

I. Background

1. Premises 1413 K Street, N.W., Washington, D.C., was previously occupied by Inner Circle 1413, LLC, t/a Tattoo (Tattoo). *ABRA Licensing File No. 075156*, Accela Database, CAP Summary (last visited Nov. 16, 2015). Tattoo operated under a Retailer's Class C Nightclub identified as ABRA License No. 075156. *Id.* Tattoo's initial application for licensure indicates that it only sought to occupy the first floor of the premises. *ABRA Application License No. 75156*, ABRA Application, Business Information, Question 4 (received Apr. 18, 2006). Tattoo's sole owner is Michael Rehman. *Id.* Tattoo also filed a Certificate of Occupancy that indicates that it was only approved by the District of Columbia Department of Consumer and Regulatory Affairs to operate on the first floor and mezzanine. *Certificate of Occupancy*, CO 156915 (Nov. 30, 2007).
2. On September 21, 2015, the Alcoholic Beverage Regulation Administration (ABRA) received an application to transfer Tattoo's license to Boyermarketing, LLC, t/a Odessa (Odessa). *ABRA Licensing File No. 100813*, Transfer Consent Form (received Sept. 21, 2015). The application indicates that Ajiboye Laosebikan holds a 100 percent interest in Odessa. *ABRA Licensing File No. 100813*, ABRA Application, Question 18 (received Sept. 21, 2015). In its transfer application, Odessa indicated that it sought to operate in the building's first floor and mezzanine area. *ABRA Licensing File No. 100813*. Odessa further indicated in its application that it would not seek a substantial change to its operations. *ABRA Licensing File No. 100813*, Transfer Consent Form, Question 6 (received Sept. 21, 2015).
3. Odessa filed a lease between landlord Silicon 13, LLC, and Odessa. *ABRA Licensing File No. 100813*, Retail Lease, 1 (Apr. 20, 2015). The lease indicates that the term "premises" means the "2,535 square feet of rentable area located on the First (1st) floor of the Building." *Id.* at Art. I(a). Under Article II, § 2.1, the Landlord leased "Premises," defined as the first floor, and permitted Odessa to use the building's common areas. *Id.* at Art. II, § 2.1.
4. As of November 18, 2015, the transfer application has not been approved by the Board. Moreover, the Board has not issued a Temporary Operating Retail Permit to Odessa, which permits an applicant to operate an establishment, while a transfer application is pending review. 23 DCMR § 703.1 (West Supp. 2015).
5. The application contained a transfer without sale agreement between Odessa and Tattoo, which was executed on September 16, 2015. *Case Report No. 100813*, Exhibit 15.

II. November 1, 2015

6. On Sunday, November 1, 2015, Supervisory Investigator Craig Stewart received an anonymous tip regarding an establishment operating without an appropriate alcohol license. *Case Report No. 15-CMP-00761*, 1. He arrived at 1413 K Street, N.W., around 1 a.m. *Id.* Supervisory Investigator Stewart was aware that Tattoo previously operated in that space.

7. Upon arriving at the establishment, he observed Tattoo's front door covered with brown paper. *Id.* at 2. He was able to see evidence of construction in an empty space in the building. *Id.* He also heard amplified music emanating from the premises. *Id.* He then entered the building and proceeded down a flight of stairs into the basement. *Id.* Upon descending the stairs into the basement, he observed a full length mirror that swung open when patrons exited the room. *Id.*

8. Supervisory Investigator Stewart walked through the mirror door and was stopped by an individual requesting identification. *Id.* He noted that approximately 100 patrons were located inside the basement of the building. *Id.* He further saw mounted speakers playing music, a fully stocked bar, and a bartender and bar backs. *Id.*

9. Supervisory Investigator Stewart presented his badge and credentials and asked to speak with the manager or owner. *Id.* Supervisory Investigator Stewart was approached by Jeffrey M. Coles, who holds a manager's license. *Id.* He then asked Mr. Coles to present the establishment's license and Certificate of Occupancy. *Id.* Mr. Coles retrieved the establishment's alcohol license, which was located behind a number of alcoholic beverages and not clearly visible to the public. *Id.* The license and Certificate of Occupancy presented by Mr. Coles indicated that the documents belonged to Tattoo. *Id.* He then requested to speak with the owner. *Id.*

10. The manager called the owner on the telephone and indicated that Ajiboye Laosebikan was on the phone. *Id.* The person on the phone identified himself as Mr. Laosebikan. *Id.* Mr. Laosebikan indicated that Tattoo had transferred its license to Odessa. *Id.*

11. Supervisory Investigator Stewart returned to ABRA's headquarters to look into Odessa's licensing status. *Id.* He determined that ABRA's records show that Tattoo's license is still active, but that it does not cover the basement of 1413 K Street, N.W. *Id.*

12. Supervisory Investigator Stewart also obtained alcohol invoices from licensed wholesalers. *Id.* at 3. The invoices show that Odessa bought alcohol from wholesalers on October 9, 2015, October 23, 2015, and October 30, 2015 using Tattoo's accounts. *Id.* at Exhibit Nos. 20-23. In addition to beer and wine, the invoices show that Odessa purchased the following spirits from Southern Wine & Spirits of Maryland and D.C. (Southern): El Silencio Mezcal Espanadin; Ramazzotti Amaro Liquor, Ramazzotti Sambuca; St. Elder Elderflower Liqueur; and Strega Liqueur. *Id.*

III. Prior History of Ajiboye Laosebikan

13. Supervisory Investigator Stewart also reviewed Case Report No. 15-251-00078, dated March 7, 2015. *Id.* at 3. The case report indicated that Mr. Laosebikan, while managing another establishment, previously forged an ABC Managers license and attempted to deceive an ABRA investigator. *Id.*

IV. Odessa in the Media

14. Social media on the internet indicates that the establishment trades as “The Speak,” and has a “secret bar” or “speakeasy” theme. *Id.* at 3; Exhibit No. 26. Advertisements show that the establishment has been offering drink specials since May 13, 2015. *Id.* at 3. Supervisory Investigator Stewart also observed that Seth McClellan presented himself as the establishment’s owner in June 2015. *Id.* at 3-4.

CONCLUSIONS OF LAW

15. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public . . .” D.C. Official Code § 25-829(a).

16. Based on Supervisory Investigator Stewart’s investigation, it is clear that the establishment has committed several violations of the law. First, Odessa sold alcohol without a license in violation of D.C. Official Code § 25-102. Second, Odessa engaged in an illegal expansion of the premises into the basement in violation of D.C. Official Code § 25-762. Third, Odessa illegally purchased spirits from a licensed wholesaler in violation of D.C. Official Code § 25-111(a). In light of these facts, Odessa is ordered to place Tattoo’s license into safekeeping pursuant to § 25-791. Furthermore, based on the severity of these violations, the Board orders Odessa to also cease and desist its unlicensed and illegal activity at 1413 K Street, N.W., in accordance with the Board’s Order below.

I. ODESSA SOLD ALCOHOL WITHOUT A LICENSE IN VIOLATION OF § 25-102.

17. The Board agrees with Supervisory Investigator Stewart’s conclusion that Odessa sold alcohol without a license on November 1, 2015. *Case Report No. 15-CMP-00761*, at 1. Under § 25-102(a), “[n]o person shall sell any alcoholic beverage in the District without having first obtained an appropriate license as required by this title.” D.C. Official Code §25-102(a). Further, under § 25-102(d)

[n]o person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation or where facilities are especially provided and service is rendered for the consumption of alcoholic beverages who does not possess a license under this title shall permit the consumption of alcoholic beverages on the premises.

D.C. Official Code § 25-102(d).

18. Supervisory Investigator Stewart observed Odessa operate a full service bar on November 1, 2015. *Supra*, at ¶ 8. The establishment has been selling alcohol in the basement of 1413 K Street, N.W., since May 2015. *Supra*, at ¶¶ 1, 14. Yet, Odessa has never been licensed to sell alcohol at 1413 K Street, N.W. and its transfer application was never approved by the Board. *Supra*, at ¶ 4. Furthermore, even if Odessa was authorized to use Tattoo's license, Tattoo was never authorized to operate in the basement of 1413 K Street, N.W. Therefore, the Board finds sufficient information to sustain a violation of § 25-102.

II. ODESSA ENGAGED IN AN ILLEGAL SUBSTANTIAL CHANGE BY OPERATING IN THE BASEMENT IN VIOLATION OF § 25-762.

19. The Board agrees with Supervisory Investigator Stewart's conclusion that Odessa engaged in an illegal substantial change while its transfer was pending. Under § 25-762, the expansion of an "establishment to another floor" is deemed a substantial change. D.C. Official Code §25-762(b)(3). The law requires that all substantial changes be approved by the Board before making the change in operations. D.C. Official Code § 25-404(a), 25-762(a). In this case, Tattoo has never applied to expand its operations to its basement. *Supra*, at ¶ 1. Moreover, in its application, Odessa indicated that no substantial change would occur. *Supra*, at ¶ 2. As a result, even if Odessa was authorized to begin operations, it could not operate in the basement until it filed a substantial change. Therefore, the Board has sufficient grounds to deem Odessa in violation of § 25-762 for operating in the unapproved basement.

III. ODESSA FAILED TO OBTAIN A TEMPORARY OPERATING RETAIL PERMIT.

20. Under § 703.1, "The purchaser of an ABC licensed establishment awaiting Board approval on a transfer of ownership application where no substantial change will occur may apply to the Board for a permit to temporarily operate under the license . . ." 23 DCMR § 703.1 (West Supp. 2015). Odessa has been operating and selling alcohol since May 13, 2015; yet, only filed to transfer the license on September 21, 2015. *Supra*, at ¶¶ 2, 14. At no time has Odessa ever applied for or received a Temporary Operating Retail Permit in accordance with § 703. *Supra*, at ¶ 4. Consequently, Odessa had no authority to operate and sell, serve, or permit the consumption of alcohol on the premises between May 2015 and November 1, 2015. *Supra*, at ¶¶ 8, 14.

IV. ODESSA PURCHASED SPIRITS FROM A WHOLESALER IN VIOLATION OF § 25-111(a).

21. Supervisory Investigator Stewart's report further shows that Odessa bought spirits from a wholesaler in violation of § 25-111. Under § 25-111(a), licensed wholesalers are not permitted to sell spirits to unlicensed individuals and entities. D.C. Official Code § 25-111(a). As noted above, the Board had never approved Odessa's transfer application; yet, it went ahead and used Tattoo's accounts to purchase spirits from Southern. *Supra*, at ¶ 12. Therefore, there is sufficient evidence to sustain a violation of § 25-111, and to order Odessa to cease violating this

provision of the law, which irreparably harms licensed wholesalers by deceiving them into engaging in illegal activity.

V. TATTOO'S LICENSE MUST BE SURRENDERED TO THE BOARD BASED ON ON THE CESSATION OF ITS OPERATIONS.

22. Under § 25-791(a), "A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping." D.C. Official Code § 25-791(a). In this case, Tattoo gave its license to Odessa and executed a transfer without sale on September 16, 2015. *Supra*, at ¶¶ 5, 9. Therefore, Tattoo has legally discontinued operations, and the license must be surrendered to the Board for safekeeping in accordance with § 25-791.

VI. ODESSA'S CONTINUED OPERATIONS CONSTITUTE AN IMMEDIATE AND IRREPERABLE HARM TO THE PUBLIC.

23. Under the law, § 25-829(a) permits the issuance of a cease and desist order when a violation threatens "immediate and irreparable harm to the public." D.C. Official Code § 25-829(a). The Council of the District of Columbia provided the Board with a cease and desist power for the purpose of combatting the unlicensed sale and service of alcohol. D.C. Council, Report on Bill 13-449 at 155 (Nov. 20, 2000). The unlicensed sale of alcohol poses a danger to the public for several reasons: (1) the presence of an unlicensed establishment hinders the city's ability to provide adequate coverage by police and other emergency services, because the city is not on notice that an alcohol establishment is operating on the premises; (2) the staff of an unlicensed establishment may not have adequate training to provide security, address violent or inebriated patrons, or otherwise manage emergencies; (3) an unlicensed establishment is not subject to regular inspections; and (4) the premises have not been adequately vetted to ensure that operations are safe for the public or otherwise cause disturbances. *See* D.C. Official Code §§ 25-113(d)(1) (requirement that nightclubs operate in accordance with security plans); 25-201(c)(4) (duty to inspect); 25-335(1) (requiring denial based on a violation of the Construction Codes and other public safety rules). Moreover, all violations of Title 25 of the D.C. Official Code constitute a nuisance as a matter of law and cannot be permitted to continue on an ongoing basis. D.C. Official Code § 25-805. Therefore, the Board finds sufficient grounds to order Odessa to cease its illegal operations.

ORDER

Therefore, the Board on this 18th day of November 2015, hereby orders Boyermarketing, LLC, t/a Odessa and its agents to **CEASE AND DESIST** distributing, purchasing, selling, serving, or otherwise permitting the consumption of alcoholic beverages at 1413 K Street, N.W.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-115(c) and 23 DCMR § 1003.1, that ABRA shall no longer issue temporary licenses and one-day substantial change licenses for 1413 K Street, N.W.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA

refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance), if necessary.

IT IS FURTHER ORDERED that Tattoo's license, in the possession of Odessa, shall be surrendered to ABRA pursuant to D.C. Official Code § 25-791 for safekeeping. Alternatively, ABRA is hereby authorized to seize the Tattoo license pursuant to this Order and D.C. Official Code § 25-801(f) and (g).

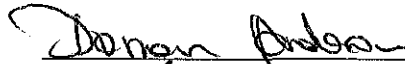
IT IS FURTHER ORDERED that Odessa shall cease using Tattoo's accounts to purchase spirits from wholesalers in violation of § 25-111(a).

The Board **ADVISES** Odessa that a copy of this Order is being forwarded to the Metropolitan Police Department and licensed wholesalers to ensure compliance. If it is found that you are continuing to sell, serve, or permit the consumption of alcoholic beverages without approval from the Board, you may be subject to both civil and criminal penalties.


The Board **ADVISES** Odessa that the Board may consider the record in this matter in determining whether Odessa qualifies for licensure under D.C. Official Code § 25-301, or otherwise merits the transfer of Tattoo's license in accordance with D.C. Official Code § 25-405 and 23 DCMR § 401.1.

ABRA shall serve notice by certified mail or personal delivery to Jeff Jackson.


District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson




Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, 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 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).