

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

In the Matter of:

HRH Services, LLC

t/a The Alibi

Applicant for a New
Retailer's Class CR License

237 2nd Street, N.W.
Washington, D.C. 20001

License No: 097969

Case No.: 15-PRO-00096

Order No: 2016-280

BEFORE:

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

ALSO PRESENT: HRH Services, LLC, t/a The Alibi, Applicant

Richard Bianco, Counsel, Hessler & Bianco Group, on behalf of the
Applicant

Charles Parsons, Counsel, on behalf of the Abutting Property Owner
Protestants

Karen Wirt, Chairperson, Advisory Neighborhood Commission (ANC)
6C, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

Today's decision stems from the sad and sordid history of My Brother's Place. The litany of misdeeds committed at the establishment includes multiple incidents of illegal alcohol

sales to large numbers of minors and the intentional sale of age identifying wristbands to minors by employees so that the minors could buy alcohol inside the establishment—an act that occurred, at a minimum, at the direction of Nelson Arias, one of the owners. *Infra*, at ¶¶ 7-29, 31, 33. Moreover, it has also come to light that during its heyday, drug use by employees and drug dealing was prevalent inside My Brother's Place. *Infra*, at ¶ 32.

While My Brother's Place appeared to be on the path towards revocation, the proverbial axe never fell, because the ownership allowed the license to expire by failing to complete the renewal process. *Infra*, at ¶ 35. Instead of renewing, two months after the cancellation of its license in August 2013, one of the minority owners of My Brother's Place, Martin Scahill, and two others, filed an application for a new license at the same location as My Brother's Place. *Infra*, at ¶ 39.

During the Alcoholic Beverage Control Board's review of this application, the Board raised issues regarding the qualifications of Martin Scahill and his fellow owners. *Infra*, at ¶ 49. Specifically, the Board required the ownership to show that they had not allowed the illegal consumption of alcohol at the unlicensed premises on October 26, 2013, and other occasions, based on information obtained by the Alcoholic Beverage Regulation Administration's (ABRA) Enforcement Division. *Infra*, at ¶¶ 46, 49. The Board also required the ownership to show their fitness for licensure based on the \$16,500 in unpaid and delinquent fines assessed to My Brother's Place and concerns that Mr. Scahill did not have the desire or ability to prevent underage drinking based on his active involvement in the operations of My Brother's Place. *Infra*, at ¶¶ 2-6, 49.

Before the issues could be resolved, Mr. Scahill requested the withdrawal of his application, which the Board formally accepted in March 2015. *Infra*, at ¶ 52. Subsequently, the Board received an Application for a New Retailer's Class CR License (Application) from HRH Services, LLC, t/a The Alibi (hereinafter "Applicant" or "HRH") for the same address as My Brother's Place and Mr. Scahill's proposed business. *Infra*, at ¶ 53.

One of the owners of HRH is Rachel Traverso. *Infra*, at ¶ 54. Ms. Traverso previously worked at My Brother's Place, was previously engaged to Mr. Scahill, and she and her family provided approximately \$270,000 to fund Mr. Scahill's proposed business. *Infra*, at ¶¶ 36, 40. She also assisted with the renovation and expected that she would be hired as the bar manager for Mr. Scahill's proposed business. *Infra*, at ¶¶ 41-42.

The Board's review of HRH's Application came screeching to a standstill when the Board credited the allegations made by Mr. Scahill's business partners that Mr. Scahill had unlawfully withdrawn the application and transferred the lease to HRH. *Infra*, at ¶ 62. Based on their motion, the Board reinstated Mr. Scahill's application and stayed the application while the former applicant and HRH litigated the matter in court. *Infra*, at ¶ 64.

After the two businesses reached a settlement, Mr. Scahill's business formally withdrew its application and the qualification issues raised by the Board never reached a final resolution.

Infra, at ¶ 67. HRH subsequently renewed its application for licensure, which was protested by the local Advisory Neighborhood Commission and the abutting property owners. *Infra*, at ¶ 68.

Even though Mr. Scahill's business formally withdrew its application, Mr. Scahill began to work for HRH without compensation. *Infra*, at ¶ 72. While HRH is self-funded and Mr. Scahill does not appear to hold an official ownership interest in the business, he regularly worked for the establishment approximately four days per week where he supervised and assisted with the renovations, picked up supplies, helped seat patrons when the restaurant was open, and even fired an employee. *Infra*, at ¶¶ 72-76. He also testified during a hearing before the District of Columbia Department of Transportation (DDOT) Public Space Committee on behalf of HRH and made a number of statements that inferred he shared in the ownership and management of the business. *Infra*, at ¶ 80.

In light of concerns regarding HRH's compliance with the law, the Board ordered HRH to show that it qualified for licensure. Specifically, the Board required HRH to demonstrate that it was not engaging in subterfuge to allow Mr. Scahill to obtain a license without the legally required review of his qualifications for licensure. *Infra*, at Count I. The Board also ordered HRH to show that it did not attempt to deceive the Board by failing to list Mr. Scahill as an owner or by filing a fraudulent lease. *Infra*, at Counts II, III. The Board further ordered HRH to show that it complied with the city's Construction Codes and other requirements related to its qualifications based on allegations made by the abutting property owners. *Infra*, at Counts IV, V.

During the hearing on these issues, on January 29, 2016, HRH voluntarily stipulated to exclude Mr. Scahill from the business and the premises by executing and maintaining a barring notice against him. *Infra*, at ¶¶ 83-90. In light of representations made by HRH during the hearing, the Board resolves issues regarding Mr. Scahill's alleged ownership and involvement in the business by imposing conditions under D.C. Official Code § 25-104(e) to enforce HRH's stipulations. The conditions attached to the license make it an offense for HRH to allow Mr. Scahill to exercise any domination or control over the business and set clear guidelines on how HRH should operate in relation to Mr. Scahill; therefore, the Board is satisfied that any threat that the Application is a mere subterfuge or front for Mr. Scahill has been removed. Therefore, the Board approves the Application for a New Retailer's Class CR License filed by HRH Services, LLC, t/a The Alibi, subject to the conditions described in this Order.

As far as the remaining issues, including those raised by the abutting property owners, the Board finds in favor of the Applicant. Finally, the Board also approves the Settlement Agreement submitted by HRH and Advisory Neighborhood Commission (ANC) 6C. The Board's reasoning is found below.

PROCEDURAL BACKGROUND

ABRA advertised HRH's Application on August 21, 2015. *ABRA, Notice of Public Hearing*, ABRA 097969 (Aug. 21, 2015). The Protest Petition deadline was October 19, 2015, and the Roll Call Hearing was scheduled for October 19, 2015. *Id.* The Board received protest

petitions from Advisory Neighborhood Commission 6C (ANC 6C) and Mr. and Mrs. Charles Parsons, as abutting property owners (Protestants). *ABRA Protest File No. 15-PRO-00096, Roll Call Hearing Results*, 1 (Oct. 19, 2015). At the protest hearing on January 6, 2016, the Board indicated on the record that it would hold a qualifications hearing related to HRH's Application. The Board also heard evidence on the appropriateness issues during the hearing.

After the conclusion of the hearing, the Board issued Board Order No. 2016-030, which advised the Applicant of the issues and concerns it had regarding the qualifications of the Applicant. *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-020, 3-12 (D.C.A.B.C.B. Jan. 13, 2016) [*Notice Order*]. The Board also granted the Protestants the right to intervene in the proceeding. *Id.* at 2.

ANC 6C did not participate in the qualifications hearing. Instead, the ANC and the Applicant filed a Settlement Agreement resolving the ANC's protest.

RESOLUTION OF THE MOTION TO DISMISS

Before the Protest Hearing, HRH filed a Motion to Dismiss (Motion) the protest for failing to file an objection based on the "protestable" issues under 23 DCMR § 1605. *Applicant's Motion to Dismiss Protest of Adjoining Property Owners*, at 4 [*Motion to Dismiss*]. The Protestants, in reply, did not contest the Applicant's contention regarding its compliance with § 1605. Under § 1605, "All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title." 23 DCMR § 1605.2 (West Supp. 2016). Section 25-311(a) also states that "if proper notice has been given . . . and no objection to the appropriateness of the establishment is filed with the Board, the establishment shall be presumed to be appropriate." D.C. Official Code § 25-311(a).

In reviewing the Protestants' initial protest letter, the Protestants raise none of the appropriateness issues listed in §§ 25-313 and 25-314, such as peace, order, and quiet; overconcentration; real property values; residential parking; or vehicular and pedestrian safety. D.C. Official Code §§ 25-313, 25-314; *Petition in Protest to the Application of HRH Services, LLC*, 1-13. Because the Protestant failed to raise any appropriateness issues, the Board grants the Applicant's Motion to Dismiss on the matter of appropriateness, which entitles the Applicant to a presumption of appropriateness in accordance with D.C. Official Code § 25-311(a). See *Transcript (Tr.)*, January 29, 2016 at 7-15.

ISSUES UNDER REVIEW

Based on the resolution of the Motion, the only contested issues remaining in this case are those raised in Board Order No. 2016-030 related to the qualifications of the Applicant. The Order required the Applicant to make the following showings in order to qualify for licensure:

- Count I: “Demonstrate” that HRH complies with the “true and actual owner requirement” described in “D.C. Official Code § 25-301(a)(5), in light of possible evidence that the Applicant is not the true and actual owner of the business . . . or is the agent of Martin Scahill, who is not identified or disclosed in the Application.” *Notice Order*, at 3.
- Count II: Show that the Application should not be denied for failing to list Martin Scahill as an owner in accordance with D.C. Official Code § 25-401(c) and 23 DCMR § 401.1. *Id.* at 10.
- Count III: Show that the Application should not be denied based on the filing of an allegedly fraudulent lease in accordance with D.C. Official Code § 25-401(c) and 23 DCMR § 401.1. *Id.* at 11.
- Count IV: Fourth, show to the satisfaction of the Board that the Application complies with D.C. Official Code §§ 25-301(a)(1), 25-301(a)(5), 25-301(a)(7), 25-311(c) and 25-335 based on allegations by the Protestants that HRH committed forgery while applying for a permit with the District of Columbia Department of Consumer and Regulatory Affairs (DCRA); that the Applicant has attempted to hide Mr. Scahill’s control over the business; and that HRH has failed to comply with the order of the District of Columbia Department of Transportation (DDOT) and the city’s Construction Codes. *Id.* at 11.
- Count V: And fifth, the Board also indicated that it would make a decision regarding the Applicant’s general fitness for licensure under D.C. Official Code § 25-301(a)(1), if the Board held against HRH on any of the issues raised in Board Order No. 2016-030. *Id.* at 12.

The Board held a contested hearing on these issues on January 29, 2016.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board’s official file, credits the following findings:

I. Facts Related to the Operations and Licensing History of My Brother’s Place.

1. The history of Arias, Inc., t/a My Brother’s Place, (My Brother’s Place), ABRA License Number 071593, is relevant to this case for two reasons. First, it explains the connection between HRH and Martin Scahill; namely, both Rachel Traverso, a part owner of HRH, worked at My Brother’s Place with Martin Scahill, a minority owner of My Brother’s Place. *Infra*, at ¶ 36. Second, it provides background on the potential motive that HRH may have for allegedly hiding Mr. Scahill’s involvement in HRH’s business; specifically, the sordid history of illegal underage drinking, unpaid fines, and other potential illegal activity related to My Brother’s

Place's operations led the Board to raise issues regarding Mr. Scahill's qualifications when he filed a separate application for licensure, which he avoided by withdrawing his application for licensure. *Infra*, at ¶¶ 49, 67. The facts related to My Brother's Place are recounted below.

a. Facts Related to Mr. Scahill's Ownership and Involvement in My Brother's Place.

2. The Board held a Fact Finding Hearing on January 29, 2014, related to the application for a new license filed by Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge (MHG). *ABRA Application*, 1 (Melles Hospitality Group). During the hearing, Martin Scahill stated on the record that he owned an "8 percent" interest in the prior establishment occupying the premises My Brother's Place, which was located at premises 237 2nd Street, N.W. *Transcript (Tr.)*, January 29, 2014, at 16-17. In an undated letter submitted by Martin Scahill, he later confirmed this admission by stating that My Brother's Place's Articles of Incorporation gave him an 8.42 percent interest in My Brother's Place. *Letter from Martin Scahill, "Substantial Evidence/Law,"* 5. He further informed the Board during the Fact Finding Hearing that he became an owner of My Brother's Place on October 6, 2004. *Tr.*, 1/29/14 at 19.

3. Martin Scahill's involvement in My Brother's Place is further described in other documents in ABRA's possession. Specifically, in 2007, he was identified as the former restaurant's treasurer, and, in 2011, he was identified as an active corporate officer and director with responsibility over events coordination and marketing in documents submitted to DCRA. *District of Columbia Department of Consumer and Regulatory Affairs, Two Year Report for Foreign and Domestic Business Corporations*, File No. 242817 (filed June 2007); *District of Columbia Department of Consumer and Regulatory Affairs, Two Year Report for Foreign & Domestic Business & Professional Corporation*, List of Active Corporate Officers and Directors (filed April 27, 2011).

4. Observations by various observers indicate that Mr. Scahill frequently managed and represented the establishment. In response to allegations made by representatives of Catholic University, Nelson Arias, another owner of My Brother's Place, and Mr. Scahill wrote a letter regarding the busing of Catholic University students to an event at the establishment and denying involvement in social media advertising directed at students of Catholic University. *Case Report 10-CMP-00182*, Letter from Martin Scahill and Nelson Arias to Kathryn Jennings, 1-2 (Date of Occurrence: Feb. 18, 2010). ABRA's records further show that on March 11, 2010, Mr. Scahill executed the certification on My Brother's Place's renewal application. *ABRA Licensing File No. 071593*, Class C Restaurant Renewal Application, 2 (2010). During an audit of the establishment on July 29, 2010, Mr. Scahill identified himself as the "Event Coordinator" and represented the business. *Case Report 10-AUD-0032*, 2 (Date of Occurrence: Jul. 29, 2010). On February 28, 2012, Mr. Scahill called ABRA Investigator Erin Mathieson and referred to himself as an owner of My Brother's Place. *Case Report 12-251-00129*, 4 (Date of Occurrence: Feb. 26, 2012). Finally, on December 1, 2012, during an investigation, ABRA investigators found three underage minors inside the establishment consuming alcohol and discussed the violations with Mr. Scahill, who was acting as the establishment's manager at the time. *Case Report 12-CMP-00717*, 2 (Date of Occurrence: Dec. 1, 2012). A 2013 Board Order further indicates that during a

books and records inspection Mr. Scahill presented himself as the Respondent's General Manager to former ABRA Investigator Tyrone Lawson. *In re Arias, Inc. t/a My Brother's Place*, Case No. 12-CMP-00538, Board Order No. 2013-182, ¶¶ 3, 11 (D.C.A.B.C.B. May 22, 2013).

5. Mr. Scahill previously indicated that he worked at the establishment every weekend and checked identifications. *Tr.*, 1/29/14 at 50, 52-54; *Case Report No. 12-CC-00117*, Exhibit No. 3 (Date of Occurrence: Oct. 26, 2012) (Email from Martin Scahill to Rachel Wainer, Catholic University of America (Sept. 25, 2012)). This admission has been corroborated by the observations of former ABRA Investigator Erin Mathieson, ABRA Investigator Abyie Ghenene, and Christopher Smith, a former employee. *Id.* at 53, 56. Finally, the Board credits the testimony of Christopher Smith, a former employee of My Brother's Place, that Martin Scahill often managed the establishment at night and supervised the restaurant's admission door and bartenders. *Transcript*, January 29, 2016 at 354, 356.

6. In 2010, Mr. Scahill demonstrated his involvement in the business by executing the required certification on My Brother's Place's renewal application. *Class C Restaurant Renewal Application*, 2 (Notarized Mar. 11, 2010). It should be noted that the My Brother's Place's file in ABRA's possession does not expressly indicate that Mr. Scahill is an owner. Nevertheless, based on the small percentage of his ownership, the establishment did not have to report his ownership of the business. 23 DCMR § 601.1 (West Supp. 2016).

b. Facts Related to Underage Drinking at My Brother's Place.

7. During its existence, My Brother's Place repeatedly demonstrated that it could not prevent underage drinking. *Infra*, at ¶¶ 8-16. Moreover, while in business, it garnered a reputation as an establishment willing to provide alcohol to minors; especially, underage students at Catholic University. *Infra*, at ¶¶ 17-31.

8. My Brother's Place's violation history shows that the business committed six sale to minor violations between 2006 and 2013. *Infra*, at ¶¶ 9-16. ABRA's records further show that before the license was cancelled, the establishment had accrued \$16,500 in delinquent fines, which were never paid. *Infra*, at ¶¶ 14-16.

9. The sale of alcohol to anyone under the age of twenty-one is prohibited in the District of Columbia. D.C. Official Code § 25-781(a)(1). Under the sale to minor law in effect during this period, four or more violations within a two year period or five violations within a five year period subjected the license to mandatory revocation. *Alcoholic Beverage Enforcement Amendment Act of 2008*, 2008 District of Columbia Laws 17-361, § 2 (Act 17-696) (effective Mar. 25, 2009) (See amended D.C. Official Code § 25-781(f) and (f)(3)) *amended by Omnibus Alcoholic Beverage Regulation Amendment Act of 2014*, 2014 District of Columbia Laws 20-270, § 2 (Act 20-609) (effective May 2, 2015) (later increasing the look back period in part (f) to four years).

10. In 2006, in Case Number 7416, My Brother's Place settled a sale to minor violation through an Offer-in-Compromise (OIC). *ABRA Licensing File No. 93491*, Investigative History,

Case Number 7416. The business paid a \$500 fine and received a one-day suspension of its license. *Id.*

11. In 2006, in Case Number 8004, the Board convicted the establishment of a second sale to minor violation. *ABRA Licensing File No. 93491*, Investigative History, Case Number 8004. The business paid a \$1,000 fine and received a three-day suspension of its license. *Id.*

12. In 2010, in Case Number 10-CC-0031, My Brother's Place admitted that it violated the sale to minor laws for a third time by agreeing to a staff settlement with ABRA. *ABRA Licensing File No. 93491*, Investigative History, Case Number 10-CC-0031. The business paid a \$3,000 fine and received a five-day suspension. *Id.*

13. On June 15, 2012, My Brother's Place admitted that it violated the sale to minor laws for a fourth time by entering into a settlement with ABRA. *ABRA Licensing File No. 93491*, Investigative History, Case Number 12-251-00129. The business received a \$4,500 fine and a ten-day suspension of its license. *Id.*

14. On May 22, 2013, My Brother's Place was found guilty of violating D.C. Official Code §§ 25-113(j)(3)(a) and 25-711(a) by failing to maintain adequate books or records and failing to maintain a copy of its settlement agreement on the premises. *In re Arias, Inc. t/a My Brother's Place*, Case No. 12-CMP-00538, Board Order No. 2013-182, 2, 5 (D.C.A.B.C.B. May 22, 2013). The establishment received a fine of \$6,500, and the Board activated a four-day suspension that had been stayed in Case Number 12-251-00129. *Id.* at 5. ABRA's records show that My Brother's Place never paid the fine, which was due on July 22, 2013. *Investigative History* (My Brother's Place, ABRA License No. 071593, Case Number 12-CMP-00538).

15. On July 17, 2013, in Case Number 12-CC-0117, My Brother's Place agreed to an OIC where it admitted that it committed its fifth sale to minor violation. *Show Cause File No. 12-CC-0117*, Hearing Disposition Form (Jul. 17, 2013). The business received a \$5,000 fine for the offense, and a ten-day suspension of its license. *Id.* The sale to minor violation counted as a primary tier violation. *Id.* ABRA's records show that the establishment never paid the fine, even though it was due on August 1, 2013. *Investigative History* (My Brother's Place, ABRA License No. 071593, Case Number 12-CC-0117).

16. Finally, on July 17, 2013, in Case Number 12-CMP-0717, My Brother's Place entered into another OIC where it admitted that it violated the sale to minor law for a sixth time. *ABRA Show Cause File No. 12-CMP-0717*, Hearing Disposition Form (Jul. 17, 2013). The business received a \$5,000 for the offense and a ten-day suspension of its license. *Id.* The Investigative History report for My Brother's Place shows that the establishment never paid the fine imposed by the Board in this matter, even though it was due on August 1, 2013. *Investigative History* (My Brother's Place, ABRA License No. 071593, Case Number 12-CMP-0717).

c. Facts Related to Specific Underage Drinking Incidents at My Brother's Place.

17. In addition to the high amount of underage drinking violations committed by My Brother's Place, the record shows that the establishment operated with minimal regard for the law and garnered a reputation for illegal underage drinking. *Infra*, at ¶¶ 18-32.

i. Facts Related to the Incident Occurring on February 26, 2012.

18. On February 26, 2012, after receiving complaints from Catholic University, Investigators Ghenene and Mathieson found fourteen underage patrons inside the establishment consuming alcohol. *Case Report No. 12-251-00129*, 1 (Date of Occurrence: Feb. 26, 2012). The investigators observed the establishment marking patrons under twenty-one with "X's" on their hands and providing them with separate wristbands indicating the person was under the legal drinking age. *Id.* at 2. While inside the establishment, three underage patrons consuming alcoholic beverages did not have an age identifying wristband. *Id.* at 4. In addition, the investigators found that four underage patrons consuming alcoholic beverages had wristbands for patrons twenty-one years or older. *Id.* These individuals told the investigators that they obtained the wristbands without showing a fake identification. *Id.* Furthermore, a number of the patrons that used fake identification to gain admittance had used identifications of extremely poor quality. *Id.* Investigator Mathieson observed that security was not monitoring the establishment for underage drinking. *Id.*

19. An eighteen-year-old female patron inside the establishment told Investigator Mathieson that My Brother's Place "is known for serving underage kids and hands out wristbands to anyone." *Id.* at 3. She noted that the establishment has a reputation at Catholic University for permitting underage drinking. *Id.*

20. In response to the investigation, the investigators, employees of Catholic University, and Mr. Scahill met to discuss the incident that occurred on February 26, 2012. *Id.* at 4. During the meeting, Mr. Scahill promised to provide employees with formal training and end "18 and over" parties. *Id.* He further promised to deny admittance to anyone under the legal drinking age after 10:00 p.m. *Id.*

21. Catholic University also provided Mr. Scahill with an anonymous email from a student. *Id.* at Exhibit No. 7. The student indicated that ADG, a campus fraternity, intended to host an event at My Brother's Place, "a bar infamous for its drug usage and under age [sic] drinking." *Id.* The student indicated that one of his friends suffered from alcohol poisoning at the establishment and needed to be taken to the hospital. *Id.* The student then wrote, "Although it is labeled 21 to drink[,] the promoters . . . hand out 21 bands to almost everyone and are ignoring the drinking laws" *Id.*

22. Nevertheless, on March 17, 2012, Mr. Scahill informed Investigator Mathieson by email that he was reneging on his promise. *Id.* at 6. According to Mr. Scahill, based on the training received by the establishment's staff, he felt that My Brother's Place could allow events that

included individuals under the legal drinking age. *Id.* He then pledged to keep patrons under the age of twenty-one restricted to certain areas and under constant supervision. *Id.* at 6.¹

23. The Board notes that the violations observed during the February 26, 2012 investigation were resolved by a settlement where the establishment agreed to a \$4,500 fine and a ten-day suspension of its license. *Supra*, at ¶ 14.

ii. Facts Related to the Incident Occurring on October 26, 2012.

24. On another occasion, a complaint filed by Catholic University's Assistant Dean of Students triggered an investigation. *Case Report No. 12-CC-00117*, 1, Exhibit No. 3 (Date of Occurrence: Oct. 26, 2012). Specifically, a student admitted to university officials that on September 13, 2013, she became ill after consuming alcohol at My Brother's Place. *Id.* The student further admitted that she had been given a wristband indicating that she was of legal drinking age, even though she displayed identification indicating the contrary. *Id.*

25. In response, on October 26, 2012, ABRA Investigators Mathieson and Ghenene conducted an investigation at the establishment and found eleven underage patrons inside the establishment consuming alcoholic beverages. *Case Report No. 12-CC-00117*, 1 (Date of Occurrence: Oct. 26, 2012). They also observed that Mr. Scahill was checking identifications at the establishment at the time of their investigation. *Id.* at 2.

26. During the investigation, the investigators found nine underage patrons who had entered the establishment with fake identifications and one underage patron, who found a wristband on the floor, illegally consuming alcoholic beverages. *Id.* at 2-3. The investigators also observed two highly intoxicated underage female patrons wearing wristbands for patrons under twenty-one years of age. *Id.* at 4. The investigators confirmed that five of the minors were students at Catholic University. *Id.* at 2-3. Investigator Ghenene observed that the fake identifications were obvious fakes, as some even lacked holograms. *Tr.*, 1/29/14 at 89.

27. The violations observed during the October 26, 2012 investigation were resolved by an OIC; whereby, My Brother's Place agreed to a \$5,000 fine and a ten-day suspension of its license. *Supra*, at ¶ 15.

¹ The Board makes the findings contained in this paragraph despite Mr. Scahill's apparent claim that Nelson Arias, a former owner of My Brother's Place, sent the email relied upon by the Board in this case without his permission. *Letter from Martin Scahill, Substantial Evidence/Law*, 4. Even if we credited Mr. Scahill's version of events, he indicated that he was aware of the email in May 2012, but waited a number of years to repudiate it. As a result, for the purposes of this case, if Mr. Scahill's account is true, the Board can only presume that he adopted the statement made on his behalf or potentially allowed his business partner to lie to an investigator. *See Wilson v. United States*, 995 A.2d 174, 187 (D.C. 2010) ("a failure to object or deny . . . statements at the time they were made is especially probative of the defendant's acquiescence *if they are made in the presence of a third party* who was not an accomplice in the crime."); D.C. Official Code § 25-823(a)(5) (prohibiting interference with investigations).

28. Investigator Ghenene observed during a hearing that Mr. Scahill frequently checked identifications at My Brother's Place. *Tr.*, 1/29/2014 at 56. The investigator noted that he has left ABRA's identification guide at My Brother's Place in the past, but never saw anyone at the establishment use it. *Id.* at 57. Further, My Brother's Place had a habit of accepting flawed identification documents, even when presented by individuals that looked extremely young. *Id.* at 90. Based on his conversations with Mr. Scahill, Investigator Ghenene believed that Mr. Scahill has a belief that he has no responsibility whatsoever if an underage person enters the establishment with fake identification, even when the identification is obviously flawed. *Id.* Finally, Investigator Mathieson further testified that over thirty students she has spoken with confirmed that My Brother's Place would accept "any ID." *Id.* at 57.

29. In an undated letter submitted by Martin Scahill, he admitted that he knew that the establishment refused to take steps to prevent the sale of alcohol to minors while the business was operational. *Letter from Martin Scahill, "Substantial Evidence/Law,"* at 4. He admitted that he was aware of the unpaid fines owed by My Brother's Place as of June 13, 2013. *Id.* at 2. Finally, he indicated that Nelson Arias, an owner of My Brother's Place, directed security staff to sell age identifying wristbands to minors. *Id.* at 6.

iii. Facts Related to Underage Drinking and Drug Activity at My Brother's Place Observed by Christopher Smith.

30. Christopher Smith is twenty six years old and obtained an undergraduate degree from Catholic University in 2012. *Tr.*, 1/29/16 at 293. While in college, Mr. Smith frequently patronized My Brother's Place with his fraternity brothers. *Id.* He worked at the establishment from 2012 until it closed in 2013. *Id.* at 301. He also worked at the establishment while Martin Scahill and Rachel Traverso worked at the establishment. *Id.* at 294-95.

31. As part of his job at My Brother's Place, he would collect money and distribute age identifying wristbands that indicated whether a patron could drink alcohol after Martin Scahill checked the identifications of patrons at the door. *Id.* at 296-97, 332. As a Catholic University student, he recognized some patrons were displaying fake identifications to Mr. Scahill. *Id.* at 296. While working at the establishment, he frequently told Mr. Scahill that certain patrons were under the age of twenty one; nevertheless, if the person had a fake identification, Mr. Scahill would allow the patron to have a wristband indicating that they were over twenty-one and enter the establishment. *Id.* at 296, 335.

32. Mr. Smith also observed drug activity at My Brother's Place. *Id.* at 343. Specifically, he observed various employees use illegal drugs at My Brother's Place and saw the kitchen staff and bartenders use cocaine and marijuana inside the premises. *Id.* He also observed individuals selling drugs inside My Brother's Place. *Id.* at 370.

d. Facts Related to Rachel Traverso's Involvement in My Brother's Place.

33. Rachel Traverso began working for My Brother's Place in 2009 and left in 2013. *Tr.*, 1/6/16 at 133, 204; *see also Tr.*, 1/6/16 at 70-72. Ms. Traverso indicated that proper

identification checking “didn’t happen” on many occasions at My Brother’s Place. *Id.* at 206. She is further aware that employees of My Brother’s Place were selling wristbands to underage patrons for twenty dollars to allow them to drink inside the establishment. *Id.* at 210-11. She also indicated that she observed Mr. Scahill checking identifications at the door on nights when underage patrons were being served inside the establishment. *Id.* at 210.

34. Christopher Smith was 19 years old when he worked at My Brother’s Place with Rachel Traverso. *Id.* at 341-42. Mr. Smith noted that Rachel Traverso served him alcohol at the establishment. *Id.* at 342. Nevertheless, he never saw Ms. Traverso serve alcohol to other underage customers. *Id.* at 341.

e. Facts Related to the End of My Brother’s Place.

35. The Board cancelled My Brother’s Place’s license on August 14, 2013, because the establishment failed to complete the renewal process. *In re Arias, Inc. t/a My Brother’s Place*, License No. 071593, Board Order No. 2013-366, 1 (D.C.A.B.C.B. Aug. 9, 2013) (Cease and Desist Order); *In re Arias, Inc. t/a My Brother’s Place*, License No. 071593, Board Order No. 2013-373, 1 (D.C.A.B.C.B. Aug. 14, 2013) (Order Cancelling License).

II. Facts Related to the Relationship Between Mr. Scahill and Rachel Traverso.

36. Martin Scahill and Rachel Traverso were previously engaged to be married. *Tr.*, 1/6/16 at 105. The couple previously lived together at 708 G Street, N.E. *Id.* at 27, 140. They lived together for five years, but Mr. Scahill moved out several months before the Protest Hearing. *Id.* at 140, 142. They previously maintained a joint bank account. *Id.* at 51. The account was closed by December 2015. *Id.* at 51-52. After Mr. Scahill left, he moved to Sterling, Virginia and has a part time job at his ex-wife’s hair salon. *Id.* at 185; *Tr.*, 1/29/16 at 58-59.

III. Facts Related to Prior Applications Filed After the Close of My Brother’s Place.

37. After the closing of My Brother’s Place, Martin Scahill created a corporate entity, named HRH, LLC, t/a My Place (My Place) in August 2012, which is an entity distinct from the current Applicant although their names are similar. *Tr.*, 1/29/16 at 126; *Parsons Exhibit No. 2*. My Place had a principle place of business at 708 G Street, S.E.—the principal residence of Rachel Traverso and Mr. Scahill in August 2012. *Tr.*, 1/29/16 at 126. Ms. Traverso admitted that the HRH in My Place’s entity name stands for “Her Royal Highness,” that she developed the name, and that Mr. Scahill and she developed the restaurant concept for the entity. *Id.* at 127. Nevertheless, she was never an official owner or officer of My Place. *Id.* at 177. Mr. Scahill intended to locate My Place at 237 2nd Street, N.W. *Id.* at 129.

38. The purpose of creating My Place was to support their joint plans to open a restaurant. *Id.* at 126-27. Mr. Scahill’s entity, My Place, received \$70,000 from Richard Traverso on July 31, 2013. *Id.* at 128-29. My Place never came to fruition and was eventually replaced by MHG, a new entity, which adopted the “Alibi” trade name. *Id.* at 130.

39. MHG filed an Application for a New Retailer's Class CR License at 237 2nd Street, N.W., on October 18, 2013—the former location of My Brother's Place. *ABRA Application*, 1 (Melles Hospitality Group). MHG's application listed the ownership as follows: Abraham Melles owned 36 percent; Martin Scahill owned 49 percent; and Hailemaryam Negash owned 15 percent. *Id.* Based on the timing of the submission, MHG's Application was submitted approximately two months after the cancellation of My Brother's Place's license. *Id.*

a. Facts Related to the Involvement of Rachel and Richard Traverso in MHG.

40. Richard and Rachel Traverso became major financial backers of MHG's business. Over the course of 2014, the Traverso family gave Rachel Traverso at least \$270,000, which Ms. Traverso used to help fund the construction of the business. *Tr.*, 1/6/16 at 91, 99-100, 106. Initially, as noted above, Richard Traverso loaned Mr. Scahill and Ms. Traverso \$70,000 to allow them to invest in My Place, which eventually became MHG. *Tr.*, 1/29/16 at 213. Unbeknownst to Richard Traverso, his wife was also loaning money to Ms. Traverso to fund the business. *Id.* at 213-14, 230. He also learned that the other members of MHG never properly funded or capitalized the business. *Id.* Once he learned that the landlord was going to evict MHG, he decided to stop funding the business. *Id.* at 214. In order to save the investment, he decided that he would only fund a business at 237 2nd Street, N.W., if he and his daughter solely controlled the business. *Id.*

41. Richard and Rachel Traverso also helped MHG renovate the property while the Board reviewed MHG's application. While MHG was preparing the property for operations, Richard and Rachel Traverso assisted with painting and brick pointing. *Id.* at 232; *see also Tr.*, 1/29/16 at 114. Rachel Traverso applied for a building permit on behalf of MHG on March 24, 2014. *Tr.*, 1/6/16 at 156-57. She also picked up construction supplies for MHG and helped renovate the premises. *Id.* at 196. In addition, she made drawings for the business, which were used to help plan the layout of the premises. *Id.* at 203.

42. Rachel Traverso also expected that she would have a management role at the restaurant once it opened. *Id.* Specifically, she expected that MHG would make her the bar manager when the business opened. *Id.* at 195. In that vein, she helped MHG design the menu and concept for the business. *Id.* at 195-96. Further, in 2013, Ms. Traverso drafted alcohol service policies and procedures for MHG. *Tr.*, 1/29/16 at 76-77.

b. Facts Related to the Involvement of Christopher Smith in MHG.

43. Christopher Smith, who testified during the hearing, indicates that Mr. Scahill offered Mr. Smith a job at MHG in July 2013, after My Brother's Place closed. *Tr.*, 1/29/16 at 303-04. Mr. Smith agreed to the offer and began working for MHG in August 2013. *Id.* at 304. Mr. Smith performed construction work at the establishment from September 1, 2013, to the middle of 2014. *Id.* at 314. During his time at MHG, Mr. Scahill indicated to Mr. Smith that he worked for him. *Id.* at 316-17.

44. While Mr. Smith was working at the establishment, he observed Rachel Traverso and Martin Scahill work at the establishment. *Id.* He also observed Richard Traverso and his wife help plaster the walls of the premises. *Id.* at 315.

45. During the renovations of the premises, Mr. Smith used drawings of the renovation prepared by Rachel Traverso to assist with the renovation job. *Id.* at 316. As part of the renovation, MHG removed the floors, replaced portions of the ceiling, fixed the electrical system, replaced some of the plumbing, renovated the bathrooms, and restructured the basement. *Id.* at 317-18. Mr. Smith also reports that Martin Scahill, Rachel Traverso, and he used marijuana together inside the premises during the renovation, although he did not indicate whether this occurred when MHG controlled the premises or when HRH controlled the premises. *Tr.*, 1/29/16 at 343.

c. Facts Related to the Raising of Qualification Issues Against MHG's.

46. While the property was undergoing renovations, ABRA Investigator Erin Mathieson observed a Facebook post on October 26, 2013, advertising an event at MHG's proposed location. *Tr.*, 1/29/2014 at 54. The Facebook post by David Williams, which was on Martin Scahill's Facebook page, described the event as a "pre-opening" that was "not open to the public" but served "partly to reintroduce old regulars to the new and updated bar." *Id.* at 54-55; *Alibi Facebook Posts*. According to the post, guests were advised, "Please remember the bar cannot and will not have alcohol so guests must bring their own." *Id.* at 55; *Alibi Facebook Posts*. A later post by Mr. Williams added, "For those attending the invite only party for brothers regulars and their friends October 26, please note brothers cannot sell or provide alcohol, ever [sic] person will supply their own alcohol when they arrive . . . Ice and mixers are provided." *Alibi Facebook Posts*. Investigator Mathieson noted that Mr. Scahill was tagged in the post along with other people. *Id.*

47. The Facebook post observed by Investigator Mathieson potentially described a violation, because under § 25-102(d), it is an offense to permit the consumption of alcohol at any unlicensed location "where facilities are especially provided and service is rendered for the consumption of alcoholic beverages" D.C. Official Code § 25-102(d).

48. On January 29, 2014, the Board held a Fact Finding Hearing regarding the application for a new license submitted by MHG. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-067, 1 (D.C.A.B.C.B. Jan 29, 2014) (Order Requiring Resubmission and Replacarding of Application). As noted above, one of the owners of MHG was Martin Scahill, who admitted to being a part owner of My Brother's Place, ABRA License No. 071593, which was formerly located at 237 2nd Street, N.W. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-067, 1-2 (D.C.A.B.C.B. Feb. 26, 2014) (Order Denying Applicant's Motion for Reconsideration). During the Board's review of the Application, it came to light that Mr. Scahill failed to disclose his prior ownership of My Brother's Place, and also failed to disclose that My Brother's Place had been the subject of numerous violations. *Id.* at 2. In light of this error, the Board ordered the replacarding of the establishment, demanded the submission

of a corrected application, and notified MHG that the Board intended to examine its character and fitness for licensure. *Id.* at 7.

49. On April 23, 2014, the Board issued an order notifying MHG of the Board's specific concerns regarding its qualifications for licensure and issued a proposed order. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-129, 1-2 (D.C.A.B.C.B. Apr. 23, 2014) (Order Amending Order Requiring Applicant to Demonstrate Fitness for Licensure under § 25-301 and Proposed Findings of Fact, Conclusions of Law, and Order Finding Applicant Unfit for Licensure). Specifically, the notice alleged the following: (1) "Abraham Melles, Martin Scahill, and Hailemaryam Negash are unfit for licensure, because they permitted the consumption of alcohol on the premises in violation of D.C. Official Code § 25-102(d) on . . . October 26, 2013, as well as on other occasions after August 2013"; and (2) "Mr. Scahill is individually unfit for licensure" because "the Application is [an attempt] to avoid the \$16,500 in delinquent fines owed by [My Brother's Place] . . ." and "Mr. Scahill'[s] prior actions demonstrate a lack of desire and ability to prevent underage drinking in compliance with the law." *Id.* at *Proposed Order*, at 2.

50. During the pendency of the qualifications matter, the Board formally rejected MHG's proposal to resolve the issues raised by the Board and set the matter for a hearing. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-428, 1, 5 (D.C.A.B.C.B. Oct. 22, 2014). It should also be noted that the Board simultaneously rejected a motion to intervene filed by Charles Parsons. *Id.* at 4-5; *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-428, 1-2 (D.C.A.B.C.B. Dec. 10, 2014) (Order Denying Motion for Reconsideration).

d. Facts Related to the Actions of DCRA Against MHG While the Board Reviewed MHG's Application.

51. In December 2013, DCRA issued a stop work order against MHG. *Tr.*, 1/29/16 at 115. In order to continue working on the roof, Rachel Traverso filled out a neighbor notification form issued by DCRA. *Id.* at 116. The form filled out by Ms. Traverso shows Mr. Scahill's signature as an owner of MHG. *Id.* at 117; *Parsons Exhibit No. 8* (page 19). The form also contains the name of Charles C. Parsons as the adjoining property owner. *Tr.*, 1/29/16 at 117-19. As part of DCRA's notification process, the adjoining property owner may sign the form. *Id.* at 118-19. In this case, the form contains a signature that appears to be from Charles Parsons, but Ms. Traverso cannot confirm that the signature is Mr. Parsons' signature because she was not present when Mr. Scahill sought his signature. *Id.* at 118-19, 124; *Parsons Exhibit No. 8* (page 19). Mr. Scahill later went to DCRA with the full DCRA application containing the notification form and obtained a building permit. *Tr.*, 1/29/16 at 120-21.

e. Facts Related to the End of MHG.

52. Instead of going to a hearing, on January 21, 2015, the Board received a letter purportedly from MHG withdrawing the Application. *In re Melles Hospitality Group, LLC, t/a*

The Alibi Restaurant & Lounge, ABRA License No. 93491, Board Order No. 2015-086, 1 (D.C.A.B.C.B. Mar. 11, 2015). According to the letter,

Melles Hospitality Group formally requests that its application . . . be withdrawn. As of January 12th 2015, Melles Hospitality Group no longer holds the lease at 237 2nd St NW, Washington, DC 20001 and therefore has no desire, need or legal standing to apply for an ABC license in the District of Columbia.

Letter from Martin Scahill to General Counsel Martha Jenkins, (Jan. 21, 2015). The letter appeared to contain the official letterhead of MHG. *Id.* Mr. Scahill also identified himself as an “Owner” and “Representative” of the LLC in the letter. *Id.* The Board granted the withdrawal on March 11, 2015. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, Board Order No. 2015-086 at 1.

IV. Facts Related to the First Review of the Application filed by HRH.

53. Following the withdrawal, the Board received an Application for a New Retailer’s Class CR License from HRH Services, LLC, t/a The Alibi (HRH) at the same address as sought by MHG and previously occupied by My Brother’s Place. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, HRH Services, LLC*, ABRA License No. 93491, 97969 Board Order No. 2015-241, 2 (D.C.A.B.C.B. May 6, 2015).

54. HRH identified Rachel Traverso and Richard Traverso as managing members or persons with an ownership interest in the business. *ABRA Application*, 1 (received Feb. 13, 2015) (See Question 18). The Application reported that Rachel Traverso and Richard Traverso each hold a 50 percent interest. *Id.* No written document in the record indicates that a third party outside HRH contributed money to capitalize HRH or that a third party is legally entitled to the profits or revenue generated by HRH. *Tr.*, 1/6/16 at 75-76.

V. Facts Related to HRH’s Communications with the ANC.

55. On February 27, 2015, Rachel Traverso sent an email to ANC Single Member District Commissioner Karen Writ, who represents ANC 6C02. *Parsons Exhibit No. 16*, at 1. In the email, Ms. Traverso stated, “I am a NEW business. I had nothing to do with the previous business. I was not an owner, investor, or employee.” *Id.* at 1. While it may be technically true that Ms. Traverso was never an owner, investor, or employee, the statement that she “had nothing to do” with MHG appears to be a misrepresentation, based on the large amount of money and labor provided to MHG by Ms. Traverso and her concern regarding the loss the money if the landlord rented the premises to someone else. *Supra*, at ¶¶ 40-42; *Infra*, at ¶ 59. She also wrote in the letter that her “ex fiancé,” Mr. Scahill, gave up on opening the restaurant due to the actions of Mr. Parsons. *Parsons Exhibit No. 16*, at 1-2. She then stated, “my ex-fiancé has denounced this country, is currently preparing to move back to England after 22 years, and I have subsequently lost the love of my life.” *Id.* at 2. Despite this statement, as of January 29, 2016, the record shows that Mr. Scahill has not moved back to England. *Supra*, at ¶ 36; *infra*, at ¶ 75.

VI. Facts Related to the Unauthorized Transfer of MHG's Property and Lease to HRH.

56. The Application for licensure instructs applicants that

[a] lease is required if you are leasing the space . . . All lease documents must be signed by the property owner and contain specific authorization to sell and serve alcoholic beverages on the premises. The lease must be in the applicant's name, i.e., . . . LLC

In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, HRH Services, LLC, Board Order No. 2015-241, at ¶ 19 *citing Instructions for Filing an Alcoholic Beverage Control (ABC) License Application*, Alcoholic Beverage Regulation Administration, 5.

57. As part of its Application, HRH attached a lease assignment agreement to the Application *ABRA Licensing File No. 97969*, Lease Assignment, 1. On its face, the assignment attempted to assign the lease of 237 2nd Street, N.W., from MHG to HRH. *Id.* The document indicated that Martin Scahill was the “Manager of the Assignor” and had the authority to act on behalf of MHG. *Id.* at § 1.01 (Assignment). The agreement transferred “[a]ll trade fixtures and restaurant equipment existing in the Leased premises” to HRH. *Id.* at § 3 (No Release). The signature block, which contained the signature of Martin Scahill, further indicated that he was the manager of MHG. *Id.* (First Signature Page).

58. Rachel Traverso, Martin Scahill, and the landlord of the property entered into negotiations over an assignment of the lease in January 2015. *Tr.*, 1/29/16 at 61. In order to avoid eviction, Mr. Scahill promised—without authority—that MHG would pay \$27,000 and lawyer's fees to the landlord for permission to assign the lease. *Id.* at 62.

59. Rachel Traverso indicated that she sought to take over the lease for MHG because she was concerned that the landlord would rent the property to a third party, which would have resulted in the loss of all the money donated to MHG by her family. *Id.* at 180. As a result, she sought to protect her family's interest in the business even though she had no legal interest in the business or written agreement indicating a right to repayment of the money. *Id.* at 181, 185. Mr. Scahill remains as a guarantor of HRH's lease. *Id.* at 196.

60. During the January 2015 lease negotiations and when the Application was filed, Rachel Traverso was not aware that Mr. Scahill lacked the authority to enter into legal agreements on behalf of MHG. *Id.* at 62-64.

61. On behalf of HRH, Richard Traverso obtained the agreement of the landlord to assign the lease to HRH in exchange for paying back rent and attorney fees. *Id.* at 215. In total, HRH paid \$35,000 to the landlord for the agreement. *Id.* He was not aware that Mr. Scahill had failed to obtain the formal approval of MHG to enter into the transfer of the lease. *Id.* at 217-18. The lease transfer orchestrated by Martin Scahill and Rachel Traverso did not result in a transfer of money between MHG and HRH. *Tr.*, 1/6/16 at 101.

62. While the Board began to review HRH's Application, the Board received an objection from MHG that Mr. Scahill wrongfully withdrew the Application and transferred the lease and property of MHG to the Applicant. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License Nos. 93941, 97969, Board Order No. 2015-241, 2 (D.C.A.B.C.B. May 6, 2015).

63. In resolving the objection, the Board issued an order that credited MHG's contention that Martin Scahill lacked the authority to withdraw its application or transfer the lease and property of MHG, because MHG's corporate documents gave that authority to one of the other members of the limited liability company. *Id.* at 2, 5, 7-8. The Board further noted that "Mr. Scahill likely deprived the other members of their interest in the application, or . . . the right to obtain the maximum value for MHG's assets." *Id.* at ¶ 34.

64. The Board then reinstated MHG's application and deemed HRH's application incomplete for failing to include a valid lease. *Id.* at 9-10. The Board then stayed MHG's application for further consideration pending the outcome of litigation between the parties and the landlord. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2015-296, 1-2 (D.C.A.B.C.B. Jun. 10, 2015).

65. After the ruling by the Board, HRH and MHG engaged in litigation to resolve the issue. *Tr.*, 1/29/16 at 218. In total, MHG reached a settlement where HRH paid MHG \$165,000 for the lease assignment. *Id.* Currently, HRH pays the landlord \$6,600 per month in rent. *Id.* at 244.²

VII. Facts Related to the Alleged Construction Code and Electrical Permit Fraud.

66. During the Board's consideration of MHG's Application, the Protestants, in a motion to intervene, alleged that MHG was in violation of Title 12 of the District of Columbia Municipal Regulations—the city's Construction Codes—and had falsified an electrical permit application submitted to DCRA. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-428, 2-3 (D.C.A.B.C.B. Oct. 22, 2014). In responding to the motion, the Board noted that as a matter of law the Board does not overturn the final decisions of other coordinate agencies on matters they administer, in accordance with the court's ruling in *Dupont Circle Citizens Association*. *Id.* at 4 *citing Dupont Circle Citizens Ass'n v. D.C. Alcoholic Beverage Control Board*, 766 A.2d 59, 62 (D.C. 2001). Further, the Board indicated that it would rely on the Office of Administrative Hearing's acceptance of DCRA's motion to withdraw the enforcement action related to the electrical permit. *Id. citing 2nd Street Properties LLC v. D.C. Dep't of Consumer and Regulatory Affairs*, Case No. 2013-DCRA-00058 (O.A.H. Sept. 4, 2014). In regard to the violations of the Construction Codes, the record indicated that the violations were being adjudicated in the Superior Court of the District of Columbia; as a result, out of comity to the Superior Court, the Board indicated that it would rely on the court's final decision. *Id.* As of January 6, 2016, HRH has never been found by a court that it is in violation of the city's Construction Codes. *Tr.*, 1/6/16 at 85.

² There is no indication in the record as to whether Mr. Scahill received a portion of the settlement, as an owner of MHG, or whether the money solely went to the other members of MHG.

VIII. Facts Related to MHG's Final Withdrawal.

67. On July 20, 2015, MHG withdrew its application with the approval of all of its members. *Letter from Abraham Melles, Martin Scahill, and Hailmaryam Negash to Alcoholic Beverage Control Board* (Jul. 20, 2015). Thus, the Board never issued a final order indicating whether Martin Scahill qualified for licensure under D.C. Official Code § 25-301.

IX. Facts Related to the Second Review of HRH's Application.

68. In accordance with its prior Order, upon the withdrawal of the MHG's application, HRH requested that the Board consider its Application. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, HRH Services, LLC*, Board Order No. 2015-241, at 10; *Letter from Rachel Traverso, General Manager to Alcoholic Beverage Regulation Administration* (Jul. 20 2015).

69. Rachel Traverso formed HRH in 2014 and its place of business is 708 G Street, N.E. *Tr.*, 1/6/16 at 120, 139. Since March 2015, HRH has operated as a restaurant that does not serve alcoholic beverages. *Id.* at 49, 79. The business intends to operate as a British-American pub. *Id.* at 79. She manages the day-to-day operations of HRH, which currently serves lunch five days per week. *Tr.*, 1/29/16 at 45-46. Further, Ms. Traverso has worked in the restaurant industry for nine years in various capacities and held a manager's license for four years. *Id.* at 123-24.

70. HRH uses its own bank account to conduct business. *Tr.* 1/29/16 at 53. The account only has Rachel Traverso as a signatory. *Id.* at 53-54.

a. Facts Related to Mr. Scahill's Involvement in HRH.

71. During the hearing on January 6, 2016, Richard Traverso indicated that Martin Scahill "has no role" in the business and he is not an "employee" or "partner." *Tr.* 1/6/16 at 104-05. Yet, Mr. Traverso also later admitted that Mr. Scahill has been "helping out at the restaurant." *Tr.*, 1/29/16 at 249. Furthermore, during this hearing, Rachel Traverso indicated that Mr. Scahill may be allowed to bus and wait tables in the future. *Id.* at 218-19.

72. Before January 6, 2016, Martin Scahill regularly worked at the establishment approximately four days per week and about five hours a day when he worked at the business. *Tr.*, 1/6/16 at 185, 193. In order to work at the establishment, Mr. Scahill has to commute from Sterling, Virginia in his own vehicle. *Id.* at 185. Mr. Scahill currently works as a bookkeeper for another business. *Id.* at 195. Even though Mr. Scahill has been working at HRH on a regular basis since the entity's inception, Mr. Scahill has received no payment for this work. *Tr.*, 1/6/16 at 113, 183-84.

73. Mr. Scahill has primarily worked on the renovation of the premises. He primarily advised and organized contractors renovating the premises. *Id.* at 192. Occasionally, Rachel

Traverso allowed Mr. Scahill to use her car to carry materials to the building site. *Id.* at 172-73. Mr. Scahill also supervised the removal of the enclosed sidewalk café. *Tr.*, 1/29/16 at 101.

74. ABRA Investigator Mark Brashears also observed Mr. Scahill at the HRH's restaurant on Wednesday, December 16 2015, during an investigation of the Application. *Tr.* 1/6/16 at 28. Investigator Brashears saw Mr. Scahill outside the establishment and they spoke briefly about the nature of the investigator's visit. *Id.* at 30. Investigator Brashears then entered the establishment and spoke to Rachel Traverso. *Id.* During their conversation, he observed Mr. Scahill "moving about the establishment" and conducting maintenance and repair work. *Id.* at 30, 47.

75. Mr. Scahill helped the restaurant in other ways as well. For example, Mr. Scahill has worked at the establishment's front door and guided patrons to their seats. *Tr.*, 1/29/16 at 164-65; *Tr.*, 1/6/16 at 193. Rachel Traverso has also sent Mr. Scahill to pick up supplies for the business at places like Restaurant Depot. *Tr.*, 1/6/16 at 192. After the hearing on January 6, 2016, Ms. Traverso requested that Mr. Scahill voluntarily submit evidence to HRH. *Tr.*, 1/29/16 at 103-04. Mr. Scahill gave Ms. Traverso a copy of his driver's license and a copy of his pay stub issued by his ex-wife's business. *Id.* at 103-04.

76. Additionally, Martin Scahill also supervised the work performed by Christopher Smith. Mr. Smith worked at the establishment between September 2013 and January 22, 2015. *Tr.* 1/29/16 at 147. He has worked for both MHG and HRH. *Id.* at 327-28. During his time working for MHG and HRH, he only observed Martin Scahill supervise the construction. *Id.* at 328. For example, Mr. Scahill would usually assign Mr. Smith tasks. *Id.* at 331. Finally, while working for HRH on January 22, 2015, Mr. Scahill fired him. *Id.* at 329-30, 340.

77. Mr. Smith indicated that Mr. Scahill paid him in cash for his work at the restaurant. *Id.* at 361. HRH has not paid him for the work he performed between November 2015 and January 2016. *Id.* at 362. Mr. Scahill promised Mr. Smith that he would be paid in full once the restaurant was opened. *Id.* at 362. There is no indication in the record as to whether Mr. Scahill paid Mr. Smith out of his own funds when Mr. Smith worked for HRH or whether HRH supplied the money to pay Mr. Smith.

b. Facts Related to the DDOT Sidewalk Café Permit Application.

78. HRH seeks to operate a sidewalk café as part of its business. *Parsons Exhibit No. 12.* The premises used to have an enclosed sidewalk café. *Tr.* 1/6/16 at 86. The enclosure had existed as part of the building for over thirty years and was not built by HRH. *Id.* at 86-87, 132.

79. Mr. Scahill and Rachel Traverso attended a DDOT Public Space Committee hearing related to the enclosed sidewalk café on August 27, 2015. *Id.* at 162. Mr. Scahill was not paid for his attendance at the hearing. *Id.* at 163. During the hearing, both Ms. Traverso and Mr. Scahill discussed the plans for the sidewalk café. *Parsons Exhibit No. 14*, at 4-34.

80. During the hearing, Mr. Scahill made various statements that inferred that he had an ownership or managerial role in the business. These statements include:

MR. SCAHILL: . . . And it would be the difference [to] us being profitable or not being profitable.

Id. at 36-37.

MR. SCAHILL: . . . All I'm trying to do is . . . provide a great restaurant that's been there since 1957.

Id. at 80.

MR. SCAHILL: . . . I'll let both employees make another payroll. Then I'll give them seven days and see if they can get done.

MR. SCAHILL: Rachel, come one. We've got some fucking people to fire.

Id. at 88.

While arguing with the chair of the committee, Mr. Scahill also told the Public Space Committee that he was "paying for" the sidewalk café. *Id.* at 84. Rachel Traverso then added, "We are paying for it." *Id.* at 85.

81. DDOT ruled that the enclosed sidewalk café was illegal and HRH tore it down to comply with the ruling. *Tr.* 1/29/16 at 72-73. After tearing down the enclosure, HRH applied to DDOT for an unenclosed sidewalk. *Id.*

82. HRH currently holds a certificate of use issued by DDOT for 237 2nd Street, N.W. *Id.* at 71. DDOT issued the permit on January 8, 2016, which allows for the use of an unenclosed sidewalk café. *Id.*; *Applicant Exhibit No. 12.*

X. Facts Related to the Execution of a Barring Notice Against Mr. Scahill by HRH.

83. A few weeks before the hearing on January 29, 2016, before the Board, Richard and Rachel Traverso discussed barring Mr. Scahill from the premises. *Tr.*, 1/29/16 at 133. They mutually decided that it was best for the business if Mr. Scahill could not enter the premises. *Id.* at 135, 141.

a. Facts Related to the Barring Notice.

84. The barring notice warns Mr. Scahill "to stay off the property and grounds" of "237 2nd Street, N.W." *Applicant's Exhibit No. 15.* The notice further warns that "no exceptions to this notice" exist and that a violation may result in "prosecution for Unlawful Entry under D.C. Code § 22-3302." *Id.* The notice indicates that Mr. Scahill is barred because the "Barred individual has been accused by the D.C. ABC Board of being unfit for licensure, due to his character. Owner of the Alibi does not wish the barred Individual to be in or near his business to avoid the

appearance of impropriety.” *Id.* The notice is signed by Mr. Scahill. *Id.* The notice states that it “is in effect for 5 years unless cancelled in writing.” *Id.*

b. Facts Related to Executing and Enforcing the Barring Notice.

85. Richard Traverso executed and served a barring notice on Mr. Scahill on January 27, 2016, two days before the hearing on January 29, 2016. *Tr.*, 1/29/16 at 137-38, 209, 225, 228. Martin Scahill signed the barring notice around 9:30 p.m. near HRH’s restaurant. *Id.* at 225, 228. Rachel Traverso also witnessed the signing of the barring notice. *Id.* at 190, 224.

86. It should be noted that the barring notice does not require parties to notify or serve the notice on the Metropolitan Police Department (MPD); therefore, MPD would have no idea that one is in effect until a complaint is made. *Id.* at 266.

87. Richard Traverso indicated that he is committed to enforcing the barring notice and calling the police, if necessary. *Id.* at 212. He indicated that the barring notice shows that HRH has completely separated itself from Mr. Scahill. *Id.* at 267. Mr. Traverso indicated that while the barring notice is in effect, he will not allow Mr. Scahill on the property. *Id.* at 267. Furthermore, he indicated that he would ensure that the barring notice remains in effect for five years. *Id.* at 269-70.

88. Rachel Traverso also stated on the record that due to the barring notice, Martin Scahill is “not allowed to work at the restaurant.” *Id.* at 141. She also stated that she understands that if Martin Scahill enters the premises “the police get called.” *Id.* at 191.

89. Since the issuance of the barring notice, Rachel Traverso has seen Martin Scahill on two occasions. *Id.* at 143. On one occasion, Ms. Traverso visited Mr. Scahill’s home in Virginia and stayed for dinner. *Id.* at 144, 146. During this visit, she requested and obtained evidence used during the hearing on January 29, 2016. *Id.* at 146.

c. Facts Related to HRH’s Representations Regarding the Barring of Mr. Scahill.

90. During closing arguments, HRH’s counsel, on behalf of HRH, made three representations. First, the barring notice bars Martin Scahill from the premises. *Tr.*, 1/29/16 at 428. Second, HRH is willing to enforce the barring notice for five years. *Id.* Third, HRH voluntarily proposes adding conditions to the license ensuring the maintenance and enforcement of the barring notice, as well as other related conditions, if the Board deems them necessary. *Id.* at 429.

CONCLUSIONS OF LAW

91. In reviewing applications for licensure, “The Board has a public interest function to perform unlike that of a court in private civil litigation between two contesting parties where relevant and material allegations made by the plaintiff are taken as admitted if not contested.”

Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd., 288 A.2d 666, 669 (D.C. 1972). Unless explicitly exempted, all applicants bear the burden of showing that he or she qualifies for licensure under § 25-301. *Id.* at 666-69; 23 DCMR § 1718.3 (West Supp. 2014). “This obligation is not dependent upon whether or not anyone” raises an issue under § 25-301” *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998). Therefore, when the Board has doubts regarding an applicant’s compliance with § 25-301, “it may call for evidence to remove that doubt.” *Citizens Ass'n of Georgetown, Inc.*, 288 A.2d at 672 (Hood, Chief Judge, concurring).

92. The Board resolves all five counts in favor of HRH. First, the Board accepts HRH’s voluntary stipulation to exclude Mr. Scahill from the business and the premises and imposes conditions to enforce the stipulation. Because these conditions require HRH to exclude Mr. Scahill from the business, the Board finds Count I—and all other allegations regarding Mr. Scahill’s ownership of the business—moot and determines that HRH satisfies § 25-301(a)(5) based on the imposition of conditions that resolve the issues regarding Mr. Scahill’s alleged domination or control of the business now and in the future. Second, the Board dismisses Count II, because even if the allegation that HRH knowingly failed to list Mr. Scahill as an owner is true, the Board finds that denial is an inappropriate remedy when HRH has voluntarily stipulated to exclude him from the business. Third, the Board dismisses Count III, because there is insufficient evidence showing that HRH knowingly filed a false lease with its Application when the record leaves open the possibility that Mr. Scahill deceived his partners and HRH on his own. Fourth, the Board finds the owners of HRH fit for licensure and compliant with all laws necessary for the approval of the Application, which resolves Counts IV and V.

I. The Board accepts HRH’s voluntary stipulation to exclude Mr. Scahill.

93. The Board deems the Applicant’s stipulation to exclude and bar Mr. Scahill from the premises as a voluntary waiver of the right to obtain an unrestricted license. *Supra*, at ¶¶ 83-90. It should also be noted that HRH did not propose specific language for the conditions; therefore, the Board crafts its own conditions necessary to enforce the voluntary stipulation and to ensure HRH’s compliance with the law.

94. Under § 25-104(e), the Board is granted the authority to impose conditions on a license when “. . . the inclusion of conditions will be in the best interest of the [neighborhood]” D.C. Official Code § 25-104(e). The Board finds it appropriate to impose conditions on a license in order to enforce any promises or pledges made by the applicant when they are relied upon to approve the application. *In re T&L Investment Group, t/a Panda Gourmet*, Case No. 15-PRO-00016, Board Order No. 2015-397, ¶ 34 (D.C.A.B.C.B. Oct. 28, 2015) (imposing condition based on the representations of the Applicant during the trial). To hold otherwise merely invites licensees to operate contrary to their stated intentions and future plans, and creates an incentive for applicants to misrepresent their intentions to the Board, which is not in the best interest of the neighborhood or the administration of justice. *See In re Hak, LLC, t/a Midtown*, Case No. 13-PRO-00176, Board Order No. 2016-055, ¶ 37 (D.C.A.B.C.B. Feb. 17, 2016) (saying the Board may rely on an applicant’s future plans when evaluating an application) *citing Donnelly v. D.C. Alcoholic Beverage Control Bd.*, 452 A.2d 364, 369 (D.C. 1982); Rules of Professional Conduct, R. 3.3(a)(1) (requiring candor to the tribunal). This interpretation is also consistent with the

District of Columbia Administrative Procedure Act, which allows cases to be disposed of through “stipulation, agreed settlement, consent order, or default.” D.C. Official Code § 2-509. Finally, as in other jurisdictions, the Board has the authority to condition licensure on the exclusion of an individual or entity from the business and the premises based on the representations of the applicant. *Alm, Inc. v. Duffy*, 140 A.D.2d 977, 977, 529 N.Y.S.2d 649, 650 (N.Y. 4th App. Div. May 27, 1988) (finding condition excluding individual from the business reasonable in light of representations made by the applicant); *Cleopatra Rest. Corp. v. New York State Liquor Auth.*, 169 A.D.2d 514, 515, 564 N.Y.S.2d 370, 371 (N.Y. 1st App. Div. Jan. 17, 1991) (holding that the New York State Liquor Authority may condition licensure on the exclusion of an individual from the business); *In re DLC Corp.*, 167 Vt. 544, 550, 712 A.2d 389, 393 (V.T. 1998) (upholding the Vermont liquor authority’s condition to exclude an individual from the premises even though the individual was not a “shareholder, employee, or owner”).³

95. HRH through witnesses and representations by counsel indicated that HRH is completely separate from Mr. Scahill, will maintain the barring notice for five years, will bar him from the premises, and will accept additional conditions to enforce these representations. *Supra*, at ¶¶ 87, 90.

96. Based on this commitment, the Board, at a minimum, may condition licensure on the exclusion of Mr. Scahill from the business and the premises. In order to ensure the proper enforcement of these conditions and compliance with § 25-301(a)(5), the Board requires the following: (1) HRH shall ensure that the barring notice remains in effect for five years from the effective date identified by HRH; (2) HRH shall be obligated to inform the Board if the barring notice is no longer in effect, because the barring notice is the basis for issuing the license to HRH; (3) HRH shall maintain a copy of the barring notice on the premises, which will aid in the enforcement of the notice, if necessary; (4) HRH is obligated to report violations of the barring notice to MPD, which is based on HRH’s pledge to enforce the notice; (5) HRH is prohibited from transferring the license to Mr. Scahill, because an individual barred from the premises cannot properly superintend a license under D.C. Official Code § 25-301(a)(6); and (6) HRH shall not transfer any interest to Mr. Scahill; permit him to manage, work, or volunteer for HRH; or give him access to HRH’s financial accounts, which is based on HRH’s representation that it is completely separate from Mr. Scahill and barred from the premises. The Board notes that the full conditions are contained in the Order Section, below.

³ The Board notes that courts in New York have upheld orders similar to the one being issued by the Board in this decision. For example, in *Duffy*, a New York court upheld and deemed reasonable a condition excluding an individual from employment or other involvement in the establishment as a condition of licensure. *Alm, Inc. v. Duffy*, 140 A.D.2d 977, 977, 529 N.Y.S.2d 649, 650 (N.Y. 4th App. Div. May 27, 1988). In affirming the decision of the New York State Liquor Authority, the court cited the representations of the Applicant promising not to hire the individual as one of the reasons for deeming the condition appropriate. *Id.* Further, in *Cleopatra*, another New York court noted that a condition excluding a specific individual was reasonable in light of the individual’s “unfavorable history as a principal of several liquor licensees.” *Cleopatra Rest. Corp. v. New York State Liquor Auth.*, 169 A.D.2d 514, 515, 564 N.Y.S.2d 370, 371 (N.Y. 1st App. Div. Jan. 17, 1991).

II. Based on the conditions placed on the license, HRH satisfies § 25-301(a)(5).

97. Having resolved to accept the conditions proposed by HRH, the Board turns to the issue of whether HRH operates or will operate as a front or subterfuge on behalf of Mr. Scahill. Section 25-301(a)(5) requires the Board to “determine” whether “the applicant is the true and actual owner of the establishment for which the license is sought, and [whether] he or she intends to carry on the business for himself or herself and not as the agent of any other individual [or entity] . . . not identified in the application.” D.C. Official Code § 25-301(a), (a)(5).

i. The test for determining compliance with § 25-301(a)(5).

98. In evaluating an applicant’s compliance with § 25-301(a)(5), the Board will weigh:

- (1) The involvement or potential future involvement of a third party, unidentified in the application, in operating the applicant’s business to the extent it may show domination or control of the business;
- (2) the existence of a motive for the applicant or third party to hide the third party’s involvement in the applicant’s business and the applicant’s relationship to the third party;
- (3) the manner in which the applicant obtained the funding, property, or other resources necessary to operate the business; and
- (4) the nature and timing of the application, as well as the location sought by the application.

1. The case law justifying the Board’s interpretation of § 25-301(a)(5).

99. In interpreting § 25-301(a)(5), the Board found the case law of the District Court of the United States for the District of Columbia, other states, and prior decisions of the Board instructive.

100. First, in *Chippas*, the District Court of the United States for the District of Columbia reviewed a prior version of § 25-301(a)(5), which required that licensees be the “true and actual owner of the business” for the purpose of resolving a contract dispute. *Chippas v. Valltos*, 123 F.2d 153, 153-54 (D.C. Cir. 1941). There, it was alleged that the defendant and plaintiff-alien agreed to open a restaurant as “a 50-50 partnership for the operation . . . including the sale of alcoholic beverages, and after two years . . . [the] defendant forced him to leave.” *Id.* at 153. The “plaintiff admitted that . . . [he] knew that he could not obtain a license” under the prior version of § 25-301(a)(5). Nevertheless, “the liquor license had been taken out in defendant’s name with [the plaintiff’s] consent . . .” *Id.* In refusing to enforce the contract out of equity, the court noted that the alcohol laws prohibited a third party from allowing another to “take out” a license for the purpose of allowing a third party to conduct the business in another party’s name. *Id.* at 154.

101. Second, Mississippi's alcohol laws contain a statute similar to § 25-301(a)(5). *Mississippi State Tax Comm'n v. Moore*, 209 So. 2d 832, 836 (Miss. 1968). Specifically, in *Moore*, the court noted that under Mississippi's laws, "where another person who is himself disqualified from holding a license has a financial interest in the premises or business, and would dominate the applicant in operating the business, the license may be refused." *Id.* at 837. In reviewing an appeal from a denial of a liquor permit by the state tax commission, the Supreme Court of Mississippi noted that the applicant was a twenty-two year old college student whose father "had previously been in the illegal liquor business" but denied a permit three months prior due to the large amount of taxes owed to the state. *Id.* at 836. The applicant proposed naming the store after her father, hire a manager formerly employed by her father in his illegal enterprise, and would use money provided by her father to purchase the business. *Id.* Based on these considerations, the court upheld the denial of the application by the commission because the commission could find that the "application was a subterfuge" and make a "reasonable inference she was acting for and through her father, for the purpose of evading the statutory prohibition" that prevented the father from obtaining a permit. *Id.* (quotation marks removed).

102. Third, in *Nixon*, the Supreme Court of Tennessee upheld the decision of the state tax commission denying the applicant a liquor license. *State ex rel. Nixon v. McCanless*, 141 S.W.2d 885, 886-87 (Tenn. 1940). There, the wives of former license holders—license holders that had their licenses revoked—applied for license to carry on the former business. *Id.* at 885. The wives lived with their husbands, sought licensure at the same location, and intended to use the former business' inventory and lease. *Id.* The court noted that neither of the wives were familiar with the liquor business or had prior business experience. *Id.* The wives further intended to employ their husbands in the store. *Id.* at 886. The court found that under these facts the state commission was justified in concluding that the application was a "subterfuge" to allow the husbands to "continue the business by operating it in the name of their wives." *Id.* at 885.

103. Fourth, in *Wilks*, the Supreme Court of Errors of Connecticut reviewed the denial of a liquor license where the applicant-wife operated a restaurant for five years, but her husband later ran the business under a separate license and he committed six violations of the liquor laws. *Wilks v. Liquor Control Comm'n*, 190 A. 262, 262 (Conn. 1937). The husband subsequently withdrew his application and his wife filed an application for the same premises and employed the husband. *Id.* Based on these facts the Connecticut's Liquor Control Commission denied the application for license. *Id.* The court upheld the denial, saying

It is self-evident that a person suitable per se to receive a permit may be rendered an unsuitable person, if, for example, he is completely subject to the domination of another who is himself an unsuitable person, in operating under it. The same is true of a person suitable to receive a permit, who in the operation under it becomes a permittee in name only in order to enable the real party in interest who is an unsuitable person in fact to control and carry on the business for himself. Therefore, where the commission has ground for believing that an applicant, though himself a suitable person, will be rendered an unsuitable permittee through either the domination, or the exclusive operating interest, or both, of another who is unsuitable, it can with reason deny the application. So it might in the exercise of its discretion hold one to be unsuitable as a permittee who employs a

person in the active conduct of the business whose reputation is such as to make it likely that he will become a party to violations of the law. The withdrawal of the plaintiff's husband's application for this permit only after his criminal record became known to the commission, this ensuing application by the plaintiff in her own name and the continued employment of the husband in the conduct of the business, coupled with the fact of the [husband's] record of this series of liquor law convictions, afforded ample ground for the reasonable conclusion by the commission that under the circumstances the plaintiff was an unsuitable person.

Id. at 263.

104. Fifth, the Board also finds persuasive the Supreme Court of Tennessee's reasoning in *McCanless*, which addresses the concern regarding sham applications filed by relatives and former employees of licensee holders. Specifically, the court upheld a law prohibiting the issuance of a liquor license

to any employee or other person having any interest in the place of business where a license has been revoked, nor will a license be issued to a relative of any employee or other person having any interest in the business for the privilege of doing business near the location of the establishment whose license was revoked.

McCanless v. State ex rel. Hamm, 181 Tenn. 308, 313-14, 316 (Tenn. 1944). In upholding the law, the court credited the testimony of the state tax commission, which indicated that after revocations, "relatives have come forward and obtained a license to operate the business . . . 'as a front'" for the prior operator to carry on the business either directly or indirectly. *Id.* at 313-315. The court noted that a familial relationship, whether by blood or relation, between individuals gives them "influence," and that the rule was a reasonable means of preventing "fraud and deception." *Id.* at 314-313.

105. And sixth, in *GII Restaurant & Lounge*, the Board relied on § 25-301(a)(5) to deny an application for licensure. *In re Proof Lounge, LLC, t/a GII Restaurant & Lounge*, ABRA License No. 87228, Board Order No. 2011-496, ¶¶ 16-17 (D.C.A.B.C.B. Dec. 14, 2011). There, the record indicated that the landlord had previously engaged in the illegal sale of alcohol, declared unfit for licensure and denied a license, and attempted to control a prior license through the auspices of a third party. *Id.* at ¶¶ 18-19. The record further showed that the Applicant and landlord were violating the lease by not enforcing the security deposit or insurance provisions of the agreement. *Id.* at ¶ 19.

2. Explaining how the actual ownership test will be applied.

106. As noted above, determining compliance with § 25-301(a)(5) relies on four relevant considerations. The Board explains its reasoning for adopting these elements and how it may apply the elements below.

a. First, the Board examines the role of any unidentified third parties in the applicant's business.

107. The first element examines the involvement and potential future involvement of a third party unidentified in the application, and whether such involvement reasonably demonstrates that the third party will exercise control or domination of the applicant's business. The statutory language justifying the inclusion of this element comes from the portion of § 25-301(a)(5), which identifies unidentified people and entities as a concern and requires that the applicant "intend" to carry on the business for themselves. § 25-301(a)(5). The Board further interprets control or domination of the applicant's business to refer to control of the ownership, operation, management, or profits of the business, as identified in the definition of an interest provided by § 25-101(26). Specifically, if an unidentified third party controls the operation, management, or profits of the business—whether at the time of application or in the future—then this would indicate that the applicant has unlawfully given away a share or interest in the business as described in § 25-101(26) without authorization or cannot comply with § 25-301(a)(5).

108. In considering this element, the case law indicates a number of guiding principles when weighing the record. First and foremost, the Board will likely deny a license when it is shown that the parties conspired to take out a license for the purpose of allowing a third party unidentified in the application to operate the business in the applicant's name, as was the case in *Chippas*. The Board derives from *Wilks* the principle that an applicant may not be able to demonstrate compliance with § 25-301(a)(5) when the applicant employs a person that makes it reasonable to presume that a violation of the ownership requirement will occur. Moreover, the Board may deny an application under § 25-301(a)(5) when an unsuitable third party holds a financial interest in the business or provides significant funding, as was the case in *Moore*. The Board may also make a reasonable inference that an application is a subterfuge when the applicant employs or will employ a disqualified person, a person that withdrew an application, or a person that canceled a license, as indicated in *Moore* and *Nixon*. Finally, statements indicating ownership or statements that infer ownership of an unidentified third party may allow the Board to reasonably infer that the applicant has no intent to carry out the business or has allowed the license to fall under the control of another; especially, when the statement is made by the applicant, the third party, or one of their agents, such as an employee. See, e.g., *In re Mohammad Ahment Al-Hada, et al.*, Board Order No. 2015-094, 3-4 (D.C.A.B.C.B. Mar. 11, 2015) (relying on statement of unauthorized third party that he was the owner for the purpose of denying the transfer application under D.C. Official Code § 25-405); *In re CSBT, Inc., t/a Town House Tavern Restaurant*, ABRA License No. 024682, Board Order No. 2015-061, ¶¶ 3-5, 7 (D.C.A.B.C.B. Feb. 25, 2015) (finding relevant statements by former owner, unauthorized third party, and employee to determine that unauthorized transfer of ownership occurred); *In re Parkside Assoc. Ltd. Partnership, t/a Circle 7 Market*, ABRA License No. 014581, Board Order No. 2016-063, ¶¶ 2-3 (D.C.A.B.C.B. Feb. 10, 2016) (finding statements of the unauthorized owner and manager regarding the ownership of the premises relevant).

b. Second, the Board examines the potential motive of the applicant in hiding the ownership of a third party in the applicant's business and the relationship between the parties.

109. The second element considers the existence of a motive for the applicant or third party to hide the third party's involvement in the business and the relationship between the parties. The statutory basis for this element comes from § 25-301(a)(5)'s consideration of the applicant's intent to carry on the business for themselves and the bar on an applicant being the agent of another.

110. The alcohol laws of the District of Columbia frequently exclude individuals and entities from holding or receiving a license in order to support the policies behind the law or as a punishment for bad acts. Accordingly, there exists a subset of individuals and entities that have an interest in circumventing the law.

111. For example, in general, the District's tied house laws—laws that restrict vertical integration in the alcohol industry—generally prohibit the issuance of multiple off-premise licenses, prevent the ownership of both on-premise and off-premise retail licenses, and prevents the ownership of licenses within multiple tiers. D.C. Official Code §§ 25-301(a)(3), (a)(4), 25-303.⁴ Other examples include the bar on successive applications after the denial of an application and the bar on issuing a license to an individual for five years after the revocation of their license. D.C. Official Code §§ 25-338, 25-821(c). Thus, there are many categories of people that cannot obtain alcohol licenses or certain types of licenses.

112. Moreover, similar to other jurisdictions, the Board recognizes that certain types of relationships create a risk for fraud. As an example, the Board's regulations recognize that a spousal relationship requires license holders to undertake specific steps to ensure compliance with § 25-303 when both spouses hold specific types of licenses. § 403. Further, an applicant that has a relative barred from holding a license could also have an incentive to circumvent the ban, as noted in *McCanless*, *Nixon*, and *Hamm*. In addition, an applicant that employs an ineligible, unsuitable, or disqualified person or employs a person that withdrew their application for the same premises may have an incentive to skirt the law, as was the case in *Nixon* and *Wilks*. Further, the fact that the applicant and a third party live together may justify a negative inference, as in *Nixon*. The Board could also reasonably infer that a prior applicant is attempting skirt the law when a former employee or agent of the third party subsequently applies for a license. The Board emphasizes that its concern regarding sham applications is not a hypothetical exercise. *Chippas*, *Hamm*, *Moore*, *Nixon*, *Wilks*, *McCanless*, and the more recent decision by the Board in *GII Restaurant & Lounge* in 2011, show that people do sometimes attempt to circumvent laws preventing them from holding a license.

113. It should also be noted that § 25-301(a)(5) focuses on whether an unnamed party is exercising any control over the applicant; therefore, it does not matter whether the third party is

⁴ An "off-premise" license authorizes the sale of closed containers, while an "on-premise" license authorizes the sale of open containers for consumption on the premises.

actually a sinner or a saint; a convicted criminal or an upstanding citizen; or a bad license holder or a good license holder. Of course, a third party that falls in the “sinner” category may have a reason to hide their involvement in the applicant’s business.

c. Third, the Board examines how the applicant obtained the funding and resources to operate the business.

114. The third element considers the manner in which the applicant obtained the funding, property, or other resources necessary to operate the business. The statutory basis for this element comes from § 25-301(a)(5)’s bar on applicants being the agent of another entity.

115. First and foremost, based on *Moore* and *Nixon*, the Board may reasonably infer that an applicant that is not financially independent, funded by a third party, or receives a significant amount of property, or other benefits, from the third party may be highly influenced by the third party. Moreover, the Board may reasonably infer that an application is a subterfuge when there exists evidence of non-arm’s length transactions, sweetheart deals, or self-dealing that suggest a third party has influence over the applicant, as the Board reasoned in *GII Restaurant & Lounge*. Finally, as in *Moore* and *Nixon*, the Board could also reasonably infer that an application is a subterfuge when the applicant employs the third party or hires the third party’s former employees or managers.

d. Fourth, the Board examines the timing of the application and location sought.

116. And finally, the fourth element considers the nature, timing, and location sought by the application. This element is relevant because the circumstances surrounding the filing of the application may allow the Board to infer the intent of the applicant to carry out the business for themselves under § 25-301(a)(5). Specifically, as in *Moore*, *Nixon*, and *Wilkes*, an application for the same premises, which comes soon after the denial, cancellation or revocation of a license or the withdrawal of an application, may indicate an attempt on the part of an unidentified third party to control the license through the auspices of another.⁵ Moreover, as in *Wilks*, in some cases, the Board may make a negative inference if the applicant’s business model is similar to a business model formerly operated or proposed by a third party with a relationship to the applicant.

⁵ In *800 Water Street*, the court indicated that the Board may prevent a license holder from cancelling its license in order to avoid an enforcement action, because it undermines the ability of the Board to enforce the law. *800 Water St., Inc. v. D.C. Alcoholic Beverage Control Bd.*, 992 A.2d 1272, 1275 (D.C. 2010). The Board believes this reasoning should be extended to applicants that withdraw their applications after the Board announces its intent to review the qualifications of the applicant, because, similar to the situation in *800 Water Street*, such actions signal an intent to avoid a negative judgment. Indeed, to hold otherwise would encourage applicants to file and withdraw applications multiple times in the hopes of evading a negative result.

ii. HRH successfully demonstrated that it complies § 25-301(a)(5) based on the imposition of conditions excluding Mr. Scahill from the premises.

117. Based on the voluntary concessions made by HRH, the Board imposes conditions that exclude Mr. Scahill from the business and the premises.

118. It should be noted that while HRH demonstrated that, on paper, it is separate from Mr. Scahill and financially independent, the Board would also have to weigh facts showing (1) the filing of an application by Mr. Scahill, a minority owner of a troubled establishment, soon after the demise of the troubled business to operate an establishment at the same address, *supra*, at ¶¶ 7-32, 35, 39; (2) the withdrawal of Mr. Scahill's application once the Board raised issues regarding his qualifications for licensure, *supra* at ¶¶ 46-50, 52; (3) the quick replacement of Mr. Scahill's business with an entity controlled by Ms. Traverso, a person formerly involved in both of Mr. Scahill's former businesses and who recently had a close relationship with Mr. Scahill, *supra* at ¶¶ 33, 36, 40-42, 53-54; (4) the initial attempt to transfer the lease and property controlled by Mr. Scahill and his business without consultation with his partners to Ms. Traverso without compensation to himself or his partners, *supra* at ¶¶ 58, 61, 65; (4) the continued unpaid involvement of Mr. Scahill in HRH after the withdrawal of MHG's application, *supra*, at ¶¶ 71-77; (5) the statements made by Mr. Scahill during a public hearing inferring a role in the ownership and management of the new business when he supposedly has "no role" in the new business, *supra*, at ¶¶ 71, 80; and (6) the firing of an employee of the new business by Mr. Scahill, which appears to show that he had a managerial role in HRH, *supra*, at ¶ 76.⁶

119. Nevertheless, there is no need to resolve these conflicting considerations, because HRH has promised that Mr. Scahill is totally excluded from the business and this promise is enforced by the conditions placed in this Order. Because the involvement of Mr. Scahill in the business will result in the imposition of penalties, the Board is satisfied that Mr. Scahill will not exercise any domination or control over HRH. D.C. Official Code § 25-823(a)(6) (making it a violation to violate a condition of licensure). Moreover, the Board cannot infer that any other third party will have control over the business; therefore, the Board finds that HRH satisfies § 25-301(a)(5) and that Count I is rendered moot.

III. The condition excluding Mr. Scahill from the business renders denial an inappropriate remedy; therefore, Count II is dismissed.

120. Based on the exclusion of Mr. Scahill from the business, the Board is not convinced that denial of the Application is appropriate under § 25-401(c) for knowingly failing to Mr. Scahill's alleged ownership of the establishment, even if true. Under § 25-401(c), it is illegal to

⁶ It should also be noted that the exclusion of Mr. Scahill also eliminates the need for the Board to consider whether HRH should not be entitled to a presumption of appropriateness under D.C. Official Code § 25-311(a). *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 275 (D.C. 2013) (saying that when establishments share "overlapping ownership" or "management" the operation of the other business may reflect on the applicant's ability to "operate the establishment without a detrimental impact on the neighborhood.").

“knowingly” make a “false statement on an application, or in any accompanying statement under oath” that “the Board may require . . .” D.C. Official Code § 25-401(c). Under the law, “The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license.” *Id.* Here, even if the allegation is true, the conditions excluding Mr. Scahill from the business are an adequate remedy. Therefore, as a matter of discretion, the Board dismisses Count II.

IV. The Board finds insufficient evidence in the record to sustain Count III because Mr. Scahill may be solely responsible for the misleading lease filed with the Board.

121. The Board also finds that insufficient evidence exists to show that HRH violated § 25-401(c) by knowingly filing a false lease. Under § 25-401(c), it is illegal to “knowingly” make a “false statement on an application, or in any accompanying statement under oath” that “the Board may require . . .” D.C. Official Code § 25-401(c). Under the law, “The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license.” *Id.* Here, it has not been satisfactorily shown that HRH knew Mr. Scahill entered into the lease assignment without approval from MHG and the Board cannot discount the possibility that Mr. Scahill deceived his partners and the owners of HRH on his own. *Supra* at ¶ 60. Therefore, the record lacks sufficient evidence to sustain Count III.

V. The Protestants have not raised any issues that merit the denial of HRH’s Application.

122. The Board finds that HRH complies with D.C. Official Code §§ 25-301(a)(1), 25-301(a)(5), 25-301(a)(7), 25-311(c) and 25-335 and that the Protestants have not rebutted this showing.

a. The owners of HRH are fit for licensure under § 25-301(a)(1).

123. In this case, the Board finds that the owners of HRH are fit for licensure under § 25-301(a)(1).

124. “Before the Board may issue a license, it must determine that . . . [t]he applicant is of good character and generally fit for the responsibilities of licensure.” D.C. Official Code § 25-301(a)(1). The Board “must . . . evaluate each applicant individually, on a case-by-case basis” because “the character of the applicant . . . will necessarily differ from one application to the next . . .” *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1195 (D.C. 1985). At the very least, in order to satisfy the requirements of § 25-301(a)(1), the Board must examine “records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District’s alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.” D.C. Official Code § 25-301(a-1).

125. The term “Applicant” as it appears in Title 25 of the D.C. Official Code “means, as the context requires, the individual applicant, each member of an applicant partnership or limited liability company, or each of the principal officers, directors, and shareholders of an applicant corporation, or, if other than an individual, the applicant entity.” D.C. Official Code § 25-101(6). In this case, because HRH is a limited liability company, the term “applicant” in § 25-301(a) refers to “each member of an applicant partnership or limited liability company” *Id.* Therefore, the Board is entitled to look at the character and fitness of each individual member of HRH, as well as their prior operating histories.

126. The Applicant bears the burden of showing it qualifies for licensure under § 25-301(a)(1) through substantial evidence. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2014). Furthermore, “[t]his obligation is not dependent upon whether or not anyone makes a character challenge” *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998).

127. It has been suggested by former Chief Judge Hood that the Board may determine good character by finding that the applicant is a “law-abiding citizen” and that “the Board can satisfy itself of this requirement, in the absence of evidence to the contrary, from the fact that the individual, a mature businessman, has never been arrested.” *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d at 671-72 (Hood, Chief Judge, concurring).

128. In this case, there is no evidence that Richard or Rachel Traverso have been convicted of any crimes or arrested. Furthermore, any bad acts, inconsistent statements, or other behavior identified in the record does not rise to the level of rendering the owners of HRH unfit for licensure under D.C. Official Code § 25-301(a)(1) based on the isolated nature of these incidents. *Supra*, at ¶¶ 34, 45, 55.⁷ Nevertheless, HRH is advised that future incidents of misrepresentations to government bodies, providing alcohol to minors, or drug consumption at the premises appears may require the Board to revise this conclusion. *See Gallothom, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 820 A.2d 530, 533 (D.C. 2003) (“it is clear that prior adjudications are subject to modification and reexamination.”).

b. The Protestants issues and concerns regarding 25-301(a)(5) are moot.

129. As part of the protest, the Protestants raised concerns regarding Mr. Scahill’s control and domination of the business. As noted above, the Board finds that the conditions imposed in this case resolve this issue; therefore, the issue raised by the Protestants regarding § 25-301(a)(5) are rendered moot.

⁷ The Board did not include the allegation that Mr. Scahill hired a third party to slash the tires of one of the abutting property owners in its findings of facts. The Board notes that this situation would be solely relevant to evaluating the character and fitness of Mr. Scahill, who is excluded from the business under the terms of this Order. The Board further notes that the situation is not relevant to evaluating the character of Ms. Traverso, because there is no indication that she assisted, encouraged, or was even present when this incident occurred.

- c. HRH currently complies with the order of DDOT related to the sidewalk café; therefore, HRH cannot be held non-compliant with § 25-301(a)(7) based on the use of the sidewalk café.**

130. The Protestants raised the issue of HRH's compliance with an order of DDOT related to the operation of an enclosed sidewalk café. The Board finds that HRH is currently in compliance with DDOT's orders regarding the sidewalk café; therefore, the Board has no reason to find HRH noncompliant with § 25-301(a)(7) related to HRH's use of the sidewalk café.

131. Under § 25-301(a)(7), in order to qualify for licensure, "The applicant has complied with all the requirements of this title and regulations issued under this title." D.C. Official Code § 25-301(a)(7). It is a violation of § 25-823(a)(1) for a licensee to "violate[] any of the provisions of this title, the regulations promulgated under this title, or any other laws of the District" D.C. Official Code § 25-823(a)(7). Finally, the Board "may deny a license to an applicant if evidence shows that the applicant has permitted at the establishment conduct which is in violation of this title." 23 DCMR § 400.1 (West Supp. 2016).

132. The record shows that a long standing enclosed sidewalk café was deemed illegal in 2014 by DDOT. *Supra*, at ¶ 81. In response to the order, HRH tore down the sidewalk café and subsequently requested a permit for an unenclosed sidewalk café. *Id.* There is no evidence that HRH or the property is currently noncompliant with DDOT's regulations; therefore, the Board finds that HRH complies with § 25-301(a)(7) and does not exercise its discretion to deny the license for any prior violations of DDOT's order, even if they occurred.

- d. HRH has all licenses and permits necessary to operate the business in accordance with § 25-311(c).**

133. The Board finds that HRH satisfies § 25-311(c). Under this statute, "No license . . . shall be issued to an applicant unless the applicant has a valid certificate of occupancy for the premises in which the establishment is located and has all other licenses and permits required by law or regulation for its business." D.C. Official Code § 25-311(c). Based on the Board's review of the Application, the supporting documents, and the record in this case, HRH appears to have all licenses and permits necessary to operate its chosen business.

- e. HRH satisfies D.C. Official Code § 25-335 because there exists no current violations of the Construction Codes and similar public safety rules.**

134. The Board is satisfied that no current violations of the District's Construction Code or other public safety rule exist at the proposed premises.

135. Under § 25-335(1),

the Board shall deny a license if the evidence reasonably shows that: . . . The establishment for which the license is sought is in violation of one or more of the Construction Codes for the District contained in Title 12 of the District of Columbia Municipal Regulations, or any other law or rule of the District intended to protect public safety

D.C. Official Code § 25-335(1). Based on the phrase “is in violation,” the Board does not interpret § 25-335(1) as requiring the denial of an application for a premise that was previously in violation of the Construction Codes or other public safety rule in the past. Instead, the more sensible interpretation is that the Board cannot issue a license for premises that has current violations of the relevant rules. Moreover, when faced with these types of violations, § 25-335(1) does not prevent the Board from approving the application, but conditioning issuance on the applicant fixing or resolving the violations in a satisfactory manner.⁸

136. In this case, the Protestants alleged that the Board should deny the license based on the alleged forgery of a DCRA notification form. *Supra*, at Count IV. Even if the signature has been falsified, the record in this case does not exclude the possibility that Mr. Scahill forged the signature of Mr. Parsons on his own, without the involvement of Ms. Traverso. *Supra*, at ¶ 31. Consequently, HRH cannot be held liable for this alleged violation.

137. The Protestants have also raised other issues regarding Title 12 and an allegedly falsified electrical permit application. In a prior Order, in accordance with *Dupont Circle Citizens Association*, the Board indicated that it would not overturn or review the final decision of a coordinate agency, such as DCRA. *Supra*, at ¶ 66. In this case, the OAH recognized DCRA’s withdrawal of an enforcement action for the alleged violation. *Id.* The Board further noted that the matter, as well as other issues, were before the Superior Court of the District of Columbia and the Board, out of comity, would not begin parallel proceedings while these matters were before the court. *Id.* Under these circumstances, the Board finds that no violation of the Construction Code or other public safety rule currently exists at the premises; therefore, the Board finds that the Application does not require denial under § 25-335(1).

VI. The Board dismisses Count V based on the Board’s holdings related to Counts I through IV.

138. Based on the Board’s holdings related to Counts I through IV, there are no additional grounds to sustain the charge that the owners of HRH are unfit for licensure under § 25-301(a)(1). Therefore, Count V is dismissed.

VII. The Application satisfies all remaining criteria imposed by Title 25.

139. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (“The Board’s regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (West Supp. 2016). Accordingly, based on the Board’s review of the Application and the record, the

⁸ It should also be noted that the Board has the power to address construction and other public safety rule violations after the issuance of the license through cease and desist, summary suspension, and show cause actions. D.C. Official Code §§ 25-447, 25-823(a)(1), 25-826, 25-829.

Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 18th day of May 2016, hereby deems the Application **APPROPRIATE** pursuant to D.C. Official Code §§ 25-311(a), 25-313, and 25-314.

IT IS FURTHER ORDERED, in accordance with D.C. Official Code § 25-104(e), that the license is **APPROVED** subject to the following conditions:

1. For the purposes of this Order, Martin Scahill is identified as the former owner of My Brother's Place (ABRA License No. 071593) and the applicant listed in the application filed by Melles Hospitality Group (ABRA License No. 93491).
2. The license holder shall execute and maintain a barring notice against Martin Scahill to prohibit him from entering or accessing the licensed premises for a period of five years from January 27, 2016, to January 27, 2021. The license holder shall notify the Board in writing by certified mail within 10 days if the barring notice becomes ineffective or is otherwise rescinded.
3. The license holder shall maintain a copy of the barring notice on the premises at all times while the barring notice is in effect. The license holder or their agent shall make a copy of the notice available for inspection and review upon the request of an official with ABRA or MPD.
4. The license holder, their managers, or other agents shall notify MPD anytime the owners or their agents witness, or have reason to believe, a violation of the barring notice has occurred or Martin Scahill is present on the premises. The license holder or their agent shall notify MPD within twenty-four (24) hours of the violation.
5. The license holder shall not intentionally permit or allow Martin Scahill to remain on the premises.
6. The license holder shall not directly or indirectly transfer or attempt to transfer ownership of the establishment to Martin Scahill.
7. The license holder shall not permit Martin Scahill to obtain an interest in the business, establishment, or license. The term "interest" includes "... the ownership or other share of the operation, management, or profits of a licensed establishment." D.C. Official Code § 25-101(26).
8. The license holder shall not employ Martin Scahill as a manager, employee, independent contractor, or volunteer.

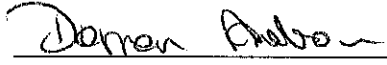
9. The license holder shall not permit or allow Martin Scahill to work or volunteer at the establishment. The term “work” or “volunteer” includes, but is not limited to, accepting payments from customers; bartending; cleaning; cooking; checking identifications; providing security; performing construction or renovating the premises; purchasing or placing orders for alcoholic beverages or food; obtaining supplies on behalf of the business; taking customer orders, or serving food or beverages.
10. The license holder shall not permit Martin Scahill to manage the establishment or its employees. The term “manage” includes, but is not limited to, directing, hiring, supervising, or firing employees or spending money on behalf of the business.
11. The license holder shall not provide Martin Scahill with access or control over any financial accounts maintained by the business.
12. The license holder is advised that the Board deems a violation of these conditions a serious offense, which may merit the revocation of the license or denial of future license applications.
13. The conditions contained in this Order shall expire on January 28, 2021.


IT IS FURTHER ORDERED that the **SETTLEMENT AGREEMENT** entered into between the Applicant and ANC 6C is **APPROVED** and made part of the license in accordance with D.C. Official Code § 25-446. The protest of ANC 6C is deemed **WITHDRAWN**.


IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

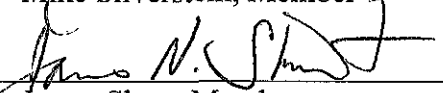
The ABRA shall deliver a copy of this Order to the designated representative or counsel of each party.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


James Short, Member

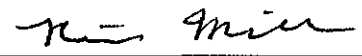
I concur with my colleagues that the Applicant, HRH, has met its burden of proof to show through substantial evidence in the record that it is qualified for licensure. I dissent only with respect to the imposition of the condition barring Mr. Scahill from the premises for a period of 5 years.

As the Court of Appeals most recently stated in *Acott Ventures*,

The statute [D.C. Code§ 2-510 (a)] thus imposes two limitations on the Board's authority to set conditions on the issuance or renewal of a liquor license: the Board must find that any conditions to be imposed are in the best interest of the affected area of the city, and it must explain in writing its reasons for imposing the conditions. Beyond those statutory prerequisites, the Board's power to set conditions is circumscribed only by the generally applicable rule that an agency's decision must be supported by substantial evidence in the record and cannot be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

D.C. Code § 2-510(a); *Acott Ventures, LLC v. D.C. Alcoholic Beverage Control Bd.*, No. 14-AA-830, 2016 WL 1078050, at *10 (D.C. Mar. 17, 2016)

In my view the record lacks sufficient evidence supporting the necessity of barring Mr. Scahill from the premises for 5 years. It is clear from the record that the Applicant offered a version of this condition in an attempt to do what it perceived would please the Board. In my view, it is insufficient for the Board to rest on such an offer when imposing a condition of this magnitude. Pursuant to *Acott*, if the Board decides to impose such a condition, the Board should articulate its reasons for doing so and why it is in the best interest of the affected area.


Ruthanne Miller, Member

Under 23 DCMR § 1719.1 (West Supp. 2016), 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, NW, 400S, Washington, D.C. 20009.

Also, under 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 under 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).

SETTLEMENT AGREEMENT

BETWEEN

HRH SERVICES, LLC T/A THE ALIBI

AND ANC 6(C)

THIS AGREEMENT is made and entered into as of this 5th day of January, 2016 by and between The Alibi (hereinafter the "Applicant") and Advisory Neighborhood Commission 6C (hereinafter the "Protestants").

WHEREAS, Applicant having filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter "ABC Board") for issuance of a Retailer's Class CR license for premises of 237 2nd Street, NW, Washington, D.C.

WHEREAS, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestant's concerns and Protestants will agree to the issuance of the ABC License and withdraw their Protests.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

- 1. Nature of Business:** Applicant will operate at all times as a bona-fide Class C (as such term is defined in ABC statutes and regulations). Food service will be available until one hour prior to closing. Applicant will not make its premises available to non-employee promoters for presentation of advertised "parties" or "events" intended to generate profit for such promoters. The foregoing shall not prevent the Applicant from closing the licensed premises to the public and having invitation only private events. Applicant will not participate in any "Pub Crawl" promotions. Applicant will not allow dancing or install a dancefloor or require a cover charge for admission to the establishment or any portion of the establishment except upon approval by the ABC Board of a substantial change in operations.
- 2. Hours of Operation:** Applicant's operating hours shall not exceed 10 a.m. to 2 a.m. Sunday to Thursday and 10 a.m. to 3 a.m. Friday and Saturday. Sale of alcoholic beverages shall not exceed 11 a.m. to 2 a.m. Sunday to Thursday and 11 a.m. to 3 a.m. Friday and Saturday. No alcoholic beverage shall be served or consumed on the sidewalk or any public space except as otherwise provided herein. It is understood that after cessation of said "operating hours," no patrons shall remain on the premises. Provided that: (a) on days designated by the ABC Board as "Extended Hours for ABC Establishments"; and (b) in the event the Council of D.C. or the ABC Board grants extended operating hours to licensees in general (e.g., as for Inauguration) applicant may avail itself of such extended hours.
- 3. Noise Suppression:** The establishment operation shall at all times be in compliance with the D.C. Noise Control Act and D.C. Code 25-725. Licensee acknowledges that noise is a critical issue for the neighborhood. Applicant will encourage employees and patrons to be considerate neighbors by keeping voices and other noises at a level that will not disturb the peace, order, quiet, and tranquility of residents in the enjoyment of their homes and workplaces. The Establishment has already installed soundproofing as part of its build out, including cork underlayment for the floors and fiberglass insulation on the walls. The Establishment agrees to

maintain such soundproofing so long as entertainment is offered. At no point between 7:00 am and 7:00 pm shall amplified noise be audible in adjoining buildings. Entertainment shall be limited to 6 pm to 2 am Monday to Thursday and 6 pm to 3 am Friday and Saturday.

4. **Deliveries:** To maintain the peace, order, and quiet of the surrounding neighborhood, Applicant shall receive all deliveries of food, beverages, and supplies during hours between 7:00 a.m. and 5:00 p.m. Mondays – Saturdays.
5. **Trash Pick-Up and Removal:** Applicant will maintain regular trash/garbage removal service only during the hours from 6:00 a.m. to 5:00 p.m. The Applicant shall keep dumpster lids tightly closed and incapable of being entered by rodents, to limit odors and help control the pest (insect) and rodent population. Applicant will contract for regular rodent and pest abatement.
6. **Maintenance of Property:** Applicant will be responsible for clearing snow from the sidewalk within five (5) daylight hours after snowfall ends.
7. **Removal of Grease and Oils:** Applicant will provide for the proper (recyclable) removal of grease and oils and will not deposit these substances for removal in dumpsters or trashcans.
8. **Withdrawal of Protest:** Protestants agree to the issuance of the license and the withdrawal of their protests upon execution of this Agreement, if this Voluntary Agreement is incorporated into the Board's order issuing, amending, or renewing the license, which order is thereby conditioned upon compliance with such Voluntary Agreement.
9. **Substantial Change:** Applicant shall not substantially change its operations, without the approval of the ABC Board. Up to six (6) times per year the Applicant may request from the ABC Board a one day substantial change to allow for entertainment, extended hours of operation, a cover charge, or dancing not permitted by the applicant's license as part of a specific event. Nothing in this Agreement shall be deemed a "prohibition" on such a request.
10. **Security Cooperation in Stemming Criminal Activity and Public Drinking:** The Applicant agrees that it shall take all reasonable steps to minimize such problems, including without limitation, providing a sufficient number of employees to assure adequate security and to control unruly patrons, whether inside or in the immediate outside area; monitoring for and prohibiting criminal activity within or about the Establishment, maintaining contact and cooperating with MPD and other enforcement officials when known or suspected drug activities occur. Applicant shall to the full extent permissible by law discourage loitering in the vicinity of the Establishment
11. **Sidewalk Café:** When the Applicant purchased the Establishment it included an enclosed Sidewalk Café situated on Public Space, although the existing enclosure has been removed, this Application includes a request for a Sidewalk Café. The DPW Public Space Committee has granted permission, permit to issue (upon presentation of proof of insurance by the Applicant) for an unenclosed sidewalk cafe. The Applicant has agreed to the following with regard to its sidewalk café application with the DPW Public Space Committee: (a) the use to be made of the space will include provisions for the maintenance of a passageway not less than nine feet three inches (9'3") in width at all points, entirely across the frontage of the property occupied by the applicant, parallel to the line of the street, and generally in the line of pedestrian traffic as measured from the "backup curb" as per DDOT's approval dated 1/4/16; (b) Should the Applicant apply for an enclosed sidewalk café, the criteria of the foregoing subsection shall apply and additionally all structural materials used in an enclosed sidewalk cafe shall be easily demountable

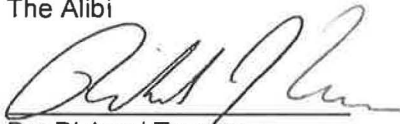
and capable of being removed within twenty-four (24) hours after notice, without damage to the sidewalk or public space that it occupies; (c) no enclosed sidewalk cafe shall project more than twenty feet (20 ft.) from the building line, or occupy more than sixty percent (60%) of available surface space. The Parties agree that the operating hours for the Sidewalk Cafe shall not exceed 10 a.m. to 12 a.m. Sunday; 10 a.m. to 2 a.m. Monday to Thursday; and 10 a.m. to 3 a.m. Friday and Saturday. Sale of alcoholic beverages on the sidewalk or in public space shall not exceed 11 a.m. 12 am Sunday; 11 a.m. to 1:30 a.m. Monday to Thursday; 11 a.m. to 2:30 a.m. Friday and Saturday.

12. Entertainment Endorsement: The Application includes a request for an Entertainment Endorsement which would allow for live and recorded music, a DJ and Karaoke. The Applicant acknowledges that the ANC is particularly concerned regarding the potential for noise emanating from the establishment during times when entertainment is being offered by the Applicant. Accordingly, the Applicant agrees that in the event that five (5) residents or businesses, from five (5) separate addresses on the 200 block of 2nd Street NW; the 100 block of C Street NW; First Street NW between C Street NW and Louisiana Avenue NW; or Louisiana Ave. NW between First Street NW and Constitution, file written complaints with ABRA within any six (6) month period and those complaints result in a finding of violation by the Board the entertainment endorsement shall be removed from the license. If the entertainment endorsement is removed from the license in accordance with this paragraph, the Applicant may re-apply for an entertainment endorsement as a substantial change if the Applicant desires to offer entertainment.

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 5th day of January 2016.

Applicant:

The Alibi



By: Richard Traverso
Its: Member



By: Rachel Traverso
Its: Member

Advisory Neighborhood Commission 6C:



By: Drew Courtney
Chair
Alcoholic Beverage Licensing Committee