

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

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| In the Matter of: |) | |
| |) | |
| LCRL, Inc. |) | License No.: 24599 |
| t/a The Islander Caribbean Restaurant & Lounge |) | Case No.: 12-CMP-00407 |
| |) | Order No.: 2013-184 |
| |) | |
| |) | |
| Holder of a Retailer's Class CT License at premises |) | |
| 1201 U Street, N.W. |) | |
| Washington, D.C. 20001 |) | |

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

ALSO PRESENT: LCRL, Inc., t/a The Islander Caribbean Restaurant & Lounge, Respondent

Amy Schmidt, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that LCRL, Inc., t/a The Islander Caribbean Restaurant & Lounge, (Respondent) violated District of Columbia (D.C.) Official Code § 25-725 on July 19, 2012. The Respondent shall pay a \$750 fine for the violation.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing, which the Board executed on November 7, 2012. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1201 U Street, N.W., Washington, D.C., on November 15, 2012.

The Notice charged the Respondent with the following violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

Charge I: [On July 19, 2012,] [y]ou played music at a loud enough intensity that it was clearly distinguishable in a premise other than the establishment, in violation of D.C. Official Code § 25-725(a)

Both the Government and Respondent appeared at the Show Cause Status Hearings for this matter on January 9, 2013. The parties then proceeded to a Show Cause Hearing and argued their respective cases on March 13, 2013.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a CT License, ABRA License Number 24599. *See ABRA Licensing File No. 24599*. The establishment's premises are located at 1201 U Street, N.W, Washington, D.C. *Id.*
2. On July 19, 2012, ABRA Investigator Jabriel Shakoor received a complaint regarding noise at the Respondent's establishment from Todd Eismeier. *Transcript (Tr.)*, March 13, 2013 at 7. Mr. Eismeier complained that he could hear noise from the Respondent's disc jockey inside his residence. *Id.* at 7.
3. Upon receiving the complaint, Investigator Shakoor visited Mr. Eismeier's residence, which is located on the fifth floor of 2020 12th Street, N.W., and zoned as a CR District. *Id.* at 8. Once Investigator Shakoor entered Mr. Eismeier's residence, he clearly heard hip-hop coming from the Respondent's sidewalk café inside the premises. *Id.* at 8-9. Indeed, Investigator Shakoor could clearly identify the music as a song performed by Kanye West, because he heard the song's lyrics inside the residence. *Id.* at 9.
4. After hearing the music in Mr. Eismeier's residence, Investigator Shakoor exited the premises and proceeded to the Respondent's establishment. *Id.* at 10. Upon seeing the Respondent's sidewalk café, Investigator Shakoor immediately saw a disc jockey playing music in the sidewalk café area. *Id.* Investigator Shakoor observed that the disc jockey was affiliated with a radio station, which was broadcasting live from the Respondent's premises. *Id.* at 11.

5. Addie Green, the owner of the establishment, was not present on the night the noise violation occurred. Id. at 14. Her son, the establishment’s ABC Manager, was supervising the establishment on the night of the incident. Id. at 18. According to Ms. Green, the event was a community service event, which was held to encourage voter registration. Id. at 14-15. Ms. Green believed that she could not commit a noise violation at 9:30 p.m., which was the time Investigator Shakoor discovered the violation. Id. at 14. According to Ms. Green, she believed that 9:30 p.m. was too early to commit a noise violation. Id.

CONCLUSIONS OF LAW

6. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Code § 25-830 (West Supp. 2013); 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine “that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed.” D.C. Code § 25-447 (West Supp. 2013).

7. We find that the Respondent violated § 25-725(a) by having a disc jockey play music loud enough to be heard in Mr. Eisemeier’s residence. Under § 25-725(a),

The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any . . . Mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise

D.C. Code § 25-725(a), (a)(1) (West Supp. 2013). Here, Investigator Shakoor clearly heard the music produced by the disc jockey performing on the Respondent’s sidewalk café inside Mr. Eisemeier’s premises. Supra, at ¶¶ 3-4. As an on-premise Retailer’s Class CT License holder, the Respondent may not have its music heard in residences located in residential zones. Supra, at ¶¶ 1, 3; § 25-725(b)(3). Therefore, under these facts, we find the Respondent guilty of the violation described by Charge I.

8. The Respondent has been found guilty of violating § 25-725(a), which is described as a secondary tier violation in our schedule of civil penalties. § 25-725(a); 23 DCMR § 800 (West Supp. 2013). “We determine the appropriate penalty by counting the number of [secondary tier violations] committed by the Respondent by ‘looking to the date of the incident in the current matter,’ and then determining the number of violations the licensee has committed within the requisite time period.” In re Vertigo, Inc. t/a Sultra Lounge/Viet-Thai, Case Number 12-CMP-00105, Board Order No. 2013-114, ¶ 21. (D.C.A.B.C.B. May 8, 2013) citing In re Asefu Alemayehu, t/a Yegna, Case No. 11-CMP-00321, Board Order No. 2013-049, 4 (D.C.A.B.C.B. Feb. 27, 2013). We determine the number of violations committed by the Respondent by looking to the dates we convicted the Respondent of any prior violations within the time period under review. Id. (The Board looked to the date of conviction when determining the number of violations the licensee had committed). Furthermore, in the case of a citation or staff settlement, the date the licensee paid the citation is the date of conviction, because that is the day the

Respondent admitted its guilt. Here, the Respondent committed the current violation on July 19, 2012. Supra, at ¶ 8. The Respondent's investigative history shows that the Respondent previously settled an entertainment endorsement violation on July 31, 2009, and paid a citation for failing to submit a quarterly report on September 11, 2009, both of which are secondary tier violations. This means that the current violation is the Respondent's third secondary tier violation within a three-year period. Therefore, the fine range for the Respondent's third secondary tier violation within a three-year period is \$750 to \$1,000. 23 DCMR § 802.1(C) (West Supp. 2013).


ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 15th day of May 2013, finds that LCRL, Inc., t/a The Islander Caribbean Restaurant & Lounge, violated D.C. Official Code § 25-725(a). Accordingly, for the violation described in Charge I, the Respondent shall pay a fine of \$750. The Respondent shall pay this fine within thirty (30) days from the date of this Order. The ABRA shall deliver copies of this Order to the Government and the Respondent.


District of Columbia
Alcoholic Beverage Control Board



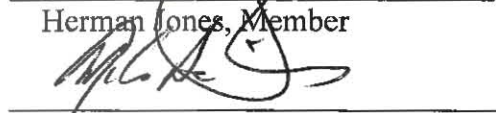
Nick Alberti, Member



Donald Brooks, Member

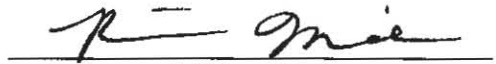


Herman Jones, Member



Mike Silverstein, Member

I concur with the decision reached by the majority of the Board. I only dissent from the penalty selected by the majority, because I believe this violation merits a warning.



Ruthanne Miller, Chairperson

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

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