

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

**In the Matter of:** )  
DC Live, LLC )  
t/a XO )  
Holder of a ) Case No.: 16-251-00277  
Retailer's Class CT License ) License No.: ABRA-100316  
at premises ) Order No.: 2017-522  
15 K Street, NE )  
Washington, D.C. 20002 )

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

**ALSO PRESENT:** Ermiyas Asfaw, on behalf of DC Live, LLC, t/a XO, Respondent  
  
Walter Adams, II, Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
  
Pete Chatrabhuti, Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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The Alcoholic Beverage Control Board (Board) finds that DC Live, LLC, t/a XO (Respondent), violated District of Columbia (D.C.) Official Code § 25-823(a)(5) on November 13, 2016. As a result, the Respondent must pay a \$2,000 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on July 5, 2017. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 15 K Street, NE, Washington, D.C., on July 15, 2017.

The Notice charged the Respondent with the following violation:

Charge I: [On Sunday, November 13, 2016] [y]our failed or refused to allow an ABRA investigator and members of the Metropolitan Police Department to examine the books and records of the business or otherwise interfered with an investigation, in violation of D.C. Official Code § 25-823(a)(5)...

*ABRA Show Cause File No. 16-251-00277, Notice of Status Hearing and Show Cause Hearing, 2-3 (July 5, 2017).*

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Status Hearing on August 2, 2017, where there was no settlement of the matter. The parties argued their respective cases at the Show Cause Hearing held on September 27, 2017.

## **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. Background**

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated July 5, 2017. See ABRA Show Cause File No. 16-251-00277. DC Live, LLC, t/a XO, holds a Retailer's Class CT License, ABRA License No. ABRA-100316. See ABRA Licensing File No. ABRA-100316. The establishment's premises is located at 15 K Street, NE, Washington, D.C. See ABRA Licensing File No. ABRA-100316.

2. The Show Cause Hearing was held on September 27, 2017. The Notice charges the Respondent with the violation enumerated above. See ABRA Show Cause File No. 16-251-00277.

### **II. Testimony of ABRA Supervisory Investigator John Suero**

3. The Government presented its case through the testimony of ABRA Investigator John Suero. *Transcript (Tr.) 9/27/17 at 10.*

4. On November 13, 2016, Supervisory Investigator Suero received a telephone call from Metropolitan Police Department (MPD) informing him that an assault occurred at the Respondent's establishment. *Id.* at 11.

5. Supervisory Investigator Suero went to the establishment to investigate the incident. *Id.* He met with MPD officers upon his arrival. *Id.* at 12. MPD stated that a patron alleged that he was assaulted inside of the establishment by a member of Respondent's security staff near the bar area. *Id.* at 12-13.

6. Supervisory Investigator Suero and MPD entered the establishment and met with Ermiyas Asfaw, the owner of the establishment. *Id.* at 12. They informed Mr. Asfaw about the assault allegations and requested the video footage from the establishment's security camera system. *Id.* at 13. After viewing the video footage onsite, Supervisory Investigator Suero requested copies of the footage of all camera angles to include the bar area where the alleged assault happened. *Id.* at 13, 17. Supervisory Investigator Suero made this request at approximately between 1:00 a.m. to 3:00 a.m. *Id.* at 16-17. He specifically advised Mr. Asfaw that ABRA and MPD would need a copy of the video footage in furtherance of the investigation. *Id.* at 17.

7. Supervisory Investigator Suero provided Mr. Asfaw with his business card which contained his contact information. *Id.* at 17. He wrote on the back of the business card exactly what camera video he needed, the camera views and angles, and in particular the view of the bar area, so that he could continue with the investigation. *Id.* at 14, 17. Supervisory Investigator Suero testified that he did not receive the video footage from Mr. Asfaw as he had requested on the night of the incident. *Id.*

8. Several days after incident on November 13, 2016, Supervisory Investigator Suero received an email from Mr. Asfaw stating that he was out of town due to a family emergency. *Id.*

9. Supervisory Investigator Suero then assigned the case to Investigator Jason Peru, who was advised to contact Mr. Asfaw to obtain the previously requested camera video footage. *Id.* at 20.

### **III. Testimony of ABRA Investigator Jason Peru**

10. ABRA Investigator Jason Peru also testified on behalf of the Government. *Id.* at 26.

11. Investigator Peru authored the Investigative Report, whose contents and exhibits serve as the basis of the factual nature of the incident. *Id.* at 32-35. Government's Exhibit 1.

12. Investigator Peru was assigned by Supervisory Investigator Suero to conduct the investigation of the assault that occurred on November 13, 2016 at the Respondent's establishment. *Id.* at 27. The investigation was based on a MPD PD-251 report received by ABRA's Enforcement Division. *Id.* Investigator Peru was not at the establishment the night of the alleged incident. *Id.* at 35.

13. Investigator Peru went to the Respondent's establishment on November 26, 2016 to further investigate the incident and to obtain a copy of the video footage previously requested by Supervisory Investigator Suero. *Id.* at 27, 36.

14. Mr. Asfaw told Investigator Peru that on the night of the alleged incident, Supervisory Investigator Suero met with him and viewed the surveillance video. *Id.* at 28. He acknowledged that Supervisory Investigator Suero advised him to retain the video footage and provide a copy to ABRA and MPD. *Id.*

15. Mr. Asfaw also stated that he had a family emergency in Florida, so he left for a couple of days after the date of the incident. *Id.* He indicated that when he returned a lot of the video footage was overwritten by new video footage. *Id.* Nevertheless, he was able to save video footage from several of the cameras but he could not save the video footage from the camera that captured the alleged assault near the bar area. *Id.* Mr. Asfaw provided two (2) thumb drive copies of the video footage to MPD. *Id.* at 29, 36, 45.

16. Mr. Asfaw informed Investigator Peru that he upgraded his video surveillance DVR system to store video footage for thirty (30) days instead of eight (8) days which is what it was storing at the time of the alleged incident. *Id.* at 28-29.

17. Mr. Asfaw stated that he was using Big John Protective Services the night of the alleged incident. *Id.* at 29, 117. He also indicated that he terminated the contract with John Protective Services for not properly responding to the incident. *Id.* at 29.

18. Investigator Peru also spoke to Sergeant Foskett about the video footage. *Id.* at 30. Sergeant Foskett stated that he received two (2) thumb drives from Mr. Asfaw. *Id.* However, none of the camera footage received from Mr. Asfaw showed the alleged incident. *Id.* The video footage from the bar area where the alleged incident happened was missing. *Id.* After Investigator Peru learned from Sergeant Foskett that the video did not cover the alleged assault, he concluded that the available video footage provided by Mr. Asfaw was not helpful to the investigation. *Id.* at 40-41.

19. Investigator Peru confirmed with Supervisory Investigator Suero, Mr. Asfaw and Sergeant Foskett that there was a camera facing the bar area where the alleged incident happened. *Id.* at 44, 50. However, the video footage was not properly retained by the Respondent and it was overwritten with new footage. *Id.* at 50.

#### **IV. Testimony of Ermiyas Asfaw**

20. Ermiyas Asfaw is the owner of the licensed establishment. *Id.* at 4. Mr. Asfaw stated that he was unsure of what happened the night of the alleged assault. *Id.* at 53-54. He did not know whether a security guard assaulted a patron or a patron was involved in an altercation with an individual who was wearing a black shirt. *Id.* at 54.

21. On the night of the alleged incident MPD interviewed the entire security team. *Id.* However, none of the security team admitted that they were involved in an altercation with a patron. *Id.*

22. Mr. Asfaw looked at every camera angle, but he did not see an incident. *Id.*

23. Mr. Asfaw stated that he was instructed by MPD to retain a copy of the video footage and to save it to a thumb drive for them to pick it up. *Id.* at 55. Supervisory Investigator Suero also asked for a copy of the video footage. *Id.* Mr. Asfaw indicated that he asked Sergeant Foskett to provide a copy of the video footage to ABRA and Sergeant Foskett agreed. *Id.*

24. Before Mr. Asfaw left for Florida on November 14, 2016, he saved the footage that was listed on Supervisory Investigator Suero's business card. *Id.* at 55, 67, 70. He saved

the video footage on two (2) thumb drives from 12:30 a.m. to 2:00 a.m. for all cameras located in the bar area. *Id.* at 56, 95. Mr. Asfaw delivered the thumb drives to Sergeant Foskett ten days later on November 24, 2016. *Id.* at 70.

25. Mr. Asfaw stated that by the time Investigator Peru visited the establishment and requested to see the original video footage, it was overwritten. *Id.* at 56. The cameras were in a continuous record mode which saved the video for no more than eight (8) days. *Id.* at 56, 93. Mr. Asfaw then upgraded the hard drive. *Id.* at 56. The hard drive was already upgraded when Investigator Peru visited the establishment on November 26, 2916. *Id.*

26. Mr. Asfaw claimed that Investigator Peru did not ask if a video copy of the alleged incident was available. *Id.* Mr. Asfaw also claimed that he was unaware that ABRA needed a copy of the video footage. *Id.* at 65. Mr. Asfaw indicated that he only gave a copy to MPD. *Id.* at 96-97. Further, Mr. Asfaw stated that Supervisory Investigator Suero asked for the video footage but he was never given instructions about how to deliver it to ABRA. *Id.* at 134.

27. Mr. Asfaw believed that ABRA and MPD were conducting the investigation together and that they were sharing information. *Id.* at 65. He was unaware that he had to produce two (2) copies of the video footage, one for ABRA and another for MPD. *Id.* at 66. If he had known, he would have also provided a copy to ABRA. *Id.*

28. Mr. Asfaw admitted that Supervisory Investigator Suero did not indicate that he was working for MPD. *Id.* at 71, 75. However, Mr. Asfaw stated that no one from ABRA followed up regarding the submission of a copy of the video footage. *Id.* at 73-74. However, Mr. Asfaw acknowledged that Supervisory Investigator Suero's business card specifically listed the camera information needed by ABRA. *Id.* at 74.

29. Mr. Asfaw denied that there was any missing video footage. *Id.* at 77. He stated that everything was contained in the camera footage that he saved and stored on the thumb drives. *Id.* Mr. Asfaw admitted that there are cameras pointing to the bar area. *Id.*

30. Mr. Asfaw stated that the only camera which could capture the alleged incident was the camera on the back wall of the bar area. *Id.* at 110. However, there was a rack of speakers installed in front of the stage which blocks the camera's view angle of the bar area and most likely blocked the recording of the incident. *Id.* He further stated that there was no video footage or evidence that confirms that the alleged incident occurred. *Id.* at 77-78.

31. Mr. Asfaw indicated that he provided Investigator Peru with a Security Plan. *Id.* at 57. Respondent's Exhibit 1. Since that day, he has not received any further communication from Investigator Peru. *Id.*

## **CONCLUSIONS OF LAW**

32. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause

Hearing, the Board is entitled to impose conditions if the Board determines “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. Official Code § 25-447.

## I. THE RESPONDENT VIOLATED § 25-823(a)(5)

33. The Board finds the Respondent liable for interfering with an ABRA investigation in violation of D.C. Official Code § 25-823(a)(5). The Board does not find the testimony of the Respondent credible, but rather credits the evidence in the record and the testimony of ABRA’s two investigators to sustain the charge brought by the Government.

34. The law cannot be more clear. D.C. Official Code § 25-823(a)(5) prohibits a licensee from interfering with an ABRA or MPD investigation.

35. The Board is persuaded that on November 13, 2016, ABRA investigators were thwarted in their efforts to obtain critical security camera video in order to determine whether an assault had taken place inside the Respondent’s establishment. The Respondent was requested by both Supervisory Investigator Suero and Investigator Peru on separate occasions to produce the video from the camera whose view angle covered the bar area where the assault was believed to have taken place. *Supra*, at ¶ 6, 14. The Respondent failed to turn the video footage over to ABRA as part of an ongoing investigation, and as a result, no determination was made as to the underlying violation of assault. *Supra*, at ¶ 7. Thus the Respondent hindered the investigation, and this act is sufficient to constitute a violation of § 25-823(a)(5).

36. Turning to the Respondent’s testimony, the Board finds it unreliable, misleading and evasive. He alternates between admitting that Supervisory Investigator Suero requested the video, but not knowing where to deliver the video, and then again admitting that he received Supervisory Investigator Suero’s business card with the necessary instruction. *Supra*, at ¶ 28. The Respondent places more blame on the ABRA investigators to explain away his failure to comply with the request to produce the video. *Supra*, at ¶ 26, 28.

37. Additionally, the Respondent’s testimony that he delivered the video to MPD to demonstrate compliance falls short. The video that was provided to MPD was overwritten, the quality was poor and nothing was visible with respect to the interior of the establishment, let alone an assault. *Supra*, at ¶ 19, 25.

38. Therefore, the Board sustains the charge brought by the Government.

## II. PENALTY

39. The Board finds that the Respondent’s behavior in this incident particularly repugnant. Cooperation by licensees in MPD and ABRA investigations and related enforcement actions are critical to the success of agency’s efforts to properly regulate the industry. The Respondent may believe he succeeded in thwarting ABRA’s efforts to investigate the assault, but his failure to fully comply with the investigator’s request has resulted in being liable for a different violation.

40. The violation in this case represents a first time primary tier violation. 23 DCMR § 805 (West Supp. 2017). The civil penalty schedule indicates that a violation of 25-25-823(a)(5) is not eligible for a warning. Id. As a matter of discretion, the Board is entitled to suspend or revoke the license of any licensee that violates § 25-823(a)(5). 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 of \$2000 for the reasons stated above.

## **ORDER**

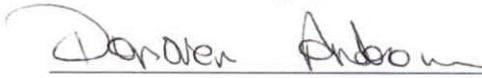
Based on the foregoing findings of fact and conclusions of law, the Board, on this 25 day of October, 2017, finds that the Respondent, DC Live, LLC, t/a XO, located at 15 K Street, NE, Washington, D.C., holder of a Retailer's Class CT license, violated D.C. Official Code § 25-823(a)(5).

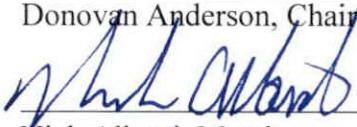
The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$2,000 by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

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

District of Columbia  
Alcoholic Beverage Control Board

  
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Donovan Anderson, Chairperson

  
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Nick Alberti, Member

  
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Mike Silverstein, Member

  
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James Short, 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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 (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).