

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

In the Matter of:

HRH Services, LLC
t/a The Alibi

Holder of a
Retailer's Class CR License

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

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)
) Case Nos.: 16-CMP-00503
) 16-CMP-00600
) License No.: 097969
) Order No.: 2017-392

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Jacob Perry, Member

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

Brendan Klaproth, Counsel, Klaproth Law PLLC, on behalf of the
Respondent

Ann Daniels and Walter Adams, Assistant Attorney General
Office of the Attorney General for 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 HRH Services, LLC, t/a The Alibi, (hereinafter "Respondent" or "The Alibi") in violation of two counts of violating District of Columbia (D.C.) Official Code § 25-823(a)(6). Specifically, Rachel Traverso, one of Alibi's owners, on June 10, 2016, and July 8, 2016, intentionally permitted Martin Scahill to remain on

the premises, in violation of the conditions that ensure that Alibi remains in compliance with the law and prevents the business from falling under the unlawful control of an unauthorized third party.

The circumstances surrounding the violations in this case make revocation a just remedy. First, the violations in this case are the equivalent of committing contempt of court. These offenses are especially contemptuous because they directly contradict the conditions attached to Alibi's liquor license, and violate material representations Alibi made to the Board in order to qualify for its liquor license and prove that its original application was not a subterfuge.¹ In particular, the conditions allowed Alibi to satisfy D.C. Official Code § 25-301(a)(5) and the appropriateness criteria, which were necessary in order to obtain Alibi's liquor license.² Second, Rachel Traverso, Alibi's owner, despite having notice of the conditions through the delivery of the original order and verbal notice by an ABRA Investigator on June 10, 2016, directly participated in the two violations that occurred.³ See *2447 Good Hope Rd., Inc. v. D.C. Alcoholic Beverage Control Bd.*, 295 A.2d 513, 516 (D.C. 1972) (saying that revocation was justified where "... those in a position to lawfully operate the business had been specifically put on notice as to the proscription . . ."). Third, the involvement of the license holder herself, rather than an employee or another agent, and the fact that the offense was intentional makes the violations particularly offensive. *In re Bar 9, LLC, t/a DC 9*, Case No. 10-251-220, Board Order No. 2010-551 (D.C.A.B.C.B. Nov. 10, 2010) ("The Board has long held management to a higher standard of conduct and accountability . . ."). And fourth, this case raises serious questions as to whether Ms. Traverso has truly heeded the Board's warning to avoid making "misrepresentations."⁴

¹ Material facts during the application process include the nature of the ownership, the licensee's future plans regarding compliance, and the record of managers used by the business at other establishments. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) ("past and future efforts"); *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 275 (D.C. 2013) ("shar[ing of] similar management" were relevant to whether the "'new' owner will operate the establishment without a detrimental impact on the neighborhood."). During the qualifications hearing, Alibi represented to the Board that they had voluntarily decided to bar Martin Scahill from the premises. *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-280, ¶¶ 83, 85 (D.C.A.B.C.B. May 18, 2017) (indicating that the owners of Alibi voluntarily decided to issue a barring notice against Martin Scahill). Alibi, through the testimony of Richard Traverso, one of the owners, committed to enforcing the barring notice, preventing Mr. Scahill from accessing the property, and ensuring it remained in effect for five years. *Id.* at ¶ 87. Alibi's prior attorney further assured the Board that Alibi would enforce the barring notice and was willing to have the Board place additional conditions on the license to ensure the conditions were followed and that the application was not a subterfuge. *Id.* at 3, ¶ 90. The present violations show that Alibi has not lived up to its representations.

² *Id.* at ¶¶ 129 (noting that the conditions resolved the issues raised under § 25-301(a)(5)); *id.* at ¶ 118 n.6 (noting that Mr. Scahill's inclusion in the business could have resulted in the Board raising questions as to the legal appropriateness of the establishment based on his record of ownership) citing *Panutat LLC v. D.C. Alcoholic Beverage Control Board*, 75 A.3d 269, 275 (D.C. 2013).

³ *Id.* at 37 (noting that the Order was provided to the parties after it was issued by the Board); *infra.*, at ¶ 17 (indicating that Investigator Brashears advised her of the order and violation on June 10, 2016), *infra.*, at ¶¶ 20-21 (despite the prior verbal notice, Ms. Traverso again violated the conditions on June 8, 2016).

⁴ *Id.* at ¶ 128. The Board's prior Order and this case call into question Ms. Traverso's propensity for telling the truth. In the prior Order, it was noted that Ms. Traverso wrote an email to Advisory Neighborhood Commission 6C02 where she stated that she "had nothing to do with the previous business," *id.*, at ¶ 55; nevertheless, this was

Nevertheless, revocation is a severe remedy. At this time, the Board refrains from revoking Alibi's license as the violations in this case represent first time offenses. Moreover, the Board recognizes that revocation would be devastating to the economic interests of Richard Traverso, the Alibi's other owner, who did not participate in the violations at issue in this case. Therefore, the Board imposes the maximum fine for both offenses, which in this case results in a \$4,000 fine.

Procedural Background

The investigative report in Case No. 16-CMP-00503 has a date of occurrence of June 10, 2016. *Case Report No. 16-CMP-00503*, 1. The report indicates that it was finalized on June 29, 2016. *Id.* at 3. The Board formally reviewed the report at the Board's public meeting on August 3, 2016, and referred the matter to the District of Columbia Office of the Attorney General for a potential enforcement action. *Investigative Agenda* (Aug. 3, 2016) (See item no. 1). The Board received the notice in Case No. 16-CMP-00503 from the Office of the Attorney General and signed the notice on October 3, 2016. *Notice*, 16-CMP-00503, 1, 4. The service form indicates that this notice was received by Rachel Traverso, the owner of Alibi, on October 6, 2016. *ABRA/ABC Board Personal Service Form*, 1. As a result, 55 days passed from the date the Board reviewed the investigative report on August 3, 2016, to the date the Notice of Status and Show Cause Hearing was issued and signed. *See* 23 DCMR § 102.1 (West Supp. 2017) (Computation of Time).

The investigative report in Case No. 16-CMP-00600 has a date of occurrence of July 8, 2016. *Case Report No. 16-CMP-600*, 1. The report indicates that it was finalized on August 6, 2016. *Id.* at 4. The Board formally reviewed the report at the Board's public meeting on September 14, 2016, and referred the matter to the Attorney General for a potential enforcement action. *Investigative Agenda* (Sept. 14, 2016) (see item no. 15). A service form included in the file indicates that the investigative report in this case was served on Rachel Traverso on September 20, 2016, less than 75 days after the date of occurrence. *ABRA/ABC Board Personal Service Form* (Sept. 20, 2016). The Board received the notice in Case No. 16-CMP-00600 from the Office of the Attorney General and signed the notice on November 7, 2016. *Notice*, 16-CMP-00600, 1, 4. The service form indicates that this notice was received by the Alibi on November 9, 2016. *ABRA/ABC Board Personal Service Form*, 1. As a result, 54 days passed from the date the Board reviewed the investigative report on September 20, 2016, to the date the second Notice of Status and Show Cause Hearing was issued and signed. § 102.1.

The notices in this matter charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

contradicted by the evidence in the record that her family funded and performed work for the prior business. *Id.* at ¶¶ 40-42, 44-45. The facts in this case show a second misrepresentation likely occurred on July 8, 2016, when Ms. Traverso denied the presence of Mr. Scahill even though Investigator Brashears' observations and the statement of the other woman inside the premises show the contrary. *Infra.*, at ¶ 22. Moreover, the case itself calls into question whether the owners were sincere when they told the Board that they would be "willing to enforce the barring notice." *The Alibi*, Board Order No. 2016-280, at ¶¶ 87-90.

Specifically, the notice in Case No. 16-CMP-00503 charges the Respondent with the following violation:

Charge I: [On June 10, 2016,] [y]ou failed to follow a Board Order in violation of D.C. Official Code § 25-823 . . .

Notice of Status Hearing and Show Cause Hearing, 2 (16-CMP-00503).

Additionally, the notice in Case No. 16-CMP-00600 provides the following:

Charge I: [On July 8, 2016,] [y]ou failed to follow a Board Order in violation of D.C. Official Code § 25-823 . . .

Notice of Status Hearing and Show Cause Hearing, 2 (16-CMP-00600).

Both the Government and Respondent appeared at the Show Cause Status Hearing for Case No. 16-CMP-00503 on November 2, 2016. The parties proceeded to a consolidated Show Cause Hearing and argued their respective cases on March 15, 2017. Both parties filed proposed findings of fact and conclusions of law after the hearing, which the Board considered as part of its final decision.

FINDINGS OF FACT

In contested cases, the Board is required to make conclusions regarding “each contested issue of fact,” which “shall be based solely upon evidence contained in the record and facts of which the Board . . . took judicial notice.” 23 DCMR § 1718.2 (West Supp. 2017). Factual findings made by the Board “shall be supported by . . . reliable, probative, and substantial evidence.” 23 DCMR § 1718.3 (West Supp. 2017). As the “trier of fact,” the Board makes its factual findings based on its determination regarding the “credibility of the witnesses” and “reasonable inferences” derived from “the evidence presented.” *Smith v. United States*, 809 A.2d 1216, 1221 (D.C. 2002). Further, in making factual findings, the Board may make findings based on hearsay evidence so long as the evidence is sufficiently truthful, reasonable, and credible because “[a]dministrative hearings are not governed by the strict rules of evidence” *Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 477 (D.C. 2004); *Martin v. D.C. Police & Firefighters’ Ret. & Relief Bd.*, 532 A.2d 102, 109 (D.C. 1987).

Keeping these principles in mind, 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, makes the following findings:

I. Facts Related to Alibi and the Conditions Imposed on the License.

1. The Alibi holds a Retailer’s Class CR License at 237 2nd Street, N.W., Washington, D.C. ABRA License No. 097969. As part of the final Order granting the license on May 18, 2016, the Board imposed conditions regulating the operations of the business. *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-280, 36-37 (D.C.A.B.C.B. May

18, 2016) *aff'd HRH Services, LLC, d/b/a The Alibi v. District of Columbia Alcoholic Beverage Control Board*, No. 16-AA-758 (D.C. 2016) (dismissing petition for review).

2. The conditions in this case arose based on the “sad and sordid history of My Brother’s Place,” one of the prior businesses operating at the Alibi’s current location. *Id.* at 1-2. During its heyday, My Brother’s Place allowed a large number of underage drinking violations to occur, as well as drug dealing and drug use. *Id.* at 2. After the prior establishment’s license was allowed to expire, Martin Scahill, a minority owner of My Brother’s Place, attempted to apply for a new license. *Id.* at 2. After receiving Mr. Scahill’s application, the Board notified him and his partners of its intent to review his qualifications for licensure based on My Brother’s Place’s infraction history, the \$16,500 in unpaid fines owed by My Brother’s Place, and concerns regarding Mr. Scahill’s ability to prevent underage drinking. *Id.* The issues raised by the Board were never resolved because Mr. Scahill withdrew his application. *Id.* Nevertheless, soon after the withdrawal, the Alibi filed an application for a new license at the same location as My Brother’s Place and Mr. Scahill’s proposed business. *Id.*

3. It came to light that one of Alibi’s owners, Rachel Traverso, “previously worked at My Brother’s Place, was previously engaged to Mr. Scahill, . . . provided, through herself and her family, approximately \$270,000 to fund Mr. Scahill’s prior proposed business,” assisted with the renovations when it was controlled by Mr. Scahill, and had an expectation that she would be hired by Mr. Scahill’s business as a “bar manager.” *Id.*

4. Furthermore, the Board also discovered that Mr. Scahill was working for Alibi “without compensation” on a frequent basis and made statements on the record during a hearing conducted by another District agency that allowed for an inference that “he shared in the ownership and management of the business.” *Id.* at 3.

5. In light of these facts, the Board ordered Alibi to demonstrate its qualifications for licensure by showing that it was not acting “as a front or subterfuge on behalf of Mr. Scahill.” *Id.* at 3, ¶ 97. Specifically, among other issues, the Board required the Alibi to demonstrate its compliance with D.C. Official Code § 25-301(a)(5), which 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. Code § 25-301(a), (a)(5); *id.* at ¶ 97.

6. During the protest trial, Alibi “voluntarily stipulated to exclude Mr. Scahill from the business and the premises by executing and maintaining a barring notice against him.” *The Alibi*, Board Order No. 2016-280, at 3. Relying on the stipulations, the Board resolved the matter in favor of the Alibi and imposed conditions ensuring the enforcement of Alibi’s promises by preventing Mr. Scahill from exercising “any domination or control over the business.” *Id.*

7. The specific conditions relevant to this matter that were imposed by the Board read as follows:

[Condition 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).

[Condition 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.

[Condition 5] The license holder shall not intentionally permit or allow Martin Scahill to remain on the premises.

[Condition 8] The license holder shall not employ Martin Scahill as a manager, employee, independent contractor, or volunteer.

[Condition 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.

Id. at 36-37.

II. Relevant Facts Occurring Before May 18, 2016.

8. Board Order No. 2016-280 indicates that ABRA Investigator Mark Brashears observed, met, and had a conversation with Martin Scahill during an inspection of Alibi's premises on December 16, 2015. *The Alibi*, Board Order No. 2016-280 at ¶ 74.⁵ Investigator Brashears also previously met Rachel Traverso, one of the owners of Alibi, during the protest. *Transcript (Tr.)*, March 15, 2017 at 21-22.

9. The Order notes that Richard and Rachel Traverso, Alibi's owners, "mutually decided [sometime before January 29, 2016,] that it was best for the business if Mr. Scahill could not enter the premises." *Id.* at ¶ 83. Based on this decision, Alibi executed a barring notice against Mr. Scahill. *Id.* at ¶ 85. As part of the execution, Mr. Scahill signed the barring notice on January 27, 2016, which was witnessed by Rachel Traverso. *Id.*

10. The Order further indicates that Ms. Traverso "stated on the record that due to the barring notice, Martin Scahill is 'not allowed to work at the restaurant'" and "if Martin Scahill enters the premises 'the police get called.'" *Id.* at ¶ 88. The Order indicates that it was sent to each of the parties to the controversy. *Id.* at 37.

⁵ While the Board's decision is not dependent on the facts provided by the prior Order, the Board is entitled to adopt the previously made fact findings as factual findings in this case, where Alibi was a party to the prior proceeding, the underlying statements made by Richard and Rachel Traverso constitute party admissions, and Investigator Brashears testified in the present matter.

III. Facts Demonstrating a Violation of § 25-823(a)(6) on June 10, 2016 (16-CMP-00503).

11. Alcoholic Beverage Regulation Administration Investigator Mark Brashears was aware of Board Order No. 2016-280 based on his prior work related to the protest of the license application. *Tr.*, 3/15/17 at 13, 16.

12. On June 10, 2016, Investigator Brashears became aware that ABRA had received a complaint that Martin Scahill was at Alibi. *Id.* at 16. In response to the complaint, ABRA Investigator Tasha Cullings and he arrived at the Alibi in order to investigate. *Id.* at 16, 141. As part of the investigation, Investigator Brashears shared documents containing passport and driver's license photographs of Mr. Scahill with Investigator Cullings. *Id.* at 16. When Investigator Brashears arrived, he stood approximately 50 feet away from the Alibi's premises and surveilled the scene. *Id.* When Investigator Cullings arrived, she entered the Alibi "in an undercover capacity." *Id.* at 142-43.

13. While Investigator Cullings was inside the premises, Investigator Brashears observed Mr. Scahill, Rachel Traverso, and two people that appeared to be patrons sitting in Alibi's sidewalk café. *Id.* at 20, 23, 74-75. He observed that Mr. Scahill and Ms. Traverso were sitting at the same table. *Id.* at 109. During this time, Investigator Brashears walked to a point on the sidewalk approximately 35 feet away from the Alibi's sidewalk café and made the same observation. *Id.* at 67-68. Mr. Scahill and Ms. Traverso appeared to be either "eating dinner" or had "just finished" eating and "conversing." *Id.* at 22-23. He further noted that while he could not hear their conversation, their body language showed them acting in a "casual" manner towards each other. *Id.* at 23. Mr. Scahill and Ms. Traverso sat together outside for approximately five to ten minutes. *Id.*

14. After Investigator Cullings left the establishment, she saw the same people that Investigator Brashears observed in the sidewalk café. *Id.* at 152. Investigator Cullings was not familiar with Mr. Scahill and could not definitively identify Mr. Scahill in the sidewalk café, even with the photograph she was given. *Id.* at 152, 158. However, she recalled Investigator Brashears telling her that one of the people in the sidewalk café was Mr. Scahill and indicated that she has no "reasonable basis to doubt" his identification of Mr. Scahill. *Id.* at 156, 159. After meeting Investigator Brashears on the sidewalk, Investigator Brashears entered the premises himself. *Id.* at 24, 145, 147.

15. He met Ms. Traverso inside the premises, near a main door to the interior located near a dishwashing station, and identified himself as an ABRA investigator. *Id.* at 24-25. He then began to discuss setting up a "final inspection" for the premises. *Id.* at 25. As they were talking, Mr. Scahill walked between Ms. Traverso and Investigator Brashears while carrying "a tray with some dishes on it." *Id.* at 25-26.

16. After seeing Mr. Scahill, Investigator Brashears said "hey, wasn't that Martin." *Id.* at 26. In response, Ms. Traverso followed Mr. Scahill to "the dishwashing area." *Id.* at 26. She then—apparently unaware that Investigator Brashears had just seen her outside with Mr. Scahill—berated him, saying "you're not supposed to be here. If you don't leave, I'm going to call the

police.” *Id.* After Ms. Traverso’s statement, Mr. Scahill did not make any statement in response, but quickly left the premises. *Id.* at 26.

17. Ms. Traverso then attempted to explain the situation to Investigator Brashears. *Id.* at 27. First, she said that Mr. Scahill was showing up at the establishment in an attempt to undermine the business because he was unhappy with the Board’s decision and trying to get her in trouble. *Id.* at 27. She indicated that Mr. Scahill was conspiring with one of her bartenders in order to undermine her. *Id.* at 27, 111.⁶ In response, Investigator Brashears advised her of the order and informed her that he would report the violation. *Id.* He then departed the establishment. *Id.*

18. At no time that Investigator Brashears was present at Alibi, did he observe Ms. Traverso contact the police. *Id.* at 29.

IV. Facts Demonstrating a Violation of § 25-823(a)(6) on July 8, 2016 (16-CMP-00600).

19. On July 4, 2016, ABRA received a complaint that Martin Scahill was present at the Alibi. *Id.* at 40. After reviewing the complaint, Investigator Brashears decided to investigate the matter further. *Id.* at 41. On Wednesday, July 6, 2016, Investigator Brashears visited the establishment, but did not observe Mr. Scahill present. *Id.* at 43.

20. Investigator Brashears returned to the neighborhood by himself on July 8, 2016, around 11:40 p.m. *Id.* at 44. After parking his car around the corner, Investigator Brashears got out and went up to the Alibi’s window. *Id.* He observed that the street was lit by street lights and he could see inside Alibi because the interior lights were on. *Id.* at 44-45.

21. Looking inside the establishment, he saw Mr. Scahill standing near the bar and speaking with Ms. Traverso. *Id.* at 45, 96-97. He recognized Mr. Scahill, because Mr. Scahill was facing the window that Investigator Brashears was looking through. *Id.*

22. After observing Mr. Scahill, Investigator Brashears went to Alibi’s front door, found it locked, and began to knock. *Id.* at 46, 100-01. A female answered the door and told Investigator Brashears that “we’re closed.” *Id.* at 46. Without identifying himself as an official with ABRA, Investigator Brashears then asked if Mr. Scahill was present. *Id.* at 47. In response, the woman at the door stated that “he’s talking to Rachel next to the bar.” *Id.*⁷ Investigator Brashears then identified himself and attempted to enter the establishment. *Id.* at 47-48.

⁶ It should be noted that Ms. Traverso’s statements made in front of and to Investigator Brashears also independently identify Mr. Scahill on June 10, 2016.

⁷ It should be noted that this factual finding based on the statement of the female answering the door does not constitute hearsay because it falls under the “present sense impression” exception to the hearsay rule. *Hallums v. United States*, 841 A.2d 1270, 1276 (D.C. 2004) (“we will recognize the hearsay exception or present sense impressions, *i.e.*, statements describing or explaining events which the declarant is observing at the time he or she makes the declaration or immediately thereafter . . .”). In this case, Investigator Brashears went immediately to the Alibi’s door and the female he met at the entrance made a statement matching what he had just seen. Given the small amount of time that had passed and her unawareness as to Investigator Brashears identity, the record support the conclusion that the statement was made without “conscious reflection” and was “spontaneous,”

23. The woman at the door told him to “hold on a minute”; however, the investigator ignored the instruction and walked to the bar where Ms. Traverso was standing. *Id.* at 48. Investigator Brashears asked Ms. Traverso if Mr. Scahill was present. *Id.* In response, Ms. Traverso denied that Mr. Scahill was present. *Id.* at 48-49. He noted that he did not canvass the entire establishment; therefore, it is possible that Mr. Scahill was in another room or hiding. *Id.* at 102-03.

24. Investigator Brashears then left the establishment. *Id.* at 49. He monitored outside the premises for another twenty minutes but did not see Mr. Scahill again. *Id.* at 50.

CONCLUSIONS OF LAW

25. 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 (D.C.) Official Code pursuant to D.C. Official Code § 25-823(a)(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2017).

V. Standard of Proof

26. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2017). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep’t of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children’s Defense Fund v. District of Columbia Dep’t of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

VI. Alibi Violated the Conditions Placed on the License on June 10, 2016 and July 8, 2016.

27. Board Order No. 2016-280 contains several conditions restricting the operations of the establishment that have been in effect since May 18, 2016. *Supra*, at ¶ 1. Under § 25-823(a)(6), it is a violation for a licensee to “fail[] to follow” a “Board Order.” D.C. Code § 25-823(a), (a)(6). All licensees are “required to comply with the [an] . . . order from the Board that is attached to the license during all times that it is in operation. D.C. Code § 25-823(c). Finally, “A single violation of a[n] . . . order from the Board shall be sufficient to prove a violation” *Id.*

28. The Board is persuaded by the Government that several violations of the conditions occurred on June 10, 2016, and July 8, 2016.

which supports crediting the statement. *Id.* at 1277. Consequently, the Board is entitled to rely on these statements as direct evidence of Mr. Scahill’s presence and the intent of Ms. Traverso.

a. Alibi violated Condition 5 on June 10, 2016 (Case No. 16-CMP-00503).

29. According to Condition 5 attached to Alibi's license, "The license holder shall not intentionally permit or allow Martin Scahill to remain on the premises." *The Alibi*, Board Order No. 2016-280 at 36.

30. It is commonly understood that "An intentional act is one that is done consciously or voluntarily, and not inadvertently or accidentally." *Lee v. United States*, 831 A.2d 378, 382 (D.C. 2003). Intent is generally shown by "circumstantial evidence," and not "direct evidence." *State v. Rokus*, 483 N.W.2d 149, 154 (Neb. 1992); *W.C.M. v. State*, 142 So. 3d 1279, 1283 (Ala. Crim. App. 2013). Therefore, "The mind of an alleged offender may be read from his acts, conduct, and inferences fairly deducible from all the circumstances." *Young v. State*, 791 So. 2d 875, 879 (Miss. Ct. App. 2001); *Bethea v. United States*, 365 A.2d 64, 87 (D.C. 1976) ("Only by inference can the existence of intent . . . be determined.").

31. On June 10, 2016, Investigator Brashears caught Ms. Traverso red-handed violating Condition 5. Ms. Traverso was, and still is, the owner of Alibi; therefore, she had a duty comply with Condition 5 on June 10, 2016. *Supra*, at ¶ 3. The Board further credits Investigator Brashears' testimony identifying Martin Scahill and confirming his presence in Alibi's sidewalk café and interior on June 10, 2016. *Supra*, at ¶¶ 8, 13-17.

32. There is also a bonanza of circumstantial evidence demonstrating Ms. Traverso's intent to violate Condition 5 by "intentionally" allowing or permitting Mr. Scahill "to remain on the premises." *The Alibi*, Board Order No. 2016-280 at 36. First, the Board may reasonably infer that Ms. Traverso knew Mr. Scahill was on the premises because she was sitting with him in the sidewalk café, had likely eaten a meal with him, and made statements in front of and to Investigator Brashears that she would not have made, if the person was anyone else but Mr. Scahill. *Supra*, at ¶¶ 13-17.

33. Second, there is no evidence that Mr. Scahill forced, threatened, or snuck his way onto the property or that he was otherwise acting as a trespasser. Instead, Investigator Brashears observed Mr. Scahill and Ms. Traverso idly chatting in the sidewalk café for approximately five to ten minutes. *Supra*, at ¶ 13. Martin Scahill then walked between Ms. Traverso and Investigator Brashears as they were talking inside the establishment. *Supra*, at ¶ 15. Mr. Scahill was carrying a tray with Alibi's dishes to the establishment's dishwashing area. *Supra*, at ¶ 16. While Ms. Traverso—likely insincerely—asked Mr. Scahill to leave once Investigator Brashears discovered him and pointed him out, this does not excuse her from allowing and condoning Mr. Scahill's presence beforehand. *Id.* Consequently, based on these facts, the Board may infer that Ms. Traverso intentionally allowed and permitted Mr. Scahill to remain on the premises in violation of Condition 5 on June 10, 2016. There is simply no other reasonable or believable explanation of Ms. Traverso and Mr. Scahill's behavior.

b. Alibi violated Condition 8 and 9 on June 10, 2016 (Case No. 16-CMP-00503).

34. According to Condition 8, "The license holder shall not employ Martin Scahill as a[n] . . . employee, independent contractor, or volunteer." *The Alibi*, Board Order No. 2016-280 at 36.

Condition 9 elaborated this requirement by stating that “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, . . . cleaning; . . .” *Id.* at 37.

35. In this case, the plain language of Condition 8 and 9 prohibit Alibi from allowing Mr. Scahill to work at the premises in a paid or unpaid capacity. *Id.* at 36-37. One of the examples of prohibited acts provided by Condition 9 includes “cleaning.” *Id.* at 37. As noted above, Ms. Traverso was fully aware that Mr. Scahill was present on the premises. *Supra*, at ¶¶ 13, 15-16. Investigator Brashears then observed Mr. Scahill walk into the establishment with a tray of dishes and bring them to the establishment’s dishwashing area. *Supra*, at ¶¶ 15-16. Under these circumstances, it is reasonable to infer that Ms. Traverso allowed Mr. Scahill to engage in cleaning activity in an either paid or unpaid capacity, which at a minimum constitutes volunteer activity in violation of Condition 8 and 9.

c. Alibi violated Condition 4 on June 10, 2016 (Case No. 16-CMP-00503).

36. According to Condition 4, “The license holder . . . or [their] 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.” *Id.* at 36.

37. As noted above, Martin Scahill was present at the establishment on June 10, 2016. *Supra*, at ¶¶ 13, 15-16. Investigator Brashears did not observe Ms. Traverso contact MPD. *Supra*, at ¶ 18. While it is possible that Ms. Traverso or someone else connected with Alibi contacted the police, it is not reasonable to presume this occurred where Mr. Scahill was knowingly welcomed onto the premises. *Supra*, at ¶¶ 13, 15-16. Indeed, there is no documentary evidence (e.g., police report) or witness testimony indicating that the police were contacted after Investigator Brashears left. Under these circumstances, it is reasonable for the Board to infer that no such communication occurred in violation of Condition 5.

38. Consequently, for all of the above reasons, both separately and jointly, the Board sustains Charge I in Case No. 16-CMP-00503.

d. Alibi violated Condition 5 on July 8, 2016 (Case No. 16-CMP-00600).

39. Likewise, Alibi similarly violated the conditions attached to its license on July 8, 2016. According to Condition 5, “The license holder shall not intentionally permit or allow Martin Scahill to remain on the premises.” *The Alibi*, Board Order No. 2016-280 at 36.

40. The Board credits Investigator Brashears testimony that he observed Ms. Traverso and Mr. Scahill speaking near Alibi’s bar from outside the establishment. *Supra*, at ¶¶ 20-21. While Investigator Brashears did not see Mr. Scahill when he entered the establishment, his observation was corroborated by the statement of the woman answering the establishment’s door confirming that Mr. Scahill was inside the premises. *Supra*, at ¶ 22. As the two were chatting by the bar while the establishment was closed, the Board may reasonably infer that Ms. Traverso intentionally allowed and permitted Mr. Scahill to remain on the premise. *Supra*, at ¶ 30.

Consequently, the Board sustains the charge brought by the Government in Case No. 16-CMP-00600).

VII. The Board Reaffirms its Denial of Alibi's Motion to Dismiss Based on the Lack of Prejudice to Alibi Related to Any Failure to Comply with § 25-447.

41. During closing arguments, the Alibi renewed its motion to dismiss under § 25-447. *Transcript (Tr.)* March 15, 2017 at 172-73.

42. Under § 25-447(c),

Within 30 days of receiving evidence supporting a reasonable belief that any licensee or permittee is in violation of the provision of this title or the regulations issued under it, the Board shall order the licensee or permittee, by personal service or certified mail, to appear before the Board not less than 30 days thereafter to show cause why the license or permit should not be . . . penalized.

D.C. Code § 25-447(c).

43. As noted previously, the time period contained in § 25-447 is “directory, not mandatory.” *In re HRH Service, LLC, t/a The Alibi*, Case No. 2016-CMP-00600, Board Order No. 2017-003, 2 (D.C.A.B.C.B. Jan. 11, 2017). It is well known that “when a statute says that an agency ‘shall’ make a decision within a set period of time, that limit is generally considered ‘directory rather than mandatory.’” *Brown v. D.C. Pub. Employee Relations Bd.*, 19 A.3d 351, 355 (D.C. 2011) *citing Spicer v. District of Columbia Real Estate Comm’n*, 636 A.2d 415, 418 (D.C. 1993).⁸

44. When confronted with the violation of a directory procedural regulation by the government, the question is whether there is prejudice to “substantial rights,” where the burden of showing the outcome was unaffected rests upon the party seeking to sustain it against the error.” *JBG Properties, Inc. v. D.C. Office of Human Rights*, 364 A.2d 1183, 1186 (D.C. 1976).

⁸ Despite being aware of the Board's position since first rejecting the motion, Alibi does not challenge the Board's interpretation of § 25-447(c). Nevertheless, the Board's interpretation is further supported by the fact that the statute contains no sanction related to the failure to comply. *Brown v. D.C. Pub. Employee Relations Bd.*, 19 A.3d 351, 356 (D.C. 2011) *citing Teamsters Local 1714 v. District of Columbia Public Employee Relations Board*, 579 A.2d 706, 710 (D.C.1990) (“a statutory time limit for agency action which is not accompanied by attendant sanctions raises a rebuttable presumption that the time limitation is intended to be merely directory.”). Moreover, the conclusion that the time limit set in § 25-447(c) is directory is also supported by the fact that doing so would “prejudice private rights and [the] public interest,” where the conditions in this case seek to prevent Alibi's license from being controlled by an unapproved individual and uphold the rights of the protestant whose protest was overcome based on the promises made by the licensee. *JBG Properties, Inc. v. D.C. Office of Human Rights*, 364 A.2d 1183, 1185 (D.C. 1976) (“Further, for obvious reasons founded in fairness and justice, time provisions are often found to be directory merely, where a mandatory construction might do great injury to persons not at fault, as in a case where slight delay on the part of a public officer might prejudice private rights or the public interest.”); D.C. Code §§ 25-301(a)(1), 25-301(a)(5) (showing that the ability of the Board to identify the individuals holding the license is an important part of the application process); D.C. Code § 25-805(a) (sale of alcohol by unlicensed person deemed a nuisance); *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-280, 3 (D.C.A.B.C.B. May 18, 2017) (the Board, on page 3 of the Order, discussed its reliance on Alibi's representations in ruling in favor of Alibi).

The court has further said that dismissal may be warranted when the “prejudice to [the] to respondent is grave and could not have been avoided by reasonable efforts on respondent's part to preserve and present its case despite the agency delay.” *Wisconsin Ave. Nursing Home v. D.C. Comm’n on Human Rights*, 527 A.2d 282, 286 (D.C. 1987).

45. The test laid out by the court makes each case unique, but various courts have dealt with the issue of the government issuing untimely orders and notices. For example, in *JBG* the court has noted that filing charges “only 12 days late” would be unlikely to cause “undue prejudice” or be deemed “unreasonable.” *Id.* at 1186. In *Gallothom*, the court indicated that a 120 day delay in issuing an order was not prejudicial. *Gallothom, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 820 A.2d 530, 535 (D.C. 2003). Finally, an Ohio court, in *Boggs*, found that an agency’s failure to notify the respondent of an investigation and findings related to alleged violations did not cause undue prejudice even though the agency was late by 11 months. *Boggs v. Ohio Real Estate Comm.*, 926 N.E.2d 663, 669, 671-72 (C.O.A.O.H. 10th Dist. Dec. 3, 2009).

46. In this case, the record shows that Alibi suffered no prejudice from the delay. First and foremost, Alibi exaggerates the violation of § 25-447(c) by misstating the number of days it took to issue the order of show cause. In its original motion, Alibi claimed a delay of over 90 days. *Respondent’s Motion to Dismiss*, at 2 (labeled Case No. 2016-CMP-00600). While Alibi apparently claims—without support—that the time period starts on the date of occurrence listed on the investigative reports, this date does not represent the date the Board “receiv[ed] evidence” of the violation. § 25-447. Instead, the date the Board actually became aware of the alleged violations were the dates the Board actually reviewed the reports, which was August 3, 2016, and September 14, 2016, respectively. As noted above, from the date of referral to the Office of the Attorney General to the date the notice was issued amounts to less than 60 days. In light of the 30 period provided by § 25-447, the government was no more than 30 days late, which the Board finds to be *de minimis* in light of *JBG*, *Gallothom*, and *Boggs*.

47. Moreover, Alibi’s claims of prejudice are unpersuasive. *Tr.*, 3/15/17 at 171-72. First, Alibi’s claim that Alcoholic Beverage Regulation Administration (ABRA) Investigator Brashears has a “faulty memory” is conclusory and not supported by the record based on the testimony given during the trial. *Id.*⁹ A witness is not impeached or not credible merely because

⁹ Even if Alibi were correct that Investigator Brashears suffered from a “faulty memory,” the Board could make the same findings of fact by relying on the case report as evidence of the violations. Indeed, the case reports would not even be deemed hearsay because they would fall under the past recollection recorded exception to the hearsay rule. As noted in *Carey*,

A prior out-of-court statement is admissible as a past recollection recorded if the following four criteria are established: (1) the witness must have had first-hand knowledge of the event; (2) the written statement must be an original memorandum made at or near the time of the event and while the witness had a clear and accurate memory of it; (3) the witness must lack a present recollection of the event; and (4) the witness must vouch for the accuracy of the written memorandum.

Carey v. United States, 647 A.2d 56, 58 (D.C. 1994). In this case, Investigator Brashears authored the case reports, had personal knowledge of the events described in the reports, both reports were drafted within 30 days of the respective incidents, and the investigator vouched for the accuracy of the case reports. *Tr.*, 3/15/17 at 14-15, 19, 34; *Case Report No. 16-CMP-00503*; *Case Report No. 16-CMP-600*. As a result, even if Alibi’s allegations regarding the investigator’s memory are true, the Board could (and would) rely on the case reports and reach the same result.

they lack a photographic memory of events that occurred, has a different perception of those events, or is mistaken about minor details.

48. Second, there is no indication in the record that relevant or material evidence is no longer available. Indeed, there is no indication that Rachel Traverso, Martin Scahill, or anyone that may have been present at the establishment on June 10, 2016 or July 8, 2016, was not available to provide information to Alibi's counsel prior to the hearing or no longer available to testify. *Transcript (Tr.)*, 3/15/17 at 3-4 (showing Ms. Traverso was present at the show cause hearing).

49. Third, even with various continuances and extensions granted by the Board, this case has been resolved in record time. From the date of the first incident occurring on June 10, 2016, to the date of the issuance of this Order, only about a year has passed. As a result, it can hardly be argued with a straight face that the passage of time has somehow prejudiced Alibi. Consequently, the Board reaffirms its denial of the motion.

VIII. Any Failure of the Government to Comply with Alibi's Subpoena Does Not Change the Outcome of this Case.

50. Under § 1704.3, "Subpoenas issued by the Board shall be enforceable in the manner prescribed in D.C. Official Code § 25-443(c)." 23 DCMR § 1704.3 (West Supp. 2017). Under § 25-443(c), "In the case of contumacy or refusal to obey a subpoena, the Superior Court of the District of Columbia, upon written request by the Board, shall issue an order requiring the contumacious person to appear and testify before the Board or to produce evidence if so ordered." D.C. Code § 25-443(c).

51. As § 25-447 makes clear, while the Board has the power to issue subpoenas, the sole remedy for any failure to comply is for the Board to request an order from the Superior Court to order the enforcement of the subpoena. There is no other sanction provided by the statute or the Board's regulations for the failure to comply with the subpoena.

52. While Alibi has argued that the Government has not complied with its subpoena request, Alibi has made no motion to continue the case and seek the enforcement of the subpoena during the trial; as a result, the Board deems any claims Alibi may have regarding the subpoena waived. *Respondent's Proposed Findings of Fact and Conclusions of Law*, at 7-12. Moreover, the Board fails to see how any alleged failure to comply with the subpoena could reasonably undermine Investigator Brashears' credibility regarding his observations on June 10, 2016, and July 8, 2016 based on his prior interaction with Mr. Scahill, and the corroboration provided by the actions and statements of third parties present at the scene. *Supra*, at ¶¶ 8, 16, 22.

IX. The Board Rejects Dismissing the Case for Any Violation of § 25-823 Because Alibi's Inclusion of the Issue in its Proposed Findings of Fact and Conclusions of Law is Out of Order, Untimely, and Without Merit.

53. In its Proposed Findings of Fact and Conclusions of Law, Alibi, for the first time in this case, raises the issue of whether the Government complied with D.C. Code § 25-823.

Respondent's Proposed Findings of Fact and Conclusions of Law, at 2, 10-11. The Board rejects consideration of this issue and deems it waived because such consideration would be out of order and untimely. Moreover, even if the Board considered the matter on the merits, there is no violation in Case No. 16-CMP-00600 and no reasonable claim of prejudice that would justify the dismissal of the Government's case.

a. The motion to dismiss under § 25-823 is out of order and untimely because it was filed after the close of the record.

54. The record in this case shows that this is the first time that Alibi raises any issue regarding the Government's compliance with § 25-832. *Respondent's Motion to Dismiss*, 1-2 (in both cases, the motion only cites § 25-447 as grounds for dismissal and does not mention § 25-832); *Tr.*, November 2, 2016 at 1-6 (no indication that counsel raised issues regarding § 25-832 during the status hearing); *Tr.*, 3/15/17 at 1-180 (no clear reference to § 25-832 appears in the trial transcript).

55. In light of these facts, consideration of this issue is out of order and untimely for a number of reasons. First, there is no authority in Title 25 of the District of Columbia (D.C.) Official Code or Title 23 of the D.C. Municipal Regulations that authorize the filing of a motion raising new issues after the close of the record but before the issuance of the Board's final order. *See* D.C. Code § 25-433(b), (d) (only authorizing the submission of proposed findings of fact and conclusions of law and motions for rehearing, reargument, reconsideration, and stays). Second, considering the issue would be prejudicial to the other side in this case, as there is no avenue for them to file an objection or response to what amounts to a completely new motion to dismiss after the close of the record. 23 DCMR § 1716.2 (allowing the filing of responses and replies after the submission of a motion); 23 DCMR § 1717.1, (a) (West Supp. 2017) (requiring the submission of a "motion to Re-open the Record" to file a new document). Third, sneaking a new issue into proposed findings of fact and conclusions of law exceeds the scope of a document meant to solely address contested facts and issues raised at trial. 23 DCMR § 1718.1 (West Supp. 2017) (defining "Findings of Fact and Conclusion of Law" as a "concise statement of the Board's conclusions on each contested issue of fact" that are "based solely upon evidence contained in the record."). Finally, in light of Alibi failure to properly raise this defense, the Board deems the issue waived. *Fleet v. Fleet*, 137 A.3d 983, 992 (D.C. 2016) ("[I]t is fundamental that arguments not raised in the trial court are not usually considered on appeal."); *Redman v. United States*, 616 A.2d 336, 338 (D.C. 1992) ("Like other complaints about the conduct of a trial, such a challenge may be waived if it is not raised in a timely fashion."). Consequently, the motion is denied because it is out of order and untimely.

b. Even if the Board addressed the motion on the merits, any failure to provide the investigative reports in a timely manner did not result in prejudice.

56. For the same reasons the Board found no prejudice under § 25-447, the Board similarly finds no prejudice to Alibi related to any failure to comply with § 25-832. *Supra*, at ¶¶ 46-49.

57. Under §25-832, “ABRA shall provide a licensee with . . . an investigative report . . . that may result in a show cause hearing as set forth in § 25-447 within 90 days of the . . . incident” D.C. Code § 25-832(a).

i. The investigative report in Case No. 16-CMP-00600 was served in a timely manner.

58. In Alibi’s Proposed Findings of Fact and Conclusions of Law, Alibi claims that the investigative report in Case No. 16-CMP-00600 was delivered on February 13, 2017. *Respondent’s Proposed Findings of Fact and Conclusions of Law*, at ¶ 40. This is incorrect. A service form in that case file indicates that it was delivered to Alibi on September 20, 2016, which falls within the 90 day timeline provided by § 25-832(a). *Supra*, at 3. Consequently, the claim that the Government failed to comply with § 25-832 related to Case No. 16-CMP-00600 is without merit.

ii. There is no indication of prejudice to Alibi related to any failure to comply with § 25-832.

59. In regard to Case No. 16-CMP-00503, similar to the Board’s conclusion regarding § 25-447(c), the Board previously held that D.C. Code § 25-832 was “directory” in *Little Miss Whiskey’s Golden Dollar* in 2013.¹⁰ *In re LMW, LLC, t/a Little Miss Whiskey’s Golden Dollar*, Case No. 12-CMP-00603, Board Order No. 2013-440, 1 (D.C.A.B.C.B. Oct. 2, 2013). There, the Board concluded § 25-823 was directory based on the similarity of the statute to other statutes deemed directory and the lack of sanction for violating the statute. *Id.* at 3-4. Turning to the issue of whether prejudice had occurred, the Board noted that there was no indication that a 36-day delay in delivering the report was prejudicial to the licensee. *Id.* at 4.

60. Alibi claims that the report in Case No. 16-CMP-00503 was delivered 248 days after the incident. Presuming Alibi’s calculation is correct, and considering the 90 day window, this means that the report was potentially 158 days late. In light of *Little Miss Whiskey’s Golden Dollar*, *Gallothorn*, and *Boggs*, the Board finds the alleged late delivery of the report *de minimis*. Moreover, the Board finds it highly unlikely that this delay was prejudicial when Alibi was served with a notice describing the factual basis for the charges in detail on October 6, 2016, which gave the licensee actual notice of the need to begin preserving evidence and preparing a defense. Furthermore, the Board’s finding of a lack of prejudice in regards to any violation of § 25-447, similarly applies to any contention of prejudice related to a failure to comply with § 25-823. Therefore, the Board finds Alibi’s request to dismiss the charges under § 25-823 to be without merit.

X. Penalty

61. The present violations represent two first time primary tier violations. 23 DCMR § 805 (West Supp. 2017). The civil penalty schedule indicates that a violation of 25-823(a)(6) is not eligible for a warning. *Id.* As a matter of discretion, the Board is entitled to suspend or revoke

¹⁰ If it were shown that the investigative report was provided late in Case No. 16-CMP-00600, the Board would reach the same conclusion regarding prejudice as it does in Case No. 16-CMP-00503.

the license of any licensee that violates § 25-823(a)(6). D.C. Code § 25-823(a). If the Board imposes a fine, the fine range for first time primary tier offenses shall be no less than \$1,000 and no more than \$2,000. 23 DCMR § 801.1(a) (West Supp. 2017). The Board imposes the maximum fine for both violations based on the contemptuous nature of the offense and the short time that passed between the date of the issuance of Alibi's license and the incident date of the violations in this matter.

ORDER

Therefore, the Board, on this 19th day of July 2017, finds HRH Services, LLC, t/a The Alibi, guilty of violating § 25-823(a)(6) on two occasions. The Board imposes the following penalty on The Alibi:

(1) In total, Alibi shall pay a fine of \$4,000, which is assessed as follows:

- a. For the violation described in Charge I in Case No. 16-CMP-00503, Alibi shall pay a fine of \$2,000.
- b. For the violation described in Charge I in Case No. 16-CMP-00600, Alibi shall pay a fine of \$2,000.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be recorded as two primary tier violations on Alibi's investigative history.

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 copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

Nick Alberti, Member



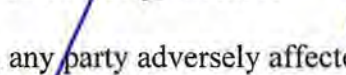
Mike Silverstein, Member



James Short, Member



Jacob Perry, Member



Pursuant to D.C. Official Code § 25-433(d)(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, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). 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) (2004).