THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
Mimi & D, LLC t/a Mood	)	License No.: 86037 Case No.: 11-CMP-00354 Order No.: 2012-214
Holder of a Retailer's Class CT License at premises 1318 9th Street, N.W. Washington, D.C. 20008	)	

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

ALSO PRESENT: Mimi & D, LLC, t/a Mood, Respondent

Abeba Beyane, Owner, on behalf of the Respondent

Kwamina Williford, Esq., Holland & Knight LLP, on behalf of the Respondent

Louise Phillips, Esq., Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On November 10, 2011, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated November 4, 2011, on the Respondent located at premises 1318 9th Street, N.W., Washington, D.C. The Notice charged the Respondent with the following violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

Charge I: You violated paragraph 6 of the Voluntary Agreement ("VA"), which you entered on March 10, 2008, by allowing music to be played at the licensed establishment at volumes that were audible by occupants in their adjacent residential property, in violation of D.C. Official Code § 25-446 (2001), for which the Board may take [the] proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

ABRA Show Cause File No. 11-CMP-00354, Notice of Status Hearing and Show Cause Hearing.

The parties came before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on December 7, 2011. The matter proceeded to a Show Cause Hearing on March 14, 2012, where the Government sought to prove the charge through substantial evidence.

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

FINDINGS OF FACT

I. Background

1. The Respondent holds a Retailer's Class CT License, ABRA License Number 86037. See *ABRA Licensing File No. 86037*. The establishment's premises are located at 1318 9th Street, N.W., Washington, D.C. See *ABRA Licensing File No. 86037*.

2. The Respondent entered into a Voluntary Agreement on March 10, 2008, with ANC 2F. *ABRA Show Cause File No. 11-CMP-00354, Voluntary Agreement*. Section 6 of the Voluntary Agreement states,

> **Noise and Privacy.** Applicant will comply with Title 25, Section 725 of the D.C. code, make architectural improvements to the property, and take all necessary actions to ensure that music, noise and vibrations from the establishment are not audible within any adjacent residential properties. Applicant will also take all necessary steps to ensure that the music, noise and vibrations are not disruptive to the adjacent residential property occupants' reasonable use of outdoor areas of their property. Should any sound, noise, or music be heard in any residential premises, Applicant will take immediate remedial action. If necessary, Applicant will take reasonable steps to reduce noise emanating from the establishment from the opening of the entry and exit doors.

Id. at § 6.

3. Section 16 of the Voluntary Agreement further states,

> **Notices and Enforcement Before ABC Board.** In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within

> thirty (30) days unless the violation be of such a nature that more immediate action is required, in which case, the period for opportunity to cure shall be reduced to a reasonable time commensurate with the violation (Such 30-day or shorter period is hereinafter referred to as the "cure period"). A material violation of this Agreement or its ABC license by Applicant, which has not been cured within the cure period, shall constitute cause for seeking a Show Cause Order from the ABC Board.

Id. at § 16.

II. Jonathan Froehlich

4. Jonathan Froehlich lives in Apartment 1 at 1316 9th Street, N.W., in The Nine condominium building. *Transcript (Tr.)*, March 14, 2012 at 10-11. The Nine is located next to the Respondent's establishment. *Tr.*, 3/14/12 at 11. The Nine contains four residential units and two commercial units. *Tr.*, 3/14/12 at 32. Mr. Froehlich's condominium shares a wall with the establishment. *Tr.*, 3/14/12 at 21-22.

5. Mr. Froehlich heard music generated by the Respondent's establishment inside his condominium on July 22, 2011. *Tr.*, 3/14/12 at 16; *ABRA Show Cause File No. 11-CMP-00354*, Exhibit No. 1. The music was extremely loud, and vibrated the walls of his apartment. Id.

6. Mr. Froehlich sent an email to Abeba Beyane, the establishment's owner, on July 22, 2011, which notified her that the establishment was in violation of the Voluntary Agreement. *ABRA Show Cause File No. 11-CMP-00354*, Exhibit No. 1. The email stated that noise from the establishment could be heard at an "extremely high volume" and was making the "walls vibrate." Id. Mr. Froehlich copied Investigator Jabriel Shakoor on the email. *Tr.*, 3/14/12 at 16; Exhibit No. 1.

7. On July 27, 2011, Investigator Shakoor facilitated a sound test at the establishment in the presence of Mr. Froehlich, Abeba Beyane, and Betina Orezzoli. *Tr.*, 3/14/12 at 19. During the test, the establishment played music while Mr. Froehlich stood in his apartment. *Tr.*, 3/14/12 at 19. At the conclusion of the test, the parties agreed upon an acceptable volume level for the establishment. *Tr.*, 3/14/12 at 19. Nevertheless, on July 28, 2011, Mr. Froehlich submitted a complaint to ABRA that the establishment was playing music louder than the level agreed upon at the sound test. *Tr.*, 3/14/12 at 21, 26; Exhibit No. 6.

8. On August 14, 2011, Mr. Froehlich again heard music generated by the establishment in his condominium. *Tr.*, 3/14/12 at 27; Exhibit No. 9. The music was so loud that it vibrated Mr. Froehlich's walls. *Tr.*, 3/14/12 at 27.

9. Finally, on September 4, 2011, Mr. Froehlich heard music generated by the establishment inside his condominium. *Tr.*, 3/14/12 at 28. The music had a high volume and a high base. *Tr.*, 3/14/12 at 28. This incident occurred more than 30 days after Mr. Froehlich's July 22, 2011, complaint.

III. Betina Orezzoli

10. Betina Orezzoli lives in the same condominium as Mr. Froehlich. *Tr.*, 3/14/12 at 63. Ms. Orezzoli is Mr. Froehlich's fiancée. *Tr.*, 3/14/12 at 64. Ms. Orezzoli has lived with Mr. Froehlich since May 2011. *Tr.*, 3/14/12 at 64.

11. Ms. Orezzoli described the noise issues caused by the Respondent. *Tr.*, 3/14/12 at 64-65. She noted that from inside her condominium she can discern the words of the songs played by the Respondent, and hear disc jockeys screaming into the establishment's microphones. *Tr.*, 3/14/12 at 65. Ms. Orezzoli has also observed the art on the condominium's walls shake from the bass vibrations. *Tr.*, 3/14/12 at 65.

12. Ms. Orezzoli was in her condominium during the July 27, 2011, sound test. *Tr.*, 3/14/12 at 68. She observed that the test did not include the sound generated by the establishment's microphone. *Tr.*, 3/14/12 at 68.

13. On the day following the sound test, Ms. Orezzoli heard music from the Respondent's establishment inside her residence. *Tr.*, 3/14/12 at 73. She described the music as being at least "ten times louder" than the agreed upon level. *Tr.*, 3/14/12 at 73. Ms. Orezzoli sent a text message complaint to the establishment's manager. *Tr.*, 3/14/12 at 74. The establishment's manager explained that their disc jockey had increased the sound level through the laptop, which circumvented the establishment's equipment. *Tr.*, 3/14/12 at 74, 210; Exhibit No. 2.

14. Ms. Orezzoli was present in the condominium on September 4, 2011. *Tr.*, 3/14/12 at 99. Ms. Orezzoli confirmed that she heard noise from the establishment inside her residence on that day. *Tr.*, 3/14/12 at 99.

IV. Investigator Shakoor

15. Alcoholic Beverage Regulation Administration (ABRA) Investigator Jabriel Shakoor investigated Mr. Froehlich and Ms. Orezzoli's noise complaints. *Tr.*, 3/14/12 at 124. He has visited Mr. Froehlich's residence almost every weekend since April 2011.

16. On June 22, 2011, Investigator Shakoor visited the Respondent's establishment and Mr. Froehlich and Ms. Orezzoli's residence. *Tr.*, 3/14/12 at 127-28. He noted that the establishment was operating on two floors and had its windows and doors closed. *Tr.*, 3/14/12 at 128-29. Investigator Shakoor confirmed that music from the establishment could be heard emanating from the wall shared by the residence and the establishment. *Tr.*, 3/14/12 at 127-28.

17. Investigator Shakoor conducted a sound test at the establishment on July 27, 2011. *Tr.*, 3/14/12 at 144. The establishment had a disc jockey play music on both of the establishment's floors. *Tr.*, 3/14/12 at 144. Investigator Shakoor indicated that the Respondent and Mr. Froehlich and Ms. Orezzoli found an acceptable sound level for the establishment's disc jockey booths and sound limiter. *Tr.*, 3/14/12 at 144, 147. Notably, the agreed upon level still resulted in Investigator Shakoor observing low levels of music and base sounds in the condominium. *Tr.*, 3/14/12 at 146, 153, 183, 204.

18. After the sound test, Investigator Shakoor received additional complaints from residents of The Nine. Exhibit No. 1, 3-4; *Tr.*, 3/14/12 at 158-59, 168-69, 201. Specifically, he received noise complaints from residents of The Nine on August 1, 2011; August 5, 2011; August 14, 2011; September 3, 2011; and September 4, 2011. Id.

19. Investigator Shakoor returned to Mr. Froehlich's residence on September 4, 2011. *Tr.*, 3/14/12 at 196. He observed that music from the establishment was audible inside the residence above the limit agreed upon on July 27, 2011. *Tr.*, 3/14/12 at 196, 198, 203. Investigator Shakoor observed that the establishment's disc jockeys are able to circumvent the establishment's sound limiter and create additional noise with their laptops and the establishment's microphone. *Tr.*, 3/14/12 at 211.

V. Abeba Beyane

20. Abeba Beyane owns the establishment. *Tr.*, 3/14/12 at 223. The establishment operates as a restaurant and lounge and has an entertainment endorsement. *Tr.*, 3/14/12 at 224. The establishment generally plays house and hip-hop music. *Tr.*, 3/14/12 at 231.

21. Ms. Beyane was present at the establishment on July 22, 2011. *Tr.*, 3/14/12 at 235. On that night, Investigator Shakoor informed her that the neighbors had filed a noise complaint against the establishment. *Tr.*, 3/14/12 at 235. In response, Ms. Beyane turned the establishment's volume levels down. *Tr.*, 3/14/12 at 236.

22. Ms. Beyane testified about her efforts to reduce noise. *Tr.*, 3/14/12 at 237. First, she participated in the sound test on July 27, 2011. *Tr.*, 3/14/12 at 237. Second, based on the results of the sound test, she installed a sound limiter. *Tr.*, 3/14/12 at 238. Third, the establishment disconnected six speakers on the wall shared by the establishment and The Nine. *Tr.*, 3/14/12 at 244. Fourth, the establishment disconnected the bass speaker in the establishment's back room. *Tr.*, 3/14/12 at 244. Fifth, the establishment shifted one of the disc jockey booths to the other side of the establishment, away from the shared wall. *Tr.*, 3/14/12 at 245.

23. In addition, Ms. Beyane noted that the limiter is still installed on the establishment's sound equipment. *Tr.*, 3/14/12 at 240. The limiter is also locked in a closet with a key that only Ms. Beyane possesses. *Tr.*, 3/14/12 at 241. The limiter has not been changed since the sound test on July 27, 2011. *Tr.*, 3/14/12 at 241.

CONCLUSIONS OF LAW

24. 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; 23 DCMR § 800, *et seq.*

25. The question presented in this matter is whether the Respondent has violated § 6 of the Voluntary Agreement by creating noise that is audible in Mr. Froehlich and Ms. Orezzoli's

residence; and, whether, after being duly advised of the matter in writing on July 22, 2011, the Respondent cured the problem in accordance with § 16 of the Voluntary Agreement. Based on the substantial evidence provided by the Government, we find that noise heard in Mr. Froehlich and Ms. Orezzoli's condominium between July 22, 2011, and September 4, 2011, violates § 6 of the Respondent's Voluntary Agreement, and demonstrates that the Respondent has failed to cure the problem. We, therefore, assess a fine of $750.00 against the Respondent for the violation.

26. Our interpretation of the Respondent's Voluntary Agreement is no different than it was when we recently announced our interpretation of the agreement in a similar show cause proceeding against the Respondent, which we decided in February 2012. See Mimi & D, LLC, t/a Mood, Board Order No. 2012-050 (D.C.A.B.C.B. Feb. 1, 2012).

27. As we stated previously, the Respondent is obligated to comply with the terms of its Voluntary Agreement. D.C. Code § 25-446(c) (West Supp. 2012); Mimi & D, LLC, t/a Mood, Board Order No. 2012-050, at ¶ 17. We interpret the Respondent's Voluntary Agreement using the principles of contract law; therefore, we look to the agreement's own terms in interpreting it. North Lincoln Park Neighborhood Ass'n v. District of Columbia Alcoholic Beverage Control Bd., 727 A.2d 872, 875 (D.C. 1999); see also Mimi & D, LLC, t/a Mood, Board Order No. 2012-050, at ¶ 17.

28. Here, the Respondent's Voluntary Agreement states that the Respondent shall "take all necessary actions to ensure that music, noise, and vibrations from the establishment are not audible within any adjacent residential properties." *Voluntary Agreement*, at § 6. Section 16 then states, "In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days." Id. at § 16.

29. As we stated previously,

> Section 6 of the [Respondent's] Voluntary Agreement is clear that music and vibrations from Mood's sound system shall not be audible in adjacent residences. There is no other way to interpret § 6's mandate that the Respondent "take all necessary action to ensure that . . . noise and vibrations from the establishment are not audible within any adjacent residential properties" or that the Respondent "take immediate remedial action" if such noise is heard in a neighboring residence."

Mimi & D, LLC, t/a Mood, Board Order No. 2012-050, at ¶ 20.

30. Following our previous interpretation, the music heard by Mr. Froehlich inside his condominium on July 22, 2011, violates § 6 of the Voluntary Agreement. Supra, at ¶¶ 6, 16. The record in this matter then shows that Mr. Froehlich triggered the thirty-day cure period by notifying Ms. Beyane of the problem by sending an email to her on the same day. Supra, at ¶ 6.

31. Nevertheless, as the record demonstrates, the Respondent did not cure the problem. As reported by Investigator Shakoor, Mr. Froehlich, and Ms. Orezzoli, the establishment continued to generate music, noise, and vibrations that could be heard and felt in Mr. Froehlich and Ms.

Orezzoli's residence. Supra, at ¶¶ 8, 13, 18. The record then shows that the parties tried to agree to an acceptable sound level on July 27, 2011, but the Respondent could not maintain the noise at the agreed upon level while operating. Supra, at ¶¶ 7, 13, 19. Indeed, as Investigator Shakoor, Mr. Froehlich, and Ms. Orezzoli observed, the noise problem continued into September. Supra, at ¶¶ 9, 14, 19. Under these circumstances, the Government has conclusively shown that the Respondent was in violation of § 6 of the Voluntary Agreement, was on notice of the violation as of July 22, 2011, and failed to cure the violation within the thirty-day cure period provided by Section 16 of the agreement.

32. We further emphasize that we reject the Respondent's arguments that it is not in violation of the Voluntary Agreement, because it has taken "reasonable" steps to mitigate the noise problem. *Tr.* 3/14/12 at 355-56. The Voluntary Agreement is quite clear: the Respondent may not generate noise that is audible in a neighboring residence. Mimi & D, LLC, t/a Mood, Board Order No. 2012-050, at ¶¶ 23-24. As such, it is the Respondent's duty to take all necessary action to ensure its operations meet this standard at all times.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 23rd day of May 2012, finds that the Respondent, Mimi & D, LLC, t/a Mood, violated District of Columbia Official Code § 25-823(6). The Board hereby **ORDERS** that

(1) the Respondent shall pay a fine of $750.00 no later than thirty (30) days from the date of this Order.

The Alcoholic Beverage Regulation Administration 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

Calvin Nophlin, Member

Mike Silverstein, Member

Jeannette Mobley, 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).