest Young Things on October 18, 2012.<sup>3</sup> The record shows that various establishments within walking distance from each other in the H Street, N.E., neighborhood participated in the event conducted by Brightest Young Things on October 18, 2012. *Supra*, at ¶¶ 7, 10, 11.

---

<sup>3</sup> By agreeing to participate in event, the Board also finds that the Respondent permitted Bright Young Things to act as the Respondent’s agent; therefore, the Respondent is not entitled to argue that it is not responsible for the actions taken by Bright Young Things to promote the event.

20. The record further shows that the Respondent offered discounted drinks during this event. On October 18, 2012, the \$3 Stroh's and \$4 DAB tallboys and the free shot of Bulleit Bourbon constitute at least two separate and independent instances of the Respondent offering discounted drinks. Supra, at ¶¶ 5, 9, 12.

21. In the case of the \$3 Stroh's and \$4 DAB tallboys, two facts provide substantial evidence that this constituted a discounted drink offer. First, the advertisement listed the offers as "SPECIALS." Supra, at ¶ 5. Second, participants were required to pick up a coupon book and present coupons in order to take advantage of the "SPECIALS." Supra, at ¶ 6. The Board notes that the coupon book contained coupons for the Respondent's establishment, the investigators presented their coupon to the Respondent's bartender when they purchased their drinks, and paid the price listed on the coupon. Supra, at ¶¶ 7, 9. These facts, which we find indicative of discounting, render the Respondent's claim that he only offered regularly priced drinks unpersuasive and lacking in credibility.<sup>4</sup>

22. Separate from this determination, we further find that the free shot of Bulleit Bourbon offered by the Respondent constitutes a discounted drink. As the record shows, the shot was provided free to consumers by the Respondent's bartender. Supra, at ¶ 9. The source of the beverages served by the Respondent's employee is completely irrelevant to the determination as to whether the Respondent "offer[ed] discounted alcoholic beverages." § 712.1; *Tr.*, 10/2/13 at 165; Proposed Findings of Fact and Conclusions of Law, at 9.

23. Finally, the Respondent has also argued that the event on October 18, 2012, does not constitute a pub crawl under § 712.10, because there were less than 200 people at the event. *Tr.*, 10/2/13 at 118-19; Proposed Findings of Fact and Conclusions of Law, at 7. According to § 712.10, "Board approval shall not be required for a "Pub Crawl" containing less than 200 participants." 23 DCMR § 712.10. It is clear that § 712.10 does not alter the definition of a pub crawl provided by § 712.1; instead, § 712.10 merely states that pub crawl promoters do not require the permission of the Board to host a pub crawl if attendance is limited to less than 200 people. Consequently, the Board finds no conflict between §§ 712.1 and 712.10. See Tr., 10/2/13 at 167. As a result, the Respondent's argument on this ground is without merit and contradicted by the plain language of the two regulations at issue.

## ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 11th day of December 2013, finds that LMW, LLC, t/a Little Miss Whisky's Golden Dollar, violated § 25-446 in the manner described by Charge II. Accordingly, the Board imposes the following penalty on the Respondent:

- (1) For the violation described in Charge II, the Respondent shall pay a fine of \$500.

---

<sup>4</sup> Because we find that the facts presented by the Government counter the claims made by the Respondent, we do not reach the issue of whether a licensee may avoid participating in a pub crawl when the licensee or its agent advertises drink specials, but only offers regularly priced drinks.

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

**IT IS FURTHER ORDERED** that Charge I is dismissed.

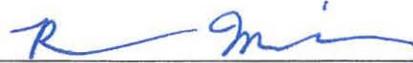
**IT IS FURTHER ORDERED** that Board Order No. 2013-440 shall remain in full force and effect; however, page five of Board Order No. 2013-440 is **AMENDED** as follows:

1. The term "9th" shall replace the term "2nd."

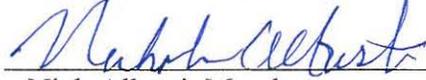
The Board further **ADVISES** the Respondent that if he desires to participate in any type of pub crawl in the future, he must seek a mutually agreed upon amendment of its Settlement Agreement with ANC 6A or file for the unilateral amendment or termination of its Settlement Agreement under D.C. Official Code § 25-446.

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

District of Columbia  
Alcoholic Beverage Control Board



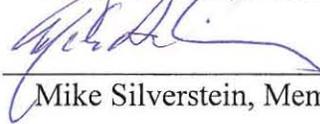
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member

Under 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, under 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 under 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).