

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

In the Matter of:)	
)	
Voyager 888, LLC)	Case No.: 19-251-00157
t/a Assets)	License No.: ABRA-113585
)	Order No.: 2023-030
Holder of a)	
Retailer's Class CN License)	
)	
at premises)	
1805 Connecticut Avenue, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
Bobby Cato, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: Voyager 888, LLC, t/a Assets, Respondent

Richard Bianco, Counsel, on behalf of the Respondent

Stephen Ortiz, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Voyager 888, LLC, t/a Assets, (hereinafter "Respondent" or "Assets") violated D.C. Official Code §§ 25-823(a)(2) and 25-823(a)(6) on October 19, 2019 where various assaults involving a patron and security occurred both inside and outside the premises; the establishment's security pursued a fleeing patron in the streets and the establishment's security manager attempted to intercept, kick, or trip that patron outside the establishment; the establishment's failed to contact the police at an appropriate time, which led to additional violence outside the establishment; and where the establishment violated

its security plan by failing to contact the police or appropriately recording the incident in the establishment's incident log. In light of these two violations, the Respondent shall pay a fine of \$2,000.

The Board further reminds the industry that it is vitally important to contact the police in response violent incidents in and around establishments. When an establishment fails to contact the police, this opens the door to violent patrons returning (and potentially with a weapon) to engage in revenge or retaliation that could endanger the public and everyone at the establishment. As the present case shows, this specific danger is not idle speculation.

Procedural Background

This case arises from the Notice of Status and Show Cause Hearing (Notice) for case 19-251-00157. *ABRA Show Cause File No. 19-251-00157*, Notice of Status and Show Cause Hearing. On March 29, 2022, the Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent. The Notice charges Respondent with allowing the establishment to be used for an unlawful or disorderly purpose and for violating the terms of its security plan. Specifically, the Notice charges the following violations:

Charge I: You allowed your licensed establishment to be used for an unlawful or disorderly purpose, for which the Board may take the proposed action under D.C. Code § 25-823(a)(2)

Charge II: You violated the terms of your Board-approved Security Plan by using excessive force on a patron, failing to contact police, and failing to create an incident log, in violation of D.C. Code § 25-823(a)(6), for which the Board may take a proposed action under D.C. Code § 25-823(a)(6).

Notice of Status Hearing and Show Cause Hearing, at 2.

The parties proceeded to a Show Cause Hearing and argued their respective cases on November 2, 2022. Both parties filed proposed findings of fact and conclusions of law, which were considered by the Board.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Voyager 888, LLC, t/a Assets, (Applicant) holds a Retailer's Class CN License at 1805 Connecticut Avenue, N.W., Washington, D.C. *ABRA License No. 113585*.
2. On October 19, 2019, ABRA Investigator George Garcia investigated an incident that had occurred at the establishment. *Transcript (Tr.)*, November 2, 2022 at 9. As part of his

investigation, the investigator interviewed several security guards that were working at the establishment on October 19, 2019.¹

3. During the investigation, Anthony Mays, one of the establishment's security staff members, indicated that the patron was ejected because he was "stealing money from strippers." *Id.* at 15. Mr. Mays further indicated that the patron had "assaulted him in the face and snatched his change and ran away." *Id.* at 15-16.

4. The investigator also interviewed the establishment's head of security, Burak Sahiner.² *Id.* at 16. At first, the head of security denied any incident took place and he further claimed that his security was not involved in any incident occurring on October 18, 2019. *Id.* Nevertheless, at a follow up interview, the head of security contradicted his earlier claim, and admitted that two security members were involved in an altercation. *Id.* at 17. He also interviewed Maurice Brisco, another security staff member, as part of his investigation. *Id.* at 42. The investigator indicated that during his interviews, security informed him that besides the persons he interviewed, no one else at the establishment was aware of the incident. *Id.* at 43.

5. The establishment provided video footage related to the incident on October 19, 2019. *Id.* at 21. The investigator noted that he specifically requested video footage related to the October 19, 2019, incident, and the video footage he received was provided by the establishment's owner or manager. *Id.* at 23. The establishment advised the investigator that the footage was from 2:00 a.m. to 2:30 a.m. *Id.* at 52.³

6. Video footage shows the aftermath of the ejection outside the establishment on October 19, 2019. *Id.* at 33-34. At around 2:02 a.m., a male patron appears from under the establishment's exterior canopy covering the entrance area. *Video Footage*, CH12_20191019_020000.ave at 2:16-2:19 [*Video Footage #1*].⁴ The video shows a security member pushing a patron away from the entrance and the patron stumbles off the sidewalk and into the street but remains standing. *Id.* The person steps back onto the sidewalk, a verbal altercation ensues, and security closes in on the patron. *Id.* at 2:19-2:29. The Board notes that one security member is wearing light colors, another is wearing dark colors, and the third is

¹ The Board notes that statements by a licensee's agents or employees are admissible as evidence under the admission of a party-opponent hearsay exception. *Pratt v. Dist. of Columbia*, 407 A.2d 612, 616 (D.C. 1979).

² The Order uses the spelling of the head of security's name contained in the Case Report. In the transcript, the head of security's name last name is spelled "Saheener."

³ The Board notes that the Respondent did not provide contravening testimony or evidence that the establishment provided incorrect or unrelated video footage, or otherwise failed to fulfill the request of the investigator. Moreover, the file name on the video and statements made by the establishment when turning the video over to ABRA supports an inference that the footage comes from the appropriate date and time, as well as the fact that the investigator could identify the head of the Respondent's security in the video. *Id.* at 30-31, 35. As a result, where the statements of the Applicant's agents corroborated the video through their statements, there is no contradictory direct testimony in the record, and the video was originally produced by the Applicant, the Board finds the footage truthful, reliable, reasonable, and credible even if the video qualifies as hearsay evidence. *See Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 476-477 (D.C. 2004).

⁴ The Board uses the file name contained in ABRA's records.

wearing lightly colored clothing with dark colored shoulders. *Id.* at 2:28-2:30. During the conversation, one security member wearing light colors puts his arm on the patron, the patron makes a motion to escape the touch, and moves into the street while the security member wearing light colors follows in close proximity. *Id.* at 2:25-2:32. While the patron and security member wearing light colors are face to face in the street, the security member attempts to punch or grab the patron. *Id.* at 2:30-2:33. In response, the patron breaks away and begins to flee up the street pursued by two security members, one wearing light colors and the other dark colors. *Id.* at 2:30-2:34. As the patron flees, the head of security, seen wearing light pants and a dark coat, then runs up and attempts to intercept and trip or kick the fleeing patron with his leg but misses. *Id.* at 2:34-2:36; *Tr.*, 11/2/22 at 35. The patron then run down the street followed by two security members. *Video Footage #1* at 2:35-2:36.

7. At approximately 2:05 a.m., the security member wearing light colors appears near the canopy. *Id.* at 5:04. The security member walks a few feet down the sidewalk after observing the patron in the crosswalk. *Id.* at 5:13-5:19. The security member wearing dark colors is then observed near the canopy. *Id.* at 5:19. The two security members stand near the canopy as the patron approaches. *Id.* at 5:24-5:31. A verbal altercation appears to ensue and the three security previously seen on the video move to surround the patron. *Id.* at 5:31-5:37. The patron turns away, walks down the sidewalk, returns to the group of security, and appears to verbally engage with security again. *Id.* at 5:37-5:57. The patron then backs down the sidewalk and the group of security follow. *Id.* at 5:37-6:01. While backing down the sidewalk, the patron changes direction and heads back towards the group of security members. *Id.* at 6:01-6:04. As the patron approaches the group, the patron puts his jacket and another object on a white vehicle parking nearby. *Id.* at 6:03-6:08. The patron then approaches the group while an additional security person wearing light colors walks around the back of the group of security, walks in the street, walks around a black vehicle parking in front of the white car, and goes in between the rear of the black vehicle and white vehicle to get behind the patron. *Id.* at 6:08-6:20.

8. Once behind the patron, the group of now four security converge to surround the patron, which prevents the patron from escaping. *Id.* at 6:19-6:21. Once security closes in on the patron, the security member wearing light colored clothes strikes at the patron with his arm. *Id.* at 6:20-6:22. The patron then stumbles back out of view of the camera. *Id.* at 6:21-6:23. The patron then flees down the sidewalk away from security. *Id.* at 6:22-6:31. The security member in light colored clothing then grabs the objects left on the car and the patron runs back towards the group. *Id.* at 6:28-6:35. When the patron reaches the security member holding his things, he strikes at the security member and there is an exchange of blows. *Id.* at 6:35-6:38. The group then converges on the patron, blows are exchanged between the group and the patron, and the patron flees down the sidewalk. *Id.* at 6:37-6:42. The patron then makes his way back to the group and additional blows are exchanged. *Id.* at 6:43-6:49. The head of security, seen earlier attempting to trip or kick the patron, then appears from the canopy and runs down the sidewalk towards the brawl. *Id.* at 6:47-6:52; *Tr.*, 11/2/22 at 35. The patron, the group of security staff, and the head of security converge, and are not visible for a small period of time. *Id.* at 6:52-7:12. The group of security and the head of security then head back towards the canopy. *Id.* at 7:12-8:17. The whereabouts of the patron are unknown after leaving view of the camera.

9. The Respondent's security plan provides the following requirements:

The manager on duty will be alerted to an altercation by security personnel immediately. If the altercation becomes violent, security personnel or management shall contact the MPD immediately.

Respondent Security Plan, § 7(C).

ASSETS management will maintain a detailed Incident Report Log in the management office. The log will be a chronological record of any incident at the establishment that involves . . . any altercation that results in the ejection of a patron; [and a] violent altercation . . . Each incident will have its own entry and . . . contact date, time, and location of each incident. Whenever possible, the incident log will contain the name and contact information of any victims and witnesses to an incident.

Respondent Security Plan, § III.

10. The security plan on page 4 further provides that while reasonable restraints are permitted in certain circumstances, “Once the offending patron is . . . no longer a threat to his or her surroundings, the use of additional restraint by security personnel will not be tolerated. Any ASSETS security personnel member who exhibits excessive force will be subject to immediate termination of employment.” *Id.* at 4.

11. During his investigation of the incident, the investigator asked several employees whether the Metropolitan Police Department (MPD) was called regarding the assault. Specifically, Head of Security Burak Sahiner and Security Employee Anthony Mays indicated that the incident was not reported to the police. *Id.* at 16, 39. The Head of Security further admitted that the incident was not recorded in the establishment’s incident log. *Id.* at 17, 39.

12. The investigator is aware that the patron eventually contacted MPD to report the assault by the establishment’s security staff. *Id.* at 62.

CONCLUSIONS OF LAW

13. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1).

I. Standard of Proof

14. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2023). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C. 1999).

II. Assets Violated D.C. Official Code § 25-823(a)(2).

15. The Board sustains Charge I. Under D.C. Official Code § 25-823(a)(2), it is unlawful for a licensee to “allow[] the licensed establishment to be used for any unlawful or disorderly purpose . . .” D.C. Code § 25-823(a)(2). In practice, this means that, “. . . (1) it is a violation for a licensee or their agents to cause, contribute, encourage, or participate (*demonstrable connection*) (2) in an unlawful or disorderly incident that occurs within or around the licensee’s premises (*unlawful or disorderly purpose*) (3) through a method of operation (*method of operation*). *In re Kabin Group, LLC, t/a Kabin*, Case No. 17-251-00134, Board Order No. 2018-247, 6 (D.C.A.B.C.B. Apr. 25, 2018). It is further provided in the statute that

A single incident of assault, sexual assault, or violence shall be sufficient to prove a violation of subsection (a)(2) of this section; provided, that the licensee has engaged in a method of operation that is conducive to unlawful or disorderly conduct.

D.C. Code § 25-823(b).

16. In describing the first element, the Board has previously stated that “a ‘demonstrable connection’ requires more than proof about what occurred, but also how the licensee’s method of operation contributed to the incident.” *Id.* at 7. Specifically, this “. . . element requires that the licensee or his or her agents engage in actions or a method of operation that are ‘conductive’ or ‘[t]end to bring about or cause’ the unlawful conduct.” *Id.* The Board further notes that “any action committed directly by the licensee or management . . . that tends to cause illegal conduct or is illegal itself always qualifies as a demonstrable connection.” *Id.*

17. In describing the second element, the Board has stated that “. . . in order to prove a violation, the Government must show that the premises were used for an ‘unlawful or disorderly purpose.’” § 25-823(a)(2). This means that the underlying alleged illegal conduct at issue must actually be illegal, whether committed by the licensee, its agents, patrons, or other third parties.” *Id.* at 8.

18. In describing the third element, the Board has provided specific instances where the method of operation element is satisfied, including situations where “. . . (1) the licensee or its agents fail to contact the police regarding crime or when ejecting patrons engaging in criminal activity (*e.g.*, assault); or (2) the licensee or its agents fail to provide sufficient security; [fail to] provide sufficient training for its security, enforce its security procedures; or has an inadequate security plan.” *Id.* (footnotes removed). The Board has also previously noted that “. . . ‘it was inappropriate for the licensed establishment’s owner or employees ‘to leave the confines of the club in order to pursue’ because “. . . pursuit ‘in and of itself, threaten[s] the safety of pedestrians, vehicles, [and] the participants . . .’ and demonstrates that the establishment lacks adequate security procedures. *In re Terfneh Kahsay, t/a Salina Restaurant*, Board Order No. 2016-356, ¶ 24 (D.C.A.B.C.B. Jun. 6, 2016) *citing In re Bar 9, LLC, t/a DC 9*, Case No. 10-251-220, Board Order No. 2010-551, ¶¶ 10, 64 (D.C.A.B.C.B. Nov. 5, 2010). Finally, illegal actions committed by the ownership or management will also satisfy this requirement, because actions committed by the ownership or its management represent the official actions of the business. *In re Kabin Group, LLC*, Board Order No. 2018-247 at 12-13.

19. The Board notes that the present case is similar to the Board’s determination in *Kabin*. In *Kabin*, the Board found the licensee liable for violating § 25-823(a)(2) where it was determined that a security manager committed an assault during an ejection and the establishment failed to call the police. *Id.* at 2. The Board noted that this finding was justified where the case involved a “simple assault,” which is a misdemeanor and only requires a general intent to commit assault, which satisfied the unlawful or disorderly purpose element. *Id.* at 12. The Board further found that the incident satisfied the method of operation element for two reasons. *Id.* First, the Board found the use of excessive force satisfied this element because the “use of excessive force shows inadequate training and security.” *Id.* at 13. Second, this element was further satisfied because the security manager or anyone associated with the establishment failed to contact the police. *Id.* at 13. Finally, the Board deemed the demonstrable connection element satisfied where only a single incident was necessary to find liability in accordance with § 25-823(b) and the action was committed by management because “any illegal act committed by management amounts to a *per se* use of the premises for an illegal purpose” *Id.*

20. The Board further finds the present case similar to *Salina Restaurant*. There, the licensed manager admitted that after a patron threw a bottle, he chased him down the street and did not call the police. *In re Terfneh Kahsay*, Board Order No. 2016-356 at ¶ 19. The Board noted that these facts were sufficient to constitute a violation of § 25-823(a)(2). *Id.* at ¶¶ 23-25.

21. Turning to the present matter, the Board finds that the Government has satisfied the elements necessary to find a violation of § 25-823(a)(2). The Board credits the statement of Anthony Mays that on October 19, 2019, a patron “assaulted him in the face” and engaged in theft inside the premises. *Supra*, at ¶ 3. Security footage then shows the establishment’s security attempting additional physical contact with the patron and security pursuing the patron in the street when he attempts to flee. *Supra*, at ¶ 6. During the patron’s attempt to flee, the security manager attempted to prevent the patron’s flight and attempted to kick or trip him. *Id.* When the patron reappears a few minutes later, a security member attempts to strike the patron and additional scuffles between security and the patron ensue. *Supra*, at ¶ 8. The Board further learned that despite the assault inside the premises, as well as the attempt to kick or trip the patron, and other actions that led to a pursuit in the streets, which were clearly known to the security manager, no one at the establishment contacted the police. *Supra*, at ¶ 11. The Board notes that had security contacted the police, the brawls that occurred when the patron returned to the establishment could have been prevented. *Supra*, at ¶ 8.

22. Addressing each element in turn, under these facts, the illegal activity at issue, as in *Kabin*, involves various assaults occurring both inside and outside the establishment. The demonstrable connection element, as in *Kabin* and *Salina Restaurant*, is satisfied where the security manager without cause and using excessive force attempted to intercept, kick, or trip the fleeing patron in the street, and otherwise witnessed the establishment’s security engage in a pursuit on the public street and did not contact the police. Finally, the method of operation element, as in *Kabin* and *Salina Restaurant*, is satisfied where the establishment failed to contact the police regarding various assaults that involved the establishment’s security both inside and outside the premises and engaged in a pursuit in the public street. Moreover, the establishment’s management participation and awareness of the incident and failure to take appropriate action

such as contacting the police allowed the patron to return and risked additional assaults, which occurred in this case. *Supra*, at ¶ 21. Therefore, the Board sustains Charge I.

III. Assets Violated D.C. Official Code § 25-823(a)(6).

23. Under D.C. Official Code § 25-823(a)(6), it is unlawful for a licensee to “fail[] to follow its . . . security plan” D.C. Code § 25-823(a)(6). The law further provides that

A licensee shall be required to comply with the terms and conditions of the licensee's . . . security plan, . . . attached to the license during all times that it is in operation. A single violation of a settlement agreement, security plan, or order from the Board shall be sufficient to prove a violation of subsection (a)(6) of this section.”

D.C. Code § 25-823(c).

24. In this case, the establishment’s security admitted that the police were not called and an incident log report regarding the incident was not made even though a patron was ejected in response to an attack on security, various assaults occurred both inside and outside the establishment, and security pursued the person in the streets despite requirements in the establishment’s security plan. *Supra*, at ¶¶ 3, 6-11. The Board further notes that the assault reported by Mr. Mays was sufficient to trigger the MPD and incident reporting requirements of the security plan because that part of the incident occurred within the establishment. Consequently, under these circumstances, the calling of the police and the making of an incident log were required by the language of the establishment’s security plan provided above. *Supra*, at ¶ 9-10. Therefore, the Board sustains Charge II.

IV. Penalty

25. The Board notes that the present violations represent first level primary tier offenses and will institute a penalty of \$1,000 for each offense.

V. Response to Proposed Findings of Fact and Conclusions of Law.

26. In reaching this determination, the Board considered the findings of fact and conclusions of law presented by both parties. Based on the Board’s findings above, the Board is generally in agreement with proposed findings of fact and conclusion of law presented by the Government. Turning to the specific arguments raised by the Respondent, the Board first notes that it has already considered and denied the Respondent’s laches defense, which is adequately discussed in Board Order No. 2021-703, which found that laches is unavailable as a defense in this case and that any delay was untimely. *Respondent’s Proposed Findings of Fact*, at ¶¶ 18-22. Moreover, there is no indication of prejudice or even reliance on inappropriate hearsay, where the Board relied on statement’s provided by the establishment’s own employees or agents and video provided by the establishment itself. *Id.* at ¶¶ 18, 21. Indeed, the Respondent has made no effort to show that any potential witness it sought to rely upon was actually unavailable, did not make any effort to subpoena potentially uncooperative witnesses such as its security contractor, and did not show that any witness it could provide could not have had his or her recollection

adequately refreshed. Second, as noted above, the Board broadly disagrees with the Respondent's interpretation of the facts where video evidence shows various assaults, a pursuit in the streets, various admissions by the establishment's own agents, and demonstrates awareness of this incident by management at the time it occurred. *Id.* at ¶¶ 23-32. Therefore, the Board is not persuaded by the Respondent's arguments and affirms its findings regarding Charge I and II.

ORDER

Therefore, the Board, on this 25th day of January 2023, finds Voyager 888, LLC, t/a Assets, guilty of violating D.C. Official Code §§ 25-823(a)(2) and (6). The Board imposes the following penalty on Assets

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$1,000 (D.C. Official Code § 25-823(a)(2).
- (2) For the violation described in Charge II, the Respondent shall pay a fine of \$1,000 (D.C. Official Code § 25-823(a)(6).

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

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800 (West Supp. 2023), the violations found by the Board in this Order shall be deemed two primary tier violations.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board

James Short, Member

eSigned via SeamlessDocs.com

Key: 256d3fca4f5e146d7f4b75bd7917d20d

Bobby Cato, Member

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Edward S. Grandis, Member

I dissent as to the Board's decision to find the establishment liable for Charge I but concur with the Board's finding of liability regarding Charge II.

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430b82b9d5f0e4b730093d1c0cc9

Donovan Anderson, Chairperson

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

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

District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).