THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
The Stadium Group, LLC t/a Stadium	Case Nos.:	12-CMP-00680
Holder of a Retailer's Class CN License	License No.: Order No.:	82005 2014-244
at premises 2127 Queens Chapel Road, N.E. Washington, D.C. 20018		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: The Stadium Group, LLC, t/a Stadium, Respondent

James Redding, Owner, on behalf of the Respondent

Karen Todd, Counsel for Respondent

Louise Phillips, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

This case arises from a Notice of Status and Show Cause Hearing which the Alcoholic Beverage Control Board executed on June 26, 2013. The Alcoholic Beverage Regulation

Administration (ABRA) served the Notice on the Respondent, located at premises 2127 Queens Chapel Road, N.E. on July 3, 2013. The Notice charged the Respondent with a number of 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 Saturday, October 20, 2012,] the Respondent provided service of alcoholic beverages after ABC approved hours on-premises, in violation of D.C. Official Code § 25-723 . . . .

Charge II: [On Saturday, October 20, 2012,] the Respondent served patrons with back-up drinks, in violation of D.C. Official Code § 25-741(b) . . . .

Charge III: [On Saturday, October 20, 2012,] the Respondent produced loud music and noise that could be heard in premises outside the licensed establishment, in violation of D.C. Official Code § 25-725 . . . .

Charge IV: [On Saturday, October 20, 2012,] the Respondent provided false or misleading information which resulted in the operation of a pavilion on a faulty permit application which voided the one day substantial change permits in violation of D.C. Official Code § 25-401 . . . .

Charge V: [On Saturday, October 20, 2012,] the Respondent violated the terms of its Safety/Security Plan in place for the special event which states that the establishment staff will be checking ID's and maintaining a head count with a clicker for entering and exiting patrons, in violation of D.C. Official Code § 25-823(6) . . . .

Charge VI: [On Saturday, October 20, 2012,] the Respondent violated the terms of the special event Safety/Security Plan which states that the establishment staff will take "alcohol awareness training so that "no back-up drinks or sale to intoxicated individuals will occur," in violation of D.C. Official Code § 25-823(6) . . . .

Charge VII: [On Saturday, October 20, 2012,] the Respondent violated the portion of its special event Safety/Security Plan which states that it will check IDs so that only 21 year olds will gain entrance and subject all patrons to pat downs and wanding, in violation of D.C. Official Code § 25-823(6) . . . .

ABRA Show Cause File No., 12-CMP-00680, Notice of Status Hearing and Show Cause Hearing, 2 (June 26, 2013).

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on August 7, 2013. The parties then appeared at the Show Cause Hearing for this matter on September 11, 2013. Due to time constraints, at the conclusion of the OAG's case-in-chief, the Board recessed the Show Cause Hearing until a later date. The OAG and the Respondent proceeded to the Show Cause Status Hearing on February 4, 2014. Finally, the parties appeared and argued their respective cases at the Show Cause Hearing on February 26, 2014.

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:

A. RESPONDENT'S OPERATING CONDITIONS

1. The Respondent holds a Retailer's Class CN License, License No. ABRA-082005. See *ABRA Licensing File No. ABRA-082005*. The establishment's premises are located at 2127 Queens Chapel Road N.E., Washington, D.C. See id. The hours of operation are Sunday through Thursday 11 a.m. to 3 a.m., and Friday and Saturday 11 a.m. to 4 a.m. See id. The hours of sales, service and consumption are Sunday through Thursday 11 a.m. to 2:00 a.m. and Friday and Saturday 11 a.m. to 3 a.m. See id.

2. On October 10, 2012, the Board held a Fact Finding Hearing to review the Respondent's Application for a One Day Substantial Change Permit. At this Fact Finding Hearing, the Respondent revealed that it had previously hosted this event for the Howard University Homecoming the year before. *Transcript (Tr.)*, 10/10/12 at 5. During this event, a stabbing occurred in the parking lot of the establishment. Id. The Board expressed its concerns that appropriate measures would be in place so that this event would be safer for participants. Id. The Respondent assured the Board that the establishment had added every precaution to make sure that this type of incident would not happen again. Id. at 6. Specifically, the Respondent informed the Board that there would be only one entrance into the gate, additional security staff and that there would be more thorough security checks. Id. at 6, 7, 10-12, 86. Among the requirements with which the Respondent was require to comply were that patron ID's would be checked at the main entrance. *Case Report 12-CMP-*00680, Exhibit 1. Additionally, each patron entering the establishment would be physically searched and wanded with a hand metal detector and would pass through a metal detector. Id.

3. On October 17, 2012, the Board granted the Respondent a special event One Day Substantial Change permit to host an event for the annual Howard University Homecoming from Friday, October 19, 2012 until Sunday, October 21, 2012.

4. The Government presented no evidence of the establishment's failure to follow its security plan on prior occasions. See generally *Tr.*, 9/11/13; *Tr.*, 2/26/14.

B. THE RESPONDENT'S SECURITY PLAN

5. The Respondent has a security plan dated December 1, 2011. This security plan was in effect at the time of the incident.

6. The "ID Checking Procedures" portion of the security plan states that "front door staff must always check a customer's identification (ID) before allowing that customer to enter the establishment. *Case Report 12-CMP-00680*, Exhibit 30.

7. The "Inside/Outside Deployment" portion of the security plan in relevant part states:

> On Friday- Saturday, there will be a minimum of eight security personnel on duty. There will be two security personnel stationed outside, one will be checking ID's and maintaining a head count with a clicker. The other outside security will be roving outside and monitoring outside activities within [a] 1000 foot radius. There will be at least one security personnel positioned at the point of entrance looking for intoxicated individuals trying to enter the establishment. There should be one front doorman checking ID's and maintaining the clicker.

Id.

8. The "Communication Equipment/Security Equipment Procedures" portion of the security plan in relevant part states that "wands are to be used on Friday, Saturdays and during special events."

Id.

C. WITNESS TESTIMONY

I. ABRA Supervisor Investigator Craig Stewart

9. On Friday, October 19, 2012 and Saturday, October 20, 2012, ABRA Supervisor Investigator Craig Stewart conducted a monitoring inspection during the Respondent's special event. *Tr.*, 09/11/13 at 29. While at the establishment on Saturday, October 20, 2012, Supervisor Investigator Stewart received various complaints from Metropolitan Police Department (MPD) officers at the establishment about the noise emanating from the establishment while a live concert was taking place. *Tr.*, 09/11/13 at 66. Soon thereafter, Supervisor Investigator Stewart dispatched two former ABRA Investigators, Investigators Parker and McKenzie to the residences who submitted complaints to first verify whether the residence was in a residential zone and then determine whether they could hear the noise from the establishment from the residence. *Tr.*, 09/11/13 at 69, 270. Supervisor Investigator Stewart confirmed that the investigators were able to hear the noise of the establishment from the residence. *Tr.*, 09/11/13 at 71-72. Supervisor Investigator Stewart informed the club owner, Mr. James Redding, about the noise and it took him approximately five to seven minutes to have the music turned down. *Tr.*, 09/11/13 at 270-71.

10. Supervisor Investigator Stewart observed that on the evening of Saturday, October 20, 2012, the security staff appeared to be overwhelmed by checking the identification of the establishment patrons. *Tr.*, 09/11/13 at 85-86. To aid the establishment, Supervisor Investigator Stewart also checked identification for about one hour. *Tr.*, 09/11/13 at 86. During that time, a number of people produced fraudulent identification which Supervisor Investigator Stewart confiscated. *Tr.*, 09/11/13 at 87; Government Exhibit 15. Moreover, the establishment failed to check the identifying lanyards that were distributed to distinguish those who could gain very important person (VIP) entrance to the tent. *Tr.*, 09/11/13 at 83, 87, 93-95. Supervisor Investigator Stewart saw one patron, who appeared to be seventeen or eighteen years of age, jump the barriers and walk through the metal detector without being searched and without providing identification. *Tr.*, 09/11/13 at 377.

11. As the event continued, Supervisor Investigator Stewart expressed his concern about the overcrowding to the establishment. *Tr.*, 09/11/13 at 100. He asked the security personnel at one of the entrances who were taking count by the door with a clicker how many people were inside. *Tr.*, 09/11/13 at 100-01. The establishment employee responded with seven hundred patrons. Unsure about this response, Investigator Stewart tested the clicker. *Tr.*, 09/11/13 at 101. With one click, the clicker displayed eight hundred and with another click the clicker displayed nine hundred. *Tr.*, 09/11/13 at 101. At the final click, the clicker returned to all zeros. *Tr.*, 09/11/13 at 101. Investigator Stewart then went to another entrance and asked the security personnel how many patrons did the establishment have inside. *Tr.*, 09/11/13 at 101. The security personnel responded that he did not know. *Tr.*, 09/11/13 at 101. Supervisor Investigator Stewart continued to the tent entrance and asked the security guard about how many patrons were inside the tent area. *Tr.*, 09/11/13 at 102. The security personnel responded that he did not know and did not have a clicker to keep count of the patrons. *Tr.*, 09/11/13 at 102.

12. At one point during the evening, a Stadium employee stationed at the side entrance of the establishment held the door open and let patrons enter without checking identification, wanding or walking through a metal detector. *Tr.*, 09/11/13 at 93. After several minutes, patrons who were in the identification line started to migrate to the side entrance door instead of coming through the front door where identification was checked. *Tr.*, 09/11/13 at 94. Supervisor Investigator Stewart reported this to Mr. Damian Ward, a member of the establishment management, who then reprimanded the employee and placed a barrier in front of the side door. *Tr.*, 09/11/13 at 98.

13. On the evening of Saturday, October 20, 2012, Supervisor Investigator Stewart determined that the metal detectors were not turned on because all of the lights on the device were out. *Tr.*, 09/11/13 at 94-95. Rather, the security staff performed "cursory" checks whereby women walked straight through the security check point and men were patted down. *Tr.*, 09/11/13 at 95-96. The metal detectors were turned on shortly thereafter. *Tr.*, 09/11/13 at 98.

14. The Respondent applied for a special events permit from the Department of Consumer Regulatory Affairs (DCRA) that four hundred participants were expected to attend the Howard University Homecoming event per day. *Tr.*, 09/11/13 at 116; see also Government Exhibit 31. Supervisor Investigator Stewart saw that this application was lacking necessary

signatures, which resulted in an incomplete application. *Tr.*, 09/11/13 at 119. According to the Respondent's one day substantial change application to its ABRA license, the establishment approximated that five hundred to seven hundred persons would attend the event. *Tr.*, 09/11/13 at 123. Based upon what he witnessed while present at the establishment, Supervisor Investigator Stewart determined that the establishment had exceeded the seven hundred person limit of their substantial change license. *Tr.*, 09/11/13 at 123.

15. While monitoring the establishment during the course of the event, Supervisor Investigator Stewart observed patrons walking around with full bottles of champagne. *Tr.*, 09/11/13 at 280. In addition, he saw service of closed bottles of alcoholic beverages by staff to patrons which he brought to the attention of management. *Tr.*, 09/11/13 at 280-82.

16. On Saturday, October 20, 2012, Supervisor Investigator Stewart observed an NBA player drinking alcohol from the bottle in the establishment after the Board approved hours and alerted management. *Tr.*, 09/11/13 at 325, 327. Moreover, at approximately 2:45 a.m., he saw "people drinking and pouring beyond the control of the security or wait staff." *Tr.*, 09/11/13 at 329. The last person that he saw drinking was at 4:10 a.m. *Tr.*, 09/11/13 at 329.

II. James Redding

17. James Redding is the owner of the establishment. *Tr.*, 02/26/14 at 2,19. He was present at the establishment on both nights of Mr. Stewart's monitoring. *Tr.*, 02/26/14 at 20. In an effort to avoid what happened in his establishment at the previous year's Howard Homecoming Event, Mr. Redding hired a different security company in addition to the security he already had on staff. *Tr.*, 02/26/14 at 21. On both Friday, October 19, and Saturday, October 20, patrons were being searched, wanded and patted down. *Tr.*, 02/26/14 at 24. In addition, IDs were checked and clickers were used during the evening. *Tr.*, 02/26/14 at 25, 33.

18. For security measures, the establishment used lanyards that distinguished between patrons who bought tickets to go into the club and the tent for the live concert. *Tr.*, 02/26/14 at 28.

19. The fire marshal came early in the evening to check on the establishment. *Tr.*, 02/26/14 at 38. As noted by Mr. Redding, the fire marshal did not shut down the establishment for overcrowding during the event on Friday or Saturday night. *Tr.*, 02/26/14 at 38.

20. The establishment does not allow bottle service outside the table area or the VIP area. *Tr.*, 02/26/14 at 45. Typically, if a patron has a bottle roaming around the club, the bottle is taken away by either security or management staff. *Tr.*, 02/26/14 at 46.

21. On the evening of Saturday, October 20, the disc jockey ("DJ") made the last call for alcohol at 2:40 a.m. *Tr.*, 02/26/14 at 58. This is standard practice of the establishment. *Tr.*, 02/26/14 at 58.

CONCLUSIONS OF LAW

22. 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. Code § 25-830 (West Supp. 2014); 23 DCMR § 800, *et seq.* (West Supp. 2014). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "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 § 25-447 (West Supp. 2014).

23. The Board finds the Respondent guilty of Charges I, III, IV, V and VII. The Board is dismissing Charges II and VI.

I. CHARGE I: THE BOARD FINDS THAT THE RESPONDENT VIOLATED § 25-723 ON SATURDAY OCTOBER 20, 2012 BY PROVIDING SERVICE OF ALCOHOLIC BEVERAGES AFTER BOARD APPROVED HOURS.

24. The Board finds that the Respondent violated its Board approved hours of operation on Saturday, October 20, 2012 by allowing alcoholic drinks to remain within the possession of patrons after hours. 23 DCMR 705.9 specifically restricts sale, service and permitting the consumption of alcoholic beverages to the same hours. 23 DCMR 705.9 implements D.C. Official Code § 25-723, with which Respondent is charged. Under § 25-723, "the licensee under [an] on-premises retailer's license...may sell or serve alcoholic beverages on any day and at any time except between... 3:00 a.m. and 8:30 a.m. on Saturday and Sunday, excluding District and federal holidays. D.C. Official Code § 25-723(b); see also 23 DCMR § 705.9 (West Supp. 2014). According to the terms of the Respondent's one day substantial change permit, the Respondent is limited to its ABRA License Hours of Service. Supra, at ¶ 1. Therefore, the Respondent was supposed to cease the sale and consumption of alcohol at 3:00 a.m. Supra, at ¶ 1. Mr. Redding claimed that on the evening of Saturday, October 20, the DJ made the last call for alcohol at 2:40 a.m. Supra, at ¶ 21. The Board credits the testimony of Supervisor Investigator Stewart, who at 2:45 a.m., observed patrons drinking and ordering beverages. Supra, at ¶ 16. Additionally, at 4:10 a.m., Supervisor Investigator Stewart saw a patron that was still drinking. Supra, at ¶ 16. Accordingly, the Board finds that the establishment continued to serve and allow the consumption of alcoholic beverages after its Board approved hours in violation of District of Columbia Official Code § 25-723.

II. CHARGE II: THE BOARD DISMISSES CHARGE II DUE TO INSUFFICIENT EVIDENCE ON THE RECORD TO ESTABLISH THAT THE RESPONDENT SERVED "BACK-UP DRINKS" IN VIOLATION OF § 25-741(B)

25. The Board dismisses Charge II due to insufficient evidence on the record to establish that the Respondent served "back-up drinks" in violation of § 25-741(b). Under § 25-741(b), a licensee under an on premises retailer's license shall not serve back up drinks to customers. D.C. Official Code § 25-741(b). As outlined in § 25-101(8), a "back up drink" is defined as a drink, including a single drink consisting of more than one alcoholic beverage, that is served to a customer before the customer has consumed a previously served drink. D.C. Official Code § 25-101(8). The Board considered Supervisor Investigator Stewart's testimony

that he observed at least one patron drinking alcohol from a bottle of champagne. Supra, at ¶ 15, 16. However, by definition, drinking from the bottle alone is not enough to establish a "back up drink." Therefore, as a matter of law, the Board cannot sustain Charge II and instead dismisses the charge.

III. CHARGE III: THE BOARD FINDS THAT THE RESPONDENT VIOLATED § 25-725 ON SATURDAY OCTOBER 20, 2012 BY PRODUCING LOUD MUSIC AND NOISE THAT COULD BE HEARD INSIDE NEARBY RESIDENCES OUTSIDE OF THE LICENSED ESTABLISHMENT.

26. The Board finds that the Respondent produced loud music and noise that could be heard in premises outside of the establishment in violation of § 25-725. D.C. Official Code § 25-725 provides that a "licensee should not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the establishment." D.C. Official Code § 25-725. Here, in addition to the complaints that the MPD received regarding the loud noise emanating from the establishment during a live concert, the Board also credits Supervisor Investigator Stewart's testimony that ABRA Investigators Parker and McKenzie could hear the music while inside nearby residences. Supra, at ¶ 9. For these reasons, the Board finds that the Respondent produced loud music in violation of D.C. Official Code § 25-725.

IV. CHARGE IV: THE BOARD FINDS THAT THE RESPONDENT VIOLATED § 25-401 ON SATURDAY OCTOBER 20, 2012 WHEN IT PROVIDED MISLEADING INFORMATION TO ABRA.

27. The Board finds that the Respondent violated § 25-401 when it provided misleading information. Under § 25-401, "any person who knowingly makes a false statement on an application...shall be guilty of making false statements." D.C. Official Code § 25-401. In the instant case, the Respondent's DCRA tent application represented that four hundred participants were expected to attend the Howard University Homecoming event. Supra, at ¶ 14. This application proved to be inconsistent with the figures that the Respondent represented to ABRA on its substantial change application which stated that seven hundred participants were expected to attend. See *Case Report 12-CMP-*00680, Exhibit 1a. Accordingly, the Board finds that the Respondent knowingly made a false statement in violation of D.C. Official Code § 25-401.

V. CHARGE V: THE BOARD FINDS THAT THE RESPONDENT VIOLATED § 25-823(6) ON SATURDAY OCTOBER 20, 2012 WHEN IT FAILED TO FOLLOW ITS SECURITY PLAN BY FAILING TO CHECK IDENTIFICATION OF ITS PATRONS AND MAINTAINING A HEAD COUNT WITH A CLICKER FOR ENTERING AND EXITING PATRONS

28. Under § 25-823(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...[that] fails to follow its security plan. D.C. Official Code § 25-823(6).

29. In 1900 M Restaurant Associations, the court provided two tests to determine whether a licensee violated § 25-823(2); which the court extended to cases arising under § 25-823(6). 1900 M Rest. Ass'ns, 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, "[in] 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. The court found that the test articulated above also applies to violations of an establishment's security plan. 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.[1] 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.

30. 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 follow its security plan. Supra, at ¶ 4. More specifically, the Government did not show the Respondent's repeated failure to check identifications or provide alcohol awareness training. Supra, at ¶ 4. Therefore, as a matter of law, the Board cannot sustain Charge V under the continuous course of conduct test.

31. Nevertheless, the Board finds sufficient evidence in the record to sustain Charge V under the single instance test. Here, the Board credits the Respondent's security plan which states that security personnel will check identifications of every patron that enters the establishment. Supra, at ¶ 6, 7. The Board recognizes that Mr. Redding hired additional security for this event. Supra, at ¶ 17. However, the Board does not give credit to Mr. Redding who

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[1] The court in 1900 M Restaurant Associations applies the continuous course of conduct and single instance test for cases arising under §25-823(2). However, 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, consider 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 as a result of the licensee's failure to operate its metal detectors in accordance with its security plan. 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 liable for its mode of operation 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 held liable for violating its security plan when the violation involves a method of operation that results in unlawful or disorderly conduct, or otherwise imperils public safety.

stated that identifications were being checked and that patrons were thoroughly searched upon entering the establishment. Supra, at ¶ 17. Rather, the Board gives credit to Supervisor Investigator Stewart, who personally observed one patron, who appeared to be seventeen or eighteen years of age, jump the barriers and walk through the metal detector without providing identification. Supra, at ¶10. In addition, Supervisor Investigator Stewart also noted that an establishment employee held the door of the side entrance and allowed patrons to enter without checking identification for several minutes. Supra, at ¶ 12. As a result of this failure to operate in accordance with the security plan, patrons under 21 gained entrance and participated in underage drinking in violation of the law. Accordingly, the Board finds this method of operation in failing to check IDs fostered and encouraged unlawful conduct.

32. Additionally, the Board considers the Respondent's Security Plan which sets forth the procedure for the maintenance of the clicker. Supra, at ¶ 7. The Respondent also failed to follow its security plan when it failed to maintain a head count with a clicker. The evidence in the record shows that at multiple points in the evening and at several locations that the establishment did not have an accurate count of patrons that were admitted into the facility. Supra, at ¶ 11. Several of the security personnel did not have a clicker. Supra, at ¶ 11. For those that did have a clicker, it malfunctioned during the evening without being able to recover an accurate count of the number of patrons inside. Supra, at ¶ 11. As a result, the Board finds this method of operation fostered and encouraged unlawful conduct.

33. Finally, as a matter of policy, the Board finds that the conduct of the Respondent is worthy of a sanction. By permitting underage patrons to enter the establishment, the Respondent is blatantly exposing these individuals to illegal activity. Furthermore, by not checking identification at all and letting lines of patrons enter without an accurate count, the Respondent is not adhering to its crowd control requirements or safety measures that all licensed establishments must abide by.

34. For the foregoing reasons, the Board finds that the Respondent failed to comply with terms set out in its Security Plan in violation of D.C. Official Code § 25-823(6).

VI. CHARGE VI: THE BOARD DIMSISSES CHARGE VI DUE TO INSUFFICIENT EVIDENCE ON THE RECORD TO ESTABLISH THAT THE RESPONDENT VIOLATED ITS SECURITY PLAN BY FAILING TO GIVE ALCOHOL AWARENESS TRAINING SO THAT NO BACK-UP DRINKS WOULD BE SERVED

35. The Board dismisses Charge VI due to insufficient evidence on the record to establish that the Respondent violated its Security Plan by failing to give alcohol awareness training so that no back-up drinks would be served. As noted in the Conclusions of Law, the Board has determined that there is insufficient evidence on the record to support that the Respondent served "back up drinks" on the night in question. Supra, at ¶ 25. Accordingly, the Board cannot find that the Respondent violated its Security Plan by failing to give alcohol awareness training to prevent "back up drinks" from being served. Therefore, as a matter of law, the Board cannot sustain Charge VI and instead dismisses the charge.

VII. CHARGE VII: THE BOARD FINDS THAT THE RESPONDENT VIOLATED § 25-823(6) ON SATURDAY OCTOBER 20, 2012 WHEN IT FAILED TO FOLLOW ITS SECURITY PLAN BY PERMITTING UNDER AGED PATRONS TO ENTER THE ESTABLISHMENT AND FAILING TO SUBJECT ALL PATRONS TO PAT DOWNS AND WANDING

36. As previously discussed in the Conclusions of Law, the Board does not find sufficient evidence in the record to find that the Respondent engaged in a continuous course of conduct where it repeatedly failed to follow its security plan. Supra, at ¶ 4. Moreover, the Government did not show the Respondent's repeated failure to check identifications or wand and pat down the patrons entering the establishment. Supra, at ¶ 4. As a result the Board concludes that as a matter of law, it cannot sustain Charge VII based on the 1900 M Street continuous conduct test.

37. However, the Board finds sufficient evidence on the record to sustain Charge VII based on the single instance test. In the instant case, there is ample evidence that suggests that the establishment had more relaxed security procedures in place than suggested by Mr. Redding. Supra, at ¶ 17, 18. In addition to the requirements set forth in the Respondent's Security Plan, the Board set forth several mandatory conditions in the Fact Finding Hearing for the event. Supra, at ¶ 2. Principally, the Respondent was responsible for checking the identification of all patrons to ensure that only patrons twenty-one and over would gain entry and that all patrons would be subject to a thorough security check. Supra, at ¶ 2. Instead of following these conditions, the security of the establishment, at several points in the evening, failed to comply. Supra, at ¶10, 12, 13. It is alarming that Supervisor Investigator Stewart observed a patron, who appeared to be only seventeen or eighteen years old, jump the barriers without being searched or providing identification. Supra, at ¶ 10. It is further alarming that a member of the security team held a door open at the side entrance to allow multiple patrons to enter without any identification check or security check. Supra, at ¶ 12. In addition, there was a time period in the evening where the metal detectors were not turned on. Supra, at ¶ 13. During this time period, while the metal detector was not in service, the security staff permitted women to walk into the establishment with no security check while men were only patted down. Supra, at ¶ 14. This conduct is clearly not in compliance with the mandates set forth both in the Respondent's Security Plan and the Fact Finding Hearing. Accordingly, the Board finds this conduct not only to be unlawful and disorderly, but also endangering to its patrons and employees. Therefore, the Board finds that the Respondent violated the terms of its Security Plan and Fact Finding Hearing in violation of D.C. Official Code § 25-823(6).

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 25th day of June, 2014, finds that the Stadium Group, LLC, t/a Stadium, violated D.C. Official Code §§ 25-723, 25-725, 25-401, and 25-823(6).

The Respondent must pay a total fine of $8,500 which the Respondent must pay within thirty (30) days from the date of this Order. In addition, the Respondent shall have its license suspended for twenty (20) days. The breakdown of the Respondent's penalty is as follows:

(1) The Respondent

a. shall pay a $2,000.00 fine and its license shall be suspended for five (5) days for the violation described in Charge I.

b. shall pay a $500.00 fine and its license shall be suspended for five (5) days for the violation described in Charge III.

c. shall pay a $2,000.00 fine for the violation described in Charge IV.

d. shall pay a $2,000.00 fine and its license shall be suspended for five (5) days for the violation described in Charge V.

e. shall pay a $2,000.00 fine and its license shall be suspended for five (5) days for the violation described in Charge VII.

(2) In total, the Respondent's twenty (20) suspension days shall begin on July 31, 2014 and end on Wednesday, August 20, 2014.

IT IS FURTHER ORDERED that the twenty day suspension of the Respondent's license shall start on July 31, 2014 and end at 3:00 a.m. on August 20, 2014.

IT IS FURTHER ORDERED that the Respondent must pay the fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board

Donald Brooks, Member

Mike Silverstein, Member

Hector Rodriguez, Member

James Short, Member

I concur with the majority of the Board's decision regarding all charges other than Charge IV regarding the establishment's liability. In my view, there is no evidence in the record that Respondent knowingly made a false statement on an application governed by D.C. Official Code §25-401. The fact that Respondent's estimate of capacity on its substantial change application may have been somewhat exceeded does not show that the Respondent knowingly made a false statement. Given that Respondent's tent application before DCRA was not submitted as part of Respondent's Application to the ABC Board, any misrepresentation on that application, if there was one, is not governed by §25-401.

Nevertheless, I dissent as to the suspensions imposed by the majority because the majority does not "identify a consistent pattern of violations demonstrating a flagrant disregard for the "public safety and welfare" to justify the suspensions. See 1900 M Rest. Ass'ns, Inc., 56 A.3d. at 486-96.

Ruthanne Miller, Chairperson

I concur with the majority of the Board's decision regarding the establishment's liability in Charge IV. However, I dissent as to the rationale that supports the establishment's liability. I rely on §25-401 which in relevant part states that "the application shall contain the information set forth in this chapter and any additional information that the Board may require" to support my position. In my view, the Respondent's application includes the representations it makes to the Board during a Fact Finding that is purposed to review the Respondent's submitted application.

I find that the establishment provided false or misleading information in violation of §25-401 by providing misleading information at the October 12, 2012 Fact Finding Hearing about its plans to mitigate overcrowding. There is substantial evidence in the record that the establishment failed to do so on the day of the event. For instance, the Respondent assured the Board at the Fact Finding Hearing, Show Cause Hearing and within their Security Plan that the establishment

would maintain a clicker to monitor entering patrons. Supra, at ¶ 7, 10; *Tr.*, 10/10/12 at 102. However, the evidence showed that the establishment failed to do so on multiple occasions during the course of the evening when the clickers malfunctioned and security personnel did not use a clicker at all. Supra, at ¶ 11. As a result, the establishment could no longer keep an accurate account of patrons that were inside. Therefore, this practice clearly contradicts the plans for crowd management portrayed by the Respondent at the Fact Finding Hearing.

Further, the establishment asserted that it would utilize identifying lanyards to determine those who were to gain VIP entrance into the event. At the Fact Finding Hearing, the Respondent represented that those who had access to the inside of the building would be identified with a pass that would hang from the guest's neck. *Tr.*, 10/10/12 at 72- 82. Only a limited number of passes would be issued and there would only be four types of those passes. Id. All other guests would only have access to the pavilion. Id. During the Show Cause Hearing, Supervisor Investigator Stewart testified that there were many guests inside the establishment who did not display one of the passes that gave guests access to the inside. Supra, at ¶ 10. Accordingly, the Respondent knowingly mislead the Board on its substantial change permit application and accompanying Fact Finding Hearing.

Nicholas Alberti, Member

I concur with the majority of the Board's decision regarding the establishment's liability. Nevertheless, I dissent as to the penalty selected by the majority.

Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).