

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

In the Matter of:)	
)	
2408 Wisconsin Avenue, LLC)	License No.: 79644
t/a Mason Inn (formerly Gin & Tonic))	Case No.: 11-251-00054
)	Order No.: 2012-122
Holder of a Retailer's Class CR License)	
at premises)	
2408 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	

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

ALSO PRESENT: 2408 Wisconsin Avenue, LLC, t/a Mason Inn (formerly Gin & Tonic),
Respondent

Andrew Kline, on behalf of the Respondent

Louise Phillips, 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**

On September 24, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated September 14, 2011, on 2408 Wisconsin Avenue, LLC, t/a Mason Inn, (Respondent) at premises 2408 Wisconsin Avenue, N.W., Washington, D.C. The Notice charged the Respondent, in Case No. 11-251-00054, with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license under § 25-823:

Charge I: The Respondent failed to follow § C(1) of its security plan in violation of District of Columbia Official Code § 25-823(6).

Charge II: The Respondent failed to follow § F(1) of its security plan in violation of District of Columbia Official Code § 25-823(6).

The Government and the Respondent came before the Board for a Show Cause Status Hearing on November 2, 2011. The Board held the Show Cause Hearing in this matter on November 30, 2011. The Board, having considered the evidence, the arguments of the parties, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Respondent holds a Retailer's Class CT License and is located at 2408 Wisconsin Avenue, N.W., Washington, D.C. See *ABRA Licensing File No. 604*.
2. The Respondent's security plan contains the following language in § C(1): "Your responsibility is to monitor [the] lounge area and bathrooms." *Security Plan*, § C(1).
3. The Respondent's security plan also contains the following language in § F(1): "Every incident shall be recorded as soon after the incident as possible and must be on the day it occurs. The names of any employees with relevant information must be included in the incident log so that they may be interviewed by management." *Security Plan*, § F(1).
4. Elizabeth Swezey hosted a party at the Respondent's establishment on February 13, 2011. *Tr.*, 11/30/11 at 35, 70. During the party, Ms. Swezey entered the Respondent's bathroom, and found Emily Jones sitting on a toilet in an unconscious state. *Tr.*, 11/30/11 at 37, 55; *Licensee's Exhibit No. 1*. Ms. Swezey knew Ms. Jones, because they had attended the same college. *Tr.*, 11/30/11 at 34-36. Ms. Swezey does not know how long Ms. Jones had been at the establishment, or how long she remained in the bathroom before Ms. Swezey found her. *Tr.*, 11/30/11 at 58-59.
5. Ms. Swezey could not awaken Ms. Jones, and had some of her friends carry Ms. Jones out of the bathroom. *Tr.*, 11/30/11 at 38, 54, 84. Ms. Swezey estimates that she remained in the bathroom no longer than ten minutes. *Tr.*, 11/30/11 at 39.
6. Within five to seven minutes after exiting the bathroom, Ms. Swezey and her friends helped Ms. Jones out of the establishment's emergency exit, with the intention of bringing her to Ms. Swezey's home. *Tr.*, 11/30/11 at 39, 42, 66. Upon exiting, two police officers stopped Ms. Swezey and her friends, and contacted an ambulance. *Tr.*, 11/30/11 at 40-41. Ms. Swezey then accompanied Ms. Jones to the hospital. *Tr.*, 11/30/11 at 47.
7. George Ross Brickelmaier serves as the general manager of the Respondent's establishment and is in charge of security at the establishment. *Tr.*, 11/30/11 at 96, 98. Mr. Brickelmaier was at the establishment on February 13, 2011. *Tr.*, 11/30/11 at 97. Mr. Brickelmaier observed Ms. Swezey and her friends helping Ms. Jones out of the establishment, while he stood in front of the alley with the establishment's Metropolitan Police Department Reimbursable Detail. *Tr.*, 11/30/11 at 118.

8. According to Mr. Brickelmaier, four additional security staff members were on duty on February 13, 2011. *Tr.*, 11/30/11 at 100, 104. Specifically, two security staff members were stationed near the establishment's door, one roamed the area near the stage, and another roamed the interior of the establishment. *Tr.*, 11/30/11 at 99. It is the establishment's regular practice to have the roaming security staff member in the interior of the establishment walk by the establishment's bathrooms. *Tr.*, 11/30/11 at 101. Furthermore, that employee's duty is to ensure that patrons in the hallway by the bathroom remain orderly. *Tr.*, 11/30/11 at 103; see also Licensee Exhibit No. 4. As a result, one of the Respondent's employees visually inspected the hallway leading to the bathroom every ten to fifteen minutes on February 13, 2011. *Tr.*, 11/30/11 at 105-06.

9. Investigator Donell Butler investigated the incident that occurred at the establishment on February 13, 2011. *Transcript (Tr.)*, November 30, 2011 at 6. On February 25, 2011, Investigator Butler visited the establishment and spoke to the establishment's manager, George Ross Brickelmaier. *Exhibit 1, 2; Tr.*, 11/30/11 at 8. Investigator Butler requested that the establishment provide him with its incident log, but Mr. Brickelmaier told Investigator Butler that it was not at the establishment. *Id.* Investigator Butler told Mr. Brickelmaier that he would return on February 26, 2011, and pick up a copy of the incident log; however, when he returned the following day, the establishment did not have a copy of its log available for Investigator Butler's review. *Id.* Investigator Butler then informed Mr. Brickelmaier that he could email the log, and gave Mr. Brickelmaier his email address. *Exhibit 1, 2; Tr.*, 11/30/11 at 8, 22.

10. Mr. Brickelmaier keeps incident reports off-site, at George, an establishment located in Georgetown. *Tr.*, 11/30/11 at 107-08. The Respondent's practice is to create incident reports by hand, and keep them in a binder in an office located inside George. *Tr.*, 11/30/11 at 109.

11. Mr. Brickelmaier emailed Investigator Butler an incident report dated February 13, 2011, on April 1, 2011. *Tr.*, 11/30/11 at 110; Licensee's Exhibit No. 3. The report does not contain the name of the police officers present or all of the names of the people involved. *Tr.*, 11/30/11 at 122-23.

CONCLUSIONS OF LAW

12. 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 (West Supp. 2012); 23 DCMR § 800, *et seq.* (West Supp. 2012).

13. The Board bases its factual findings on the substantial evidence contained in the record. 23 DCMR § 1718.3 (West Supp. 2012). The courts define substantial evidence as evidence that "reasonable minds might accept as adequate to support the [Board's] conclusions." 2641 Corp. v. District of Columbia Alcoholic Beverage Control Bd., 950 A.2d 50, 52 (D.C. 2008) citing Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1387 (D.C. 1977).

I. Charge I

14. During the Show Cause Hearing, the Respondent moved to dismiss Charge I, because the Government failed to show through substantial evidence that the Respondent violated § C(1) of its security plan. *Tr.*, 11/30/11 at 26. We agree that the Government has not provided sufficient evidence to show that the Respondent violated § C(1) of its security plan.

15. Section C(1) states, “Your responsibility is to monitor [the] lounge area and bathrooms.” *Security Plan*, § C(1). As Mr. Brickelmaier testified, the establishment’s security staff visually inspected the hallway leading to the bathroom every ten to fifteen minutes. *Supra*, at ¶ 8. Based on the brief amount of time Ms. Sweezey and Ms. Jones were in the bathroom, and the short amount of time it took Ms. Sweezey and her friends to carry her outside of the establishment, it is not surprising that security inside the establishment did not observe Ms. Jones and Ms. Sweezey’s departure. *Supra*, at ¶¶ 4-6. Therefore, we are convinced that the establishment sufficiently monitored its bathrooms in compliance with § C(1) of the security plan.

II. Charge II

16. Nevertheless, we find that the Respondent did not create an incident report on February 13, 2011, as required by § F(1) of its security plan.

17. The Respondent’s security plan states, “Every incident shall be recorded as soon after the incident as possible and must be on the day it occurs. The names of any employees with relevant information must be included in the incident log so that they may be interviewed by management.” *Security Plan*, § F(1). Although the Respondent submitted an incident report dated February 13, 2011, we are not convinced that the Respondent’s staff created it on that day. *Supra*, at ¶ 11. Investigator Butler gave the establishment two opportunities to submit the incident report on February 25, 2011, and February 26, 2011. *Supra*, at ¶ 9. Yet, the establishment failed to produce the incident report on both occasions. *Id.* Then, when given the opportunity to submit the incident report by email on February 26, 2011, the Respondent waited until April 1, 2011, to attempt to email the report. *Supra*, at ¶¶ 9, 11. Under these circumstances, we are not convinced that the Respondent actually created the incident report on February 13, 2011, and, more likely than not, produced it long after the incident occurred. Therefore, because we find that the date indicated on the incident report is not credible, we conclude that the establishment did not create an incident report in compliance with § F(1) of its security plan.

18. For these reasons, we dismiss Charge I, and find the Respondent guilty of the violation described in Charge II.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 4th day of April 2012, finds that the Respondent, t/a Mason Inn (formerly Gin & Tonic), violated D.C. Official Code § 25-823(6). The Board hereby **ORDERS** that:

(1) Charge I is dismissed; and

(2) The Respondent shall pay a \$4,000.00 fine by no later than thirty (30) days from the date of this Order for the violation described in Charge II.

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

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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 (April 2004) 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).