

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

In the Matter of:)	
)	
Songbyrd, LLC)	
t/a Songbyrd)	
)	
Holder of a)	Case No. 15-CMP-00599
Retailer's Class CT License)	License No. ABRA-096137
)	Order No. 2016-112
at premises)	
2477 18 th Street, N.W.)	
Washington, D.C. 20009)	

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

ALSO PRESENT: Alisha Edmonson, on behalf of Songbyrd, LLC, t/a Songbyrd,
Respondent

Louise 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

The Alcoholic Beverage Control Board (Board) finds that Songbyrd, LLC, t/a Songbyrd (Respondent), violated District of Columbia (D.C.) Official Code § 25-701, on September 13, 2015. The Respondent has not committed any previous violations. Therefore, the Board does not believe that a fine is warranted in this matter. Rather, the Respondent is warned against committing this violation in the future.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on December 2, 2015. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the

Respondent, located at premises 2477 18th Street, N.W., Washington, D.C., on January 11, 2016.

The Notice charged the Respondent with the following violation:

Charge I: [On Sunday, September 13, 2015] [y]ou failed to have a Board-approved and licensed manager on-duty during hours of sale, service and/or consumption of alcoholic beverages, in violation of D.C. Official Code § 25-701...

ABRA Show Cause File No., 15-CMP-00599, Notice of Status Hearing and Show Cause Hearing, 2-3 (December 2, 2015).

On September 21, 2015, Citation #4730 was issued to the Respondent in the amount of \$250.00 for violating D.C. Official Code § 25-701.

On October 14, 2015, the Respondent refused to pay the citation and instead, requested a hearing.

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on January 20, 2016, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on February 17, 2016.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

I. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated December 2, 2015. *See* ABRA Show Cause File No. 15-CMP-00599. Songbyrd, LLC, t/a Songbyrd, holds a Retailer's Class CT License, ABRA License No. ABRA-096137. *See* ABRA Licensing File No. 15-CMP-00599. The establishment's premises is located at 2477 18th Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-096137.
2. The Show Cause Hearing was held on February 17, 2016. The Notice charges the Respondent with two violations enumerated above. *See* ABRA Show Cause File No. 15-CMP-00599.

II. Testimony of ABRA Investigator Tasha Cullings

3. The Government presented its case through the testimony of one witness, ABRA Investigator Tasha Cullings. *Transcript (Tr.)* 2/17/16 at 5.

4. Investigator Cullings has been employed by ABRA since July 27, 2015. *Tr. 2/17/16 at 6.* Prior to her employment at ABRA, she was a police officer for nine (9) years. *Tr. 2/17/16 at 7.* She authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Tr. 2/17/16 at 8.* Government's Exhibit 1.

5. On September 13, 2015, Investigator Cullings visited the Respondent's establishment to ensure that the Respondent was in compliance with the terms of its license during Adams Morgan Day. *Tr. 2/17/16 at 7-8.* She arrived at the establishment at 3:45 p.m. *Tr. 2/17/16 at 810-11.* She conducted a Regulatory Inspection during her visit. *Tr. 2/17/16 at 7.*

6. Upon her arrival, Investigator Cullings identified herself to a security guard stationed at the front door and asked to speak to the owner or an ABC-licensed Manager. *Tr. 2/17/16 at 11.* The security guard directed Investigator Cullings to the back area of the bar. *Tr. 2/17/16 at 11.* There she spoke to the bartender and made a second request to speak to the owner or ABC licensed manager. *Tr. 2/17/16 at 11-12.*

7. While she was making her way to the back of the bar, Investigator Cullings observed patrons sitting with alcoholic beverages in front of them. *Tr. 2/17/16 at 8.* She readily identified the beverages as alcoholic because the beverages were in wine and beer glasses and had the distinct color of wine and beer. *Tr. 2/17/16 at 8.*

8. Investigator Cullings was informed by the bartender that there was no ABC-licensed manager or the owner on the premises. *Tr. 2/17/16 at 12-13.* He further indicated that the owner had stepped out and he would text her to return to the bar. *Tr. 2/17/16 at 12-13, 21.*

9. While the bartender was texting the owner, Investigator Cullings conducted a regulatory inspection. *Tr. 2/17/16 at 13.* She requested to see the Certificate of Occupancy and the ABC license. *Tr. 2/17/16 at 13, 18.* She took the documents to the end of the bar and began completing the regulatory inspection form. *Tr. 2/17/16 at 13.* It took Investigator Cullings from ten (10) to twelve (12) minutes to conduct the regulatory inspection. *Tr. 2/17/16 at 13, 20.* She estimated that she was in the bar five (5) to seven (7) minutes prior to undertaking the regulatory inspection. *Tr. 2/17/16 at 14, 20.* She entered the time, 3:48 pm, on the form prior to commencing the inspection. *Tr. 2/17/16 at 14.* She then documented the time at completion of the form as 4:00 p.m. *Tr. 2/17/16 at 14, 17-19.*

10. When Investigator Cullings turned her attention to the bartender to get his personal information, Ms. Edmonson walked in and identified herself as the owner. *Tr. 2/17/16 at 15.* Investigator Cullings advised Ms. Edmonson that an owner or an ABC licensed manager must be on the premises at all times. *Tr. 2/17/16 at 15.* Investigator Cullings then entered Ms. Edmonson's driver's license information on the regulatory inspection form and had Ms. Edmonson sign it. *Tr. 2/17/16 at 15, 18.* Investigator Cullings then explained to Ms. Edmonson that she needed to consult with her supervisor and that Ms. Edmonson would hear from ABRA in due course. *Tr. 2/17/16 at 16, 19.*

III. Testimony of Alisha Edmonson

11. Alisha Edmonson is the owner and testified that on September 13, 2015, she left the licensed establishment when she was summoned by an officer with Homeland Security. *Tr. 2/17/16 at 23, 26, 38.* The Respondent was standing outside her establishment on the patio when the officer waved at her from across the street. *Tr. 2/17/16 at 26.*

12. Ms. Edmonson was sponsoring seven bands located across the street at SunTrust Plaza for Adams Morgan Day. *Tr. 2/17/16 at 23, 27, 36.* She was responsible for superintending the event and the use of the plaza. *Tr. 2/17/16 at 37.* The bands were performing on the lower level of the plaza and people were standing on the top level to get a better view. *Tr. 2/17/16 at 27.* The officer asked Ms. Edmonson to direct her staff to control the crowd and remove patrons from the top tier of the plaza for safety reasons. *Tr. 2/17/16 at 23, 27, 40.* She had three staff personnel on the plaza to manage the event; none of whom could be identified by the officer. *Tr. 2/17/16 at 38.*

13. Ms. Edmonson determined that it was better to leave the establishment and accommodate the request from the officer than to remain on the licensed premises. *Tr. 2/17/16 at 2-24.* She did not want to ask her bar security to address the concern at SunTrust Plaza because she thought they were needed more at the front door of the establishment to check identification. *Tr. 2/17/16 at 23, 47.* She also attempted to engage the staff located on the plaza but none of them was answering their phones. *Tr. 2/17/16 at 39.* She was no more than 60 to 90 feet from her establishment the entire time she was gone. *Tr. 2/17/16 at 23.*

14. While she was directing her staff to remove the patrons from the top tier, she received a text from her bartender. *Tr. 2/17/16 at 24, 40.* She immediately made her way through the crowd of about 100 people, talked to her security personnel at the door, and located Investigator Cullings. *Tr. 2/17/16 at 24.* Ms. Edmonson talked to Investigator Cullings about the regulatory inspection and was under the impression from the investigator that she was going to receive a warning. *Tr. 2/17/16 at 24.*

15. Ms. Edmonson was the only ABC Manager on duty at the time. *Tr. 2/17/16 at 27.* She is aware that an ABC Manager must be on duty at all times the establishment is open and operating. *Tr. 2/17/16 at 27, 35.* She left the premises because she did not believe she had a choice to ignore the officer when he beckoned her to the plaza. *Tr. 2/17/16 at 27.* It took her two minutes to direct her staff to remove the patrons from the top tier. *Tr. 2/17/16 at 28.* It took her no more than five minutes to make her way through the crowd to return to the establishment once she received the text from her bartender. *Tr. 2/17/16 at 28.*

16. Ms. Edmonson had another ABC Manager located on the street but he was not in visual sight when the officer waved her down. *Tr. 2/17/16 at 29.* She attempted to communicate with him before she left the premises. *Tr. 2/17/16 at 29.* She never did contact her licensed manager and did not see him for over an hour. *Tr. 2/17/16 at 31.*

17. Ms. Edmonson left the establishment knowing there was no one else to cover her absence. *Tr. 2/17/16 at 30.* She tried to diffuse the situation at the plaza and return to the bar as quickly as possible. *Tr. 2/17/16 at 30.*

18. Ms. Edmonson has been a bar manager since 2009. *Tr.* 2/17/16 at 35. She has been previously licensed as an ABC Manager. *Tr.* 2/17/16 at 35. She had three staff persons superintending the SunTrust Plaza and for the establishment she had two rotating security guards, two persons outside on the sidewalk café, two bartenders and one server. *Tr.* 2/17/16 at 38, 42. She has a total of 15 employees. *Tr.* 2/17/16 at 43. Of those 15, two are ABC licensed managers. *Tr.* 2/17/16 at 43. One of the two ABC licensed managers showed up at the establishment for the evening shift shortly after Investigator Cullings departed. *Tr.* 2/17/16 at 43. She acknowledged that in hindsight she should have hired another ABC licensed manager that day to assist with the Adams Morgan Day festival. *Tr.* 2/17/16 at 48.

CONCLUSIONS OF LAW

19. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1), D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines “that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed.” D.C. Official Code § 25-447.

I. THE RESPONDENT VIOLATED § 25-701

20. The Board finds the Respondent liable for permitting the licensed establishment to operate on March 21, 2015, without either the licensee or an ABC-licensed Manager superintending during the hours of operation in violation of D.C. Official Code § 25-701.

21. ABRA’s regulations are clear that either the licensee or an ABC-licensed Manager must be present while the establishment is operating. Title 23 of the DCMR § 707.1 provides that in the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises.

22. The Board finds that the facts set forth in the Investigative Report support the charge and support a finding of liability as to the Respondent. It is unrefuted that on September 13, 2015 at approximately 3:45 p.m., the bartender admitted to Investigator Cullings that there was no ABC-licensed manager or owner on the premises. Moreover, the owner returned to the establishment after Investigator Cullings had completed her Regulatory Inspection and acknowledged that she was across the street. The Respondent was open and operating during Investigator Cullings’ inspection.

II. PENALTY

23. The ABRA Civil Penalty Schedule, set forth at 23 DCMR 800, provides the Board with discretion to issue a warning with respect to specific violations, including violation of § 25-701, when circumstances warrant. The Board finds that the circumstances governing the owner’s leaving the establishment – a direct response to the Homeland Security personnel’s summoning – warrants such a warning.

24. In this case, the owner made a reasonable decision to comply with a Homeland Security personnel's direction to come across the street to attend to a public safety matter. The owner did so in short order and then promptly returned to the establishment. The owner was always in sight of the establishment, was immediately reachable by her staff, and immediately responded to her staff's text. Under these circumstances, we find that the owner's action of leaving the establishment was both reasonable and responsible.

25. Finally, this establishment has a history of compliance with the law. The Respondent's Investigative History shows that Respondent has had no violations since the establishment's opening. *Licensing File No. ABRA-096137*, Investigative History. As such, the Board issues a Warning to the Respondent. *Licensing File No. ABRA-096137*, Investigative History; DCMR § 23-802.

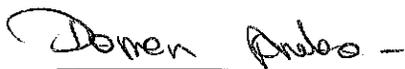
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 16th day of March, 2016, finds that the Respondent, Songbyrd, LLC, t/a Songbyrd, located at 2477 18th Street, N.W., Washington, D.C., holder of a Retailer's Class CT license, violated D.C. Official Code § 25-701.

The Board hereby **ORDERS** that the Respondent be **WARNED** not to commit this offense again.

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

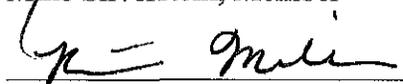
District of Columbia
Alcoholic Beverage Control Board



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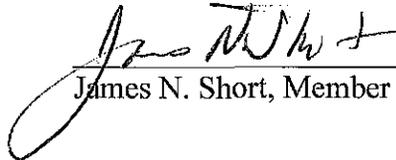
We respectfully dissent from the majority of the Board with regard to the penalty imposed. There is no dispute that the Respondent violated the licensed manager requirement. The owner admitted that she left the establishment knowing there was no ABC licensed manager on duty. She disclosed that she had been an ABC Manager since 2009 and is well aware of her responsibilities. She acknowledged that an ABC licensed manager is to be on duty while the establishment is open and operating. But for the text received from her staff, she may not have returned to the licensed establishment when she did. She testified that she was only at the plaza for two minutes, but this statement is contradicted by the credible

testimony of Investigator Cullings who states that she was present at the establishment for upwards of 12 minutes without a licensed manager present.

The Respondent testified that a Homeland Security personnel, who spotted her standing outside the door to the establishment, visually summoned her to the plaza. The officer appeared to signal that someone from the establishment was needed on plaza to address a concern with an event sponsored by the Respondent. The respondent had staff on the plaza to manage the event, but that staff wore no clothing, badges or insignia identifying them as members of the Respondent's staff. The Respondent wasn't able to contact her staff that was working crowd control at the plaza nor the one ABC licensed manager who was out in the street. Had the Respondent made appropriate plans for the staff on the plaza to be identifiable to Homeland Security or MPD as the point of contact for the event or had implemented adequate measures to communicate with staff on the plaza, her presence on the plaza may not have been necessary. Of 15 staff personnel employed by the Respondent, only two have their ABC manager licenses. Only one of those two managers was on duty at the time of the violation and that person was stationed on the plaza. We conclude that the Respondent's absence from the establishment was due to her neglect in implementing adequate procedures for the management of the sponsored event on the plaza without negatively impacting the operations of her establishment. Given the record in this case, we are not confident that the owner comprehends the seriousness of operating an ABC licensed establishment.



Nick Alberti, Member



James N. Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (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).