THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
Yetenbi, Inc..	Case No.:	15-CMP-00869
t/a Noble Lounge	License No:	85258
	Order No:	2016-503
Holder of a		
Retailer's Class CT License		
at premises		
1915 9th Street, N.W.		
Washington, D.C. 20001		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: Yetenbi, Inc.., t/a Noble Lounge, 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 finds Yetenbi, Inc.., t/a Noble Lounge, (hereinafter "Respondent" or "Noble Lounge") in violation of District of Columbia (D.C.) Official Code § 25-823(a)(5) for interfering with an investigation; D.C. Official Code § 25-823(a)(7) for operating after Board-approved hours; 23 DCMR §707.1 for failing to have a Board approved manager present; and D.C. Official Code § 25-711 for failing to keep its license conspicuously posted. Based on this finding, Noble Lounge shall pay a $7,750 fine within 60 days of receipt of this Order. In addition to receiving three stayed suspension days, the establishment shall also serve a two day suspension on October 28, 2016, and October 29, 2016.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on April 14, 2016. *ABRA Show Cause File No., 15-CMP-00869,* Notice of Status Hearing and Show Cause Hearing, 2 (Apr. 14, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1915 9th Street, N.W., Washington, D.C., on February 10, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 15-CMP-00869,* Service Form. The Notice charges the Respondent with multiple violations, 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 violations:

Charge I: [On November 19, 2015,] [y]our interfered with an [ABRA] investigation, failed to let the Metropolitan Police Department (MPD) enter or inspect the premises without delay in violation of D.C. Official Code § 25-823(a)(5) . . . .

Charge II: [On November 19, 2015,] [y]our violated . . . § 25-823(a)(7) . . . by operating after Board-approved hours . . . .[1]

Charge III: [On November 19, 2015,] [y]our violated . . . § 25-823[a](3) . . .and 23 DCMR § 707.1 by failing to have a Board-approved manager present at the licensed premises . . . .

Charge IV: [On November 19, 2015,] [y]our failed to post your ABC license in a conspicuous place in violation of . . . § 25-711(a) . . . .

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

The Board notes that only the Government appeared at the Show Cause Status Hearing on May 18, 2016. Nevertheless, both parties appeared at the Show Cause Hearing and argued their respective cases on July 27, 2016.

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:

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[1] The notice incorrectly cited § 25-823(a)(3) instead of D.C. Official Code § 25-823(a)(7) for operating past its approved hours. Because the notice adequately described the charge, the Board finds that Noble Lounge had adequate notice of the charges and was not prejudiced by the error, which the Board corrects in this Order. *F.W. Woolworth Co. v. D.C. Bd. of Appeals & Review*, 579 A.2d 713, 716 (D.C. 1990); *see also Transcript*, Jul. 20, 2016 at 103 (the prosecutor said in closing, "it doesn't matter whether you're serving food or not, your hours of operation end at 2:00, everybody needs to be out except for employees who are . . . cleaning up.").

I. Background

1. Noble Lounge holds a Retailer's Class CT License at 1915 9th Street, N.W., Washington, D.C. *ABRA License No. 85258.*

2. On Thursday, November 19, 2015, ABRA received a hotline phone call from MPD complaining that people inside the establishment were not letting officers enter around 3:30 a.m. *Transcript* (*Tr.*), July 27, 2016 at 10-11. ABRA sent ABRA Investigator Dorshae Demby and ABRA investigator Edgerton to respond to MPD's complaint. *Id.*

3. Investigator Demby arrived at the establishment around 3:50 a.m. and observed an MPD vehicle parked outside the establishment with its lights on. *Id.* at 11, 41. He further observed an officer standing by Noble Lounge's front door. *Id.* at 11. Standing outside Noble Lounge, Investigator Demby heard people inside the premises making "shushing" sounds and telling others to be quiet. *Id.* at 11-12.

4. The officer standing by the door informed Investigator Demby that she and her partner were patrolling the area when they noticed the establishment still open. *Id.* at 13. Before calling ABRA, she went to the front door and her partner attempted to enter through the rear of the establishment. *Id.* at 13.

5. Investigator Edgerton went to the rear of the establishment to join the officer in the back, while Investigator Demby began knocking loudly on Noble Lounge's front door. *Id.* at 14. He then identified himself and demanded entry in a loud voice so that the people inside could hear him. *Id.* at 15.

6. After knocking and yelling, no one inside the establishment responded and the lights remained off. *Id.* However, Investigator Demby heard an upset female inside the patron say that she wanted to go home. *Id.* He then heard people inside the establishment "shush" her and saying "be quiet." *Id.* at 15. Investigator Edgerton returned to the front of the establishment and indicated that the back door was unlocked; however, when he tried to open it, someone inside the establishment slammed their body against the door and locked it. *Id.* at 17. At this point, the investigators had been at the establishment for approximately twenty to thirty minutes. *Id.*

7. Investigator Demby then obtained the owner's contact information and called the owner of Noble Lounge. *Id.* at 19. The owner picked up the phone. *Id.* at 20. Investigator Demby asked her to come to the establishment to open the door, but she indicated that she could not come to the establishment because she had child care responsibilities. *Id.* The owner indicated that she would call the manager inside the establishment, who she identified as "Dawit." *Id.* After a number of calls, the manager came down and opened the door. *Id.* at 21. Mr. Dawit opened the door around 5:10 a.m. *Id.* at 23.

8. Investigator Demby, Investigator Edgerton, and an MPD officer then entered the establishment and walked up the steps. *Id.* at 24. Upon reaching the second floor, he observed thirty-five to forty people sitting and standing upstairs. *Id.* at 24, 26. When the people saw the investigators and police officers they began gathering their things and leaving. *Id.* at 24. One

individual was rolling a cigarette, lit it, and about to smoke it until Mr. Dawit told him to put it out. *Id.* Investigator Demby saw no alcohol out or in anyone's possession, but he observed two females wearing black behind the bar engaging in cleaning. *Id.* at 25, 28. He further noted that many people were dressed as if they were "going out" and appeared to have consumed alcohol. *Id.* at 27, 28.

9. Mr. Dawit did not respond to Investigator Demby when asked why he did not open the door. *Id.* Mr. Dawit was also not able to produce a manager's license and indicated that he did not have a license. *Id.* at 25-26.

10. Investigator Demby also conducted a regulatory inspection downstairs after observing the upstairs. *Id.* at 29. He observed that the establishment's license was face down on the fireplace, and could not be seen. *Id.*

11. Mr. Dawit told Investigator Demby that he thought the establishment could remain open until 5:00 a.m. *Id.* at 30. In fact, the Noble Lounge's licensed hours of operation ended at 2:00 a.m. *Id.* at 31.

12. Melat Tessera owns Noble Lounge. *Id.* at 3. She indicated that Nebiu Ali was managing the establishment from 11:00 a.m. to 2:00 a.m., but went home after 2:00 a.m. *Id.* at 58, 80.

CONCLUSIONS OF LAW

13. 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(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). 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.

II. Standard of Proof

14. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). 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).

III. The Respondent's Employee Knowingly Delayed ABRA and MPD's Entry onto the Premises in Violation of § 25-823(a)(5).

15. The Board finds the Respondent in violation of § 25-823(a)(5) because the Respondent's employee knowingly and unreasonably delayed ABRA investigators and MPD officers on November 19, 2015.

16. Under § 25-823(5),

> The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if: . . . [t]he licensee fails or refuses to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation.

D.C. Official Code § 25-823(a)(5).

17. In *Bistro 18*, the court indicated that a licensee may be held responsible for the violation of an employee or agent under a theory of "*respondeat superior.*" *Sami Restaurant, LLC, t/a Bistro 18 v. District of Columbia Alcoholic Beverage Control Bd.*, No. 14-AA-277, 5 (D.C. 2015). The court explained that a finding of liability for an agent's "conduct" when the conduct consists of "the kind of work she is employed to perform, within the authorized space and time limits, and motivated at least in part by a purpose to serve the employer." *Id.* In light of this interpretation, the court affirmed that the Board could find that the licensee's employees unlawfully interfered with an investigation by preventing an investigator from "documenting alcohol consumption" inside the establishment. *Id.*

18. Further, a logical extension of the court's reasoning in *Bistro* 18 is that employees employed as managers, security, bussers, or waitstaff include the expectation of compliance with the city's alcohol laws and "limited interaction with ABRA investigators" as part of their duties. *Id.*

19. In this case, the facts show that Mr. Dawit was an employee of the Respondent, who was engaged in operating the establishment during the early morning hours of November 19, 2016. *Supra*, at ¶¶ 2, 7. Despite being aware that ABRA and MPD sought admittance, Mr. Dawit either through his own actions or in conspiracy with others sought to hide the presence of patrons by unsuccessfully keeping the crowd quiet and ignored the lawful orders of ABRA investigators and MPD officers to allow them to enter for a significant period of time. *Supra*, at ¶ 6. Furthermore, when one investigator found an unlocked door, a person inside the establishment—clearly attempting to keep ABRA and MPD out—slammed their body against the door to close it. *Id.* As in *Bistro 18*, Mr. Dawit's actions prevented ABRA and MPD from documenting activities inside the establishment, which benefitted the Respondent in this case by preventing ABRA from confirming whether patrons were illegally consuming alcohol after the end of the establishment's legal hours. For these reasons, the Board sustains Charge I.

IV. The Respondent Violated § 25-823(a)(7) by operating in violation of its Board approved hours of operation.

20. The Board further concludes that the Respondent violated its hours of operation on November 19, 2015. Under § 25-823(a)(7), a licensee must "follow the terms of its license approved by the Board." D.C. Official Code § 25-823(a)(7). In this case, the Respondent's

license required that it cease operations at 2:00 a.m. *Supra*, at ¶ 11. Nevertheless, the Respondent's continued to host patrons and operate past 5:00 a.m. when discovered by ABRA and MPD on November 19, 2015. *Supra*, at ¶ 8. For these reasons, the Board sustains Charge II.

V. The Respondent Failed to Supervise the Establishment While Operating in Violation of November 19, 2015.

21. The Board next finds that the Respondent violated § 25-823(a)(3) on November 19, 2015. Under § 25-823(a)(3), all licensees are obligated "to superintend in person, or through a manager approved by the Board, the business for which the license was issued" D.C. Official Code § 25-823(a)(3). It should be noted that this requirement includes all times when the business is in operation. *2447 Good Hope Rd., Inc. v. D.C. Alcoholic Beverage Control Bd.*, 295 A.2d 513, 516 (D.C. 1972). In this case, no licensed manager was present on the date of the incident while the establishment was in operation. *Supra*, at ¶¶ 9, 12.

VI. The Respondent Failed to Conspicuously Post its License.

22. Finally, the Board finds that the Respondent failed to post its license conspicuously on November 19, 2015. Under § 25-711(a), "A person receiving a license to manufacture, sell, or permit the consumption of alcoholic beverages shall frame the license under glass and post it conspicuously in the licensed establishment." D.C. Official Code § 25-711(a). In this case, the license was not visible to the public on the fireplace; therefore, there is sufficient evidence in the record to sustain Charge IV. *Supra*, at ¶ 10.

VII. Penalty

23. The Board is empowered to penalize a licensee for violation of Title 25 of D.C. Official Code. D.C. Official Code § 25-823.

24. A violation of §§ 25-823(a)(5) and 25-823(a)(7) are deemed primary tier violations, while a violation § 707.1 is deemed a secondary tier violation. 23 DCMR § 800 (West Supp. 2016).

25. Noble Lounge previously committed two primary tier violations in the past three years. *Investigative History*, Noble Lounge (Aug. 29, 2016). The fine range for a third primary tier violation is between $4,000 to $6,000. 23 DCMR § 800.1(c) (West Supp. 2016). The Board issues a $4,000 fine, with two days served and three days stayed for Charge I. In addition, the Board issues a $3,000 fine for Charge II.

26. Moreover, Noble Lounge also previously committed two secondary tier violations 23 DCMR § 802.1(C). The fine range for a third secondary tier violation within three years is between $500 and $750. 23 DCMR § 802.1(C). The Board issues the maximum $750 fine for Charge III because this represents the third time the Noble Lounge has violated the manager requirement. *Investigative History*, Noble Lounge (Aug. 29, 2016). The Board issues a warning for Charge IV because the violation appears accidental.

ORDER

Therefore, the Board, on this 12th day of July 2016, finds that Yetenbi, Inc.., t/a Noble Lounge, guilty of violating §§ 25-823(a)(5), 25-823(a)(7), and § 707.1. The Board imposes the following penalty on Noble Lounge:

(1) For the violation described in Charge I, Noble Lounge shall pay a $4,000 fine. The Respondent shall also receive a two (5) day suspension of its license for this offense. The Respondent shall also receive three (3) stayed suspension days, 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) For the violation described in Charge II, Noble Lounge shall pay a fine of $3,000.

(3) For the violation described in Charge III, Noble Lounge shall pay a fine of $750.

(4) For the violation described in Charge IV, the Board issues Noble Lounge a **WARNING** for violating D.C. Official Code § 25-711 by failing to have its licensed properly posted.

IT IS FURTHER ORDERED that the 2 day suspension of the Respondent's license shall start on October 28, 2016, and end at 11:59 p.m. on October 29, 2016.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within sixty (60) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED that the Respondent shall be deemed to have committed two primary tier violations and one secondary 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

Ruthanne Miller, Member

James Short, 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).