

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

In the Matter of:)
)
Boyermarketing, LLC)
t/a Odessa)
)
Applicant for a)
Retailer's Class CN License)
)
1413 K Street, N.W.)
Washington, D.C. 20005)
_____)

License No: 100813
Case No.: 15-CMP-00761
Order No: 2015-592

TO: Craig A. Butler, Esq.
Email: cab.esq@gmail.com
Email: cbutler@blgnow.com¹

**ORDER REQUIRING APPLICANT TO DEMONSTRATE FITNESS FOR LICENSURE
UNDER § 25-301**

The Alcoholic Beverage Control Board, on this 16th day of December 2015, **ORDERS** Boyermarketing, LLC, t/a Odessa (hereinafter "Applicant" or "Odessa") to appear at a **Qualifications Hearing**, located at the Reeves Center, 2000 14th Street, N.W., Suite 400, Washington, D.C., Suite 400 on January 20, 2016 at 2:30 p.m. Please note that the date and time of this hearing may be changed to accommodate the Applicant or any potential witnesses.

The purpose of the **Qualifications Hearing** is to determine whether the owners listed in the Application are qualified for licensure and whether the applicant has complied with the law related to the application. Because this hearing may result in an administrative action or order that impacts your rights, the hearing shall be conducted as a contested case hearing using the procedures provided by the D.C. Administrative Procedure Act (D.C. APA) (D.C. Official Code § 2-501 *et seq.*) and the protest procedures described in Title 23 of the D.C. Official Code (Title 23). See 23 DCMR § 1600.5, 1606.1-1606.8 (West Supp. 2014). Please also note that Title 25 of the D.C. Official Code (Title 25) places the burden of proof on the applicant to demonstrate through substantial evidence that he or she meets the qualifications for licensure. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2015).

¹ As of the date of this notice, Odessa's attorney has not filed a formal entry of appearance with the Board. As a result, the only point of contact on record with the agency is Mr. Butler's email.

All pleadings, or any other written communication, addressed to the Board, should be delivered to Martha Jenkins, General Counsel, 2000 14th Street, N.W., Suite 400, Washington, D.C. **You or your legal counsel, if represented, should contact General Counsel Martha Jenkins at (202) 442-4456 or abra.legal@dc.gov upon receipt of this notice to discuss any potential settlement, consent order, or stipulation that you want the Board to consider in lieu of a Qualifications Hearing in accordance with § 2-509(a).**

All documents referenced in this notice are incorporated by reference, and also form the basis of the count described below. Please contact William Hager at (202) 442-4425 or william.hager@dc.gov if you wish to obtain copies of any document cited in this notice.

Please also note that the Board has the right to obtain additional information regarding the application under 23 DCMR § 1611.1.

If the Board finds that any of the owners participating in the application are unfit for licensure, this may result in the denial of the application, as well as an inability of the Applicant, its owners, and other members, from renewing alcohol licenses or participating in other licensed establishments in the District of Columbia. In addition, in lieu of denying the application, the Board may impose conditions on the license under D.C. Official Code §§ 25-301 and 25-104(e). Finally, any information obtained during these proceedings may be used by ABRA or forwarded to other government agencies to support additional administrative or criminal actions against the applicant or the individual owners.

Under D.C. Official Code § 2-509(b), you may personally appear at the hearing, and you, as well as the applicant, may be represented by legal counsel. At your scheduled hearing, you have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may also examine evidence produced and have subpoenas issued on your behalf to require the production of witnesses and evidence.

The Board reserves the right to amend this notice in accordance with D.C. Official Code § 2-509 based on new information that is discovered during the hearing process. The Board also reserves the right to schedule additional hearings to address preliminary motions or additional information received by the Board during the hearing process.

All hearings are conducted before the Board in the English language. If a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the Board for the appointment of a qualified interpreter.

Please note that under § 2-509, your failure to appear at the time and place set for the hearing, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter or entering a default judgment based on the information contained below.

The basis of the contemplated action is certain information received by the Board. Specifically, the counts upon which this notice is based are set forth below:

Count I: **Ajiboye Laosebikan, the sole owner of the Applicant, lacks good character and is generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) because he permitted the sale of alcohol or otherwise sold or permitted the consumption of alcohol without a license in violation of D.C. Official Code § 25-102. This determination is supported by the following:**

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 (Application) 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 Application, Odessa indicates that it sought to operate in the building's first floor and mezzanine area. *ABRA Licensing File No. 100813*. Odessa further indicates in its Application that it will 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 the "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 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.

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 1:00 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 inside 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 Espandin; Ramazzotti Amaro Liquor, Ramazzotti Sambuca; St. Elder Elderflower Liqueur; and Strega Liqueur. *Id.*

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.*

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.

15. On Friday, November 20, 2015, the social media webpages associated with the The Speak have been removed from the internet. *Case Report No. 15-CMP—00761(a)*, 2.

16. Mr. Laosebikan holds a manager’s license, identified as ABRA License No. 098483. *ABRA Licensing File No. 098483* (Accela Database). The expiration date of the license is March 25, 2017. *Id.*

17. Case Report Nos. 15-251-00078 (Date of Occurrence Mar. 7, 2015), 15-CMP-00761 (Date of Occurrence Nov. 11, 2015), and 15-CMP-00761(a) (Date of Occurrence Nov. 11, 2015), and the exhibits found in those reports are incorporated by reference.

18. Odessa sold alcohol without a license on November 1, 2015. *Case Report No. 15-CMP-00761*, at 1.

19. Section 25-301 states, “Before issuing, transferring to a new owner, or renewing a license, the Board shall determine that . . . [t]he applicant is of good character and generally fit for the responsibilities of licensure.” D.C. Official Code § 25-301(a)(1). Under this statute, the Board may consider an applicant’s participation and involvement in illegal activity. *Minkoff v. Payne*, 210 F.2d 689, 690-91 (D.C. Cir. 1953) (saying evidence that an applicant engaged in violations of the law is sufficient to merit a finding that the applicant is unfit for licensure).

20. Furthermore, the Board’s precedent indicates that a violation of § 25-102 by an applicant while the application is pending is sufficient grounds to merit denial under the character and fitness standard. For example,

In *Shaw’s Tavern*, the Board previously denied an application for licensure, because the owner permitted the consumption of alcohol on the premises without a license, which rendered the owner unfit for licensure. *In re Shaw’s Tavern, LLC t/a Shaw’s Tavern*, Case No. 11-CMP-00314, Board Order No. 2011-458, ¶¶ 22, 31 (D.C.A.B.C.B. Nov. 2, 2011). There, the owner operated a tavern that had not yet opened for business, but held a number of preopening events that featured the consumption of alcohol. *In re Shaw’s Tavern, LLC t/a Shaw’s Tavern*, Case No. 11-CMP-00314, Board Order No. 2012-018, 7 (D.C.A.B.C.B. Jan. 25, 2012). Because the owner had applied for a tavern license, the owner was operating an establishment that required the possession of a license before alcohol could be consumed on the premises under § 25-102(d). *Id.*

In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, ABRA License No. 93491, Board Order No. 2014-119, *Proposed Findings of Fact, Conclusions of Law, and Order Finding Applicant Unfit for Licensure*, ¶ 35 (D.C.A.B.C.B. Apr. 23, 2014).

21. 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).

22. Supervisory Investigator Stewart observed Odessa operate a full service bar on November 1, 2015. *Supra*, at ¶ 8. The establishment has been selling and permitting the consumption of 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, Odessa sold alcohol without a license in violation of § 25-102, or at the very least allowed or permitted the illegal sale and consumption of alcohol on the premises.

Count II: Ajiboye Laoesebikan lacks good character and is generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) because he engaged in an illegal substantial change in violation of § 25-762. Furthermore, the Applicant made a false statement as described in D.C. Official Code § 25-401(c) by indicating that he would not engage in a substantial change This determination is supported by the following:

23. The narrative under Count I is incorporated by reference and forms part of the basis of Count II.

24. Odessa engaged in an illegal substantial change and misled the Board regarding its operations while its Application was pending review. Under § 25-762, the expansion of an “establishment to another floor” is deemed a substantial change. D.C. Official Code §25-762(b)(3). Under § 25-401(c), knowingly making a false statement in an application constitutes grounds for denying the application. D.C. Official Code § 25-401(c). 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 §§ 25-401 and 25-762 based on its operations in the unapproved basement, which merits a finding of unfitness.

Count II: Ajiboye Laoesebikan lacks good character and is generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) because he failed to obtain a temporary operating retail permit in accordance with 23 DCMR § 703. This determination is supported by the following:

25. The narrative under Count I is incorporated by reference and forms part of the basis of Count III.

26. 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, which merits a finding of unfitness. *Supra*, at ¶¶ 8, 14.

Count IV: Ajiboye Laoesebikan lacks good character and is generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) because he purchased spirits from a wholesaler in violation of D.C. Official Code § 25-111. This determination is supported by the following:

27. The narrative under Count I is incorporated by reference and forms part of the basis of Count IV.

28. 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, which merits a finding of unfitness.

Count V: Ajiboye Laoesebikan lacks good character and is generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) because he previously interfered with an investigation by forging a manager's license and presenting it to an ABRA investigator in violation of D.C. Official Code § 25-823(5). Furthermore, in the alternative, this conduct, in and of itself, constitutes good cause for finding Mr. Laoesebikan unfit for

licensure under § 25-301(a)(1). This determination is supported by the following:

29. The narrative under Count I is incorporated by reference and forms part of the basis of Count V.

30. Under D.C. Official Code § 25-823(a)(5), “The 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).

31. Case Report No. 15-251-00078, dated March 7, 2015, indicates that Mr. Laosebikan, while managing another establishment, previously forged an ABC Managers license and attempted to deceive an ABRA investigator during an investigation. *Supra*, at 3. Under these facts, Mr. Laosebikan violated § 25-823(a)(5), which merits a finding of unfitness.

Count VII: All or any of the violations contained in Counts I through IV merit denial of the Application in accordance with § 401.1, which states that “The Board may deny a license to an applicant if evidence shows that the applicant has permitted at the establishment conduct which is in violation of this title.” 23 DCMR § 401.1 (West Supp. 2015).


32. The narrative under Count I is incorporated by reference and forms part of the basis of Count VII.

Remedy: If the Board sustains any or all of the Counts contained in this notice, the Board may impose any or all of the following remedies:

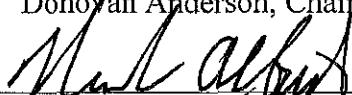
1. Denial of the Application;
2. Find that Ajiboye Laoesebikan and the Applicant are unfit for licensure in accordance with D.C. Official Code § 25-301(a)(1), which merits denial of the Application, including all other applications for licensure, including renewals, filed with ABRA for up to ten years in accordance with D.C. Official Code § 25-301(a-1). Such a finding may also result in the Board ordering the denial of any renewal application filed by Mr. Laoesebikan related to his manager’s license for a period of up to ten years.
3. The Applicant shall be prohibited from filing a successive application at 1413 K Street, N.W. for five years in accordance with D.C. Official Code § 25-338; and
4. Impose conditions on the license in accordance with D.C. Official Code § 25-104(e).

ABRA shall deliver a copy of this Order to the Applicant’s counsel by email in accordance with 23 DCMR § 1703.5(g).


District of Columbia
Alcoholic Beverage Control Board




Donoyan Anderson, Chairperson



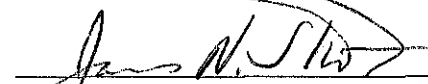
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, 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).