

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

In the Matter of:)	
)	
De Amigo, LLC)	Case Number: 11-251-00372
t/a Sesto Senso/Andulo/Spot/Lupe/MIA)	License Number: 81092
)	Order Number: 2014-252
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
1214 18th Street, N.W.)	
Washington, D.C. 20036)	

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds De Amigo, LLC, t/a Sesto Senso/Andulo/Spot/Lupe/MIA (hereinafter "Respondent" or "MIA") in violation of one count of violating D.C. Official Code § 25-823(2) and two counts of violating § 25-823(6). Specifically, the Board finds that on November 24, 2011, the Respondent permitted unlawful and disorderly conduct at the establishment and violated the terms of its security plan by ignoring the pleas of patrons involved in a prior altercation inside the establishment to call the police and then ejecting those same patrons into the same crowd that previously attacked them. The Board also finds that the Respondent further violated

its security plan by failing to maintain footage of the incident. In total, the Board imposes a fine of \$18,000 and places fifteen suspension days on the Respondent's license, with nine of those days to be served, and six days to be conditionally stayed for one year. The Board further notes that the violation found in this case triggers the five stayed conditional suspension days placed on the Respondent's license in Case Number 11-251-00062. The Board's reasoning is explained below.

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) . . .

Notice of Status Hearing and Show Cause Hearing, 2. The factual basis of Charge I are allegations that the establishment broke up an altercation inside the establishment and escorted a large group of patrons outside the establishment. *District of Columbia's Opposition to Respondent's Motion to Vacate Discharge and Dismiss Show Cause*, 4 [*Opposition*]. After the incident, three female patrons, who were attacked during the incident, requested that the establishment call the police and allow them to remain inside. *Id.* Nevertheless, the establishment refused this request and escorted the three patrons outside, resulting in the victims being immediately attacked by the first group of patrons escorted outside the establishment.¹ *Id.*

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)

¹ The Government also alleged that the establishment did not call the police after the victims were attacked outside; nevertheless, based on the short amount of time between the fight outside the establishment and the arrival of the police, the Board cannot reasonably fault the establishment for not calling the police after the fight outside the establishment occurred. *Opposition*, 4. As a result, the Board determines that the only remaining inquiry related to Charge I is whether the establishment's failure to notify the police after receiving a request from the victims to call the police is sufficient to merit a violation of § 25-823(2).

Charge III: [On November 24, 2011,] [y]ou violated the Specific Guidelines (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, 3-4.

Only the Government appeared at the Show Cause Status Hearing on October 3, 2012.² *Board's Calendar*, at 2 (Oct. 3, 2012). Both parties appeared at the second Show Cause Status Hearing on December 12, 2012, where the Board set the matter for a hearing on February 6, 2013. *Board's Calendar*, at 4, (Dec. 12, 2013). At the Show Cause Hearing on February 6, 2013, the Board postponed consideration of the Respondent's Motion to Discharge and Dismiss Show Cause, granted a consent motion by both parties to continue the hearing at a later date, and granted the Government's request to extend the time required for a response to the Respondent's motion. *Board Calendar*, at 4 (Feb. 6, 2013).

On April 10, 2013, after a number of continuances, the parties appeared before the Board for a Show Cause Hearing, which the Board converted into a Motions Hearing. *Supplemental Agenda*, Notice of Meeting (Feb. 20, 2013); *Board's Agenda*, at 3 (Mar. 13, 2013); *Board's Agenda*, at 3 (Apr. 10, 2013). The Motions Hearing dealt with the Motion to Discharge and Dismiss Show Cause filed by the Respondent, which alleged improper notice under D.C. Official Code § 25-832 and a failure to provide sufficient notice in light of the court's holding in 1900 M Restaurant Associations, Inc. t/a Rumors Restaurant (Rumors). *Transcript (Tr.)*, April 10, 2013, at 4-5. At the hearing, the Board orally dismissed the motion on the grounds that the notice should not be dismissed as a matter of law in accordance with Rumors, and that whether sufficient facts existed to substantiate Charges I through III were questions of material fact that should be addressed at the Show Cause Hearing. *Id.* at 54-56. The Board further found that the Notice, the investigative history included with the investigative report, and a later filed opposition to the Respondents' motion gave the Respondent reasonable notice of the Government's case; therefore, the Board rejected the Respondent's argument that the notice was deficient or defective. *Id.* at 56-57. The Board further granted the Government's motion to amend the Notice to incorporate the facts raised in its opposition and the Respondent's investigative history. *Id.* at 65-66.

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 request for a continuance. The Respondent then submitted a second Motion to Dismiss on September 18, 2013, based on the untimely service of the investigative report. *Resp. Mot. to Dismiss*, 1-4. The Government subsequently filed an opposition to the second Motion to Dismiss. *Opposition*, 1. In a separate written order, the Board denied the Respondent's motion to dismiss, because there was no evidence of undue prejudice. In re De Amigo, LLC, t/a

² The Board notes that Board Order No. 2013-520 incorrectly lists the date of this hearing as October 3, 2013.

The Show Cause Hearing continued on November 13, 2013, where both parties further presented their respective cases. The Board received Proposed Findings of Fact and Conclusions of Law from the both parties.

RESOLUTION OF PROCEDURAL CLAIMS

I. THE GOVERNMENT HAS PROVIDED THE RESPONDENT WITH REASONABLE NOTICE OF THE CHARGES IN ACCORDANCE WITH § 2-509(a) BY FULLY STATING THE FACTS AND LAW AT ISSUE THROUGH THE NOTICE, THE INVESTIGATIVE REPORT, AND THE GOVERNMENT'S OPPOSITION

1. Before the Board may reach the merits of this matter, the Respondent has charged in its Proposed Findings of Fact and Conclusions of Law that the Notice is defective as a matter of law, because it does not state the “method of operation” or “continuous course of conduct” at issue. *Respondent's Proposed Findings of Fact and Conclusions of Law*, at 14, 18-21 [*Resp. PFOFCOL*]. The Respondent also complains that the Government has not provided the Respondent with an amended notice, nor is the Government permitted to do so, which mandates dismissal of the charges. *Id.* at 21. The Board disagrees.

2. The Government pointed out in its opposition that the case report describing the incident also included the Respondent's investigative history, which describes seven prior incidents formally investigated by ABRA. *District of Columbia's Opp. to Resp. Mot. to Vacate Discharge and Dismiss Show Cause*, 2, 6; *Case Report No. 11-251-00372*, at 4. The Government's opposition further stated that it intended to rely on three of these incidents, and then described in detail how these cases established a continuous course of conduct. *Id.* at 5-12. The Government then made an oral motion to amend the Notice, which the Board approved on April 10, 2013. *Tr.*, 4/10/13 at 36, 65-66.

3. While Respondent cites a bevy of cases in support of its claims, the D.C. Administrative Procedure Act (Act) is the controlling authority. *Resp. PFOFCOL*, at 14-24. Section 2-509(a) of the Act states, “The notice shall state the time, place, and issues involved, but if, . . . subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto.” D.C. Official Code § 2-509(a).

4. In this case, the Government's Notice and opposition fully states the facts and law that underlie the charges brought by the Government. There is no requirement in Title 25 of the D.C. Official Code (Title 25), Title 23 of the D.C. Municipal Regulations, or the D.C. Administrative Procedure Act, that the issues may only be fully stated in the formal notice, or if stated in another document, the Notice must be amended accordingly. As a result, the Board finds that the D.C. Administrative Procedure Act allows the Government to rely on the Notice and its opposition to provide the Respondent with reasonable notice of the charges; especially, when no evidence exists in the record demonstrating that this reliance has prejudiced the Respondent in any way.

II. THE GOVERNMENT'S AMENDMENT OF THE NOTICE IS PERMITTED BY LAW AND DID NOT CAUSE PREJUDICE TO THE RESPONDENT

5. Separate and apart from the Board's determination above, even if a formal amended notice is required, the Board notes that the Notice was formally amended on April 10, 2013—a decision the Board affirms in this Order. While the Board's governing statute and regulations do not describe an amendment process, it has been previously established that permitting amendments are "within the ambit of the Board's discretion." Kingman Park Civic Ass'n, Et Al., v. District of Columbia Alcoholic Beverage Control Bd., No. 11-AA-831, 7 (D.C. 2012). The Board also notes that the D.C. Court of Appeals previously affirmed that a prosecutor could amend an information after the government presented its evidence and rested its case, when no additional offense is charged and there is no showing of prejudice. Bobrow v. U. S., 225 A.2d 311, 312 (D.C. 1967). Based on this precedent, the Board's granting of the Government's request to amend the Notice was appropriate and timely, because there is no showing of prejudice in the record; particularly, when the amendment occurred before the Show Cause Hearing, and only further explains the factual basis underlying Charges I through III.

III. SECTION 2-1801.02 DOES NOT APPLY TO PROCEEDINGS BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD

6. During closing arguments, the Respondent argued that the charging document filed by the Government violates D.C. Official Code § 2-1801.2 for containing an incorrect time. *Transcript (Tr.)*, November 13, 2013 at 352. Yet, there is no legal authority supporting this position. As noted in Bernstein, the purpose of the Civil Infractions Act, which contains § 2-1801.02, is to provide agencies with a means to impose alternative sanctions, ". . . not to replace existing authority to impose such sanctions." Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n, 952 A.2d 190, 195 (D.C. 2008). As a result, because the present case does not involve alternative sanctions and is not brought under the Civil Infractions Act, § 2-1801.02 has no bearing on the present matter.

7. Instead of relying on § 2-1801.02, the correct analysis is whether the error is prejudicial to the defense. Roberts v. United States, 752 A.2d 583, 590 (D.C. 2000). In this case, there is no showing that the listing of an incorrect time in the charging document prejudiced the Respondent; therefore, the Board has no cause to dismiss the Notice.³

8. Consequently, the Board finds that the Government has provided the Respondent with reasonable notice of both the facts and law at issue, and that the Board is entitled to reach a decision on the merits in the present matter.

³ The mere fact that a charging document lists an incorrect date and time is not sufficient to render the charging document defective. Roberts v. United States, 752 A.2d 583, 589 (D.C. 2000) citing Glasser v. United States, 315 U.S. 60, 66 (1942) ("The particularity of time, place, circumstances, causes, etc. . . is not essential to an indictment."). See also Scott v. City of Booneville, 962 So. 2d 698, 701 (Miss. Ct. App. 2007) ("An incorrect date will not render an indictment defective").

FINDINGS OF FACT

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:

9. MIA holds a Retailer's Class CT License, ABRA License Number 81092. See ABRA Licensing File No. 81092. The establishment's premises are located at 1214 18th Street, N.W., Washington, D.C. See id.

I. THE PRIOR HISTORY OF THE ESTABLISHMENT

A. Prior failures to contact the police.

10. The Government did not provide evidence that the establishment had failed to contact the police on prior occasions. See generally District of Columbia's Opposition to Respondent's Motion to Vacate Discharge and Dismiss Show Cause, 5-12 [Opposition]

B. Prior failures to separate patrons fighting in the establishment.

11. The Government did not provide evidence that the establishment had failed to eject patrons fighting inside the establishment separately. Id.

C. Prior failures to properly maintain the establishment's security footage.

12. The establishment has a well-documented history of failing to have functioning security cameras on the premises. On December 10, 2010, the Board held a Fact Finding Hearing where it was revealed that the establishment's cameras did not have sufficient recording capability; which, resulted in footage of an injured and intoxicated patron being carried from the establishment being erased. *Opposition, 7*. At the end of the Fact Finding Hearing, the Respondent pledged to update its security plan to mandate the retention of footage for thirty days. Id.

13. The establishment appeared before the Board for an additional Fact Finding Hearing related to sale to minor violations that occurred on February 18, 2011. *ABRA Fact Finding File No. 11-251-00062, Tr.*, Apr. 13, 2011; *Opposition, 12*. During ABRA's investigation, the investigator was unable to obtain the establishment's security footage due to alleged flooding in the Respondent's basement. *Opposition, 10*.

II. THE TESTIMONY OF TIMNIT SOLOMON

14. Timnit Solomon testified on behalf of the Government. *Tr.*, May 15, 2013 at 11. Ms. Solomon works as an accountant for a commercial real estate company. Id. at 12.

15. Ms. Solomon visited MIA on or about November 24, 2011, with her friends Serat Medhani and Walta Keflezghi. Id. at 13-14. Ms. Solomon recalls arriving in Alexandria, V.A., and visiting an acquaintance's apartment located on King Street. Id. at 14-15, 17.

Around midnight, Ms. Solomon and her two friends left the apartment. Id. at 14. They took a fifteen to twenty minute cab ride to MIA and arrived around 12:30 a.m. Id. at 16-17, 19.

16. After exiting the cab, Ms. Solomon and her friends went into the establishment and approached the bar. Id. at 17-18. Ms. Solomon remained at the bar with her friends and consumed at least one alcoholic beverage during a two-hour period. Id. at 19-21, 81. She noted that two other male friends had joined them at the establishment. Id. at 52-53. The establishment was not crowded. Id. at 82.

17. Around 3:00 a.m., Ms. Solomon was sitting with Ms. Medhani and Ms. Kiflezghi when she noticed that Ms. Medhani “had . . . a confused look on her face.” Id. at 19, 21-22, 83. Ms. Solomon took a step towards Ms. Medhani, but two women began hitting Ms. Solomon multiple times. Id. at 84. Ms. Solomon then fell to the floor. Id. at 23.

18. Ms. Solomon observed a member of the establishment’s security break up the incident, hold the attackers back, and order them to leave. Id. at 22-23, 69-70. She attempted to stand up, but as soon as she rose, a man hit her in the face. Id. at 23, 41. Ms. Solomon then fell to the floor and landed on her side. Id. at 23-24.

19. After standing up a second time, Ms. Solomon stood up and observed security kick everyone out of the establishment. Id. at 24. She realized that she had lost her purse and her necklace, and began to look for them. Id. Ms. Solomon was able to find her necklace near the bar area, which was approximately five feet away from where she was standing. Id. at 24, 37. Ms. Solomon observed Ms. Medhani and Ms. Kiflezghi also searching for their belongings at the same time. Id. at 24.

20. A member of the establishment’s security staff wearing dreadlocks then directed Ms. Solomon and her friends to leave the establishment. Id. at 24, 51. Ms. Solomon asked the employee to allow her to look for her purse, but he refused. Id. She also observed Ms. Medhani and Ms. Kiflezghi request to stay in the establishment to avoid being thrown out with the people who just attacked them; however, the employee refused this request. Id. at 25.⁴ She also noted that one of her friends requested that the establishment call the police. Id. at 31. According to the employee, Ms. Solomon and her friends had to leave, and he told them the police were outside. Id. at 25. Ms. Solomon noted that she was unable to call the police herself because her phone was in her missing purse. Id. at 32.

21. She and her friends left down the establishment’s stairs and left the establishment. Id. at 30. She estimated that approximately five minutes passed from when the assault began to when the establishment forced her to leave. Id. at 33. No one from the establishment’s security followed them outside. Id. at 53-54. Upon exiting, Ms. Solomon recalls seeing police in the street in front of the establishment. Id. at 71-72.

22. As soon as Ms. Solomon and her friends exited, a group of ten people—comprised of two men and eight females—attacked them. Id. at 25, 55. The group first attacked Ms.

⁴ We credit Ms. Solomon’s testimony that the victims made this request over the conflicting testimony of Mr. Mbeleg based on his prior inconsistent statements regarding the events surrounding the incident. Supra at ¶¶ 48-52.

Medhani, then Ms. Solomon, followed by Ms. Kiflezghi. Id. at 39. Ms. Solomon observed that she had two women hitting her before a police officer intervened and pulled Ms. Solomon away. Id. at 25, 54-55. Ms. Solomon recognized the people attacking her as the same people who attacked them in the club, because she observed the male patron that punched her inside MIA attack them outside the establishment. Id. at 39-40.

23. Ms. Solomon then attempted to console Ms. Medhani who was crying on the ground. Id. at 26. Ms. Solomon and Ms. Kiflezghi attempted to have the police make an arrest, but the officer took no action at first, even when they pointed out one of the female assailants. Id. at 26-27. She noted that the officer did not take any action even after the assailant they identified began throwing her shoes and threatening to fight them. Id. at 27. Ms. Solomon noted that the police eventually arrested one woman for civil assault. Id. at 27-28.

24. After the incident at MIA, at around 4:00 a.m., Ms. Solomon noticed her credit card had \$443.23 in fraudulent charges on the card. Id. at 56. She later reported the fraudulent charges to her credit card company. *Government's Exhibit D*. Ms. Solomon also never found her phone or purse, and lost her identification as a result of the incident. *Tr.*, 5/15/14 at 60. Finally, she also had a scratch on her forehead because of the incident. Id. at 34.

III. THE TESTIMONY OF SERET MEDHANI

25. Seret Medhani testified on behalf of the Government. Id. at 106-07. On November 24, 2011, Ms. Medhani confirmed Ms. Solomon's account of the period before she and her friends arrived at the Respondent's establishment. Id. at 107-12. She further recalled drinking at least one to two alcoholic beverages before arriving at the establishment. Id. at 110.

26. Ms. Medhani recalls arriving at the establishment with her friends. Id. at 113-14. She then asked the bouncer about the price of admission. Id. at 113-14. Upon obtaining admittance, her party went to the downstairs portion of the establishment. Id. at 115. She then ordered a drink, danced, and socialized. Id. at 115-16.

27. Around closing, Ms. Medhani recalls seeing the establishment escort people out of the establishment. Id. at 117. A female patron standing to the right of Ms. Medhani appeared to begin a verbal altercation with a female patron standing to Ms. Medhani's left. Id. at 117. The female patron standing on the right took a swing at the other female patron, but hit Ms. Medhani in the face. Id. at 117, 119. The female patron on the left then hit her in the face as well, along with another person. Id. at 117, 119-20. Ms. Medhani admitted that she then hit one of the women back in order to defend herself. Id. at 118. She then fell to the ground on her side and the people attacking her began to kick her. Id. at 124. The kicking only lasted a few seconds, and she was able to stand back up quickly. Id. at 126. The fight lasted approximately one minute before security came and broke the fight up. Id. at 118, 121. After the fight, Ms. Medhani realized her purse was missing. Id. at 126. Ms. Medhani attempted to look for her belongings, but the Respondent's staff told her to leave. Id. at 126-27.

28. Ms. Medhani spoke to the Respondent's security, and asked for permission to remain in the establishment or have the Respondent's security call the police. Id. at 127.

The security member told Ms. Medhani that the police were outside. Id. at 128. The establishment's security then walked Ms. Medhani's group to the stairs. Id. at 129. Ms. Medhani repeated her request to stay or have the establishment call the police. Id. at 131. The security member again told her that the police were outside. Id. at 131.

29. Before exiting, a man who was hit during the fight agreed to walk out with Ms. Medhani. Id. at 135. Ms. Medhani walked up the steps and exited the establishment with the man. Id. at 130, 137. Ms. Medhani saw a police cruiser outside the establishment, but did not see any police. Id. at 172.

30. Upon exiting, she was immediately attacked by a group of females. Id. at 136. Based on the number of people attacking her, Ms. Medhani could only attempt to protect her face as she fell to the ground. Id. at 138. When she arose, she saw a man holding Ms. Kiflezghi's purse. Id. She went to retrieve it, but the man punched Ms. Medhani in the forehead, which caused her to stumble back near the Eighteenth Street Lounge window. Id. She then saw police officers clearing the street. Id. at 138-39.

31. After the incident, Ms. Medhani visited the hospital on November 26, 2011. Id. at 154. Ms. Medhani suffered bruises and large amounts of swelling under her eye. Id. at 143. She also suffered injuries to her face, neck, and scalp. Id. at 147. Ms. Medhani paid approximately \$343 in hospital fees as a result of her injuries. Id. at 148. Finally, she also lost her purse, her phone, her bank card, her identification, and her car keys as a result of the incident. Id. at 158.

IV. THE TESTIMONY OF WALTA KIFLEZGHI

32. Walta Kiflezghi testified on behalf of the Government. Id. at 217. Ms. Kiflezghi confirmed Ms. Solomon and Ms. Medhani's account of the period before she and her friends arrived at MIA. Id. at 220-23. She recalled drinking one alcoholic beverage before she arrived at the establishment. Id. at 221.

33. Ms. Kiflezghi entered the establishment with her friends. Id. at 223-24. She approached the bar along with Ms. Medhani and Ms. Solomon. Id. at 226. She ordered a drink and estimates that she was in the club for approximately a half-hour before the incident began. Id. at 230-31.

34. Ms. Kiflezghi was standing by the bar when the incident reported by Ms. Medhani and Ms. Solomon began. Id. at 231. She recalled hearing a noise and turning to witness several individuals fighting with her friends. Id. Ms. Kiflezghi approached the scuffle and recalls getting struck during the altercation. Id. at 233, 272.

35. After the establishment broke up the fight and Ms. Kiflezghi left the establishment with her friends, a woman attempted to take her purse. Id. at 251. She recalled pulling on the purse until a random male patron went up to her and punched her in the face. Id. at 251. At that time, Ms. Kiflezghi stated she lost consciousness and fell to the ground. Id. She then recalled standing up and yelling for police assistance. Id.

36. She realized her purse was empty at the end of the fight. Id. at 255. According to Ms. Kiflezghi she lost her debit card, camera, makeup, and wallet. Id. at 256. She also

received injuries on her chin, eye, forehead, and back. *Id.* at 235-36, 266-67. Finally, she had a black eye for a number of weeks and could not open her eye for two days after the fight. *Id.* at 266, 288-89.

37. Ms. Kiflezghi also sought medical treatment after the fight on November 26, 2011. *Id.* at 260, 263. Her doctor ordered her to undergo a number of tests out of concern that she may have suffered internal injuries. *Id.* at 261.

V. THE TESTIMONY OF ABRA INVESTIGATOR ABYIE GHENENE

38. ABRA Investigator Abyie Ghenene testified on behalf of the Government. *Tr.*, November 13, 2013 at 4-5. Investigator Ghenene investigated the incident at the establishment. *Id.* at 21.

39. As part of his investigation, Investigator Ghenene interviewed the establishment's ABC Manager, Mr. Mehdi Ben El Ahmar. *Id.* at 22. The investigator requested the establishment's security footage from the seven security cameras maintained by the establishment. *Id.* at 24-25. In response, Mr. Ahmar told the investigator that he would not be able to provide the footage, because construction at the establishment caused damage to the system. *Id.* at 25.

40. As part of his investigation, Investigator Ghenene also interviewed Jeremy Mbeleg, one of the establishment's security guards. *Id.* at 22, 94. Mr. Mbeleg saw part of the assault described by Ms. Solomon. *Id.* at 24, 41. He told the Investigator that Mr. Mbeleg and another security member separated the parties and escorted ten individuals outside the establishment. *Id.* at 41, 66. The security members indicated that police officers were located outside the establishment, but they did not indicate that they notified the police either before or after security escorted the parties outside the establishment. *Id.* at 43. Mr. Mbeleg further admitted to Investigator Ghenene that they escorted everyone involved in the fight out of the establishment at the same time. *Id.* at 44, 51.

41. Investigator Ghenene also noted during their interview, that Mr. Mbeleg stated, . . . he did not witness what prompted the fight. Mr. Mbeleg stated that he and other Spot security responded to the area and immediately separated the combatants and escorted at least 10 people out of the establishment. Mr. Mbeleg stated that nobody from Spot called the police because he knew the police were in the area. Mr. Mbeleg stated that once outside he observed extremely large crowds of people and almost instantly, a large fight broke out involving many different people including some of those removed from Spot. Mr. Mbeleg stated that MPD officers arrived almost simultaneously and quelled the large brawl.

Case Report 11-251-00372, 2. Mr. Ahmar gave a similar account of the evening to Investigator Ghenene as well. *Id.* at 3.⁵

⁵ The Board accepts the prior statement of Mr. Mbeleg and Mr. Ahmar as a party admission. *Harris v. United States*, 834 A.2d 106, 115-16 (D.C. 2003) ("We have adopted the substance of Federal Rule of Evidence 801(d)(2) on 'admission by party-opponent,' and deem such statements to be admissible into evidence." Rule 801(d)(2) applies to out-of-court statements offered against a party that are: . . . a statement

VI. THE RESPONDENT'S SECURITY PLAN

42. Investigator Ghenene also reviewed the ABRA's files regarding the Respondent. Id. at 35-36. ABRA's records showed that the Board ordered the establishment to have a security plan as a result of an assault that occurred at the establishment. Id. at 36.

Furthermore, the Board has ordered the Respondent to update its security plan on three separate occasions. Id. at 36.

43. Section 9 of the portion of the security plan titled "Security Inside the Club" states,

When breaking up incidents, separate the groups immediately. Work together to make sure that both parties are removed and remain separated upon leaving. We are responsible for securing the area in front of the club and for all customers who leave the club within that area, not just the inside the club.

Case Report 11-251-00372, Exhibit 5.

44. Section 12(d) of the security plan states, "The club is also equipped with 7 security cameras that are able to record for 30 days." Id. At the time of the incident, the security plan did not describe the location of the establishment's security cameras. *Tr.*, 11/13/13 at 86.

VII. THE TESTIMONY OF OFFICER BRIAN BROWN

45. The Respondent called Metropolitan Police Department (MPD) Brian Alexander Brown to testify. *Tr.*, 11/13/13 at 96. On November 24, 2011, Officer Brown was patrolling Police Service Area (PSA) 208, the PSA where the Respondent's establishment is located. Id. at 97.

46. Officer Brown noted that he regularly parks near the establishment when he is on patrol. Id. at 157-58. On November 24, 2011, he did not witness a fight outside the establishment, but admitted that he could have missed the incident. Id. at 161.

47. Officer Brown recalls responding to the establishment on November 24, 2011, with at least three other officers. Id. at 100, 105. He recalled speaking to Ms. Solomon about an assault and observed injuries on the three victims. Id. at 101, 123, 152, 154. He did not recall observing any fighting at the establishment after he arrived. Id. at 102. He did not recall anyone asking to have someone arrested. Id. at 103. Officer Brown also spoke to the establishment's staff, but he did not recall them identifying any combatants. Id. at 104-05.

VIII. THE TESTIMONY OF JEREMY MBELEG

48. The Respondent called Jeremy Mbeleg to testify. Id. at 179-80. Mr. Mbeleg serves as the Respondent's security manager. Id. at 180.

by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship . . .") (citation removed).

49. Mr. Mbeleg was working at the establishment on November 23, 2011. Id. at 180. He recalled observing an altercation near the middle of the bar around 2:30 a.m. Id. at 180-81. He then used his radio to notify other employees that an altercation was occurring inside the establishment. Id. at 181-82.

50. Mr. Mbeleg intervened in the altercation in order stop the fight. Id. at 183. At the time of the incident, Mr. Mbeleg identified Ms. Solomon's group as the least aggressive, and separated them from patrons he deemed more aggressive. *Tr.*, 11/13/13 at 183. He then escorted the patrons he deemed more aggressive out the door. Id.

IX. RESOLUTION OF FACTUAL INCONSISTENCIES IN THE TESTIMONY OF JEREMY MBELEG

51. The Board does not credit Mr. Mbeleg's testimony that he "... notified ... MPD ... stationed outside the club" that he was escorting individuals outside and turned them over to MPD. Id. at 184. The Board is entitled to find testimony unreliable and lacking credibility when there is a "specific and legitimate reason[] for doing so." Jones v. District of Columbia Dept. of Employment Services, 41 A.3d 1219, 1222 (D.C. 2012). In response to the question of how MPD took over managing the patrons first escorted out by Mr. Mbeleg, Mr. Mbeleg stated, "I think I took them outside and they took over. I don't remember ... I don't recall." Id. at 224. There is also no testimony in the record supporting the assertion that MPD took control of the first batch of patrons escorted outside the establishment. See id. at 101.⁶ As a result, based on Mr. Mbeleg's deficient memory and lack of support in the record, we cannot credit Mr. Mbeleg's statement that MPD began managing the patrons outside the establishment. Instead, the Board finds that MPD may have been present outside the establishment at the time Ms. Solomon and her friends were escorted out, but there is no evidence that supports the conclusion that MPD had taken control over the situation or were aware that the establishment intended to escort a large group of patrons outside. See id. at 259-60.

52. The Board also does not credit Mr. Mbeleg's claim that no fighting occurred after he escorted Ms. Solomon and her friends outside the establishment. Id. at 187. The Board does not find this assertion by Mr. Mbeleg credible, because it contradicts his statement to Investigator Ghenene during an interview that a large fight occurred outside the establishment. Supra, at ¶ 41.

X. THE TESTIMONY OF MEHTI BENKHAYAT

53. Mehti Benkhayat, one of the Respondent's managing partners, testified on behalf of the Respondent. *Tr.*, 11/13/13 at 271. Mr. Benkhayat was present at the establishment on November 23, 2011, but he did not witness the altercation that occurred inside the establishment. Id. Mr. Benkhayat was outside the establishment when security escorted the first group of patrons outside the establishment. Id. at 272. He observed

⁶ Officer Brown did not mention MPD taking control of the situation or engaging in crowd control when he first arrived at the establishment. Id. at 101.

approximately two police officers in or near an MPD vehicle near the establishment. Id. at 272.

54. Mr. Benkhayat admitted that the cameras were not working on the night of the incident. Id. at 276-77. Mr. Benkhayat claimed that the camera system was not working due to water damage and construction. Id. at 277.

XI. RESOLUTION OF FACTUAL INCONSISTENCIES IN THE TESTIMONY OF MEHTI BENKHAYAT

55. The Board does not credit Mr. Benkhayat's claim that security escorted the first group to MPD. Id. at This claim is contradicted by Mr. Mbeleg's statement that a large fight broke out among the patrons escorted outside the establishment and that MPD quelled the brawl after it began. Supra, at ¶ 41.

56. The Board also does not credit Mr. Benkhayat's claim that no fighting occurred outside the establishment after the first group of patrons were ejected. Id. at 275. The Board does not find this assertion by Mr. Benkhayat credible, because it contradicts the statements made to Investigator Ghenene by Mr. Mbeleg during an earlier interview that a large fight occurred outside the establishment. Supra, at ¶ 41.

XII. RESOLUTION OF FACTUAL INCONSISTENCIES BETWEEN THE TESTIMONY OF THE VICTIMS AND THE RESPONDENT'S WITNESSES

57. The Respondent argues that the Board should deem the testimony of Ms. Solomon, Ms. Medhani, and Ms. Keflezghi unreliable, because they were under the influence of alcohol, and gave different statements regarding the timing of various events and minor inconsistencies in their testimony. Id. at 349-50. In addition, the Respondent argues that Officer Brown refuted their testimony. Id. at 350.

58. The Board disagrees with this argument. First, while the victims admitted they consumed alcohol during the evening, there is no evidence in the record that supports the conclusion that they were intoxicated. See supra, at ¶¶ 16, 25, 32. Second, the inconsistencies cited by the Respondent does not undermine the victims' testimony regarding the three major issues in the present action: (1) whether the establishment ignored the victims' request to contact the police; (2) whether the establishment failed to properly separate patrons before ejecting them from the establishment in violation of the establishment's security plan; and (3) whether the establishment's security cameras were operational in accordance with the establishment's security plan. In addition, the Board finds that the general events outlined by the victims are the only reasonable explanation for how they received the injuries identified in the record.⁷ Supra, at ¶¶ 24, 31, 36, 47. Finally, the Board finds that Officer Brown did not refute the testimony of the victims based on his admission that he could have missed the altercation and his observation that the victims were injured. Supra, at ¶ 46.

⁷ In order to credit the story presented by the Respondent's witnesses, the Board would have to believe that after MPD arrived, the victims walked away from the establishment, got beat up out of the sight of both MPD and the Respondent's security, and then returned to the establishment in order to speak to Officer Brown.

CONCLUSIONS OF LAW

59. The Board has the authority to levy fines, as well as suspend or revoke the license of a licensee who violates any provisions of Title 25 of the District of Columbia Official Code or Title 23 of the District of Columbia Municipal Regulations. D.C. Code §§ 25-830, 25-823(1); see also 23 DCMR § 800, *et. seq.* (West Supp. 2014). 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. Code §§ 25-830, 25-447.

60. The Board finds the Respondent guilty of three charges brought by the Government.

I. THE BOARD FINDS THAT THE RESPONDENT VIOLATED § 25-823(2) ON NOVEMBER 24, 2014 BY FAILING TO CONTACT THE POLICE AND EJECTING THE VICTIMS INTO A HOSTILE CROWD WHICH LED TO THE ASSAULTS AGAINST THE VICTIMS.

61. Under § 25-832(2), “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: . . . The licensee allows the licensed establishment to be used for any unlawful or disorderly purpose.” D.C. Official Code § 25-823(2).

62. In 1900 M Restaurant Associations, the court provided two tests to determine whether a licensee violated § 25-832(2). 1900 M Rest. Associations, Inc. v. D.C. Alcoholic Beverage Control Bd., 56 A.3d 486, 493-94 (D.C. 2012). First, under the continuous course of conduct test, a violation may be found when “. . . there is substantial evidence of a course of conduct, continued over time, that reflects the licensee's adoption of a pattern or regular method of operation that encouraged, caused, or contributed to the unlawful or disorderly conduct at issue. Id. at 493. Under this test, “[t]he evidence upon which the Board rests its conclusion must have a ‘demonstrable connection’ to the establishment's operation.” Id. Second, under the single instance test, “[i]n the absence of evidence of a continuous course of conduct, it may be sufficient that the licensee's method of operation created an environment that fostered or was conducive to the unlawful or disorderly conduct that inevitably took place.” Id. at 493-94. In Levelle, the court affirmed that, among other actions, a licensee’s “failure to properly communicate with police about incidents” is “. . . the type[] of omission[] that [is] conducive to an unlawful and disorderly environment” Levelle, Inc. v. D.C. Alcoholic Beverage Control Bd., 924 A.2d 1030, 1037 (D.C. 2007)

63. The Board finds insufficient evidence in the record to find that the Respondent engaged in a continuous course of conduct where it repeatedly failed to call the police in response to violent incidents. Supra, at ¶ 10. Therefore, as a matter of law, the Board cannot sustain Charge I under the continuous course of conduct test.

64. Nevertheless, the Board finds sufficient evidence in the record to sustain Charge I under the single instance test. Here, the Board credits Ms. Solomon that she and her

friends were attacked inside the establishment. Supra, at ¶ 17. After security broke up the fight, she and her friends requested that the establishment call the police. Supra, at ¶ 20. The establishment's staff chose not to respond to this request; instead, the Respondent's staff recklessly told them to leave without determining whether the area outside the establishment was safe. Supra, at ¶¶ 21-22. The Board finds the behavior of the Respondent's staff particularly disturbing, because they should have been on notice that Ms. Solomon and her friends were in danger based on the fighting that occurred inside the establishment and the victims' request to call the police.

65. As noted in the Board's Findings of Fact, the Board does not find the Respondent's claim that staff notified the police of the ejection of patrons, or that MPD took over management of the scene. Supra, at ¶¶ 40-41, 51-52, 56-57. Instead, the Board credits Mr. Mbeleg's previous claim that staff did not call ". . . the police because [they] knew the police were in the area." Supra, at ¶ 41. Thus, the record demonstrates that without warning, the Respondent's staff ejected a large group of hostile patrons outside the establishment, and then knowingly dumped the people targeted by those patrons into their midst, without warning MPD or checking if the first group of patrons had dispersed. Supra, at ¶¶ 17, 21-22, 27-28, 30.⁸ Based on MPD's presence outside the establishment, had the Respondent called or communicated to the police that they intended to eject patrons that had previously been attacked by the patrons outside the establishment, it is highly likely that MPD would have prevented the fighting that occurred outside the establishment. Id. For example, had the Respondent notified MPD, officers on the scene could have called for back-up, escorted Ms. Solomon's group outside the establishment, instructed staff to keep Ms. Solomon and her friends inside the establishment, or taken another appropriate action to quell the hostile crowd before violence broke out. Thus, as in Levelle, the Board concludes that the Respondent's method of operation—i.e., the failure to call the police—resulted in an environment that led to the attack against Ms. Solomon and her friends.

66. Finally, as a matter of policy, the Board finds the conduct of the Respondent in this matter worthy of sanction. The failure to notify police that the Respondent intended to eject patrons into a hostile crowd creates a danger to the patrons involved, the public, and the police. The Respondent, as well as other licensees, must not be permitted to dump a potential riot onto the street or into the lap of an unsuspecting officer without some form of notice or communication. Consequently, the Board is convinced that the mere presence of MPD outside the establishment should not be sufficient to alleviate the Respondent's responsibility for the events that occurred after Ms. Solomon and her friends were ejected from the establishment.

II. THE RESPONDENT VIOLATED ITS SECURITY PLAN

67. Under § 25-832(6), "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: (6) The licensee fails to follow its . . . security plan . . ." D.C.

⁸At the time of the incident, Mr. Mbeleg identified Ms. Solomon's group as the least aggressive and separated them from patrons he deemed more aggressive. *Tr.*, 11/13/13 at 183. This means that he was aware of the need to separate Ms. Solomon's group from the other patrons. Id.

Official Code § 25-823(6). The court found that the test articulated above also applies to violations of an establishment's security plan. 1900 M Rest. Associations, Inc., 56 A.3d at 495. Specifically, the court extended the continuous course of conduct to cases arising under § 25-823(6). Id. However, the Board's interpretation of the court's order is that it does not preclude the Board from applying the single instance test to violations of § 25-823.⁹ Therefore, as the Board interprets the court's opinion, when a licensee engages in a single violation of its security plan, such an action violates § 25-823(6) when such a violation fosters or encourages unlawful or disorderly conduct, or otherwise imperils public safety. Id. at 493-94.

A. The Board sustains Charge II, because the Respondent's failed to separate the ejected parties in violation of its security plan, which resulted in the assault against the victims.

68. The Board finds insufficient evidence in the record to find that the Respondent engaged in a continuous course of conduct where it repeatedly failed to eject patrons fighting inside the establishment separately. Supra, at ¶ 11. Therefore, as a matter of law, the Board cannot sustain Charge II under the continuous course of conduct test.

69. Nevertheless, the Board finds sufficient evidence in the record to sustain Charge II under the single instance test. Here, the Respondent's security plan requires the establishment's staff to ensure that parties engaged in fighting "remain separated upon leaving." Supra, at ¶ 43. At the time of the incident, Mr. Mbeleg identified Ms. Solomon's group as the least aggressive party, and separated them from patrons he deemed more aggressive. Supra, at ¶ 50. This means that he was aware of the need to separate Ms. Solomon's group from the other patrons. Id.

70. Yet, instead of checking to determine whether the first group ejected from the establishment had dispersed, Mr. Mbeleg required Ms. Solomon's group to leave while the first group was still outside. Id. Thus, the Respondent's staff did not ensure that the parties "remain[ed] separated upon leaving." Supra, at ¶ 43. Once outside, the group immediately attacked Ms. Solomon and her friends; as a result, the record shows that the

⁹ Unless overturned, the Board sees no reason not to also apply the single instance test to security plan violations, as the court provided no rationale for treating §§ 25-823(2) and (6) differently. To hold otherwise, will simply give licensees a free pass on violent incidents caused or encouraged by the failure of the establishment to comply with their security plans.

For example, say Club X, a large nightclub with an occupancy of 1,000 persons has a security plan that mandates that the club require all patrons to pass through metal detectors before entering the establishment. On a random night, a shooting occurs inside the establishment that injures five people. Police and ABRA investigators determine that the shooter brought a gun inside the establishment. Investigators further determine that there were no other instances where the establishment failed to use metal detectors. If the Board is only entitled to apply the continuous course of conduct test, this means that the establishment could not be held in violation of its security plan—even though (1) the incident could have been prevented had the licensee been in compliance with its security plan and (2) the failure had a direct impact on safety inside the establishment.

Therefore, in the Board's view, an establishment may be held liable for violating its security plan when the failure results in unlawful or disorderly conduct, or otherwise imperils public safety.

Respondent's failure to comply with its security plan created the environment that led to the various assaults committed against the three victims. Supra, at ¶¶ 21-22, 43, 50.

71. Consequently, the Respondent's failure to ensure that parties were ejected separately violated the security plan's requirement that the ejected patrons "remain separated upon leaving" and lead to an environment that encouraged the attack against Ms. Solomon and her friends.

B. The Board sustains Charge III, because the Respondent has a well-documented history of failing to maintain its security footage in violation of its security plan.

72. The Board sustains Charge III under the continuous course of conduct test. The record shows that the Respondent's method of operation on November 24, 2011—i.e., the failure to maintain its security cameras—is part of a continuous course of conduct that interferes with ABRA and MPD's ability to investigate incidents at the establishment.

73. The Respondent's security plan requires the establishment to maintain seven security cameras that are able to record for thirty days. Supra, at ¶ 44. Nevertheless, the record demonstrates that the Respondent has a history of failing to maintain its security footage. In February 2011, when the establishment was subject to the security plan at issue, alleged flooding in the Respondent's basement resulted in security footage related to an underage drinking investigation being unavailable. Supra, at ¶ 13. As a result, the record shows that the failure to maintain security footage on November 24, 2011, is part of a continuous pattern of behavior. Supra, at ¶ 39.¹⁰ Consequently, the Board finds sufficient evidence in the record to sustain Charge III.

III. PENALTY

74. The Board imposes the maximum fine, because the charges involve a threat to public safety and the improper handling of a violent incident by the establishment. The Respondent's citation history shows that it admitted guilt to a primary tier violation in an Offer-in-Compromise on July 14, 2010, which resolved Case Number 09-251-00253. The Respondent also admitted guilt to a second primary tier violation on July 27, 2011. Because the current violation occurred on November 24, 2011, the Board finds that current charges shall be treated as the Respondent's third primary tier violation within a three-year period. 23 DCMR § 801.1(c) (West Supp. 2014).

ORDER

Therefore, for the foregoing reasons, the Board, on this 18th day of June 2014, hereby finds the Respondent in violation of D.C. Official Code §§ 25-823(2) and 25-823(6). In total, the Board imposes a fine of \$18,000 and places fifteen suspension days on the Respondent's license, with nine of those days to be served, and six days to be conditionally stayed for one year.

¹⁰ The Respondent's excuse that the system was damaged due to construction and water damage does not alleviate the Respondent's responsibility to comply with its security plan. Supra, at ¶ 54.

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$6,000. The Respondent shall also receive a three (3) day suspension of its license for this offense. The Respondent shall also receive two (2) 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, the Respondent shall pay a fine of \$6,000. The Respondent shall also receive a three (3) day suspension of its license for this offense. The Respondent shall also receive two (2) 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.
- (3) For the violation described in Charge III, the Respondent shall pay a fine of \$6,000. The Respondent shall also receive a three (3) day suspension of its license for this offense. The Respondent shall also receive two (2) 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.

IT IS FURTHER ORDERED that the five (5) stayed suspension days attached to the Respondent's license conditioned on the Respondent not committing any further violations within a one-year period in Case Number 11-251-00062 on July 27, 2011, have been triggered by the Board's finding in this Order.

IT IS FURTHER ORDERED that the fourteen-day suspension of the Respondent's license shall start on August 1, 2014, and end at 2:00 a.m. on August 15, 2014.

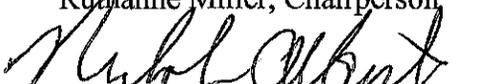
IT IS FURTHER ORDERED that the Respondent must pay the fines imposed by the Board within ninety (90) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, that due to the date of the incident, the three violations found by the Board in this Order shall be treated as unlisted violations under the previous civil penalty schedule enacted by the Board.

Copies of this Order shall be sent to the Government and the Respondent.

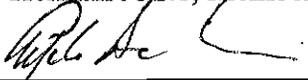
District of Columbia
Alcoholic Beverage Control Board


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).