

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

In the Matter of:

De Amigo, LLC

t/a Sesto Senso/Andulo/Spot/Lupe/MIA

Holder of a

Retailer's Class CT License

at premises

1214 18th Street, N.W.

Washington, D.C. 20036

Case Number: 11-251-00372

License Number: 81092

Order Number: 2013-520

BEFORE:

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

ALSO PRESENT:

De Amigo, LLC, t/a Sesto Senso/Andulo/Spot/Lupe/MIA,
Respondent

Emanuel N. Mpras, on behalf of the Respondent

E. Louise R. Phillips, Assistant Attorney General

Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel

Alcoholic Beverage Regulation Administration

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

INTRODUCTION

The question before the Alcoholic Beverage Control Board (Board) is whether the Board is required to dismiss a show cause matter when De Amigo, LLC, t/a Sesto Senso/Andulo/Spot/Lupe/MIA (Respondent) received the relevant investigative report 164 days after the 90-day deadline described by District of Columbia (D.C.) Official Code § 25-832. The Board concludes that the timeline set by § 25-832 is directory, and that the Respondent was not prejudiced by the untimely service of the report. Therefore, the Board denies the Motion to Dismiss filed by the Respondent.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 15, 2013. *ABRA Show Cause File No.*, 11-251-00372, Notice of Status Hearing and Show Cause Hearing, 2-4 (Aug. 15, 2012). The ABRA served the Notice on the Respondent, located at premises 1214 18th Street, N.W. Washington, D.C., on August 26, 2012, along with the Investigative Report related to this matter. *ABRA Show Cause File No.*, 11-251-00372, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

Specifically, the Notice, charges the Respondent with the following violations:

- Charge I: [On November 24, 2011,] [y]ou allowed the licensed establishment to be used for an unlawful or disorderly purpose . . . [in violation of] D.C. Official Code § 25-823(2)
- Charge II: [On November 24, 2011,] [y]ou violated the "Security Inside the Club (9)" provision of your Security Plan, which requires that when breaking up an incident, Security must ensure the parties remain separated upon leaving and secure the front of the club for all customers leaving the club . . . [in violation of] D.C. Official Code § 25-823(6)
- Charge III: [On November 24, 2011,] [y]ou violated the Specific Guidenlines (d) provision of your Security Plan, which requires the establishment be equipped with [seven] security cameras that can record for 30 days . . . [in violation of] D.C. Official Code § 25-823(6)

Notice of Status Hearing and Show Cause Hearing, 2-4.

Only the Government appeared at the Show Cause Status Hearing on October 3, 2013. The Respondent filed a Motion to Dismiss based on the District of Columbia Court of Appeals Decision in 1900 M Restaurant Associations, Inc. t/a Rumors Restaurant, which the Board denied on April 10, 2013. The first Show Cause Hearing in this matter occurred on March 15, 2013, where the Government had the opportunity to present three witnesses and the Respondent had an opportunity to cross-examine the witnesses. The second part of the Show Cause Hearing was scheduled for September 18, 2013, but the Board granted the Respondent's Motion for a Continuance. The Respondent then submitted a second Motion to Dismiss on September 18, 2013. The Government subsequently filed an opposition to the second Motion to Dismiss.

FINDINGS OF FACT

1. The Simple Assault that occurred inside the Respondent's establishment occurred on November 24, 2011. Investigative Report, 11-251-00372, 1. On December 16, 2011,

the Applicant was unable to provide ABRA with the establishment's video footage related to the assault that occurred in November due to an alleged technical issue. Id. at 2. Therefore, the Board determines that the incident in this matter occurred on December 16, 2011, because this is the day that ABRA discovered that the Respondent failed to comply with its own security camera requirement contained in its security plan. Id. at 3-4.

2. The Respondent received the incident report related to this matter on August 26, 2012. This means the Respondent received the incident report 254 days after the incident occurred. See 23 DCMR § 102.1 (West Supp. 2013) (Computation of Time).

3. Finally, the Respondent received the investigative report in this matter after the 90-day deadline created by § 25-832. Specifically, service of the Investigative Report occurred 164 days after the deadline set by § 25-832. Nevertheless, the Respondent has not provided any facts showing that it suffered prejudice due to this error.

DISCUSSION

The Respondent moves to dismiss the charges brought by the Government under D.C. Official Code § 25-832, even though the record contains no facts showing prejudice to the Respondent.

In full, § 25-832 states,

(a) ABRA shall provide a licensee with either an investigative report or a public police incident report that may result in a show cause hearing as set forth in § 25-447 within 90 days of the date upon which the incident occurred.

(b) The requirement in subsection (a) of this section shall not apply where

(1) Criminal action is being considered against the licensee or its employees; or

(2) Enforcement action is requested by the Chief of Police under § 25-827.

D.C. Code § 25-832 (West Supp. 2013).

Recently, in Little Miss Whiskey's Golden Dollar, the Board determined that the 90-day deadline found in § 25-832 is directory, not mandatory. In re LMW, LLC, t/a Little Miss Whiskey's Golden Dollar, Case Number 12-CMP-00603, Board Order Number 2013-440, 3-4 (D.C.A.B.C.B. Oct. 2, 2013). Thus, in the case where ABRA delivers an investigative report to a licensee after the 90-day deadline, the Board will only dismiss the show cause action against a licensee when there is a showing of undue prejudice. Id. at 3.

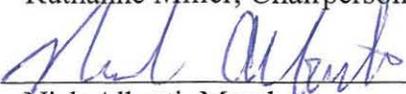
In this case, there is no reason to believe that the Respondent suffered undue prejudice. The Board agrees with the Government that the record contains no evidence of prejudice and that the Respondent's long delay in raising its § 25-832 claim shows that no prejudice occurred. The Board also finds that ABRA's investigator visited the establishment several times and spoke with the Respondent's employees, which gave the Respondent actual notice that the Simple Assault incident that occurred on November 24, 2011, was under investigation.

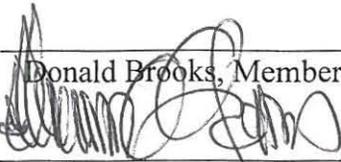
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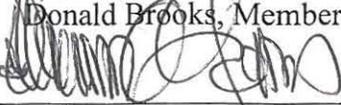
Therefore, for the foregoing reasons, the Board, on this 6th day of November 2013, hereby **DENIES** the Motion to Dismiss. Copies of this Order shall be sent to the Government and the Respondent.

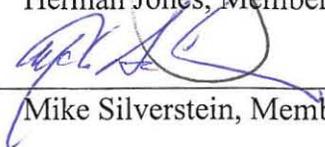
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, 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).