

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

_____ )		
Melles Hospitality Group, LLC )	Case Number:	N/A
t/a The Alibi Restaurant & Lounge )	License Number:	93491
)	Order Number:	2014-129
Application for a New )		
Retailer's Class CR License )		
)		
at premises )		
237 2nd Street, N.W. )		
Washington, D.C. 20001 )		
_____ )		

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge  
Applicant

Andrew Kline, Counsel, on behalf of the Applicant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER AMENDING ORDER REQUIRING APPLICANT TO DEMONSTRATE  
FITNESS FOR LICENSURE UNDER § 25-301 AND PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER FINDING APPLICANT UNFIT FOR  
LICENSURE**

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The Alcoholic Beverage Control Board (Board) received an Application for a New Retailer's Class CR License (Application) from Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge (hereinafter "Applicant" or "Alibi") at premises 237 2nd Street, N.W., Washington, D.C. The Alcoholic Beverage Regulation Administration (ABRA) published notice of the Application in the District of Columbia (D.C.) Register and complied with the notice requirements of D.C. Official Code § 25-421. 60/47 D.C. Reg. 4614695 (Nov. 1, 2013). A

placard notifying the public was posted on November 1, 2013. Id. The Board held a Fact Finding Hearing regarding the Application on January 29, 2014.

On April 9, 2014, the Board issued a Notice Ordering Applicant to Demonstrate Fitness for Licensure Under § 25-301 (Notice) on the Alibi. Specifically, Count I alleges that Abraham Melles, Martin Scahill, and Hailemaryam Negash are unfit for licensure, because they permitted the consumption of alcohol on the premises in violation of D.C. Official Code § 25-102(d) on or about October 26, 2013, as well as on other occasions after August 2013. In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, Case No. N/A, Board Order No. 2013-119 (D.C.A.B.C.B. Apr. 9, 2014). Count II alleges that Mr. Scahill is individually unfit for licensure for the following separate reasons: (1) the Application is a means to avoid the \$21,500 in delinquent fines owed by Arias, Inc. t/a My Brother's Place, (My Brother's Place) ABRA License Number 071593 before its cancellation in August 2013, and (2) Mr. Scahill prior actions demonstrate a lack of desire and ability to prevent underage drinking in compliance with the law. Id.

The Board notes that the delinquent fines in this matter stem from Case Number 12-CMP-00717, where My Brother's Place failed to pay a \$5,000 fine; Case Number 12-CC-00117, where My Brother's Place failed to pay another \$5,000 fine; and Case Number 12-CMP-00538, where My Brother's Place failed to pay a \$6,500 fine. Therefore, the total amount of fines owed by My Brother's Place was \$16,500—not \$21,500 as indicated in the current Order.

### **ORDER**

Accordingly, the Board, on this 23rd day of April 2014 hereby **AMENDS** Board Order No. 2014-119 as follows:

- (1) All references to "\$21,500" shall be struck and replaced with the term "\$16,500."
- (2) All other terms and conditions of Board Order No. 2014-119 shall remain in full force and effect.

A corrected copy of Board Order No. 2014-119 is attached to this Order. ABRA shall serve a copy of this Order on the Applicant.

District of Columbia  
Alcoholic Beverage Control Board



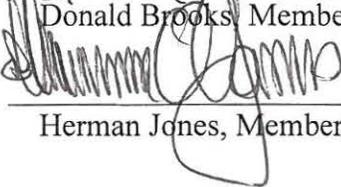
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member

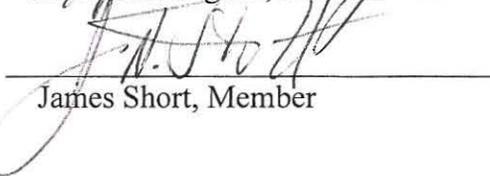


Herman Jones, Member

Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Under 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

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

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)	Board Order No.:	2014-119
<i>Applicant</i> )		
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Application for a New )		
Retailer's Class CR License )		
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237 2nd Street, N.W. )		
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_____ )		

To: Andrew Kline  
Counsel  
Veritas Law Firm  
1225 19th Street, N.W., Suite #320  
Washington, D.C. 20036

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**ORDER REQUIRING APPLICANT TO DEMONSTRATE FITNESS FOR LICENSURE  
UNDER § 25-301**

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The applicant is hereby directed to appear before the Alcoholic Beverage Control Board (Board), located at the Reeves Center, 2000 14th Street, N.W., Suite 400, Washington, D.C., Suite 400 on May 2, 2014 at 10:00 a.m. for a **Qualifications Hearing**.<sup>1</sup>

The purpose of the **Qualifications Hearing** is to determine whether the owners listed in the Application qualify for licensure under District of Columbia (D.C.) Official Code § 25-301. Because this hearing may result in an administrative action or order that impacts your rights, the hearing shall be conducted as a contested case hearing using the procedures provided by the D.C. Administrative Procedure Act (D.C. APA) (D.C. Official Code § 2-501 *et seq.*) and the protest procedures described in Title 23 of the D.C. Official Code (Title 23). See 23 DCMR § 1600.5, 1606.1-1606.8 (West Supp. 2014). Please also note that Title 25 of the D.C. Official Code (Title 25) places the burden of proof on the applicant to demonstrate through substantial evidence that he or she meets the qualifications described in § 25-301. Citizens Ass'n of Georgetown, Inc. v.

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<sup>1</sup> This date and the time of the hearing may be changed to accommodate the applicant and any potential witnesses.

D.C. Alcoholic Beverage Control Bd., 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2014).

All pleadings, or any other written communication, addressed to the Board, should be delivered to Martha Jenkins, General Counsel, 2000 14th Street, N.W., Suite 400, Washington, D.C. **You or your legal counsel, if represented, should contact General Counsel Martha Jenkins at (202) 442-4456 upon receipt of this notice to discuss any potential settlement, consent order, or stipulation that you want the Board to consider in lieu of a Qualifications Hearing in accordance with § 2-509(a).**

The basis of the contemplated action is certain information received by the Board. Specifically, the counts upon which this notice is based are set forth below:

**Count I: Abraham Melles, Martin Scahill, and Hailemaryam Negash lack good character and are generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) based on their violation of D.C. Official Code § 25-102(d). In addition, based on this violation, the Board may deny the license under 23 DCMR § 401.1.**

This determination is supported by the following facts:

On or about October 26, 2013, as well as on other occasions after August 2013, the owners permitted the consumption of alcohol on the premises in violation of D.C. Official Code § 25-102(d). Additional facts, as well as the legal basis, supporting Count I are also found in the transcript of the Alibi Fact Finding Hearing that occurred on January 29, 2014, and the Proposed Findings of Fact, Conclusions of Law, and Order Finding Applicant Unfit for Licensure (Proposed Order), which are incorporated herein by reference and made part hereof.

**Count II: Martin Scahill lacks good character and is generally unfit for the responsibilities of licensure in accordance with D.C. Official Code § 25-301(a)(1) based on the following facts:**

This determination is supported by the following facts:

Mr. Scahill may be unfit for licensure based on his involvement as a shareholder, officer, manager, and owner of Arias, Inc. t/a My Brother's Place, (My Brother's Place) ABRA License Number 071593. Specifically, the Board may find Mr. Scahill unfit for the following separate reasons:

First, the present application was filed for the same address as My Brother's Place, two months after the Board cancelled its license, and is a bald attempt by Mr. Scahill to evade the \$16,500 in unpaid delinquent fines incurred by his prior establishment.

Second, the character and reputation of My Brother's Place as an establishment that permitted underage drinking, as well as Mr. Scahill's direct role in the failure of the establishment to properly screen identifications and prevent underage drinking, shows that Mr. Scahill does not have the desire or ability to properly superintend a licensed establishment in compliance with the law.

Additional facts, as well as the legal basis, for Count II are also found in the transcript of the Alibi Fact Finding Hearing that occurred on January 29, 2014, and the Proposed Order, which are incorporated herein by reference and made part hereof.

All documents referenced in this notice and the attached Proposed Order are incorporated by reference, and also form the basis of the counts described above. Please contact William Hager, Public Information Officer, at (202) 442-4425 or [william.hager@dc.gov](mailto:william.hager@dc.gov) if you wish to obtain copies of any document cited in this notice or the Proposed Order.

Please also note that the Board has the right to obtain additional information regarding the application under 23 DCMR § 1611.1. **The Board is requesting that you provide the following information in a sworn affidavit at least fifteen (15) days before the Qualifications Hearing:**

- (1) Disclosure of the name and address of any and all licensed establishments that the above-mentioned individuals currently own or hold a direct or indirect interest in, whether located within or outside the District of Columbia;
- (2) Disclosure of the name and address of any and all licensed establishments that the above-mentioned individuals previously owned, or held a direct or indirect interest in, in the past ten years, whether located within or outside the District of Columbia;
- (3) Disclosure of the dates in which the above-mentioned individuals ever owned or held an interest in any establishment disclosed in question (1) or (2); and
- (4) Disclosure of any administrative actions taken against the establishments described above.

Your failure to provide the requested information may result in a negative inference that the above-mentioned owners have a prior operating history that does not support their claim of good character and fitness for licensure under § 25-301(a)(1). Namerdy v. Generalcar, 217 A.2d 109, 112 (D.C. 1966). In addition, if you fail to provide this information, the Board reserves the right to hold the hearing in abeyance while ABRA investigates the operating history of the above-mentioned owners, or, in the alternative, to issue subpoenas against the above-mentioned individuals requiring them to provide the requested information.

While not intended as a limit on the Board's authority to call its own witnesses, the Board specifically reserves the right to call any of the following individuals as witnesses to provide testimony or rebuttal evidence: ABRA Investigators Erin Mathieson; ABRA Investigator Abyie Ghenene; ABRA Compliance Analyst Neal Adejunmobi; former ABRA Investigator Tyrone Lawson; former ABRA Investigator Brian Molloy; MPD Detective David Carter; Rachel Wainer; any person described in the Proposed Order; and representatives of Catholic University.

If the Board finds that any of the owners participating in the application are unfit for licensure, this may result in the denial of the application, as well as an inability of the above-mentioned owners from renewing alcohol licenses or participating in other licensed establishments in the District of Columbia. In addition, in lieu of denying the application, the Board may impose conditions on the license under D.C. Official Code §§ 25-301 and 25-104(e), which include, but are not limited to:

- (1) the exclusion of specific owners from participating, financing, or working at the proposed establishment;
- (2) the payment of all unpaid fines owed by My Brother's Place before its cancellation;
- (3) a prohibition on the possession of an entertainment endorsement;
- (4) a limitation on the establishment's hours and occupancy;
- (5) the imposition of mandatory training for all staff by a third party on a regular basis;
- (6) the imposition of mandatory operating procedures related to preventing underage drinking and checking identifications; and
- (7) the imposition of mandatory operating procedures ensuring that the establishment operates as a restaurant.

Finally, any information obtained during these proceedings may be used by ABRA or forwarded to other government agencies to support additional administrative or criminal actions against the applicant or the individual owners.<sup>2</sup>

Under D.C. Official Code § 2-509(b), you may personally appear at the hearing, and you, as well as the applicant, may be represented by legal counsel. At your scheduled hearing, you have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may also examine evidence produced and have subpoenas issued on your behalf to require the production of witnesses and evidence.

The Board reserves the right to amend this notice in accordance with D.C. Official Code § 2-509 based on new information that is discovered during the hearing process. The Board also reserves the right to schedule additional hearings to address preliminary motions or additional information received by the Board during the hearing process.

All hearings are conducted before the Board in the English language. If a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the Board for the appointment of a qualified interpreter.

Please note that under § 2-509, your failure to appear at the time and place set for the hearing, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter or entering a default judgment.

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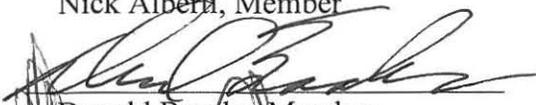
<sup>2</sup> Please be aware that a violation of D.C. Official § 25-102 may be deemed a misdemeanor criminal offense in the District of Columbia. D.C. Official Code §§ 25-102, 25-801(d)-(e).

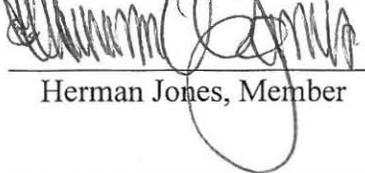
## **ORDER**

Therefore, the Board, on this 9th day of April 2014, hereby orders that Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, demonstrate to the satisfaction of the Board that it qualifies for licensure under D.C. Official Code § 25-301 in accordance with this Order.

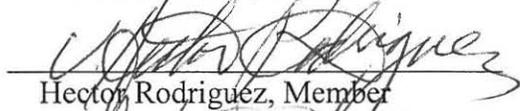
District of Columbia  
Alcoholic Beverage Control Board

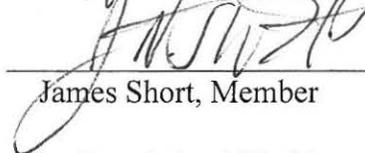
  
\_\_\_\_\_  
Nick Alberti, Member

  
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Herman Jones, Member

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Mike Silverstein, Member

  
\_\_\_\_\_  
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\_\_\_\_\_  
James Short, Member

I concur with the majority opinion that the Board should hold a qualifications hearing with respect to the Applicant in this case to resolve concerns regarding Mr. Scahill's involvement in selling alcohol to minors during his tenure at My Brother's Place, concerns regarding whether the owners of Alibi permitted the consumption of alcohol on its premises in violation of D.C. Official Code § 25-102(d) and concerns regarding whether Mr. Scahill is responsible for fines incurred by a previous establishment in which he owned 8% interest. I dissent to this order to the extent that the standards upon which the Applicant will be judged are not clear.

I concur with the majority opinion that it is the Board's responsibility to satisfy itself that an Applicant is of good moral character.

§ 25-301(a) provides;

Before issuing, transferring to a new owner, or renewing a license, the Board shall determine that the applicant meets all of the following criteria:

- (1) The applicant is of good character and generally fit for the responsibilities of licensure.

D.C. Official Code § 25-301(a).

I also concur with the majority that in this instance, Mr. Scahill, is considered an Applicant. Under D.C. Official Code § 25-301 "Applicant" is defined in Section 25-101(6) of the statute, in relevant part, as follows: "'Applicant' means, as the context requires, the

individual applicant, each member of an applicant partnership, or limited liability company. . . .” D.C. Official Code § 25-101(6). Alibi is a limited liability company, of which Mr. Scahill owns 49% interest, and two other members own 36 % and 15% respectively. Accordingly, the Board is acting within its statutory authority to satisfy itself that Mr. Scahill is of good moral character under the statute.

D.C. Official Code § 25-301(a-1), a newly enacted statute provides guidance for applying this provision, stating in full:

To determine whether an applicant for a new license meets the criteria of subsection (a)(1) of this section, the Board shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.

§ 25-301(a-1).

Accordingly, I concur with the Board's review of the records to determine if there were prior violations by the Applicant and if an establishment was "controlled" by the Applicant.

I dissent in part to the majority opinion because, in my view, it is not clear under what standard the Applicant will be measured. The Court of Appeals has specifically cautioned this Board against standards which are unarticulated and unannounced, specifically with respect to this type of fitness hearing.

The proposed order appears to indicate that Mr. Scahill may be found unfit based on incident reports and outstanding fines regarding an establishment for which he had only an 8% ownership interest. It also appears that the Board may rely on Face Book postings. This would be a departure from past precedent that the Court of Appeals foresaw in James F. Haight v. District of Columbia Alcoholic Beverage Control Board, 439 A2d 487 (D.C. 1981). In the past, the Board has evaluated fitness under § 25-301 on the basis of whether the applicant has committed any illegal acts. Footnote 11 in Haight speaks directly to the point that while the criteria could be broader than that, the Board must first put applicants on notice as to its criteria. Footnote 11 states in full:

We do not necessarily suggest that the Board could never require more of its license applicants than mere compliance with the law. But in order to do so the Board must put applicants on fair notice by making public its criteria. Compare California v. La Rue, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972) (regulations restricting nude dancing in licensed establishments) with 4934, Inc. v. Washington, D.C. App., 375 A.2d 20, 24 (1977) (license could not be suspended for topless dancing absent "patently offensive" conduct or duly published regulations.)

Finally, this Board just two months ago stated in an order granting a license to an applicant whose character was also challenged under D.C. Official Code § 25-301 that "the Board rejects the use of any incident against a licensee that does not lead to a violation or a

formal finding.” See 301 Romeo, LLC t/a Romeo & Juliet, Case Number 3-PRO-00136, Board Order Number: 2014-045, ¶ 39 (D.C.A.B.C. January 29, 2014.).

As the Board has not publicized any other grounds for determining fitness, the Board should employ the standard articulated in Haight compliance with the law.

23 DCMR § 401.1 provides “The Board may deny a license to an applicant if evidence shows that the applicant has permitted at the establishment conduct which is in violation of this title.” Accordingly, this regulation should be the clear standard for judging the Applicant’s fitness with respect to conduct at My Brother’s Place and at Alibi, and any other laws that may apply to the Applicant’s conduct.

  
\_\_\_\_\_  
Ruthanne Miller, Chairperson

Under 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

**THE DISTRICT OF COLUMBIA  
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Andrew Kline, Counsel, on behalf of the Applicant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FINDING  
APPLICANT UNFIT FOR LICENSURE**

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*The Alcoholic Beverage Control Board (Board) issues the following proposed order in conjunction with the Order Requiring Applicant to Demonstrate Fitness for Licensure Under §25-301.<sup>1</sup>*

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<sup>1</sup> This Order does not represent the final opinion of the Board, and has been solely written to inform the Applicant of the specific facts and law that may support a finding that it is disqualified from licensure in accordance with D.C. Official Code § 2-509(a).

## INTRODUCTION

The Board denies the Application for a New Retailer's Class CR License filed by Alibi, because the ownership is disqualified under D.C. Official Code § 25-301(a). The Board finds Abraham Melles, Martin Scahill, and Hailemaryam Negash unfit for licensure, because they permitted the consumption of alcohol on their premises in violation of District of Columbia (D.C.) Official Code § 25-102(d) on or about October 26, 2013.

Separately, the Board finds Mr. Scahill unfit for licensure based on his involvement as an owner and manager of Arias, Inc. t/a My Brother's Place, (My Brother's Place) ABRA License Number 071593. Specifically, the Board finds Mr. Scahill unfit for the following separate reasons:

- (1) The present application was filed for the same address as My Brother's Place, two months after the Board cancelled its license, and is a bald attempt by Mr. Scahill to evade the \$16,500 in unpaid delinquent fines incurred by his prior establishment.
- (2) The character and reputation of My Brother's Place as an establishment that permitted underage drinking, as well as Mr. Scahill's direct role in the failure of the establishment to properly screen identifications, shows that Mr. Scahill does not have the desire or ability to properly superintend a licensed establishment.

For these reasons, the Board denies the Application filed by Alibi.

### *Procedural Background*

The Alcoholic Beverage Control Board (Board) received an Application for a New Retailer's Class CR License (Application) from Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge (hereinafter "Applicant" or "Alibi") at premises 237 2nd Street, N.W., Washington, D.C. The Alcoholic Beverage Regulation Administration (ABRA) published notice of the Application in the District of Columbia (D.C.) Register and complied with the notice requirements of D.C. Official Code § 25-421. 60/47 D.C. Reg. 4614695 (Nov. 1, 2013). A placard notifying the public was posted on November 1, 2013. *Id.* The Board held a Fact Finding Hearing regarding the Application on January 29, 2014.

On April 9, 2014, the Board issued and served a Notice Ordering Applicant to Demonstrate Fitness for Licensure Under § 25-301 (Notice) on the Alibi. Specifically, Count I alleges that Abraham Melles, Martin Scahill, and Hailemaryam Negash are unfit for licensure, because they permitted the consumption of alcohol on the premises in violation of D.C. Official Code § 25-102(d) on or about October 26, 2013, as well as on other occasions after August 2013. *Order Requiring Applicant to Demonstrate Fitness for Licensure Under § 25-301*, 2 (Apr. 9, 2014) [Notice]. Count II alleges that Mr. Scahill is individually unfit for licensure for the following separate reasons: (1) the Application is a means to avoid the \$16,500 in delinquent fines owed by Arias, Inc. t/a My Brother's Place, (My Brother's Place) ABRA License Number 071593 before its cancellation in August 2013, and (2) Mr. Scahill prior actions demonstrate a lack of desire and ability to prevent underage drinking in compliance with the law. *Notice*, 2.

## PROPOSED FINDINGS OF FACT

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

### I. Alibi's Application

1. Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge, filed an Application for a New Retailer's Class CR License on October 18, 2013. *Fact Finding File No. 93491, ABRA Application, 1 [ABRA Application]*. The Application lists the ownership as follows: Abraham Melles owns 36 percent; Martin Scahill owns 49 percent; and Hailemaryam Negash owns 15 percent. *Id.* The establishment also applied for an entertainment endorsement that would permit it to provide live entertainment, such as disc jockeys, and dancing. *Id.*
2. At the January 29, 2014 Fact Finding Hearing, Martin Scahill stated on the record that he owned an "8 percent" interest in the former Arias, Inc. t/a My Brother's Place, (My Brother's Place) ABRA License Number 071593, located at premises 237 2nd Street, N.W. *Transcript (Tr.)*, January 29, 2014, at 16-17.<sup>2</sup> Mr. Scahill further stated on the record that he became an owner of My Brother's Place on October 6, 2004. *Id.* at 19.

### II. My Brother's Place

3. The Board cancelled My Brother's Place License on August 14, 2013, because the establishment failed to submit a new renewal application after the Board dismissed the first renewal application, because the ownership failed to appear at a required hearing. *In re Arias, Inc. t/a My Brother's Place*, License No. 071593, Board Order No. 2013-366, 1 (D.C.A.B.C.B. Aug. 9, 2013) (Cease and Desist Order); *In re Arias, Inc. t/a My Brother's Place*, License No. 071593, Board Order No. 2013-373, 1 (D.C.A.B.C.B. Aug. 14, 2013) (Order Cancelling License).
4. My Brother's Place was located at the same address as the proposed location for Alibi. *Id.* The present Application was submitted approximately two months after the cancellation of My Brother's Place's license. *ABRA Application, 1.*
5. ABRA's records show that Mr. Scahill has had an active role in the operations and management of My Brother's Place. In response to a complaint from Catholic University, Mr. Scahill and Nelson Arias co-authored a letter explaining their reasons for busing Catholic University students to an event at the establishment and denying involvement in a Facebook advertisement targeting Catholic University students. *Case Report 10-CMP-00182*, Letter from Martin Scahill and Nelson Arias to Kathryn Jennings, 1-2 (Date of Occurrence: Feb. 18, 2010). Mr. Scahill also signed the certification on My Brother's Place renewal application on March 11, 2010. *ABRA Licensing File No. 071593, Class C Restaurant Renewal Application, 2 (2010).*

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<sup>2</sup> The Board has not found a record in My Brother's Place file that indicates Mr. Scahill is an owner. Nevertheless, based on the small percentage of his ownership, the establishment did not have to report the change. 23 DCMR § 601.1. The Board notes that Mr. Scahill signed the certification on the establishment's renewal application in 2010. *Infra.*, at ¶ 5.

During an audit conducted at My Brother's Place on July 29, 2010, Mr. Scahill represented the establishment and presented himself as the establishment's "Event Coordinator." *Case Report 10-AUD-0032*, 2 (Date of Occurrence: Jul. 29, 2010). As part of an underage drinking investigation, Mr. Scahill called ABRA Investigator Erin Mathieson on February 28, 2012, and referred to himself as an owner of My Brother's Place. *Case Report 12-251-00129*, 4 (Date of Occurrence: Feb. 26, 2012). Finally, during an underage drinking investigation on December 1, 2012, ABRA investigators found three underage minors consuming alcohol in the establishment, and discussed the violations with Mr. Scahill, who was acting as the establishment's manager during the investigation. *Case Report 12-CMP-00717*, 2 (Date of Occurrence: Dec. 1, 2012).

6. A 2013 Board Order shows that Mr. Scahill presented himself as the Respondent's General Manager to former ABRA Investigator Tyrone Lawson during a books and records investigation in 2012. *In re Arias, Inc. t/a My Brother's Place*, Case No. 12-CMP-00538, Board Order No. 2013-182, ¶¶ 3, 11 (D.C.A.B.C.B. May 22, 2013).

7. Mr. Scahill has further admitted that he worked at the establishment every weekend and checked identifications. *Tr.*, 1/29/14 at 50, 52-54; *Case Report No. 12-CC-00117*, Exhibit No. 3 (Date of Occurrence: Oct. 26, 2012) (Email from Martin Scahill to Rachel Wainer, Catholic University of America (Sept. 25, 2012)). This admission has been confirmed by the observations of ABRA Investigator Mathieson and ABRA Investigator Abyie Ghenene. *Id.* at 53, 56.

### III. Investigative History of My Brother's Place

8. The Investigative History of My Brother's Place shows that the establishment committed six sale to minor violations between 2006 and 2013.<sup>3</sup> In addition, before the Board canceled the license for My Brother's Place, the establishment had \$16,500 in delinquent fines, which were never paid. *Infra*, at ¶¶ 13-15. My Brother's history of sale to minor violations, as well the establishment's history of delinquent and outstanding fine payments are recounted below.

9. In 2006, in Case Number 7416, My Brother's Place agreed in an Offer-in-Compromise that it violated the District's sale to minor laws. *ABRA Licensing File No. 93491*, Investigative History, Case Number 7416. My Brother's Place paid a \$500 fine and received a one-day suspension of its license. *Id.*

10. In 2006, in Case Number 8004, My Brother's Place was found in violation of the District's sale to minor laws a second time. *ABRA Licensing File No. 93491*, Investigative History, Case Number 8004. My Brother's Place paid a \$1,000 fine and received a three-day suspension of its license. *Id.*

11. In 2010, in Case Number 10-CC-0031, My Brother's Place entered into a staff settlement admitting that it committed a sale to minor violation. *ABRA Licensing File No. 93491*, Investigative History, Case Number 10-CC-0031. My Brother's Place paid a \$3,000 fine and received a five-day suspension. *Id.*

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<sup>3</sup> District of Columbia law prohibits the sale of alcohol to anyone under the age of twenty-one. D.C. Official Code § 25-781(a)(1).

12. On June 15, 2012, My Brother's Place entered into a settlement agreement with ABRA admitting that it violated the District's sale to minor laws. *ABRA Licensing File No. 93491*, Investigative History, Case Number 12-251-00129. Under the terms of the agreement, My Brother's Place received a \$4,500 fine and a ten-day suspension of its license. *Id.*

13. On May 22, 2013, the Board found that My Brother's Place violated D.C. Official Code §§ 25-113(j)(3)(a) and 25-711(a) by failing to maintain adequate books or records and maintain a copy of its settlement agreement on the premises. *In re Arias, Inc. t/a My Brother's Place*, Case No. 12-CMP-00538, Board Order No. 2013-182, 2, 5 (D.C.A.B.C.B. May 22, 2013). The Respondent was fined \$6,500, and the Board activated a four-day suspension that had been stayed in Case Number 12-251-00129. *Id.* at 5. The Board noted the violations in the case constituted one primary tier violation and one secondary tier violation. *Id.* The Investigative History report for My Brother's Place shows that the establishment never paid the fine imposed by the Board in this matter, which was due on July 22, 2013. *Investigative History* (My Brother's Place, ABRA License No. 071593, Case Number 12-CMP-00538).

14. On July 17, 2013, in order to resolve Case Number 12-CC-0117, My Brother's Place entered into an Offer-in-Compromise (OIC) where it admitted that it violated D.C. Official Code § 25-781 (Sale to minors or intoxicated persons prohibited). *Show Cause File No. 12-CC-0117*, Hearing Disposition Form (Jul. 17, 2013). My Brother's Place was fined \$5,000 for the offense, and received a ten-day suspension of its license. *Id.* The sale to minor violation counted as a primary tier violation. *Id.* The Investigative History report for My Brother's Place shows that the establishment never paid the fine imposed by the Board in this matter, even though it was due on August 1, 2013. *Investigative History* (My Brother's Place, ABRA License No. 071593, Case Number 12-CC-0117).

15. In addition, on July 17, 2013, in order to resolve Case Number 12-CMP-0717, My Brother's Place entered into another OIC where it admitted that it violated § 25-781. *ABRA Show Cause File No. 12-CMP-0717*, Hearing Disposition Form (Jul. 17, 2013). My Brother's Place was fined \$5,000 for the offense, and received a ten-day suspension of its license. *Id.* The sale to minor violation counted as a primary tier violation. *Id.* The Investigative History report for My Brother's Place shows that the establishment never paid the fine imposed by the Board in this matter, even though it was due on August 1, 2013. *Investigative History* (My Brother's Place, ABRA License No. 071593, Case Number 12-CMP-0717).

#### **IV. Failure of My Brother's Place to Prevent Underage Drinking**

16. As an operation, My Brother's Place demonstrated repeatedly that it had deficient procedures to prevent underage drinking. *Infra*, at ¶¶ 17-28. In addition, My Brother's Place had a well-known reputation as a place where Catholic University students could engage in illegal underage drinking. *Infra*, at ¶¶ 18, 20, 28.

##### **a. Case Report No. 12-251-00129**

17. During an investigation on February 26, 2012, which was triggered by complaints from Catholic University, ABRA Investigators Mathieson and Ghenene found fourteen underage

patrons inside the establishment. *Case Report No. 12-251-00129*, 1 (Date of Occurrence: Feb. 26, 2012). On the night of the investigation, the establishment was marking patrons under twenty-one with “X’s” on their hands and gave them a wristband different from those patrons twenty-one years of age or older. *Id.* at 2. Notably, the investigators found three underage patrons consuming alcoholic beverages without a wristband. *Id.* at 4. Four underage patrons consuming alcoholic beverages had wristbands for patrons twenty-one years or older and stated that they did not require fake identification to obtain wristbands. *Id.* Furthermore, a number of the patrons who had used fake identification to gain entrance had used identifications of extremely poor quality. *Id.* Investigator Mathieson observed during her investigation that security did not appear to be monitoring the establishment for underage drinking. *Id.*

18. Hannah Kildruff, an eighteen-year-old female patron who did not possess any alcohol, advised Investigator Mathieson that My Brother’s Place “is known for serving underage kids and hands out wristbands to anyone.” *Id.* at 3. She also stated that the establishment has a reputation at Catholic University for permitting underage drinking. *Id.*

19. As a result of the investigation, Investigator Mathieson, Investigator Ghenene, representatives from Catholic University, and Mr. Scahill met to discuss the incident on February 26, 2012. *Id.* at 4. At the meeting, Mr. Scahill pledged to provide formal training to his employees and end “18 and over” parties. *Id.* He further pledged to deny entrance to individuals under the age of twenty-one after 10:00 p.m. *Id.*

20. Catholic University later provided ABRA and Mr. Scahill with an anonymous email from a student. *Id.* at Exhibit No. 7. The student reported that ADG, a Catholic University fraternity, was planning a party at My Brother’s Place, “a bar infamous for its drug usage and under age [sic] drinking.” *Id.* The student indicated that one of his friends got alcohol poisoning at the establishment and had to be taken to the hospital. *Id.* The student then stated, “Although it is labeled 21 to drink the promoters . . . hand out 21 bands to almost everyone and are ignoring the drinking laws . . . .” *Id.*

21. Nevertheless, on March 17, 2012, Mr. Scahill informed Investigator Mathieson that he was reneging on his promise. *Id.* at 6. According to Mr. Scahill, based on the training received by the establishment’s staff, he felt that My Brother’s Place could allow under twenty-one events. *Id.* He then pledged to keep patrons under the age of twenty-one restricted to certain areas and under constant supervision. *Id.* at 6.

22. The Board notes that the violations observed during the February 26, 2012 investigation were resolved by the settlement agreement where the establishment agreed to pay a \$4,500 fine and receive a ten-day suspension of its license. *Supra*, at ¶ 12.

**a. Case Report No. 12-CC-00117**

23. Another investigation of My Brother’s Place was triggered by a complaint from Catholic University’s Assistant Dean of Students. *Case Report No. 12-CC-00117*, 1, Exhibit No. 3 (Date of Occurrence: Oct. 26, 2012). Specifically, a student admitted to Catholic University’s administration that she became ill after consuming alcohol at My Brother’s Place on September

13, 2013. *Id.* The student further admitted that she had been given a wristband for patrons twenty-one years of age or older, even though she only displayed identification indicating that she was under the age of twenty-one. *Id.*

24. In response, on October 26, 2013, ABRA Investigators Mathieson and Ghenene conducted an investigation at the establishment and found eleven underage patrons inside the establishment. *Case Report No. 12-CC-00117*, 1 (Date of Occurrence: Oct. 26, 2012). They also observed that Mr. Scahill was checking identifications at the establishment at the time of their investigation. *Id.* at 2.

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

26. The Board notes that the violations observed during the October 26, 2013, investigation were resolved by an OIC where the establishment agreed to pay a \$5,000 fine for the offense, and received a ten-day suspension of its license. *Supra*, at ¶ 14.

27. Investigator Ghenene testified that Mr. Scahill frequently checked identifications at My Brother's Place. *Tr.*, 1/29/2014 at 56. The investigator noted that he has left ABRA's identification guide at the establishment in the past, but never saw anyone at the establishment use it. *Id.* at 57. Further, My Brother's Place had a habit of not challenging flawed identification documents, even when presented by individuals that looked extremely young. *Id.* at 90. Finally, based on his conversations with Mr. Scahill, it appears that Mr. Scahill has a belief that he has no responsibility whatsoever if an underage person enters the establishment with fake identification, even when the identification is obviously flawed. *Id.*

28. Investigator Mathieson further testified that over thirty students she has spoken with confirmed that My Brother's Place would accept "any ID." *Id.* at 57.

#### **V. Applicant's Violation of § 25-102**

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

*Facebook Posts*. Investigator Mathieson noted that Mr. Scahill was tagged in the post along with other people. *Id.*

## PROPOSED CONCLUSIONS OF LAW

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

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

### I. THE BURDEN OF PROVING CHARACTER AND FITNESS LIES ON THE APPLICANT.

32. The Applicant bears the burden of showing it qualifies for licensure under § 25-301(a)(1) through substantial evidence. *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2014). Furthermore, “[t]his obligation is not dependent upon whether or not anyone makes a character challenge . . .” *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998). Therefore, when the Board has doubts regarding an applicant’s character and fitness, “it may call for evidence to remove that doubt.” *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d at 672 (Hood, Chief Judge, concurring).

### II. ALIBI’S OWNERSHIP IS UNFIT FOR LICENSURE BECAUSE IT ALLOWED THE CONSUMPTION OF ALCOHOL ON THE PREMISES IN VIOLATION OF § 25-102(d).

33. On or about October 26, 2013, the Applicant permitted the consumption of alcohol on the premises without a license in violation of D.C. Official Code § 25-102(d).

34. “Before the Board may issue a license, it must determine that . . . [t]he application is of good character and generally fit for the responsibilities of licensure.” § 25-301(a)(1). Accordingly, under § 25-102(d),

No person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation or where facilities are especially provided and service is rendered for the consumption of alcoholic beverages who does not possess a license under this title shall permit the consumption of alcoholic beverages on the premises.

D.C. Official Code § 25-102(d); see also 23 DCMR § 213 (West Supp. 2014). Section 401.1 states, “The Board may deny a license to an applicant if evidence shows that the applicant has permitted at the establishment conduct which is in violation of this title.” 23 DCMR § 401.1 (West Supp. 2014).

35. In Shaw’s Tavern, the Board previously denied an application for licensure, because the owner permitted the consumption of alcohol on the premises without a license, which rendered the owner unfit for licensure. In re Shaw’s Tavern, LLC t/a Shaw’s Tavern, Case No. 11-CMP-00314, Board Order No. 2011-458, ¶¶ 22, 31 (D.C.A.B.C.B. Nov. 2, 2011). There, the owner operated a tavern that had not yet opened for business, but held a number of preopening events that featured the consumption of alcohol. In re Shaw’s Tavern, LLC t/a Shaw’s Tavern, Case No. 11-CMP-00314, Board Order No. 2012-018, 7 (D.C.A.B.C.B. Jan. 25, 2012). Because the owner had applied for a tavern license, the owner was operating an establishment that required the possession of a license before alcohol could be consumed on the premises under § 25-102(d). Id.

36. The Facebook post reported by Investigator Mathieson indicates that Alibi hosted a BYOB (“bring your own alcohol”) event at the establishment on or about October 26, 2013, without any sort of license or permit authorizing the event. Supra, at ¶ 29. In accordance with § 25-102(d) and the Board’s decision in Shaw’s Tavern, Alibi’s ownership was not permitted to allow the consumption of alcohol on its premises without a license issued by the Board. Therefore, Alibi’s violation of § 25-102(d) on or about October 26, 2013, renders the ownership unfit for licensure, and merits dismissal of the application under § 401.1.

### **III. MARTIN SCAHILL IS UNFIT FOR LICENSURE BASED ON HIS RECORD OF INVOLVEMENT IN THE OPERATIONS OF MY BROTHER’S PLACE.**

37. Separate and apart from the Board’s determination in Section II, the Board finds Martin Scahill individually unfit for licensure based on his record as an owner of My Brother’s Place.

38. “Before the Board may issue a license, it must determine that . . . [t]he applicant is of good character and generally fit for the responsibilities of licensure.” § 25-301(a)(1). If an applicant has owned other establishments in the District of Columbia, § 25-301(a-1) requires the Board to review “records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District’s alcohol laws and regulations by the applicant or *establishments owned or controlled by the applicant.*” D.C. Official Code § 25-301(a-1) (emphasis added). The term “Applicant” as it appears in Title 25 “means, as the context requires, . . . each member of an applicant partnership or limited liability company, or each of the principal officers, directors, and shareholders of an applicant corporation, or, if other than an

individual, the applicant entity.” § 25-101(6). Consequently, because Mr. Scahill served as a stockholder, owner, and manager of My Brother’s Place, the Board is entitled to look at the records pertaining to his involvement at that establishment in accordance with § 25-301(a-1). Supra, at ¶ 2.

**a. Mr. Scahill is unfit for licensure based on the \$16,500 in unpaid fines incurred during his prior ownership of My Brother’s Place.**

39. Taken alone, the \$16,500 in unpaid fines incurred by My Brother’s Place during Mr. Scahill’s ownership are sufficient grounds to find him unfit for licensure under § 25-301.

40. No provision in Title 25 assigns the responsibility to pay fines proportionally among owners based on their percentage of ownership. Instead, a correct and reasonable reading of Title 25 is that all owners, regardless of their share, are jointly and severally liable for all fines incurred by an establishment.

41. Furthermore, the Board is persuaded that the reasoning of the District of Columbia Court of Appeals decision in 800 Water Street should be applied to applicants that attempt to avoid fine payments by allowing their license to expire, and then applying for a new license with a new entity. The Board notes that “[w]hen read as a whole, Title 25 . . . provides a comprehensive mechanism for the Board “to issue and renew liquor licenses and to monitor the compliance by licensees with local statutes and regulations pertaining to the sale of alcohol.” 800 Water St., Inc. v. D.C. Alcoholic Beverage Control Bd., 992 A.2d 1272, 1274-75 (D.C. 2010) citing North Lincoln Park Neighborhood Ass'n v. Alcoholic Beverage Control Bd., 666 A.2d 63, 66 (D.C.1995). “The Board has a variety of statutory powers, some discretionary, some mandatory.” Id. at 1275 (quotations removed). “One of these powers allows the Board to . . .” fine a licensee for violations of Title 25 in accordance with “the schedule of civil penalties established under § 25-830.” Id.; D.C. Official Code § 25-823, (1). Allowing an applicant to disregard a previously issued fine by having its license cancelled, and then applying for a new license “would . . . render inoperative” the Board’s authority to fine licensees for violations of the law. 800 Water St., Inc., 992 A.2d at 1275. Construing the language of Title 25 otherwise, “would lead to the absurd result that the attendant consequence of a . . .” fine “. . . would be nullified at the licensee’s discretion.” Id. (quotation marks removed). Consequently, there is no requirement in the law that the Board blind itself to the fact that an applicant’s prior establishments have a history of unpaid delinquent fines.

42. Here, before the Board cancelled the license on August 14, 2013, My Brother’s Place incurred three separate fines—totaling \$16,500—which were never paid. Mr. Scahill has held an eight percent share of My Brother’s Place since 2004. Supra, at ¶ 2. Alibi’s Application, which requested a license at the same address as My Brother’s Place, was received by the Board on October 18, 2013, approximately two months after the license for My Brother’s Place was canceled. Supra, at ¶¶ 1, 4. Based on these facts, the Board can only conclude that the present application is a bald attempt on the part of Mr. Scahill to avoid paying the \$16,500 in unpaid delinquent fines accrued by My Brother’s Place by creating a new entity at the same address shortly after the cancellation of the previous license.

43. The Board further notes that the license was officially cancelled on August 14, 2014, which means all of the payments—one owed on July 22, 2013 and two owed on August 1, 2013—were late. *Supra*, at ¶¶ 13-15. The act of failing to pay a fine in a timely fashion, in and of itself, constitutes a violation of § 25-823(6) for failing to comply with the Board Orders imposing the fines. D.C. Official Code § 25-823(6).

44. The Board cannot allow Mr. Scahill—or any individual for that matter—to walk away “scot-free” from \$16,500 in unpaid delinquent fines by allowing his license to expire, forming a new entity, and then applying for a new license in the same location in the span of approximately two months.<sup>4</sup> As such, the Board finds Mr. Scahill unfit for licensure under § 25-301(a)(1) based on the large amount of unpaid delinquent fines incurred by My Brother’s Place during his ownership of the establishment.

**b. Mr. Scahill had a direct role in My Brother’s Place character and reputation as an establishment that permitted illegal underage drinking.**

45. Separate and apart from our determination in Section II(a), the record before the Board indicates that Mr. Scahill owned and managed an establishment that catered to underage patrons, and that he lacks the ability and desire to prevent underage drinking.

46. “Before the Board may issue a license, it must determine that . . . [t]he application is of good character and generally fit for the responsibilities of licensure.” § 25-301(a)(1).

47. In *Gerber*, the District of Columbia Court of Appeals found that the Board could consider an applicant’s ability to prevent underage drinking when determining whether an applicant is qualified for licensure. *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1195-96 (D.C. 1985). Specifically, the court approved the Board’s rejection of an application based on its conclusion that the applicant “would [not] take any special precautions to prevent the sale of alcoholic beverages to underage school children.” *Id.* at 1196.

48. Under § 25-781(a), “A person under 21 years of age, either for the person's own use or for the use of any other person . . .” D.C. Official Code § 25-781(a)(1). Further, under § 25-783(b), “A licensee or his agent or employee shall take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age. Any person who supplies a valid identification document showing his or her age to be the legal drinking age shall be deemed to be of legal drinking age.” D.C. Official Code 25-783(b).

49. My Brother’s Place garnered a well-known reputation as an establishment that catered to underage patrons seeking to drink illegally.<sup>5</sup> Multiple students reported to Catholic University

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<sup>4</sup> See *Street Road Bar & Grille, Inc. v. Pennsylvania Liquor Control Board*, 583 Pa. 72, 92 (P.A. 2005) (“A history of citations, and a consideration of the appropriateness of the applicant’s response to those citations, may suggest a lack of regard for the liquor laws.”).

<sup>5</sup> See *id.*, at 91 (saying the term “character is frequently used interchangeably with the word reputation” and noting that “[t]he method of proving character is by showing the general reputation of the person in the neighborhood in which he lives. What is proven, therefore, is not a person’s real character, but his

officials and ABRA investigators that the establishment regularly permitted illegal underage drinking and is known for not challenging flawed identifications. Supra, at ¶¶ 18, 20, 27-28. This reputation is well-earned, as the establishment obtained six sale to minor violations between 2006 and 2013. Supra, at ¶ 8.<sup>6</sup>

50. Mr. Scahill bears direct responsibility for My Brother's Place operation and reputation as an establishment that catered to underage drinkers. Mr. Scahill served as an owner of the establishment from October 6, 2004 to August 2013, when the Board cancelled the license of My Brother's Place. Supra, at ¶¶ 2-3. He also served as My Brother's Place point of contact with ABRA investigators during investigations; certified the establishment's renewal application in 2010; and represented the establishment at a meeting with Catholic University and ABRA investigators regarding underage drinking at the establishment. Supra, at ¶¶ 5, 6. He also had a personal role in My Brother's Place identification checking procedures by personally checking identifications at the establishment during the weekends. Supra, at ¶ 7.<sup>7</sup> Indeed, he was personally checking identification on the October 26, 2013, when ABRA investigators found eleven patrons engaging in illegal underage drinking. Supra, at ¶¶ 7, 24-25.

51. The Board also notes that Investigator Ghenene's observations of the establishment's identification checking procedures show that Mr. Scahill, along with other employees, failed to take any special precautions. Supra, at ¶ 27. He further observed that Mr. Scahill failed to screen identifications adequately, and would accept any identification regardless of whether the identification was clearly a fake. Id. As result, the Board has reason to doubt Mr. Scahill's ability to comply with § 25-783; thus, the Board is not convinced that Mr. Scahill has the desire or ability to take reasonable measures to prevent minors carrying obviously false identifications from obtaining alcohol.

52. Consequently, based on these facts, Mr. Scahill is even more unworthy to hold a license than the applicant described in Gerber. For these reasons, the Board finds Mr. Scahill unfit for licensure, because he lacks the ability or desire to comply with §§ 25-781 and 25-783.

### PROPOSED ORDER

Therefore, , the Board, on this \_\_\_th day of \_\_\_\_ 2014, finds that Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge is unfit for licensure under § 25-301 for the

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character as reputed among his neighbors, or what the consensus of opinion of the neighbors is as to his character.") (quotation marks removed).

<sup>6</sup> See id. at 92 ("The applicant's citation history in connection with other liquor licenses is extremely probative in order to accurately measure whether a person (or establishment) is reputable."); id. at 95 ("notions of double jeopardy do not bar consideration of "settled" citations in a civil proceeding where the question is the propriety of awarding a liquor license. The fact that the prior citations resulted in paid fines does not serve to expunge the violations, any more than service of a sentence would serve to expunge a conviction. The fact of the violations are probative of the character and reputation of the violator.")

<sup>7</sup> See also *Case Report No. 12-CC-00117*, Exhibit No. 3 (Mr. Scahill stated in an email, "I was working at the door that night, as I am every Saturday night.")

reasons stated in Counts I and II; therefore, the Application for a New Retailer's Class CR License is **DENIED**.

**IT IS FURTHER ORDERED** that Abraham Melles, Martin Scahill, and Hailemaryam Negash are prohibited from filing a successive application at 237 2nd Street, N.W. for five years under D.C. Official Code § 25-338.