

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

In the Matter of:	)	
	)	
Beg Investments, LLC	)	License No.: 76366
t/a Twelve Restaurant & Lounge	)	Case Nos.: 11-251-00241
	)	11-CMP-00352
	)	11-CMP-00458
Holder of a Retailer's Class CT License	)	Order No.: 2012-301
at premises	)	
1123-1125 H Street, N.E.	)	
Washington, D.C. 20002	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Beg Investments, LLC, t/a Twelve Restaurant & Lounge, Respondent  
  
Andrew Kline, Non-lawyer Representative, on behalf of the Respondent  
  
Amy Schmidt, Esq., Assistant Attorney General,  
on behalf of the District of Columbia  
  
Martha Jenkins, Esq., General Counsel  
Alcoholic Beverage Regulation Administration

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

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**INTRODUCTION**

We find that Beg Investments, LLC, t/a Twelve Restaurant & Lounge, (Respondent) violated District of Columbia Official Code § 25-823(6) on July 13, 2011, and October 9, 2011; whereby, the Respondent violated the conditions the Board placed on its license in Board Order Nos. 2011-289 and 2011-368 by distributing flyers promoting events on July 13, 2011, and failing to hire the Metropolitan Police Department (MPD) Reimbursable Detail for a disc jockey (DJ) performance hosted by the establishment on October 9, 2011. We dismiss the alleged violation of § 25-823(6) on August 30, 2011, because there is insufficient evidence to conclude

that the establishment had a disc jockey perform on that day. We find that the two violations merit a total fine of \$3,000.00.

*Procedural Background*

On February 2, 2011, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated January 25, 2012, on the Respondent located at premises 1123-1125 H Street, N.E., Washington, D.C. The Notice charged the Respondent with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent’s ABC-license:

- Charge I: [On July 13, 2011,] [y]ou failed to comply with an order of the Alcoholic Beverage Control Board, Order No. 2011-289 by using flyers to promote events at your establishment . . . .
  
- Charge II: [On August 30, 2011,] [y]ou failed to comply with an Order of the Alcoholic Beverage Control Board, Order No. 2011-368 by not hiring a Metropolitan Police Reimbursable Detail while a DJ was playing music at your establishment . . . .
  
- Charge III: [On October 9, 2011,] [y]ou failed to comply with an Order of the Alcoholic Beverage Control Board, Order [No.] 2011-368 by not hiring a Metropolitan Police Reimbursable Detail while a DJ was playing music at your establishment . . . .

*ABRA Show Cause File Nos. 11-251-00241, 11-CMP-00352, 11-CMP-00458, Notice of Status Hearing and Show Cause Hearing (Jan. 25, 2012).*

The parties came before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on March 14, 2012. The matter proceeded to a Show Cause Hearing on April 25, 2012.

**FINDINGS OF FACT**

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

1. The Respondent holds a Retailer’s Class CT License, ABRA License Number 76366. See ABRA Licensing File No. 76366. The establishment’s premises are located at 1123-1125 H Street, N.E., Washington, D.C. See id.

## I. Charge I

2. The Board placed two conditions on the Applicant's license in Board Order No. 2011-289, which was issued on June 22, 2011, after hearing a protest against the renewal of the Respondent's license. In re BEG Investments, LLC, t/a Twelve Restaurant & Lounge, Board Order No. 2011-289, 1, 5 (D.C.A.B.C.B. Jun. 22, 2011). The first condition stated, "the Applicant and its third-party promoters shall not use flyers to promote events at the establishment." Id. The second condition stated, "the Applicant shall hire MPD Reimbursable Detail whenever the establishment provides any entertainment permitted by the establishment's entertainment endorsement . . . ." Id.

3. After the Board issued Board Order No. 2011-289, Alcoholic Beverage Regulation Administration (ABRA) Investigator Tyrone Lawson visited the Respondent's establishment on July 13, 2011. *Transcript (Tr.)*, April 25, 2012 at 5-6. During Investigator Lawson's visit, he observed the establishment distribute flyers inside the establishment. *Tr.*, 4/25/12 at 6.

4. Specifically, Investigator Lawson observed a host stand with flyers to the right of the Respondent's front entrance. *Tr.*, 4/25/12 at 6, 18. According to Investigator Lawson, the flyers consisted of printouts advertising happy hour specials and promoting events occurring at the establishment. *Tr.*, 4/25/12 at 7-8, 24, 34. Investigator Lawson also observed patrons having the flyers on the host stand in their possession while inside the establishment. *Tr.*, 4/25/12 at 19.

## II. Charge II

5. Board Order No. 2011-368 later modified Board Order No. 2011-289 on August 10, 2011, in response to a request by the Respondent based on economic hardship. In re BEG Investments, LLC, t/a Twelve Restaurant & Lounge, Board Order No. 2011-368, 2-3 (D.C.A.B.C.B. Aug. 10, 2011). In response to the request, the Board changed the conditions on the Respondent's license. Id. First, we amended the prohibition on flyers to read, "the Applicant and its third-party promoters shall not distribute flyers that promote events at the establishment inside the establishment or within a half mile radius of the establishment." Id. Second, we amended the police detail provision to read, "the Applicant shall hire the MPD Reimbursable Detail whenever the establishment provides any DJs or live music as entertainment at the establishment. The MPD Reimbursable Detail shall be hired for a minimum of four hours and shall end no sooner than one hour after closing." Id. Thus, as of August 10, 2011, the Respondent was subject to the conditions outlined in Board Order No. 2011-368, and not those conditions contained in Board Order No. 2011-298. Id.

6. ABRA Investigator Jabriel Shakoor entered the Respondent's establishment on August 30, 2011. *Tr.*, 4/25/12 at 44. Upon entering, he went to the second floor of the establishment and observed an individual in the establishment's disc jockey booth. *Tr.*, 4/25/12 at 45. Investigator Shakoor did not get a clear look at the individual's activities inside the booth. *Tr.*, 4/25/12 at 49.

### III. Charge III

7. On October 9, 2011, ABRA Supervisory Investigator Craig Stewart received a complaint that the Respondent was offering entertainment without the presence of the MPD Reimbursable Detail. *Tr.*, 4/25/12 at 56. In response, Supervisory Investigator Stewart and ABRA Investigator Abyie Ghenene visited the Respondent's establishment. *Tr.*, 4/25/12 at 57.

8. Upon entering the establishment, Investigator Ghenene spoke with the Respondent's owner, Mr. Gibson, while Supervisory Investigator Stewart went to observe the establishment's second floor, where patrons were dancing. *Tr.*, 4/25/12 at 57. There, Supervisory Investigator Stewart saw a disc jockey with a laptop computer, soundboard, speakers, microphone, and headphones. *Tr.*, 4/25/12 at 57. Supervisory Investigator Stewart then walked up to the disc jockey and observed him manipulating the music selections, and he noted that the disc jockey was not just playing pre-recorded music. *Tr.*, 4/25/12 at 57-58. Furthermore, he observed the disc jockey speaking into a microphone, and observed the disc jockey attempt get the crowd excited about the music. *Tr.*, 4/25/12 at 83.

9. Supervisory Investigator Stewart then spoke to the Respondent's owner about the establishment's MPD Reimbursable Detail, which was absent on October 9, 2011. *Tr.*, 4/25/12 at 58, 61. Mr. Gibson claimed that he had applied to MPD to have the MPD Reimbursable Detail present on October 9, 2011. *Tr.*, 4/25/12 at 58. Mr. Gibson further claimed that MPD owed him a credit for September 2011.

10. Nevertheless, Mr. Gibson could not produce a document upon Supervisory Investigator Stewart's request that showed that he had hired the MPD Reimbursable Detail starting on Saturday, October 8, 2011, going into Sunday, October 9, 2011. *Tr.*, 4/25/12 at 61. Specifically, while Mr. Gibson produced an email where he asked for the MPD Reimbursable Detail, he could not show Supervisory Investigator Stewart a response from MPD. *Tr.*, 4/25/12 at 66. In addition, Mr. Gibson could not produce proof showing that he had paid for MPD Reimbursable Detail services for October 9, 2011. *Tr.*, 4/25/12 at 72. Supervisory Investigator Stewart noted that he waited approximately 35 to 40 minutes inside the establishment while Mr. Gibson attempted to retrieve documentation regarding the establishment's MPD Reimbursable Detail. *Tr.*, 4/25/12 at 65-66.

### CONCLUSIONS OF LAW

11. The Board has the authority to levy fines, as well as suspend or revoke the license of a licensee who violates any provisions of Title 25 of the District of Columbia Official Code or Title 23 of the District of Columbia Municipal Regulations. D.C. Code §§ 25-830, 25-823(1) (West Supp. 2012); see also 23 DCMR § 800, *et. seq.* (West Supp. 2012). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Code §§ 25-830, 25-447 (West Supp. 2012).

12. Based on the admitted evidence presented by the Government, we deny the Respondent's motion to dismiss the case for lack of evidence, because we find that there is sufficient eyewitness testimony in the record to sustain Charges I and III. Specifically, we find that on July 13, 2011, the Respondent distributed flyers to patrons by making them available on a host stand near the establishment's entrance in violation of Board Order No. 2011-289. Furthermore, while we dismiss Charge II for insufficient evidence, we find that the Respondent failed to hire the MPD Reimbursable Detail for a disc jockey performance on October 9, 2011, in violation of Board Order No. 2011-368.

### I. Charge I

13. We first find that the Respondent violated Board Order No. 2011-289 by distributing flyers to patrons by making available a host stand containing flyers advertising events at the establishment.

14. Under § 25-823(6), it is a violation for a licensee to fail to follow a Board Order. D.C. Code § 25-823(6) (West Supp. 2012). On July 13, 2011, the Applicant was subject to Board Order No. 2011-289, which stated, "the Applicant and its third-party promoters shall not use flyers to promote events at the establishment." In re BEG Investments, LLC, t/a Twelve Restaurant & Lounge, Board Order No. 2011-289, at 5.

15. During the hearing, the Respondent challenged the charge by arguing the prohibition against distributing flyers in our Order is vague and ambiguous. We note that any law or order that creates penalties "is void on vagueness grounds when it provides no standards by which conduct falling within its scope may be ascertained [because it] infringes upon due process rights by failing to provide fair warning of what is prohibited." Parnigoni v. District of Columbia, 933 A.2d 823, 826 (D.C. 2007).

16. Yet, the term flyers, as used in Board Order No. 2011-289, is well-defined. According to the dictionary, a flyer is any "circular or pamphlet for mass distribution." Webster's II New College Dictionary (2001) (flier or flyer). In turn, the dictionary defines a circular as "A printed advertisement . . . for mass distribution." Id. (circular). Under the commonly understood meaning of the word "flyer," a reasonable person would recognize that the Order was prohibiting the Respondent from distributing printed advertisements to prevent litter. Therefore, we find that Board Order No. 2011-289 is not vague, and provides fair notice of the prohibited conduct in question.

17. Turning to the merits of the charge, we find that the Respondent distributed flyers that promoted events in violation of Board Order No. 2011-289. We credit Investigator Lawson's eyewitness testimony that he observed a host stand near the establishment's entrance that contained flyers advertising happy hours specials and future events. Supra, at ¶ 4. We further credit Investigator Lawson's testimony that patrons had the flyers available on the host stand in their possession. Id.

18. We disagree with the Respondent's argument that leaving the flyers on the host stand is not distribution. The term distribute is defined by the dictionary as "to deliver or give out."

Webster's II New College Dictionary (distribute). It is not incongruent with the common understanding of the word "distribute" to say, by analogy, that a newspaper company distributes newspapers by leaving them on a newspaper rack for the reading public; or that a teacher distributed handouts to the class by leaving them in the front of the room for students to take as they entered the classroom. As these examples show, the Respondent's act of leaving flyers out on a host stand near the establishment's entrance for patrons to take falls comfortably within the meaning of the word "distribute."

19. Therefore, we find that the Respondent violated our condition against the distribution of flyers, by leaving printed advertisements on a host stand near the establishment's entrance for patrons to take.

20. We further reject the Respondent's contention that our prohibition on the distribution of flyers in Board Order No. 2011-289 violates the First Amendment, because our condition on the Respondent's license is a proper time, place, and manner restriction.

21. The First Amendment states, "Congress shall make no law . . . abridging the freedom of speech . . ." U.S. Const. amend. I. Yet "the First Amendment allows the government to "impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." In re T.L., 996 A.2d 805, 812 (D.C. 2010).

22. We imposed the condition against distributing flyers on the Respondent's license based on the substantial evidence presented during a protest hearing that the establishment's flyers were generating a "large amount[] of litter." Supra, at ¶ 5; In re BEG Investments, LLC, t/a Twelve Restaurant & Lounge, Board Order No. 2011-289, ¶ 16. Our concerns regarding litter came directly from the statute under which we adjudicated the Respondent's Application to Renew its Retailer's Class CT License. There, under District of Columbia Official Code §§ 25-313(b)(2) and 25-726(a), we were instructed by law to consider the establishment's effect on litter, and whether the establishment had taken "reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, [were] kept free from litter." D.C. Code §§ 25-313(b)(2), 25-726(a) (West Supp. 2012).

23. Nevertheless, in spite of the requirements imposed by law, the evidence demonstrated that the Respondent was creating litter. Specifically, during the protest hearing, we credited the testimony of Amy Dunn, a neighbor, who testified that she observed flyers produced by the establishment's promoters every weekend "on the windshields of all the cars in the neighborhood, in the neighborhood's tree boxes, and on the ground." Id. at ¶ 11. As such, our preventative condition on the Respondent's ability to distribute flyers was narrowly tailored to the facts adduced at the hearing, did not distinguish between the types of events the Respondent could hold, did not prohibit other forms of advertisement, and upheld our significant governmental interest in ensuring the Respondent complied with the law.

## II. Charge II & III

24. Turning to Charge II and III, we find that there is insufficient evidence to sustain the alleged violation of Board Order No. 2011-386 observed by Investigator Shakoor on August 30, 2011. Nevertheless, there is sufficient evidence in the record to find that the establishment had a disc jockey on October 9, 2011, and did not hire the MPD Reimbursable Detail in violation of our Order.

25. As we noted above, it is a violation for a licensee to fail to follow a Board Order. D.C. Code § 25-823(6) (West Supp. 2012). In Board Order No. 2011-368, which amended Board Order No. 2011-289, we stated, “the Applicant shall hire the MPD Reimbursable Detail whenever the establishment provides any DJs or live music as entertainment at the establishment. The MPD Reimbursable Detail shall be hired for a minimum of four hours and shall end no sooner than one hour after closing.” In re BEG Investments, LLC, t/a Twelve Restaurant & Lounge, Board Order No. 2011-368, at 3. We note that the Merriam-Webster dictionary defines disc jockey as “one who plays recorded music for dancing at a nightclub or party.” Merriam-Webster, “disc jockey,” m-w.com, (last visited June 28, 2012), <http://www.merriam-webster.com/dictionary/disc%20jockey>.<sup>1</sup>

26. Regarding Charge II, we are not convinced that there is substantial evidence in the record to sustain the charge. Specifically, on August 30, 2011, Investigator Shakoor did not get close enough to the person in the disc jockey booth to determine the function of the person and the machines in the booth. Supra, at ¶ 6. Consequently, we dismiss Charge II, because it is unclear whether the Respondent had entertainment that required the presence of an MPD Reimbursable Detail.

27. In contrast, we find that Supervisory Investigator Stewart’s testimony shows that the Respondent violated Board Order No. 2011-368 on October 9, 2011. Here, Supervisory Investigator Stewart observed patrons dancing as an individual manipulated music selections, and spoke to the crowd with the intent of getting them excited about the music. Supra, at ¶ 8. Under these circumstances, we are convinced that the individual playing recorded music at the Respondent’s establishment constituted a disc jockey, based on the common understanding of the term.

28. We further find that the Government made a prima facie case that the Respondent did not hire the MPD Reimbursable Detail on October 9, 2011. There is no evidence in the record that shows Mr. Gibson applied a credit or paid for the services of an MPD Reimbursable Detail on October 9, 2011. Supra, at ¶ 10. While Supervisory Investigator Stewart personally observed an email from Mr. Gibson, which asked for the MPD Reimbursable Detail, there is no evidence that

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<sup>1</sup> We note that we did not use the Webster’s II New College Dictionary for this definition, because the definition found there is sorely out of date. There, the Webster’s II New College Dictionary defines a disc jockey solely as “A radio announcer who presents and comments on phonograph records.” Webster’s II New College Dictionary (disc jockey). Based on the proliferation of newer methods of distributing music, like mp3s and internet streaming audio, and the common understanding of the word disc jockey in the hospitality industry, we find the online version of the Merriam-Webster dictionary more current and accurate.

Mr. Gibson consummated the transaction—which explains the absence of the MPD Reimbursable Detail on that night. Supra, at ¶¶ 9-10.

29. We are further convinced of this conclusion, because Mr. Gibson took approximately 35 to 40 minutes to obtain the MPD Reimbursable Detail information requested by Supervisory Investigator Stewart. Supra, at ¶ 10. Based on the inordinate amount of time Supervisory Investigator Stewart had to wait, we can presume that if Mr. Gibson had additional information in his possession, he would have provided it to Supervisory Investigator Stewart—if it existed.

30. For these reasons, we find that on October 9, 2011, the Respondent had a disc jockey perform without an MPD Reimbursable Detail present in violation of Board Order No. 2011-368.

### **ORDER**

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 11th day of July 2012, finds that the Respondent, Beg Investments, LLC, t/a Twelve Restaurant & Lounge, committed two violations of District of Columbia Official Code § 25-823(6). The Board hereby **ORDERS** that

- (1) Charge II is dismissed;
- (2) For the violation described in Charge I, the Respondent shall pay a fine of \$1,500.00 no later than thirty (30) days from the date of this Order; and
- (3) For the violation described in Charge III, the Respondent shall pay a fine of \$1,500.00 no later than thirty (30) days from the date of this Order.

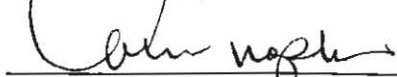
The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.



District of Columbia  
Alcoholic Beverage Control Board



Nick Alberti, Member



Calvin Nophlin, Member



Mike Silverstein, Member

I concur with the majority of the Board's decision as it relates to Charges II and III, but dissent as to the Board's decision related to Charge I.



Ruthanne Miller, Chairperson

I concur with the majority of the Board's decision as it relates to Charges II and III, but abstain from the decision as it relates to Charge I.



Donald Brooks, Member

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

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