

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

In the Matter of:)
)
MPAC, LLC)
t/a The Scene)
)
Holder of a Retailer's)
Class CX License)
)
at premises)
2221 Adams Place, N.E.)
Washington, D.C. 20018)
)
Respondent)
)

Case No.: 14-251-00133
License No.: 78642
Order No.: 2014-239

BEFORE: Ruthanne Miller, Chairperson
Donald Brooks, Member
James Short, Member

ALSO PRESENT: MPAC, LLC, t/a The Scene, Respondent

Matthew LeFande, Counsel, on behalf of the Respondent

Emmanuel Mpras, Counsel, on behalf of the Respondent

Walter Adams, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER SUMMARILY SUSPENDING THE RESPONDENT'S LICENSE

On May 17, 2014, five patrons of MPAC, LLC, t/a The Scene (Respondent), located at 2221 Adams Place, N.E., were shot near the establishment. Letter from Metropolitan Police Department (MPD), Chief of Police, Cathy L. Lanier to Willie Blakeney, 1 (May 17, 2014). The establishment did not have a MPD Reimbursable Detail present at the time, and no MPD Reimbursable Detail had been present at the establishment for several weeks. Id. at 1.

Finding that the establishment posed a danger to the public, MPD Chief of Police, Cathy L. Lanier, suspended the Respondent's Retailer's Class CX License under the authority granted to her pursuant to District of Columbia Official Code § 25-827. Id. at 1-2

The Alcoholic Beverage Control Board (Board) reviewed the closure issued by the Chief of Police on May 21, 2014. Subsequently, the Board served the Notice of Summary Suspension (Notice) on the Respondent. Pursuant to the Notice, the Board ordered the summary suspension of the Respondent's license in accordance with D.C. Official Code § 25-826. The suspension was based upon Investigative Case Report Number 14-251-00133 authored by Alcoholic Beverage Regulation Administration (ABRA) Investigator Jason Peru.

On May 21, 2014, the Respondent requested a Summary Suspension Hearing pursuant to D.C. Official Code § 25-826(c), which was held on May 23, 2014 and May 28, 2014 with the consent of the parties. See ABRA Summary Suspension File No. 14-251-00133.

The question before the Board is whether “. . . the operations of a Respondent present an imminent danger to the health and safety of the public,” and if so, “. . .the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District.” D.C. Official Code § 25-826(a).

Based on the evidence contained in the record, the testimony of witnesses, the arguments of the parties, and the documents comprising the Board's official file, the Board concludes that the operation of this establishment presents an imminent danger to the health and safety of the public, and accordingly, we continue the suspension of the Respondent's license.

As set forth more fully below, the Board finds that the establishment has an investigative history that demonstrates that the incident of May 17, 2014 is not an isolated occurrence, but that violence both inside and outside the establishment has been a reality for this establishment since 2010. For over four years, the Respondent has been on notice by the Board and MPD of the need, if not requirement, to employ Reimbursable Detail outside its establishment to protect its patrons and to enhance public safety. The establishment knowingly put its patrons, personnel and the public at risk by failing to employ MPD Reimbursable Detail for several months. This was an incident waiting to happen. In light of the dangerous environment in which the Respondent operates and Respondent's clear breach of public trust, the Board determines that in order to protect the public safety, it has no choice but to suspend the Respondent's license to sell alcoholic beverages pending a Show Cause Hearing.

FINDINGS OF FACT

I. FACTS RELATED TO RESPONDENT'S OPERATION OF BUSINESS

1. MPAC, LLC, t/a The Scene, holds a Retailer's Class CX License at 2221 Adams Place, N.E. See ABRA Licensing File No. ABRA-078642.
2. William Blakeney is the owner of the establishment. He has owned the establishment since 2010. See ABRA Licensing File No. ABRA-078642.

3. The establishment has been the subject of a police closure by the Chief of Police and summary suspension by this Board five times since 2010. See ABRA Summary Suspension File No. 14-251-00133.
4. There have been multiple cases involving assault with a deadly weapon in the vicinity of the establishment since 2010. See ABRA Summary Suspension File No. 14-251-00133.
5. The establishment conducts weapons searches on its patrons prior to their entry into the Club. Testimony of Cornell Jones; *Transcript (Tr.)*, 5/28/14 at 94.
6. Patrons of the establishment regularly engage in fighting and altercations, especially where Adams Place, N.E. meets Queens Chapel Road , N.E. Testimony of Sergeant Ferretti; *Transcript (Tr.)*, 5/23/14 at 254.
7. The Board has repeatedly communicated to the establishment the imperative of employing MPD Reimbursable Detail since 2010. See ABRA Summary Suspension File No. 14-251-00133.

II. FACTS RELATED TO THE RESPONDNET'S SECURITY PLAN

8. The Respondent's Security Plan, dated August 8, 2011, contains the following provisions:
 - a. "In the event of an altercation among patrons, security personnel are required to separate the patrons and immediate [sic] contact MPD while attempting to contain the situation." *Security Plan*, 3¹
 - b. When patrons refuse to leave, ". . . have someone from your security team . . . notify the on duty MPD officers of the situation to assist in the removal of the patron from the premises." *Id.* at 6.
 - c. "Some situations may require the police to intervene once the patron has been removed from the inside, therefore these patrons should be walked directly and handed over to the police that are part of the reimbursable detail posted outside or inside the venue." *Id.* at 10.
 - d. After a physical altercation, combatants should be escorted out of the establishment through separate doors. "These situations will likely require the police who may have to intervene once the patron has been removed from the inside, therefore these patrons should be walked directly and handed over to the police that are part of the reimbursable detail posted outside the main entrance." *Id.*

¹ The security plan also states, "[T]raining is provided by Larry Quick, Harold Holden, and Yusif Arrington, Officers of Bliss Pro every four (4) months . . ." The Board references this provision in the order because the training of employees was discussed during the hearing; however, it is unclear whether the establishment is undertaking this specific requirement.

e. “At least two detailed MPD personnel are stationed midway in the block to assist the patrons leaving the area.” *Id.* at 12.

9. The MPD Reimbursable Detail is “expected to patrol the area surrounding an establishment for the purpose of maintaining public safety and controlling traffic.” Metropolitan Police Department ABC Establishment Reimbursable Program Agreement at 3-4.

II. FACTS RELATED TO THE MAY 17, 2014 INCIDENT

10. On May 17, 2014, approximately 350 individuals attended a memorial event at the establishment. Testimony of Investigator Jason Peru; *Tr.*, 5/23/14 generally at 276.
11. There were at least two incidents that evening that necessitated security intervention and ejection of one of the establishment’s patrons. Testimony of Cornell Jones; *Tr.*, 5/28/14 generally at 94.
12. Sometime around closing time, five patrons of the Respondent’s establishment were shot in close proximity to the establishment. Letter from Metropolitan Police Department, Chief of Police, Cathy L. Lanier to Willie Blakeney, 1 (May 17, 2014).
13. The establishment did not have a reimbursable detail present that night. *Id.* at 1.
14. The gun shots appeared to have been fired from a location where the reimbursable detail would normally have patrolled. Testimony of Willie Blakeney; *Tr.*, 5/28/14 generally at 164.
15. MPD Reimbursable Detail would have directed the traffic which became gridlocked and which hindered first responders from getting to the injured. Testimony of MPD Officer Jose Hernandez; *Tr.*, 5/28/14 at 44.
16. MPD police officers were pulled from other clubs’ Reimbursable Details as well as from other nearby police units, leaving those areas exposed to public safety risk. (Testimony of MPD Sergeant Kopp; *Tr.*, 5/23/14 at 159.

III. FACTS PROVIDED BY OFFICER JOSE HERNANDEZ²

² Respondent sought to undermine the credibility of the MPD-affiliated witnesses by attempting to demonstrate that the witnesses have a financial interest in the Board imposing a mandatory detail on the Respondent. This allegation is not supported by the record. Multiple MPD-witnesses testified that fights near the establishment frequently require officers on other details to respond to the scene. The Respondent presented no contradicting evidence, such as witnesses testifying to the regular peacefulness of the area around the establishment during closing time.

Respondent also argued that MPD is retaliating against the owner because of his participation in a lawsuit related to the alleged actions of an MPD officer. The Respondent has not presented any evidence that the matter relates to any of the MPD-affiliated personnel that testified in the present matter, or even shown that the MPD-affiliated witnesses before the Board have knowledge of the lawsuit. Consequently, the Board determines that the testimony presented by the MPD-affiliated witnesses is credible.

17. The Government called MPD Officer Jose Hernandez to testify. Officer Hernandez serves in Police Service Area (PSA) 506. Officer Hernandez was serving on the reimbursable detail for the Stadium nightclub on the evening of May 16, 2014 going into the early morning of May 17, 2014.

18. In the early morning hours of May 17, 2014, Officer Hernandez heard gunshots fired on Adams Place, N.E. He called the incident on his radio and responded to the incident in his vehicle. Upon arriving, the officer witnessed a chaotic scene where people were running vehicles and attempting to flee the area. He then observed a black vehicle leave the scene. Officer Hernandez observed two people assisting an individual with a gunshot wound to the torso. Other MPD units responded, and another officer arrived to assist with the first victim he found at the scene.

19. At the scene, Officer Hernandez began assisting the victim that had been shot in the torso. He observed that the friends of the victim became rowdy, which required Officer Hernandez and a second officer to push the crowd of fifteen to twenty people back.

20. He noted that it was very difficult for first responders to access Adams Place, N.E. He noted the scene became chaotic as patrons left the establishment and people milled near the scene of the incident.

21. Officer Hernandez further explored the scene and found additional victims. He called an ambulance for one victim that had been shot in the leg. Further, down the block, he found another female victim shot in the leg. Finally, he observed another victim adjacent to the business. Officer Hernandez observed that Adams Place, N.E., is a dead-end street.

22. Officer Hernandez approached the business to discuss the incident with the establishment's owner. Officer Hernandez met three security members and asked them what occurred; nevertheless, the security members did not provide a response. He then asked them to provide for the whereabouts of the owner, and they told him that the owner was up the street.

23. Later, Officer Hernandez then went to the hospital to interview one of the victims. One of the female patrons shot in the leg informed Officer Hernandez that a fight occurred inside the establishment. She reported that she did not observe the shooter. Officer Hernandez has previously worked on the MPD Reimbursable Details in the area. Specifically, he has worked details at the Respondent's establishment, Stadium, and Echostage.

24. Officer Hernandez has regularly witnessed violence from individuals patronizing the Respondent's establishment. He noted that the establishment has issues at the close of business, because he has had to personally respond to fights during "let out," as well as the sound of gun shots near the establishment. He attributed these incidents to the patrons from the Respondent's establishment due to the lack of other nightclubs close to the establishment.

25 Officer Hernandez also expressed concern regarding the absence of an MPD Reimbursable Detail at the establishment. Specifically, the lack of a regular and committed police presence allows fights near the establishment to escalate.

IV. FACTS PROVIDED BY SERGEANT KOPP

26. The government called MPD Sergeant Kopp to testify. Sgt. Kopp serves in PSA 507. His primary role is as a patrol supervisor on the midnight shift. On May 17, 2014, he responded to the site of the shooting after receiving a radio call. Upon arriving at Adams Place, N.E., he noted that there were multiple victims in the area.

27. Sgt. Kopp arrived on the scene after the shooting and saw a large crowd of people on the sidewalk and in the street. He estimated that there were over one hundred people in the street when he arrived.

28. Sgt. Kopp attempted to manage the crime scene; nevertheless, the crowd did not cooperate with MPD's efforts to control the scene and address the needs of the victims. The crowd refused to back away and required officers to stand shoulder to shoulder to direct the crowd to move onto the sidewalk.

29. Sgt. Kopp observed that Adams Place, N.E., was completely gridlocked with vehicles and people. Several officers had to direct traffic in order to allow ambulances and fire trucks into the area. He noted that emergency first responders had no means of accessing the scene until traffic was directed out of the area. Further, managing the traffic was very difficult, because the crowd was ignoring orders issued by officers—making the situation a free-for-all

30. Based on this situation, other officers had to be called to the scene. All of the club zone units responded to the scene, along with six or seven officers from other PSAs, and three lieutenants. In addition, MPD had to send four officers to accompany the various victims to the hospital.

V. FACTS PROVIDED BY SERGEANT ROGERS

31. The Government called Sergeant Rogers to testify. In January 2014, MPD prohibited the Respondent from hiring additional MPD Reimbursable Details until it paid a number of outstanding invoices owed on previously staffed details. The Respondent's establishment has not been permitted to have an MPD Reimbursable Detail since February 25, 2014, due to the nonpayment of invoices. *Tr.*, 5/23/14 at 183.

VI. FACTS PROVIDED BY SERGEANT FERRETTI

32. The Government called Sergeant Robert Ferretti to testify. Sgt. Ferretti oversees the MPD Reimbursable Details for the Fifth District. He is aware that the Respondent's establishment regularly requires reimbursable detail officers that are serving at other establishments to respond to The Scene. Based on his experience, he is aware that the patrons of the Respondent's establishment regularly engage in fighting; especially where Adams Place,

N.E., meets Queens Chapel Road, N.E. He noted that the area gets quite hectic when patrons from the Respondent's establishment and the other two nearby establishments let out. *Tr.*, 5/23/14 at 254.

VII. FACTS PROVIDED BY THE SECURITY FOOTAGE

33. Investigator Peru obtained the establishment's security footage and described the actions occurring on the footage.

A. Facts Provided By Camera Five

34. The footage from Camera Five shows the interior of the establishment from a wide angle starting around 2:37 a.m. *Camera Five*, 2:37:01. There appears to be approximately 350 patrons inside the establishment. *Id.* The footage begins by showing a sea of people dancing and socializing inside the establishment. *Id.* The house lights turn on at 2:39 a.m. *Id.*, at 2:39:44. People continue to socialize and dance inside the establishment. *Id.*, at 2:40:47-2:47:38. Around 2:48 a.m., people begin leaving the establishment. *Id.*, at 2:48:27.

35. At 2:48:05 a.m., a security member in the crowd races through the crowd towards the upper middle right of the camera view to another portion of the crowd. *Id.*, at 2:48:05-2:48:09.³ The view of the security member is obscured by a ceiling fan; however, on the left side of the ceiling fan the footage appears to show a man forcefully pushed out the crowd and then quickly return to the crowd in a manner conducive with someone getting pushed. *Id.*, at 2:48:15-2:48:21.

36. As this disturbance occurs, at 2:48:15, a security member can be seen emerging from the same place where the first security member was standing. *Id.*, at 2:48:15-18. He is quickly guiding a male patron wearing orange shoes out of the establishment by standing behind him and pushing him towards the door as he holds the patron's arms. *Id.*, at 2:48:1-2:48:18; *Testimony of Inv. Peru.*

37. At 2:48:35, security emerges from the crowd related to the first disturbance with a male patron. *Id.*, at 2:48:35-2:48:37. The view shows the patron quickly walks towards the door as the security member that emerged with the patrons turns back towards the crowd. *Id.*, at 2:48:35-2:48:39.

B. Facts Provided by Camera Three

38. The footage from Camera Three shows the interior of the establishment's entrance. At 2:48:11, a security member standing near the doorway walks into the club and watches as security escorts the patron in the orange shoes out of the establishment. *Camera Three*, 2:28:11-2:48:12. The patron with the orange shoes is guided out from behind and knocks into a rolling garbage can as he is pushed out the door. *Id.*, at 2:48:12-2:48:21. As the patron is ejected from the club, other patrons begin exiting at the same time. *Id.*, at 2:48:21-2:48:27.

³ In the video, in the upper right portion of the video, near the ceiling fan closest to the camera, the security member is wearing a black shirt and has a bright white rectangle on the back of his shirt.

39. At 2:48:39 a.m., the second patron ejected by the establishment comes into view. Id. at 2:48:39. The patron is not wearing a shirt and is being held by a female patron as he exits the establishment. Id. at 2:48:40. A security member is following the patron as he stops to talk to a security member by the door. Id. at 2:48:42. Two security then push the two patrons outside. Id. at 2:48:45.

C. Facts Provided by Camera Two

40. The footage from Camera Two shows the establishment's front entrance. *Camera Two*, 2:44:36. The front entrance is fenced in, and is surrounded by a parking lot containing District of Columbia vans, which forces patrons to exit and approach the entrance from one direction. Id. at 2:46:30.

41. At 2:48:24 a.m., the patron with orange shoes emerges from the establishment followed by a security member. Id. at 2:48:24. The patron walks down the establishment's front stairs and is followed by security. Id. at 2:48:24-2:48:28. The patron then argues with the security and attempts to reenter the establishment as security blocks him from approaching the entrance. 2:48:29-2:49:51. The patron then begins to shout and wave his arms in an angry manner. Id. at 2:49:51-2:50:13. The patron then walks up the steps and attempts to walk through the door, but after interacting with security he goes back down the steps. Id. at 2:50:29-2:50:38. The patron then goes back up the steps and begins arguing with a female patron near the door. Id. at 2:50:46-2:50:47. The patron then attempts to enter the establishment and begins yelling at an unseen person or persons. Id. at 2:50:53. The patron is blocked by security and runs down the steps while taking off his shirt. Id. at 2:50:53-2:50:55. The patron begins yelling at patrons coming down the steps. Id. at 2:50:53-2:51:05. A crowd of about fifteen patrons forms at the bottom of the stairs, as security wraps the patron in orange shoes in a bear hug and moves him near a white trailer. Id. at 2:51:04-2:51:15. The patron continues to shout as security restrains him. Id. at 2:51:15-2:51:16. The crowd then moves out of the view of the camera as people begin running out of the establishment towards the crowd moving away from the front entrance. Id. at 2:51:21-2:51:37.

D. Facts Provided by Camera One

42. The footage from Camera One shows the area next to the establishment's front entrance that is surrounded that leads to Adams Place, N.E. *Camera One*, 2:35:44. An individual located in this area may only go towards the establishment's front entrance or walk up Adams Place, N.E. Id.

43. At 2:48:43 a.m., Camera One shows additional footage of the patron with orange shoes. Id. at 2:49:43-2:48:48. The patron continues to argue with security and attempts to approach the front entrance. Id. at 2:49:17-2:49:53. The patron then leaves the view of the camera. Id. at 2:49:50.

44. The patron wearing orange shoes returns into the view of the camera without his shirt at 2:51:18. Id. at 2:51:18. The patron is being restrained by security and pushed up Adams Place, N.E. Id. at 2:51:18-2:51:21. At the same time, a patron in a white t-shirt can be observed

restraining a patron in a dark t-shirt. Id. at 2:51:21-2:51:29. Both parties are surrounded by a crowd of patrons and at least four security personnel. Id. at 2:51:29.

45. The crowd then begins walking up Adams Place, N.E., and converges near a small bus. Id. at 2:51:34. One security member can be observed pinning the patron in the orange shoes near the bus. Id. at 2:51:42. The crowd of patrons and security then continues to walk up Adams Place, N.E. and out of view of the camera. Id. at 2:51:42-2:51:54.

E. Facts Provided by Camera 3A

46. The footage from Camera 3A is from the neighboring business, and shows the Adams Place, N.E. Id. at 2:01:18. The footage shows that Adams Place, N.E., is a narrow street lined by warehouses. Id. at 2:19:46. On May 17, 2014, the vehicles were parallel parked up and down both sides of the street. Id. The Board notes that the time stamp on this camera is incorrect.

47. The footage shows the crowd that left the view of Camera One continues up Adams Place, N.E. Id. at 2:14:27. The crowd of approximately fifteen to twenty patrons converges near two parked cars. Id. at 2:14:31. A physical altercation ensues between two patrons, and the crowd continues to move up Adams Place, N.E. Id. at 2:14:19-2:14:40. At this time, the crowd contains additional people. Id. at 2:14:48.

48. The crowd is walking directly up the middle of Adams Place, N.E., taking up the entire street. Id. at 2:14:56-12:15:06. A car driving towards the Respondent's establishment stops as patrons pass by and in front of the car. Id. at 2:15:12.

49. The footage continues by showing large crowds of patrons that have recently exited the establishment. Id. 2:19:43-2:25:01. Few patrons appear to use the sidewalks, and instead, the majority of patrons can be observed walking down the middle of the street. 2:19:43-2:35:26. As patrons exit, the footage also shows a vehicle parked on the side of the road pull out into a large crowds of patrons. Id. at 2:20:43-2:20:59. Another car drives up Adams Place, N.E., surrounded by a horde of patrons. Id. at 2:21:58-2:22:33. The car is followed by an SUV similarly surrounded by patrons as it drives up Adams Place, N.E. Id. at 2:22:40-2:23:59. A black car then has a similar experience near the intersection. Id. at 2:23:26. Following the black car, a line of cars can be observed pulling out of Adams Place, N.E., and they leave no room for any vehicles to drive to the Respondent's establishment. Id. at 2:26:49-2:30:11. The street eventually becomes completely gridlocked. Id. at 2:28:53-2:31:34.

VIII. FACTS PROVIDED BY CARL HARRIS

50. The Respondent called Carl Edward Harris to testify. *Tr.*, 5/28/14 at 5. Mr. Harris is a member of the establishment's security team. He has worked security at the establishment for four years. He is trained and licensed as a security officer. On May 17, 2014, Mr. Harris was working at the establishment's admission point. The owner ordered that the establishment stop admitting patrons at 2:30 a.m.

51. Mr. Harris noted that Adams Place, N.E., is a dead-end street.

52. Mr. Harris identified two incidents that occurred during the evening. First, an incident occurred during the evening where an individual was ejected from the establishment. He observed nothing suspicious about the individual. Second, security escorted two patrons outside and an argument ensued among a group of patrons. Security walked the group up Adams Place, N.E., but he did not see any fighting.

53. Mr. Harris then hears gunshots up Adams Place, N.E., coming from the direction of Queens Chapel Road, N.E. Mr. Harris blocked patrons from leaving the establishment in response and attempted to manage the crowd near the door.

54. He saw patrons that had left the establishment run back towards the club. He then saw a heavy-set man with a gun shot wound on his leg headed towards the establishment. He told the man to sit on the steps and asked another employee to call the police. Mr. Harris indicated that he tied his shirt to the man's leg to help with the bleeding. The owner then came with a first aid kit. Mr. Harris then saw police arrive with paramedics to treat the victim.

55. Mr. Harris stated that after the shooting, Adams Place, N.E., was chaotic.

56. Mr. Harris noted that patrons ejected by the establishment can remain outside the establishment. He stated that he does not have the authority to make people move or disperse.

IX. FACTS PROVIDED BY CORNELL JONES

57. The Respondent called Cornell Jones to testify. *Tr.*, 5/28/14 at 94. Mr. Jones serves as the Respondent's head of security. He has worked at the establishment since 2010. He previously served as a corrections officer in Maryland for fifteen years. As part of his duties, he hires employees to conduct searches for weapons. He also observes the establishment's search program and conducts searches for weapons himself. On May 17, 2014, individuals were holding a memorial fundraiser for the family of a victim of a car accident.

58. Mr. Jones is aware of two incidents occurring inside the establishment on May 17, 2014. First, a female patron was pushed and the establishment ejected the aggressor. Upon being ejected, the patron continued to stand outside the establishment's front entrance. Mr. Jones admitted that he was bothered by this, but did not do anything because the individual was calm and stated that he was waiting for a ride. Second, Mr. Jones observed an incident outside the club where a patron pulled off his shirt outside the club and attempted to enter the establishment.

59. Mr. Jones heard the gun fire related to the shooting. He ordered security to prevent patrons from leaving the area. He then observed an injured person walk back towards the club. He then sent security up Adams Place, N.E. to look for people who needed help.

X. FACTS PROVIDED BY WILLIE BLAKENEY

60. The Respondent called Willie Blakeney, the owner of the establishment, to testify. *Tr.*, 5/28/14 at 164.

61. Mr. Blakeney heard gunfire related to the shooting on Adams Place, N.E. He retrieved his first aid kit from inside the establishment, and he was informed that a man was injured. He found the victim and began applying first aid. While treating the individual, Mr. Blakeney observed a special police officer with Metroaccess. Mr. Blakeney then walked up Adams Place, N.E., to assist additional victims.

62. Mr. Blakeney described two prior fights in the establishment. First, in 2011, a patron attacked security during an ejection and then hit an MPD officer when he intervened. Mr. Blakeney testified that the officer threw the patron down the stairs in response. Second, during an altercation, a patron received a stab wound from a fire extinguisher holder.

XI. FACTS RELATED TO THE RESPONDENT'S EMPLOYMENT OF MPD REIMBURSEABLE DETAIL

63. Mr. Blakeney noted that he is currently engaged in a payment dispute with MPD over invoices related to MPD Reimbursable Detail services provided to the establishment. Testimony of Willie Blakeney; *Tr.*, 5/28/14 generally at 164.

64. Mr. Blakeney submitted copies of invoices and email correspondence in support of his argument that the Government had made errors and that he was diligently attempting to reconcile his account. *Respondent's Exhibits A-GG*.

65. MPD was prohibited from providing Reimbursable Detail to the Establishment while any payment was outstanding. Testimony of MPD Sgt. Rogers; *Tr.*, 5/23/14 generally at 183.

66. No Reimbursable Detail has been provided to the Establishment since February 25, 2014, approximately twelve (12) weeks, due to the outstanding invoices. Testimony of MPD Sgt. Rogers; *Tr.*, 5/23/14 generally at 183.

67. To maintain the services of Reimbursable Detail, Respondents with payment disputes, may continue to pay for the Detail. Credits are applied forward if and when it is determined that the Respondent is due such credits. Testimony of MPD Sgt. Rogers; *Tr.*, 5/23/14 generally at 183.

CONCLUSIONS OF LAW

68. "If the Board determines, after investigation, that the operations of a Respondent present an imminent danger to the health and safety of the public, the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District." D.C. Official Code § 25-826(a).

69. The Board finds that the establishment presents a continuing and imminent danger to the health and safety of the public for the following separate reasons:

- (1) the establishment has disregarded its commitment to public safety by allowing its Reimbursable Detail to lapse, resulting in injury to the public that was predictable and preventable.
- (2) since February 25, 2014, the establishment has regularly and continually operated in violation of its security plan
- (3) the establishment's patrons continually and regularly engage in fighting and other anti-social behavior upon exiting the establishment; ;and
- (4) the establishment's location on a narrow dead-end street prevents the District of Columbia's first responders from accessing the establishment in a timely manner in response to incidents

I. RESPONDENT'S FAILURE TO EMPLOY MPD REIMBURSABLE DETAIL CREATED AN IMMINENT DANGER TO THE PUBLIC AND RESULTED IN PREDICTABLE AND PREVENTABLE INJURY TO THE PUBLIC.

70. As set forth in the findings of fact above, Respondent's establishment operates in an environment where violence outside the club is not uncommon. Since 2010, the Respondent has been closed by the Chief of Police and its license has been suspended by the Board five (5) times. It has employed Reimbursable Detail on a weekly basis since 2010 to address the violence that occurs outside the club.

71. Allowing that Reimbursable Detail to lapse for twelve (12) weeks created an imminent and foreseeable danger that resulted in five people being shot. The Respondent addressed how it protected its patrons inside the establishment and it showed how it attempted to resolve invoice disputes with the Government. The Respondent failed to justify however, why for monies that may be credited later if owed, it left its patrons vulnerable to known dangers that MPD Reimbursable Detail was intended to protect against.

II. BETWEEN FEBRUARY 25, 2014 AND MAY 17, 2014, THE RESPONDENT REGULARLY OPERATED IN VIOLATION OF D.C. OFFICIAL CODES §§ 25-402 AND 25-823, WHICH CREATED AN IMMINENT DANGER TO THE PUBLIC

72. Under § 25-113(g)(4), "The Board, in its sound discretion, may require that a multipurpose facility Respondent file a security plan with the Board. A multipurpose facility Respondent so required shall comply with the terms of its security plan." D.C. Official Code § 25-113(g)(4); see also D.C. Official Code §§ 25-402(d)(2); 25-403(e)(2). As part of a security plan, a Respondent is required to describe its ". . . [p]rocedures for handling violent incidents, other emergencies, and calling the Metropolitan Police Department. . . ." § 25-402(d)(3)(A)(ii).

73. The pertinent security plan provisions in this case are that (1) the Respondent will call the police in the event of altercation between patrons, supra, at ¶ 8(a); (2) in some situations, the

Respondent will hand over patrons to the on-duty reimbursable detail officers, *supra*, at ¶¶ 8(c), (d); and (3) at least two MPD personnel will be stationed on “midway” on Adams Place, N.E., “. . . to assist patrons” *Supra*, at ¶ 8(e).

74. The Board finds that the Respondent violated three provisions of its security plan on May 17, 2014.

75. First, the testimony of Cornell Jones indicates that a female patron was pushed inside the establishment and the establishment ejected the aggressor. Under the security plan, the Respondent should have immediately called the police; nevertheless, the Respondent did not comply with this requirement.⁴

76. Second, the Respondent has instructed its security staff that in some circumstances it is required that security hand over patrons to on-duty MPD Reimbursable Detail officers outside the venue. In addition, the Respondent’s security plan anticipates that two MPD officers will be stationed on Adams Place, N.E. Under the security plan law, an establishment must have procedures in place related to handling violent incidents and emergencies. Nevertheless, the establishment has not hired MPD Reimbursable Detail since February 25, 2014, and the establishment did not have a Reimbursable Detail present on May 17, 2014. Without the Reimbursable Detail present, the Respondent establishment’s security personnel have no means of fulfilling this condition of the security plan, nor is it clear to the Board how the establishment expects security personnel to respond in these types of situations.

77. The Board further notes that the Respondent’s failure to comply with its security plan has a strong nexus to the incident. Had an officer been present on Adams Place, N.E., it would have likely discouraged the fighting that occurred on Adams Place, N.E., as well as the shooting itself. Consequently, this case demonstrates that the Respondent has made a conscious decision to operate in material breach of its security plan.⁵

III. A PATTERN OF VIOLENCE BY THE ESTABLISHMENT’S PATRONS CREATES AN IMMINENT DANGER TO THE PUBLIC

⁴ Mr. Jones also expressed concern that the aggressor was loitering near the front entrance, but felt he could do nothing. Had he called the police, MPD could have intervened; thus, preventing the establishment from having to engage in a guessing game as to whether a patron is merely waiting for a ride or waiting outside to reengage in violence with the victim when they emerge.

⁵ The court’s decision in *1900 M Restaurant Associations* does not require the Board to find a continuous course of conduct because that decision does not address § 25-826; as a result, the Board is satisfied that the Board or the Chief of Police may suspend a liquor license based on unrelated and isolated violations of a security plan when such incidents constitute an imminent danger, or otherwise satisfy §§ 25-826 and 25-827. D.C. Official Code §§ 25-826, 827; see generally *1900 M Rest. Associations, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 56 A.3d 486 (D.C. 2012). Finally, even if that case applies to the present matter, the Respondent chose to operate on multiple occasions without the detail; therefore, there is sufficient evidence in the record to find that the establishment engaged in a continuous course of conduct.

78. The Government demonstrated that patrons leaving the Respondent's establishment regularly engage in fighting, which regularly causes reimbursable detail officers to leave their posts at other establishments, which poses an imminent danger to the public. First, the Board credits Officer Hernandez's testimony that he has personally had to respond to fighting and other violent incidents caused by the Respondent's patrons. He further noted that the problem is especially severe during closing time. Second, the Board credits Officer Ferretti's testimony that officers serving on other reimbursable details are often required to respond to fights involving the Respondent's patrons; especially where Adams Place, N.E., meets Queens Chapel Road, N.E.⁶ Under these facts, the Board finds it necessary to maintain the closure of the establishment under § 25-826.

IV. THE ESTABLISHMENT'S LOCATION INTERFERED WITH THE ABILITY OF FIRST RESPONDERS TO ACCESS THE ESTABLISHMENT DURING EMERGENCIES, WHICH CREATES AN IMMINENT DANGER TO THE PUBLIC

79. The Board finds that establishment's location at the end of a narrow dead-end alley, combined with the large crowd permitted in the establishment, physically prevents first responders from properly accessing the establishment in a timely manner during an emergency.

80. The Board has previously denied an application for licensure when it is shown that an establishment's operations interfere with the provision of emergency services. In Sanctuary 21, the Board credited testimony that the establishment's valet continually parked vehicles in a manner that interfered with emergency vehicles. In re Panutat, LLC, t/a Sanctuary 21, Case No. 10-PRO-00003, Board Order No. 2012-012, ¶ 33 (D.C.A.B.C.B. Jan. 11, 2012). Based on this evidence, the Board denied the application, because, among other reasons, granting the application would ". . . severely delay emergency vehicles . . . [and] potentially creat[e] life-threatening situation[s] for vehicles and pedestrians (as well as people in need of rescue) on a recurring basis." Id. The same principle should apply to this case.

81. The video footage showed by the government shows that the gridlock on Adams Place, N.E. on May 17, 2014 will likely occur again. The Respondent's establishment is located near the end of Adams Place, N.E., which is a narrow dead-end street. Upon exiting, the majority of the establishment's patrons must walk up Adams Place, N.E., towards Queens Chapel Road, N.E. As shown on May 17, 2014, the narrow street can be blocked by a crowd of approximately twenty people. Further, as the footage from that date shows, when the establishment lets out hundreds of people, it is clear that there is no room on the sidewalks to accommodate the crowd, and that people are forced into the street. At the same time the crowds let out, vehicles parked on the street must navigate through large crowds. Therefore, as a matter of course, the Respondent's operations continually cause a traffic jam on Adams Place, N.E.

82. The traffic jam during closing is particularly troubling to the Board, because it physically denies first responders appropriate and timely access to Adams Place, N.E., and the establishment in a timely manner. The Board credits the testimony of Officer Hernandez and

⁶ In other words, the Respondent appears to be unfairly "mooching" off the MPD Reimbursable Details paid for by the other establishments in the area.

Sgt. Kopp that the crowd and vehicles in the street prevented fire trucks and ambulances from accessing the area.

83. Based on the events of May 17, 2014, it is highly predictable that should another emergency occur on Adams Place, N.E., or inside the establishment in conjunction with a mass exodus of patrons, this will prevent or severely delay police, fire, and paramedics from accessing the scene. Under these facts, based on the grave delay to emergency vehicles caused by the Respondent's operations, and the lack of solution to this issue, the Board finds an imminent danger to the health and safety of the public under § 25-826(a).

ORDER

Therefore, under § 25-826, it is hereby **ORDERED** on this 31st day of May 2014, in light of the inherent danger posed by the Respondent's establishment, that the Retailer's Class CX License, held by MPAC, LLC, t/a The Scene, is hereby **SUSPENDED** until the Board issues its Order in a future show cause proceeding related to the incident on May 17, 2014.

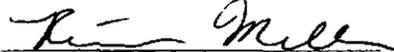
IT IS FURTHER ORDERED, based on the findings contained in the above order, that caterers in the District of Columbia are prohibited from selling, serving, or permitting the consumption of alcohol at 2221 Adams Place, N.E., Washington, D.C., pursuant to § 2009.3 of Title 23 of the DCMR.⁷

IT IS FURTHER ORDERED that ABRA's Licensing Division shall deny all temporary or one-day substantial change applications filed for 2221 Adams Place, N.E.

⁷ In accordance with § 25-826 and §§ 2009.1 and 2009.3 of the District of Columbia Municipal Regulations, "[i]f the Board determines that disruptive activity or unlawful conduct has occurred at the event site, the Board may place restrictions upon the number, nature, or size of events permitted at a site." § 25-826, 23 DCMR §§ 2009.1, 2009.3. see also D.C. Code § 25-211(f) (explaining that the Board has the authority to restrict events at an event site when it determines that ". . . events at the site have violated District of Columbia law and created parking, trash, noise, congestion or other alcohol related problems which have been substantially injurious to neighborhood residents.")

A copy of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson

Donald Brooks, Member

James Short, Member

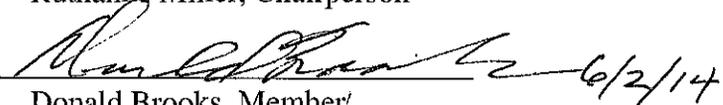
Pursuant to 23 DCMR § 1719.1, any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

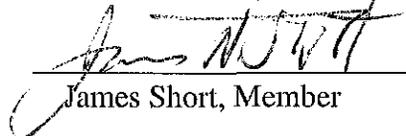
Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing 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 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).

Finally, in the case of a summary suspension, "A person aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2." D.C. Official Code § 25-826(d).

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

 6/2/14
Donald Brooks, Member


James Short, Member

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