

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

In the Matter of:)
)

Sunshine Bar & Lounge, LLC)
t/a Sunshine Bar & Lounge)

Holder of a Retailer's Class CR License)
at premises)
7331 Georgia Avenue, N.W.)
Washington, D.C. 20012)

License No.: ABRA-85239
Case No.: 12-CMP-00054
Order No.: 2012-419

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Walter Adams, II, Assistant Attorney General,
on behalf of the District of Columbia

Abyie Ghenene, Inspector,
Alcoholic Beverage Regulation Administration

Alganesh Kidane, Managing Member
Sunshine Bar and Lounge, LLC, on behalf of Respondent

Ayenen Ehalu, Manager
Sunshine Bar and Lounge, on behalf of Respondent

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

On September 12, 2012, the Alcoholic Beverage Control Board (“Board”) conducted a Show Cause hearing concerning three charges brought by the Alcoholic Beverage Regulation Administration (“ABRA”) against Sunshine Bar & Lounge, LLC, t/a Sunshine Bar & Lounge (“Respondent”) in regards to an incident on February 1, 2012 at its premises, 7331 Georgia Avenue, N.W., Washington, DC 20012 (“Premises”). The Notice of Status and Show Cause Hearings (“Notice”) was adopted by the Board on July 11, 2012 and personally served on Alganesh Kidane, the Managing Member of the Respondent, on July 18, 2012. The specific violations noted in the Notice were (1) the sale, service or permission to consume alcoholic beverages beyond authorized hours, in violation of D.C. Official Code § 25-723(b)(1); and (2) the sale, service or permission to consume alcoholic beverages on the licensed premises beyond the hours limited by the Board’s Order following a protest hearing, in violation of D.C. Official Code § 25-724; and (3) making a substantial change in the nature of the operation of the licensed establishment without Board approval, in violation of D.C. Official Code § 25-762. *Notice* at 2-3. Prior to the Show Cause hearing, the Board conducted a Show Cause status hearing on August 15, 2012.

The Board, having considered the evidence, the District’s arguments and all documents comprising the Board’s official file, finds that Respondent violated D.C. Official Code § 25-723(b)(1) and D.C. Official Code § 25-762. For the violation of D.C. Official Code § 25-723(b)(1), the Board fines Respondent Two Thousand Dollars (\$2,000) and suspends Respondent’s license for a total of two (2) days, both of which are stayed. For the violation of D.C. Official Code § 25-762, the Board fines Respondent Two Thousand Dollars (\$2,000) and suspends Respondent’s license for a total of three (3) days, which shall take place on a three consecutive day period from November 22, 2012, through November 24, 2012. The Board dismisses the charge that the Respondent violated D.C. Official Code § 25-724.

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:

1. Respondent holds a Retailer’s CR License (License No. ABRA-85239) and is located at 7331 Georgia Avenue, N.W., Washington, DC 20012. *See ABRA Licensing File No. 85239.*
2. The Show Cause Hearing in this matter was held on September 12, 2012, and the Notice charged Respondent with violating District of Columbia Official Code §§ 25-723(b)(1), 25-724, and 25-762.

3. At 3:45 a.m. on Monday, February 6, 2012, officers with the Metropolitan Police Department (MPD), responding to an alleged assault that occurred outside of Respondent's Premises entered the Premises after Ms. Kidane unlocked the side door of the Premises to let the officers into Respondent's establishment. *Transcript, September 12, 2012. at 47-54.* The officers found twenty-eight patrons on the second above-ground floor of the establishment with open containers and glasses of alcoholic beverages present. *Tr.* at 85. On the date of the incident, the establishment was licensed to operate from 11:00 a.m. until 2:00 a.m. *Order No. 2011-198, May 25, 2011 at 9.* In addition, officers have repeatedly visited the establishment and observed the establishment being open after-hours. *Tr., September 12, 2012 at 46.*

4. Respondent has scheduled events at the establishment that are in clear violation of the license's limitations on hours of operation and use of the above-ground portions of the Premises. *Tr.* at 107-109.

5. Respondent admitted that the establishment was operating after-hours on the morning of February 6, 2012. *Tr.* at 128. Moreover, Respondent was aware that the license issued for the establishment did not allow for use of the second above-ground floor as part of the establishment. *Tr.* at 129. Finally, Respondent admitted that the second above-ground floor contained a fully-stocked bar. *Tr.* at 130.

CONCLUSIONS OF LAW

6. 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.*). 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 §§ 25-830, 25-447.

I. Charge I

7. The first charge that the Board considered is the sale, service or permission to consume alcoholic beverages beyond authorized hours, in violation of D.C. Official Code § 25-723(b)(1). We find that the Respondent permitted the sale, service or permission to consume alcoholic beverages beyond authorized hours. Under D.C. Official Code § 25-723(b)(1), an establishment, except as otherwise provided for, may not sell or serve alcoholic beverages between the hours of "2:00 a.m. and 8:00 a.m, Monday through Friday, excluding District and federal holidays." D.C. Code § 25-781(a)(1). Here, Respondent admits that the establishment served alcoholic beverages after 2:00 a.m. on Monday, February 6, 2012. *Tr.* at 128. Moreover, the record establishes that alcoholic beverages were available to patrons at the establishment after 2:00 a.m. on the morning of February 6, 2012. *Tr.* at 85. As such, Respondent is liable for violating § 25-723(b)(1).

II. Penalty for Charge I

8. Under D.C. Official Code § 25-823(1), the Board has authority to suspend or revoke a license if the licensee violates any of the provisions of District laws and regulations governing the sale of alcoholic beverages. Moreover, under D.C. Official Code § 25-830(b) (1) (A), a violation of D.C. Official Code § 25-723 is considered a primary tier violation. The civil penalty schedule adopted by the Board for violation of D.C. Official Code § 25-723(b)(1) does not require the issuance of a warning for violating hours of operation and authorizes the Board to fine the licensee up to \$2,000 for such a violation, 23 DCMR § 800. Based on the egregiousness of the offense, we find that the maximum penalty is an appropriate punishment for the Respondent. The Board's approval of the transfer of the establishment's existing license to Respondent in Board Order No. 2011-198, was specifically conditioned, in part, on Respondent not using the second floor above ground for the sale, service or consumption of alcoholic beverages. *Order, supra* at 10. Respondent was very clear on this restriction and agreed to this condition during the Protest Hearing. *Transcript, March 16, 2011* at 47-48. Accordingly, Respondent was fully aware of the license's restriction but intentionally chose to ignore it for her own business purposes. *Tr.* at 129. Such conduct constitutes a flaunting of the Board's authority that cannot and should not be tolerated.

III. Charge II

9. The second charge that the Board considered is the sale, service or permission to consume alcoholic beverages on the licensed premises beyond the hours limited by the Board's Order following a protest hearing, in violation of D.C. Official Code § 25-724. Under § 25-723(b) (1), an establishment, except as otherwise provided for, may not sell or serve alcoholic beverages beyond the hours established in a Board Order. Board Order No. 2011-198, which granted an extension of the hours of operation for Respondent limited the hours of operation from Sunday through Thursday to the hours between 11:00 a.m to 2:00 a.m. *Order, supra* at 9. Here, Respondent admits that the establishment served alcoholic beverages after 2:00 a.m. on Monday, February 6, 2012. *Tr.* at 128. Moreover, the record establishes that alcoholic beverages were available to patrons at the establishment after 2:00 a.m. on the morning of February 6, 2012. *Tr.*, at 85. As such, Respondent is liable for violating § 25-723(b) (1).

IV. Penalty for Charge II

10. Under D.C. Official Code § 25-823(1), the Board has authority to suspend or revoke a license if the licensee violates any of the provisions of District laws and regulations governing the sale of alcoholic beverages. Moreover, under D.C. Official Code § 25-830(b) (1) (A), a violation of D.C. Official Code § 25-724 is considered a primary tier violation. The civil penalty schedule adopted by the Board for violation of D.C. Official Code § 25-723(b)(1) does not require the issuance of a warning for violating hours of operation and authorizes the Board to fine the licensee up to \$2,000 for such a violation, 23 DCMR § 800. Because the Board considers this violation to be duplicative of the violation contained in Charge I, above, the Board has chosen to limit Respondent's punishment to the penalty established under Charge I and hereby dismisses this Charge.

V. Charge III.

11. The third charge that the Board considered was the licensee's allegedly making a substantial change in the nature of the operation of the licensed establishment without Board approval, in violation of D.C. Official Code § 25-762(3). In this case, the record shows that Respondent intentionally made a substantial change in the nature of its operations by expanding to another floor of the premises without filing an application with or seeking the Board's approval for a substantial change. Respondent was aware that the license issued for the establishment did not allow for use of the second above-ground floor as part of the establishment. *Tr.* at 129. Moreover, Respondent admitted that the second above-ground floor contained a fully-stocked bar. *Tr.* at 130. As such, Respondent is liable for violating § 25-762(3).

VI. Penalty for Charge III

12. Under D.C. Official Code § 25-823(1), the Board has authority to suspend or revoke a license if the licensee violates any of the provisions of District laws and regulations governing the sale of alcoholic beverages. The civil penalty schedule adopted by the Board for violation of D.C. Official Code § 25-762(3) does not require the issuance of a warning for violating hours of operation and authorizes the Board to fine the licensee up to \$2,000 for such a violation. 23 DCMR § 800. Furthermore, because Respondent has so clearly flaunted the Board's authority by violating the restriction in the Board's Order on the use of the second floor and the clear statutory requirement for Board review of any change in Respondent's operations, the Board has determined that a suspension of three days is warranted.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 24th day of October 2012, finds that the Respondent, Sunshine Bar & Lounge, LLC., t/a Sunshine Bar & Lounge, violated D.C. Official Code §§ 25-723(b)(1) and 25-762(3). The Board hereby **ORDERS** that:

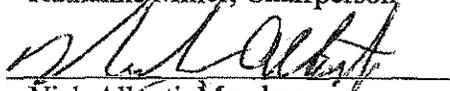
- (1) For the violation described in Charge I, Respondent shall pay a fine in the amount of \$2,000.00 by no later than thirty (30) days from the date of this Order;
- (2) Charge II is dismissed;
- (3) For the violation described in Charge III, the Respondent shall pay a fine in the amount of \$2,000.00 by no later than thirty (30) days from the date of this Order. The Respondent shall also receive a suspension of its license for three (3) consecutive days which shall be served November 22, 2012, through November 24, 2012.

The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

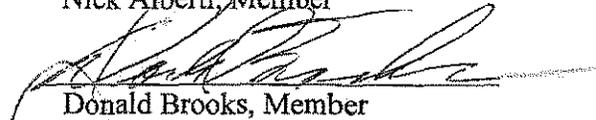
District of Columbia
Alcoholic Beverage Control Board



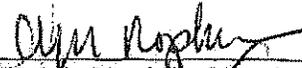
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Calvin Nophla, Member



Mike Silverstein, 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, 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 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).