THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
Sunshine Bar & Lounge, LLC t/a Sunshine Bar & Lounge	License No.: Case No.: Order No.:	85239 12-251-00054 12-CMP-00243 2014-027
Holder of a Retailer's Class CR License at premises 7331 Georgia Avenue, N.W. Washington, D.C. 20012		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

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

Samuel S. Sharp, on behalf of ANC 4B, ANC Commissioner Sara Green, and Andre R. Carley, Intervenors

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REVOKING RESPONDENT'S LICENSE AND DENYING THE MOTION TO INTERVENE

INTRODUCTION

The Board revokes the Retailer's Class CR License held by Sunshine Bar & Lounge, LLC, t/a Sunshine Bar & Lounge, (hereinafter "Sunshine" or "Respondent"). Sunshine's repeated and continuous violations of the law show that Sunshine is intentionally and willfully violating the terms of its license despite repeated warnings by the Board. Therefore, the Board finds that revocation is the only appropriate course of action.

Procedural Background

This matter arises from two Notices of Status Hearing and Show Cause Hearing (collectively the "Notices"). The Board executed the notice in Case Number 12-251-00054 on July 31, 2013, and the Alcoholic Beverage Regulation Administration (ABRA) served it on Sunshine, located at premises 7331 Georgia Avenue, N.W., Washington, D.C., on August 7, 2013. *ABRA Show Cause File No.* 12-CMP-00054, Notice of Status Hearing and Show Cause, Service Form. The Board issued the notice in Case Number 12-CMP-00243 on July 24, 2013, and ABRA served it on Sunshine on August 1, 2013. *ABRA Show Cause File No.* 12, 12-CMP-00243, Notice of Status Hearing and Show Cause, Service Form.

The Notices charge the Respondent with a number of violations, which if proven true, would justify the imposition of a fine, suspension, and possible revocation of the Respondent's license.

Specifically, the notice in Case Number 12-251-00054, charges Sunshine with the following violations:

> Charge I: [Sunshine] failed to comply with the terms of a Board Order [issued on October 24, 2012 that imposed a fine on the Respondent that has not been paid in violation of District of Columbia (D.C.) Official Code § 25-823(6)] . . .

ABRA Show Cause File No., 12-251-00054, Notice of Status Hearing and Show Cause Hearing, 2-3 (July 31, 2012).

The notice in Case Number 12-CMP-00243, charges Sunshine with the following additional violations:

> Charge I: [On Friday, July 13, 2012, Sunshine] allowed the licensed establishment to be used for an unlawful or disorderly purpose [in violation of D.C. Official Code § 25-823(2)] . . . .
>
> Charge II: [On Friday, July 13, 2012, Sunshine] failed or refused to allow police officers to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interfered with an investigation [in violation of D.C. Official Code § 25-823(5)] . . . .
>
> Charge III: [On Friday, July 13, 2012, Sunshine] made a substantial change in the nature of the operation [by using the second floor] of the licensed establishment without Board approval in violation of D.C. Official Code § 25-762[(b)(3)] . . . .
>
> Charge IV: [On Friday, July 13, 2012, Sunshine] failed to comply with a Board Order [prohibiting Sunshine from using its second floor, which violates D.C. Official Code §25-823(6)] . . . .

ABRA Show Cause File No., 12-CMP-00243, Notice of Status Hearing and Show Cause Hearing, 2-4 (July 24, 2013).

The Office of the Attorney General for the District of Columbia (OAG) and Sunshine appeared at the Show Cause Status Hearing in Case Number 12-251-00054 on September 25, 2013. *Transcript* (*Tr.*), September 25, 2013, at 3 (Case Number 12-251-00054). At the hearing, the Chairperson instructed the parties that the Show Cause Hearing would be held on November 13, 2013, at 11:00 a.m. Id. at 3 (Case Number 12-251-00054). Nevertheless, on November 13, 2013, the OAG appeared at the Show Cause Hearing, but Sunshine did not appear. See generally, *Tr.*, November 13, 2013 (Case Number 12-251-00054). As a result, the Board permitted the OAG to proceed with the prosecution ex parte in accordance with D.C. Official Code § 25-447(e).

In addition, the OAG and Sunshine appeared at the Show Cause Status Hearing on September 18, 2013 in Case Number 12-CMP-00243. See generally *Tr.*, September 18, 2013 (12-CMP-00243). On October 29, 2013, the ABRA mailed a letter to Sunshine indicating that the Show Cause Hearing had been rescheduled for November 13, 2013, at 1:30 p.m. Letter from Danette Walker, Adjudication Specialist, ABRA, to Alganesh Kidane, Sunshine Bar & Lounge (Oct. 29, 2013). Nevertheless, on November 13, 2013, the OAG appeared at the hearing, but Sunshine did not appear. See generally *Tr.*, 11/13/2013 (Case Number 12-CMP-00243). As a result, the Board permitted the OAG to proceed with the prosecution ex parte in accordance with D.C. Official Code § 25-447(e).

The Board also received a Motion to Intervene (Motion) filed by ANC 4B, ANC Commissioner Sara Green, and Andre R. Carley (collectively, the "Intervenors"). The Board addresses the Motion filed by the Intervenors in this Order.

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. Sunshine holds a Retailer's Class CR License, ABRA License Number 85239. See *ABRA Licensing File No. 85239*. The establishment's premises are located at 7331 Georgia Avenue, N.W., Washington, D.C. See *ABRA Licensing File No. 85239*.

2. Sunshine's operations are limited by Board Order No. 2011-198, issued on May 25, 2011, which states, ". . . no entertainment will be offered on the two floors above ground, nor shall the second floor above ground be licensed for the sale, service or consumption of alcoholic beverages." In re Sunshine Bar & Lounge, LLC, t/a Sunshine Bar & Lounge, Case Number 10-PRO-00149, Board Order No. 2011-198, 10 (D.C.A.B.C.B. May 25, 2011).

3. The records of the ABRA show that Sunshine was found to have committed three primary tier violations in 2012 and 2013. First, on October 24, 2012, the Board found Sunshine guilty of committing two primary tier violations. In re Sunshine Bar & Lounge, LLC, t/a

Sunshine Bar & Lounge, Case No. 12-CMP-00054,[1] Board Order No. 2012-419, 5 (D.C.A.B.C.B. Oct. 24, 2012). There, the Board found that Sunshine operated after its Board approved hours in violation of § 25-723 and engaged in an unlawful substantial change by using its second floor without the permission of the Board in violation of § 25-762(b)(3). Id. at 3-4. Second, on March 27, 2013, the Board found that Sunshine committed one primary tier violation by engaging in an unlawful substantial change by using its second floor without the permission of the Board in violation of § 25-762(b)(3). In re Sunshine Bar & Lounge, LLC, t/a Sunshine Bar & Lounge, Case No. 12-251-00123, 12-CMP-00194, Board Order No. 2013-068, 2-3, 8-9 (D.C.A.B.C.B. Mar. 27, 2012). The prior Order also found that Sunshine intentionally interfered with a lawful police investigation in violation of § 25-823(5), and violated a Board Order prohibiting the use of the second floor in violation of § 25-823(6). Id. at 8. The establishment's history of violations also demonstrates that Sunshine continues to use its second floor despite having ample notice through formal orders of the Board that such usage is illegal.

Case Number 12-251-00054

4. ABRA Public Information Officer William Hager is the custodian of ABRA's records regarding the payment and collection of fines. *Tr.*, 11/13/13 at 6 (Case Number 12-251-00054). As noted by Mr. Hager, ABRA's records show that Sunshine failed to pay the $4,000 fine imposed by the Board, which was ordered to be paid within thirty days as part of Board Order No. 2012-419 issued on October 24, 2012. Id. at 7-8; In re Sunshine Bar & Lounge, LLC, t/a Sunshine Bar & Lounge, Board Order No. 2012-419, at 5; OAG Exhibit No. 1. ABRA's records further show that the fine payment has been outstanding for almost a year. *Tr.*, 11/13/13 at 8 (Case Number 12-251-00054).

Case Number 12-CMP-00243

I. MPD Officer Michael Beeler

5. Metropolitan Police Department Officer Michael Beeler works in the police district where Sunshine is located. *Tr.*, 11/13/13 at 6-7 (Case Number 12-CMP-00243). On July 13, 2012, Officer Beeler received a radio call indicating that an assault occurred at Sunshine Bar & Lounge. Id. at 7. Officer Beeler responded to the call and made his way to the establishment. Id.

6. Upon arriving at the establishment, Officer Beeler observed Mahider Tekeste in an ambulance, two witnesses to the event, and Yeneneh Hailu. Id. at 8, 11. Officer Beeler then began interviewing the individuals present at the scene. Id. at 9. Ms. Tekeste and the other female present told him Mr. Hailu assaulted Ms. Tekeste. Id. at 12-13. Ms. Tekeste informed Officer Beeler that she injured her wrist because of the assault. Id. at 12.

7. Officer Beeler also interviewed a man at the scene who looked like he had been beat up and had blood on his face. Id. at 13-14. The man did not cooperate with Officer Beeler, but Ms.

[1] ABRA's current practice in cases involving the failure to pay a fine is to assign the matter the same case number as the underlying violations that led to the imposition of the fine. The Board notes that the current violation is separate from the violations resolved by Board Order No. 2012-419.

Tekeste indicated that he had been assaulted by Mr. Hailu and a group of men. Id. at 13, 15, 22-23.

8. Officer Beeler also interviewed Mr. Hailu. Id. at 15. Mr. Hailu stated that he ejected Ms. Tekeste from the establishment and that she began kicking the glass door at the front of the establishment, which caused it to break. Id. at 16, 21. He did not provide Officer Beeler with any other information, and he refused to provide the name for his security guard when asked. Id. at 17. Officer Beeler noted that Mr. Hailu regularly refused to provide the names of his employees to MPD when requested. Id. at 18. At the conclusion of the interview, Officer Beeler placed Mr. Hailu under arrest for the alleged assault. Id.

II. Mahider Tekeste

9. Mahider Tekeste described her experience at the establishment. Id. at 24. Ms. Tekeste works as a hotel manager and was a patron of the establishment on July 13, 2012. Id. at 27. She noted that she visited the establishment with Mahlet Zeleke, one of Ms. Tekeste's friends. Id. at 27. Ms. Tekeste noted that Ms. Zeleke is friends with Mr. Hailu as well. Id. at 28.

10. Ms. Tekeste arrived at Sunshine Bar & Lounge with Ms. Zeleke at 11:00 p.m. Id. at 28. Later in the evening, Ms. Tekeste and Ms. Zeleke were joined by their mutual friend, Mike Zewde. Id. at 30.

11. Ms. Tekeste noted that during the evening, Mr. Hailu repeatedly flirted with her and asked her to dance with him. Id. at 31, 34. During the evening, Ms Tekeste observed that Mr. Hailu was consuming alcoholic beverages. Id. at 33. Mr. Hailu gave Ms. Tekeste's group a free bottle of Moet and asked Ms. Tekeste to dance with him again. Id. at 31. Ms. Tekeste declined again, and Mr. Hailu and Mr. Zewde got into an argument over Mr. Hailu's unwanted advances. Id. at 31, 38. An hour later, Mr. Hailu announced the close of the establishment and added the bottle to the bill, which resulted in a $300 charge. Id.

12. Upon recognizing that the bottle had been improperly placed on her bill, Ms. Tekeste and her friends began arguing with Mr. Hailu over the charge. Id. at 41. During the argument, one of the establishment's bouncer slapped Ms. Tekeste on the face, stating "Bitch, don't talk to my friend like that." Id. at 41, 43. Upon witnessing the slap, Mr. Zewde began arguing with the bouncer. Id. at 43-44.

13. Immediately after Mr. Zewde began arguing with the bouncer, security began pushing Ms. Tekeste and her friends out the door. Id. at 44. At this time, Mr. Hailu snatched money Ms. Tekeste was holding in her hand, and then locked the establishment's front door once she was outside. Id. Outside, Ms. Tekeste realized her phone was in the establishment, and she began kicking the establishment's door and asking for her phone. Id. Ms. Tekeste admitted that her kicking resulted in the door cracking. Id.

14. After Ms. Tekeste cracked the door, Mr. Hailu burst out of the establishment towards Ms. Tekeste. Id. at 47. Mr. Zewde intervened before Mr. Hailu reached Ms. Tekeste; however, Mr. Hailu began hitting Mr. Zewde. Id. Then, four men joined Mr. Hailu in beating up Mr. Zewde.

Id. at 47-48. Ms. Tekeste observed the men repeatedly kick Mr. Zewde in the back, front, and head. Id. at 49.

15. Ms. Tekeste asked Ms. Zeleke to call the police, and Ms. Tekeste attempted to get Mr. Hailu off Mr. Zewde. Id. Mr. Hailu resisted her efforts, and he pushed her to the ground, which resulted in Ms. Tekeste breaking her right wrist. Id. at 49, 51-52. As a result of her injury, Ms. Tekeste had to have a plate with eight screws inserted into her wrist. Id. at 53.

III. Tyrone Lawson

16. Tyrone Lawson previously served as an investigator with ABRA, and now works for the District's Department of Consumer and Regulatory Affairs. Id. at 69-70. Mr. Lawson served as an investigator with ABRA in July of 2012. Id. at 70. Mr. Lawson arrived at the establishment at 11:40 p.m. on July 13, 2012, to investigate the alleged assault that occurred in the morning. Id. at 73. At the time of the investigation, Mr. Lawson was aware that the establishment had been prohibited by the Board from using the second floor. Id. at 76.

17. Upon arriving at the establishment with former ABRA Investigator Brian Molloy,[2] he noticed activity on the establishment's second floor. Id. at 74. Mr. Lawson and Mr. Molloy then went to the second floor and observed that the establishment had a disc jockey playing music. Id. at 75. Mr. Lawson further observed open containers of alcoholic beverages on the tables and patrons smoking hookah. Id. at 75.

18. Mr. Lawson also interviewed Mr. Hailu about the alleged assault. Id. at 77. Mr. Hailu claimed that Ms. Tekeste attempted to hit someone with a beer bottle during a dispute over a bill, but before she could do so, someone grabbed her wrist. Id. at 77-78. Mr. Hailu admitted to Mr. Lawson that Houston Brown, one of the bouncers, was present during the argument with Ms. Tekeste, and he admitted that he ordered him to leave the premises. Id. at 78. Mr. Hailu told Mr. Lawson that he did not identify Mr. Brown to the police, because he did not trust them. Id. at 79.

19. Mr. Lawson determined that Mr. Hailu lied to the police, because he told Officer Beeler that he did not know the identity of Mr. Brown, yet he admitted to Mr. Lawson that he sent him home and knows his identity. Id. at 80-81; Case Report No. 12-251-00243, 3.

CONCLUSIONS OF LAW

20. 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.

[2] The Board uses the term "former," because Mr. Molloy recently left ABRA for a job in the private sector.

I. Case Number 12-251-00054: Charge I

21. The Respondent violated Board Order No. 2012-419 by failing to pay the $4,000 fine within thirty days. Under the law, it is an unscheduled violation to fail to follow a Board Order. D.C. Official Code § 25-823(6); 23 DCMR § 800.3 (West Supp. 2013).[3] Nevertheless, Sunshine has failed to pay the fine lawfully imposed within the timeframe indicated by the Board. Supra, at ¶ 4. Therefore, we sustain Charge I in Case Number 12-251-00054.

II. Case Number 12-CMP-00243: Charge II

22. The Board finds that Mr. Hailu, Sunshine's manager, lied to MPD about the identity of the establishment's bouncer and interfered with a lawful investigation in violation of the law on July 13, 2012. Under § 25-823(5), a licensee may not "interfere[] with an investigation" conducted by MPD. § 25-823(5). Here, Mr. Hailu admitted to Mr. Lawson that he told Officer Beeler that he did not know the identity of Mr. Brown when, in fact, he was aware of Mr. Brown's identity. Surpa, at ¶¶ 18-19. In and of itself, the Board finds that lying to Officer Beeler about his knowledge of Mr. Brown's identity constitutes the intentional obstruction of MPD's investigation; therefore, the Board sustains Charge II in Case Number 12-CMP-00243.

III. Case Number 12-CMP-00243: Charge III

23. The Board finds that Sunshine engaged in an unlawful substantial change by operating on the second floor without the approval of the Board. Under § 25-762(b)(3), it is a primary tier violation for a licensee to "[e]xpand the operation of the licensed establishment to another floor . . ." without the permission of the Board. D.C. Official Code § 25-762(b)(3); 23 DCMR § 800 *et seq*. (West Supp. 2013). Here, on July 13, 2013, Mr. Lawson observed Sunshine provide entertainment and alcoholic beverages to customers on the establishment's second floor, which resulted in an expansion of the establishment to another floor without the prior approval of the Board. Supra, at ¶ 17. Therefore, the Board sustains Charge III in Case Number 12-CMP-00243.

IV. Case Number 12-CMP-00243: Charge IV

24. The Board finds that Sunshine violated a Board Order by operating on the second floor in defiance of a Board prohibition against such usage. Under § 25-823(6), a licensee is required to comply with a Board Order. D.C. Official Code § 25-823(6). Here, on July 13, 2013, Mr. Lawson observed Sunshine provide entertainment and alcoholic beverages to customers on the establishment's second floor, which is prohibited by Board Order No. 2011-198. Supra, at ¶¶ 2, 17. Therefore the Board sustains Charge IV in Case Number 12-CMP-00243.

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[3] Under the prior version of the penalty schedule, which was in effect at the time the incidents related to these violations occurred, a violation of an order issued by the Board was considered an unscheduled or unlisted violation.

V. Penalty

25. The Board finds that Sunshine's actions demonstrate that the establishment is a public nuisance and that its repeated failures to comply with District law are willful and intentional. Under D.C. Official Code § 25-831(c)(3),"A licensee found in violation of a primary tier offense for the 4th time within 4 years shall have the license either revoked or fined no less than $30,000 and suspended for 30 consecutive days." D.C. Official Code §25-831(c)(3). The violation of § 25-762(b)(3) in this matter is Sunshine's fourth primary tier violation in a four year period; therefore, Sunshine's license is subject to revocation or the imposition of a severe fine and suspension.

26. Under § 25-831(c)(3), the Board deems that a lesser penalty would be a useless gesture. Sunshine's record of violations show that previous penalties imposed by the Board have not persuaded Sunshine to cease operating on the establishment's second floor, interfering with lawful MPD investigations, or defying lawful orders of the Board. Supra, at ¶ 3. These repeated and continuous violations demonstrate that a lesser penalty would not result in Sunshine changing its behavior; therefore, revocation is the only appropriate course of action.

27. Separate and apart from this determination, the Board also revokes Sunshine's license using the discretionary authority provided by § 25-823. Sunshine's repeated interference with MPD investigations and refusal to comply with Board Orders shows that the ownership and management of the establishment cannot be trusted to comply with the law, and have determined to operate in a manner detrimental to public safety.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 15th day of January 2014, finds that Sunshine Bar & Lounge, LLC, t/a Sunshine Bar & Lounge violated D.C. Official Code §§ 25-762(b)(3) and 25-823(5), and committed two separate violations of §§ 25-823(6). In light of these violations, the Board hereby **REVOKES** the Retailer's Class CR License held by the Respondent under D.C. Official Code §§ 25-823 and 25-830.

IT IS FURTHER ORDERED that no liquor license shall be issued to Alganesh Kidane in the District of Columbia for five (5) years from the date of this Order under D.C. Official Code § 25-821(c).

IT IS FURTHER ORDERED that the Respondent shall **CEASE AND DESIST** all alcoholic beverage activity at 7331 Georgia Avenue, N.W., Washington, D.C., including, but not limited to, permitting the sale, service, and consumption of alcohol. The Board **WARNS** the Respondent that continuing to permit the sale, service, or consumption of alcoholic beverages on the premises in defiance of this Order is a misdemeanor criminal offense under D.C. Official Code §§ 25-102 and 25-831.

IT IS FURTHER ORDERED that the Motion to Intervene (Motion) of ANC 4B, ANC Commissioner Sara Green, and Andre R. Carley (collectively, the "Intervenors") is **DENIED**.

Under § 1701.4, the decision to grant an intervention request lies solely within the discretion of the Board. 23 DCMR § 1701.4 (West Supp. 2013). The Board denies the Motion, because the OAG, as the prosecutor in this matter, adequately represents the interests of the Intervenors, whom have no legally protected interests in this matter as general members of the public. Jones v. Fondufe, 908 A.2d 1161, 1163 (saying that a motion to intervene should be denied when "the applicant's interest is adequately represented by existing parties"); American Jurisprudence (Second Edition), 59 Am. Jur. 2d Parties § 160 (West Supp. 2013) ("Although an intervenor need not have a direct interest in the pending suit, he or she must have an interest greater than the general public so that he or she stands to gain or lose by the direct effect of a judgment in the suit."). The Board also denies the Motion for the reasons stated by OAG in its opposition to the request.

IT IS FURTHER ORDERED that Charge I in Case Number 12-CMP-00243 is rendered moot by this Order and dismissed.

The ABRA shall deliver copies of this Order to the OAG, the Respondent, and Samuel S. Sharp on behalf of the Intervenors.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, 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, 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).