

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

In the Matter of:)	
)	
The Stadium Group, LLC)	Case No.: 13-251-00072
t/a Stadium)	
)	
Holder of a)	License No.: 82005
Retailer's Class CN License)	Order No.: 2014-251
)	
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

PROCEDURAL BACKGROUND

This case arises from a Notice of Status and Show Cause Hearing which the Alcoholic Beverage Control Board executed on July 24, 2013. The Alcoholic Beverage Regulation

Administration (ABRA) served the Notice on the Respondent, located at premises 2127 Queens Chapel Road, N.E. on August 2, 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 Sunday, May 26, 2012,] the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose, in violation of D.C. Official Code § 25-823(2), (5)
- Charge II: [On Sunday, May 26, 2012,] the Respondent violated the "Conflict Resolution/Aggressive Customers" and "Floor Men/Security Conduct Guidelines" sections of its Security Plan which outlines use of force parameters, in violation of D.C. Official Code § 25-823(6)
- Charge III: [On Sunday, May 26, 2012,] the Respondent violated the "Incident Protocol/Incident Log" section of its Security Plan which states "all assaults must be reported to MPD" and outlines preparation of incident report parameters, in violation of D.C. Official Code § 25-823(6)
- Charge IV: [On Sunday, May 26, 2012,] the Respondent failed to incorporate the statutory requirements into its Security Plan, in violation of D.C. Official Code § 25-402 (f)
- Charge V: [On Sunday, May 26, 2012,] the Respondent failed to provide accurate information to the investigators, in violation of D.C. Official Code § 25-766

ABRA Show Cause File No., 13-251-00072, Notice of Status Hearing and Show Cause Hearing, 2-6 (July 24, 2013).

The factual basis of the Charges listed above is an allegation that on Sunday, May 26, 2013, there were three patrons and one establishment employee who suffered serious injuries while present at the licensed establishment. An investigation of the incident revealed that three individuals got into an altercation over a female. The employee became injured after he intervened. The Metropolitan Police Department of the District of Columbia ("MPD") determined that the assailant used an unknown sharp object to cut the victims.

Under the authority of the D.C. Official Code § 25-827, the MPD Chief of Police, Chief Cathy Lanier, closed the establishment. Shortly thereafter, Chief Lanier requested in writing that the Board suspend or revoke the alcoholic beverage license of the licensed establishment. The request was based upon the conclusion that the continued operation of the licensed establishment presents an imminent danger to the health and safety of the public. On May 29, 2013, the Board voted to continue the suspension of the establishment's license. The Respondent requested a Summary Suspension Hearing on May 30, 2013, under D.C. Official Code § 26-826(c).

The Board held the Summary Suspension Hearing on June 3, 2013. The Board lifted the Summary Suspension of the Respondent's ABC-license on the conditions set forth in an offer-in-compromise amending the establishment's Security Plan. The matter was continued until the Show Cause Hearing took place.

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on September 25, 2013. The Show Cause Hearing scheduled for November 6, 2013 was continued to February 19, 2014 due to a Joint Motion filed by the Respondent. The parties proceeded to the Show Cause Status Hearing and argued their respective cases on February 19, 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:

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. The Government has presented evidence of the establishment's repeated allowance of the establishment to be used for an unlawful or disorderly purpose. ¹ *See generally Transcript (Tr.), 2/19/04.*

A. THE RESPONDENT'S SECURITY PLAN

3. The Respondent has a Security Plan dated December 1, 2011. This Security Plan was in effect at the time of the underlying incident of this case.
4. The "Incident Protocol/Incident Log" portion of the security plan states:

All incidents whether major or minor, must be reported to the Head of Security. Failure to report any incident to the Head of Security can result in disciplinary action or termination. It will be the Head of Security to record all incidents into the incident log. The incident log is to contain the time of the incident, location of the incident, individuals involved, and the time Metropolitan Police Department (MPD) was notified. All assaults must be reported to MPD and must include who the report was given to. The report must also include the response time in which MPD or Medical assistance arrived.

Case Report 13-251-00072, Exhibit 10.

¹ The Board takes administrative notice of *The Stadium Group, LLC t/a Stadium*, Case No: 12-CMP-00680, Board Order No. 2014-244 (D.C.A.B.C.B. June 18, 2014) and the October 10, 2012 Fact Finding Hearing.

5. The “Procedures for handling violent incidents, other emergencies and notifying the Metropolitan Police Department” section of the portion of the security plan titled “Conflict Resolution/ Aggressive Customers” states:

In cases where a security must use physical force to prevent or stop an assault from occurring, the employee shall use the minimum amount of force needed to restrain the violent individual. In no case shall the employee place their hands or arms around the individual’s throat and shall ensure that the individual is not restrained in a manner that can result in positional asphyxiation.

Id.

6. The “Patron Ejection” section of the portion of the security plan titled “Floor Men/ Security Conduct Guidelines” in relevant part states, “if the ejected patron attacks Floor men, reasonable force can be used in self-defense.” Id. Under no circumstances should excessive force be used. Id. Chokeholds and sleeper holds should never be used except in life threatening scenarios. Id.
7. The establishment’s security plan does not include any reference to the preservation of a crime scene. Id.; see also *Tr.*, 02/19/14 at 331.

B. WITNESS TESTIMONY

I. ABRA Investigator Abyie Ghenene

8. On May 26, 2013, Investigator Ghenene monitored the Queens Chapel Road area for ABRA violations. *Tr.*, 02/19/14 at 18. At approximately, 3:05 a.m., several fire trucks, ambulances and additional police cruisers arrived to the establishment in response to an incident. *Tr.*, 02/19/14 at 19, 26. Investigator Ghenene made contact with Sergeant Fox of the MPD to determine what had occurred at the scene. *Tr.*, 02/19/14 at 25. Sergeant Fox explained that it appeared that multiple people had been stabbed inside the establishment. *Tr.*, 02/19/14 at 25-26. There were four victims in total, one of which was an employee of Stadium Club. *Tr.*, 02/19/14 at 29. One of the victims had seven stab wounds to unknown regions of his body and the most seriously injured patron had a gaping 8 inch wound. *Tr.*, 02/19/14 at 29-30. The patron with the gaping 8-inch wound was discovered outside of the establishment. *Tr.*, 02/19/14 at 211.
9. Two MPD Detectives, Detective Farmer and Detective Rivanski informed Investigator Ghenene that the crime scene had been cleaned and restored, impeding the opportunity to obtain any evidence. *Tr.*, 02/19/14 at 31. Once Investigator Ghenene arrived to the scene where the incident occurred, it appeared to him that the area had been sanitized. *Tr.*, 02/19/14 at 209. Investigator Ghenene observed police tape surrounding the area where the incident occurred and towels with blood on them inside the bathroom. *Tr.*, 02/19/14 at 94-95; See also Government Exhibit 6.
10. During his investigation, Investigator Ghenene learned from Anthony Smart, an

employee at the establishment, that there were twenty-seven security guards on duty and two reimbursable detail officers at the time of the incident. *Tr.*, 02/19/14 at 34. There was a mandatory identification check, mandatory pat down searching and mandatory use of metal detecting wands in place on the evening of the incident. *Tr.*, 02/19/14 at 35.

11. Investigator Ghenene reviewed video surveillance of the establishment taken on the evening of May 26, 2013. *Tr.*, 02/19/14 at 61. He saw that one of the establishment's security staff responded to the incident, but it did not appear that security was sufficient for the area where the incident occurred. *Tr.*, 02/19/14 at 61, 107. He also observed two of the four injured patrons exiting the establishment without being accompanied by establishment employees. *Tr.*, 02/19/14 at 61. During Investigator Ghenene's investigation, Mr. Smart represented that he escorted two of the injured victims out of the establishment and to an ambulance. *Tr.*, 02/19/14 at 110.

II. James Redding

12. Mr. Redding was present in the establishment on the evening of May 26, 2013. *Tr.*, 02/19/14 at 222. The incident occurred in Room 5 and between VIP Tables 2 and 3, as illustrated on Government Exhibit B. *Tr.*, 02/19/14 at 224. He observed two adults arguing with each other which later escalated into one adult punching the other. *Tr.*, 02/19/14 at 222. Mr. Redding stated that he saw one of his staff members, Mr. Trevor Ward, jump over a partition when the fight between the two patrons began. *Tr.*, 02/19/14 at 226-27. When Mr. Ward intervened, he suffered a cut to his arm. *Tr.*, 02/19/14 at 227. Mr. Redding attempted to get Mr. Ward out of the fight and had two people escort him out. *Tr.*, 02/19/14 at 227. Within three minutes of the outbreak of the fight, the three participants were out in the parking lot and left by themselves. *Tr.*, 02/19/14 at 228.
13. According to Mr. Redding, there was not any blood at the crime scene at the table where the actual fight broke out. *Tr.*, 02/19/14 at 228. At the time of the incident, the staff was not aware of any blood on the premises. *Tr.*, 02/19/14 at 229-30. Accordingly, the staff cleaned the broken glass off of the table and the floor. *Tr.*, 02/19/14 at 229-30. Mr. Redding regularly instructs his staff that no [empty] plates, bottles or glasses are permitted to be on the tables and that they are to clean up at all times. *Tr.*, 02/19/14 at 230.
14. At the time of the incident, Mr. Redding did not believe that any of his security staff knew what the procedure was for preserving a crime scene. *Tr.*, 02/19/14 at 331. At this point in time, he did not train his employees on how to preserve a crime scene. *Tr.*, 02/19/14 at 331.
15. There was no weapon found inside of the establishment. *Tr.*, 02/19/14 at 239. It appeared to Mr. Redding that the assailant used a broken glass to injure the patron. *Tr.*, 02/19/14 at 240.
16. Following the incident, the establishment provided ABRA with video footage and an incident report of the events that occurred that night. *Tr.*, 02/19/14 at 241-42.

III. Resolution of Factual Contradictions in the Testimony of ABRA Investigator Abiye Ghenene and Mr. James Redding

17. The Board does not credit Investigator Ghenene's testimony that the establishment's incident report fails to comply with the terms set out in its Security Plan. *Tr.*, 02/19/14 at 100-01. More specifically, the Board does not find sufficient evidence in the record to suggest that the establishment failed to adhere to the requirement that "all assaults must be reported to MPD." Investigator Ghenene noted that the incident log is required to be completed by the Head of Security. *Tr.*, 02/19/14 at 100. In addition, Investigator Ghenene highlights that there is "to be much more detail [in the report], including the individuals involved, the location of the incident, and the time MPD was notified. *Tr.*, 02/19/14 at 101. Instead, the Board finds the evidence presented by the Respondent as controlling on this issue. The Respondent submitted an AT&T phone log of Ms. Olga Lavinchy, the ABC Manager on duty on the night of the incident. *See* Licensee Exhibit 1. The phone log displays a call placed by Ms. Lavinchy to the MPD at 3:07 a.m. during the time the incident took place. *Id.* Further, the Respondent presented the Incident Report that was completed by Daniel Pearson, a member of establishment management, at the time of the incident. *See* Licensee Exhibit 3. The Report identifies the time date, people involved, the time that Ms. Lavinchy called the MPD and what time the MPD arrived on the scene to investigate as required by its security plan. *Id.*; *Supra*, at ¶ 4. In addition, the Board credits the testimony of Mr. Redding who asserted that the Head of Security was off duty on the night in question. *Tr.*, 02/19/14 at 232-35. As a result, the Board concludes that the establishment's Head of Security absence is a logical reason for why this person was unable to complete the incident report on the night in question. Moreover, Mr. Redding confirmed that the Head of Security filled out an Incident Report, in addition to the one completed by Daniel Pearson on the night of the event, when he returned to duty. *Tr.*, 02/19/14 at 232-35.

CONCLUSIONS OF LAW

18. 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).

19. The Board finds the Respondent guilty of Charges I and IV. The Board finds the Respondent not guilty of Charge II and III. The Board is dismissing Charge V.

I. CHARGE I: THE BOARD FINDS THAT ON SUNDAY MAY 26, 2013, THE RESPONDENT ALLOWED THE ESTABLISHMENT TO BE USED FOR AN UNLAWFUL OR DISORDERLY PURPOSE

20. The Board first finds that on Sunday, May 26, 2013, the Respondent allowed the establishment to be used for an unlawful or disorderly purpose in violation of D.C. Official Code § 25-823(2). Under § 25-823 (2), “the Board may fine a licensee who allows the establishment to be used for an unlawful purpose.”
21. The D.C. Court of Appeals has found “unlawful or disorderly purpose” to mean that an establishment’s “continuous course of conduct” reflected a regular method of operation that encouraged, caused or contributed to the unlawful or disorderly conduct at issue. 1900 M Rest. Ass’ns, Inc. v. D.C. Alcoholic Beverage Control Bd., 56 A.3d 486, 493-94 (D.C. 2012). In 1900 M Restaurant Associations, the court provided two tests to determine whether a licensee violated § 25-823(2). 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. The court found that the test articulated above also applies to violations of an establishment’s security plan. 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. Id. 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.
22. In applying the continuous course of conduct test articulated in 1900 M Restaurant Associations, the Board finds sufficient evidence in the record to determine that the Respondent has continuously failed to comply with the terms of its security plan resulting in the establishment being used for an unlawful or disorderly purpose. Supra, at ¶ 2. The Government made a showing of the Respondent’s previous conduct in Case No. 12-CMP-00680 in which the Board found, as a matter of law, that the Respondent had violated its Security Plan by failing to check the identification of its entering patrons. Supra, at ¶ 2. Additionally, the Board found that the Respondent violated its Security Plan by failing to subject all entering patrons to a thorough security check. Supra, at ¶ 2. The Board finds that this type of conduct has a demonstrable connection to the unlawful and disorderly conduct that took place in the licensed establishment on May 26, 2013. Therefore, the Board finds that the Respondent violated D.C. Official Code § 22-823(2) based on its continuous conduct in past incidents and well as the underlying incident of this matter.
23. Moreover, the Board also finds sufficient evidence in the record to determine that the Respondent allowed the establishment to be used for an unlawful or disorderly purpose using the 1900 M Restaurant Associations single instance test. As noted in the Findings of Fact, in this particular instance, there were four victims, one of which was an

employee of the licensed establishment. Supra, at ¶ 8. Additionally, two of these victims exited the establishment without being accompanied by establishment staff security. Supra, at ¶ 11. The record showed that the club was ill-prepared to handle an event of this magnitude by insufficient security in the area where the incident occurred, the speed of response to the incident, and the staff's failure to preserve the crime scene. Supra, at ¶ 11, 14 ; see also Case Report 13-251-00072, Exhibit 11. The Board also finds it disturbing that the area where the incident occurred appeared to be sanitized upon ABRA's arrival to the scene. Supra, at ¶ 8. The Board finds that there is substantial evidence supporting the establishment's conduct in this single instance that contributed to the disorderly conduct that occurred. Accordingly, the Board finds the Respondent to have violated D.C. Official Code § 22-823(2).

II. CHARGE II: THE BOARD FINDS THAT THE RESPONDENT DID NOT VIOLATE THE "CONFLICT RESOLUTION/AGGRESSIVE CUSTOMERS" AND "FLOOR MEN/SECURITY CONDUCT GUIDELINES"

24. The Board finds that the Respondent did not violate the "Conflict Resolution/Aggressive Customers" and "Floor Men/Security Conduct Guidelines" sections of its Security Plan which outlines use of force parameters in violation of D.C. Official Code § 25-823 (6). After reviewing the evidence and testimony, the Board did not find sufficient evidence to support this claim. The record showed that the establishment captured the incident in the incident log shortly after it occurred and again at a later date by the Head of Security. Supra, at ¶ 17. Moreover, the video surveillance presented shows that the security did respond to the incident within the force parameters permitted within its security plan. Supra, at ¶ 5, 6; see also Government Exhibit 11. Accordingly, the Board finds the Respondent did not violate D.C. Official Code § 25-823 (6).

III. CHARGE III: THE BOARD FINDS THAT THE RESPONDENT DID NOT VIOLATE ITS SECURITY PLAN BY REPORTING THE INCIDENT TO THE METROPOLITAN POLICE DEPARTMENT

25. The Board finds insufficient evidence in the record to find that the Respondent failed to comply with the terms of its security plan which states that "all assaults must be reported to MPD." Supra, at ¶ 4, 24. Consequently, the Board, as a matter of law, cannot sustain Charge III.

IV. CHARGE IV: THE BOARD FINDS THAT THE RESPONDENT FAILED TO INCORPORATE THE STATUTORY REQUIREMENTS INTO ITS SECURITY PLAN

26. The Board finds that the Respondent violated § 25-823 (1) when it failed to incorporate the statutory requirements into its Security Plan. D.C. Official Code § 25-823 (1) holds that "the Board may fine...if the licenses violates any regulations or laws of

the District.” The Omnibus Alcoholic Beverage Regulation Emergency Act of 2012, effective on January 14, 2013, requires an establishment’s security plan to include its procedures for preserving a crime scene. Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012, D.C. Official Code § 25 (2013). The record indicates that the procedures for preserving a crime scene are not a part of the Respondent’s security plan. Supra, at ¶ 7. Since the incident in question took place on May 26, 2013, the establishment was not in compliance with the requirements of this Act for approximately four months. Supra, at ¶ 9, 13. Moreover, the Board notes that in his testimony, Mr. Redding admitted that his employees had not received appropriate training on how to preserve a crime scene. Supra, at ¶ 14. Most importantly, the establishment’s conduct, which included collecting bottles and cleaning the broken glass, showed that the crime scene was not preserved. Supra, at ¶ 13. Accordingly, the Board finds that the Respondent failed to incorporate and follow the statutory requirements into its security plan in violation of D.C. Official Code § 25-823 (1).

V. CHARGE V: THE BOARD DISMISSES CHARGE V DUE TO INSUFFICIENT EVIDENCE ON THE RECORD

27. Lastly, the Board is dismissing Charge V. Charge V alleges that the Respondent failed to provide accurate information to the investigators in violation of D.C. Official Code D.C. Official Code § 25-766. D.C. Official Code § 25-766 prohibits statements that are false or misleading in the context of advertising, which is not applicable to this case. The appropriate charge is D.C. Official Code §25-823(5), which prohibits the interference with an investigation. In this case, the Board concluded that the evidence does not support this claim and therefore dismisses this charge.

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 §§, 25-402(f), 25-823(6), and 25-823(2) in Case No. 13-251-00072.

In total, the Respondent must pay a total fine of \$6,000 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 ten (10) days. The breakdown of the Respondent’s penalty is as follows:

(1) The Respondent

- a. shall pay a \$4,000.00 fine and its license shall be suspended for five (5) days to be served for the violation described in Charge I.
- b. shall pay a \$2,000.00 fine and its license shall be suspended for five (5) days to be served for the violation described in Charge IV.

- (2) In total, the Respondent must pay a fine in the amount of \$6,000 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.
- (3) In total, the Respondent's ten (10) suspension days shall begin on Wednesday, August 20, 2014 and end on Sunday, August 31, 2014.

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



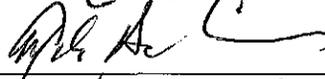
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member

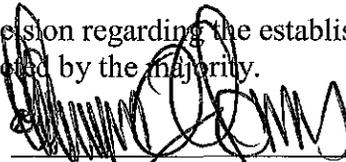


Hector Rodriguez, Member



James Short, 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).