

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

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In the Matter of:	)	
	)	
Lemma Holdings, LLC	)	Case No.: 18-251-00067
t/a Bliss	)	License No.: ABRA-95711
	)	Order No.: 2019-039
Holder of a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
2122 24th Place, N.E.	)	
Washington, D.C. 20018	)	

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

**ALSO PRESENT:** Lemma Holdings, LLC, t/a Bliss, Respondent  
  
Makan Shirafkan, Counsel, on behalf of the Respondent  
  
Chrissy Gephardt and Rebecca Barnes, Assistant Attorneys 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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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds that Lemma Holdings, LLC, t/a Bliss, (hereinafter "Respondent" or "Bliss") violated D.C. Official Code §§ 25-823(a)(2) and 25-823(a)(6) on January 15, 2018, when a security member pushed a female patron to the ground without justification and in violation of its security plan, which started a fight within the establishment between security and a number of female patrons. Furthermore, the establishment's management was complicit in this incident by failing to follow its security

procedures and properly documenting and reporting what had transpired. In light of these failures by the establishment's employees and management, the Board fines Bliss \$8,000 and requires the establishment to comply with the conditions described below.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 17, 2018. *ABRA Show Cause File No. 18-251-00067*, Notice of Status Hearing and Show Cause Hearing, 2 (Aug. 17, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 2122 24th Place, N.E., Washington, D.C., on September 1, 2018. *ABRA Show Cause File No. 18-251-00067*, Service Form. The Notice charges the Respondent with multiple violations, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violations:

**Charge I:** [On January 15, 2018,] [y]ou allowed your licensed establishment to be used for an unlawful or disorderly purpose in violation of D.C. Official Code § [25-823(a)(2)] . . . .

**Charge II:** [On January 15, 2018,] [y]ou failed to follow your security plan in violation of D.C. Official Code § [25-823(a)(6)] . . . .

**Charge III:** [On February 22, 2018 and March 1, 2018] [y]ou failed to allow ABRA to investigate without delay the licensed the licensed premises or examine the books or records of the business or otherwise interfered with an investigation in violation [of] D.C. Official Code § [25-823(a)(5)] . . . .

*Notice of Status Hearing and Show Cause Hearing, 2-3.*

Both the Government and Respondent appeared at the Show Cause Status Hearing on September 19, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on November 7, 2018.

### **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:

## I. Background

1. Bliss holds a Retailer's Class CT License at 2122 24th Place, N.E., Washington, D.C. *ABRA License No. 95711*. Bliss has a security plan on file with ABRA. *Security Plan*, 1 (Oct. 5, 2015) (Bliss).

2. Pertinent to this matter, according to the security plan, the door to the women's bathroom leads to a hallway connecting to "ROOM 2." *Id.* If, after leaving the women's bathroom, a person walks left they will proceed down another hallway that leads to the stairs to the "VIP AREA." *Bliss Security Plan*, at 19, (Oct. 5, 2015). If instead of proceeding to the "VIP AREA", one proceeds to the left, another hallway leads to an entrance area with double doors leading to the outside, which is designated as the "VIP ENTRANCE." *Id.*<sup>1</sup>

3. The camera layout provided in the security plan provides the location of various cameras potentially relevant to where the incident occurred on January 15, 2018. *Id.* at 19 (marked "CAMERA LAYOUT"). First, in the hallways leading to the bathroom, one camera is located over the outside of the women's restroom; one camera is located at the end of the hallway, near "ROOM 2"; and one camera sits in the corner where the two hallways meet near the stairs to the "VIP AREA." *Id.* There is also one camera over the double doors leading to the "VIP ENTRANCE" and one camera where the "HALLWAY" meets the "VIP ENTRANCE." *Id.* There are also at least two cameras near the exterior of the "VIP ENTRANCE." *Id.*

4. In defining levels of incident, the security plan states the following:

There are three levels of incidents; Level 1 (whereby patron voluntarily and without any problem leaves the venue or stops his unwanted actions) Level 2 (Whereby patron is asked to leave the venue due to his misconduct but he/she is not violent and cordially agrees to comply), and Level 3 (Whereby physical command is needed and All fights or sexual incidents are considered Level 3).<sup>2</sup>

*Id.* at 2-3.

5. In regard to incident reports, the plan states

All incidents Level 2 and Level 3, must be reported to the head of Security. Failure to report any incident to the Head of Security can result in disciplinary action or termination. The Head of Security is to record all such incidents in the incident log. The incident log is to contain the time of the incident, location of the incident, individuals involved, and the time MPD was notified. All Level 3 incidents must be reported to MPD and must include who the report was given to. The report must also include the response time in which MPD or Medical assistance arrived. All persons who have been evicted

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<sup>1</sup>Based on camera footage and testimony of witnesses, the incident occurred in and around the bathrooms, in the "HALLWAY" leading to the "VIP ENTRANCE", and the area both inside and outside the "VIP ENTRANCE"; which is located in the lower left corner of the "CAMERA LAYOUT" *Security Plan*, at 19 (near the area marked "EXTERIOR SMOKING AREA").

from the venue must be reported to MPD. Any reported incident should include the names of those involved, including staff patrons and/or victims. (Level 3 incidents are all incidents that involve any kind of Assault)

*Id.* at 5-6 (unbolded).

6. In regard to dealing with intoxicated patrons, the plan states the following:

In instances where a patron appears to be intoxicated, unruly, or uncooperative, use the following strategies: . . . .

If the individual refuses assistance, do not hold that person against his or her will.

Simply notify MPD by giving them a description of the individual and the direction in which the individual walked. Outside security should shadow that individual to a reasonable distance and assist if needed. The incident is to be immediately placed in the incident log and if that individual had a tab, secure it and document the time of departure.

*Id.* at 9-10.

7. In regard to dealing with violent incidents, the plan states the following:

If any employee of BLISS observes any acts of violence or other emergencies, they shall radio for assistance for another employee/security, attempt to assist, and call MPD or EMS immediately. In these instances, security will only physically intercede to prevent or stop a violent individual from physically assaulting another person.

The observer of the incident must immediately report the incident to the Head of Security and management, so that the incident can be placed in the incident log.

*Id.* at 10-11.

8. The security plan also discusses staff uniforms, and provides the following:

Bliss staff uniforms will be white or colored polo shirts with identifiable security logos. The dress code may change depending on the event of the night. Such change will be approved by management and staff will be notified. Staff shall adhere to the designated dress code.

*Id.* at 4.

9. In discussing the establishment's security cameras, the security plan provides that

There are 55 surveillance cameras that are strategically placed throughout the establishment. These cameras cover every portion of BLISS with a 30 day view and

storage time. . . . Of the 55 total cameras, 40 are located inside the establishment and 15 are located outside the establishment. A map of the location of the cameras is attached.

*Id.* at 2.

## **II. ABRA Investigator Vernon Leftwich**

10. ABRA Investigator Vernon Leftwich was assigned to investigate an incident reported by a private attorney that had occurred at Bliss on January 15, 2018. *Transcript (Tr.)*, November 7, 2018 at 18, 29. No police report of the incident was taken at the time of the incident, but the patrons involved later filed a police report, which was retrieved by Investigator Leftwich. *Id.* at 18-19.

11. On February 15, 2018, Investigator Leftwich spoke with the owner of Bliss, Henoeh Andargie. *Id.* at 29. The owner indicated that on January 15, 2018, the establishment held a college night event from 10:00 p.m. to 2:00 a.m. that was attended by approximately 800 people. *Id.* Bliss had 30 security staff members on the night of the incident. *Id.* at 30. Security at Bliss generally wear uniforms with the word “security” written on the front or back of their shirts. *Id.* Mr. Andargie further provided ABRA with security footage from the night of the incident. *Id.* at 31.

12. After viewing the video of the incident provided by Bliss, Investigator Leftwich believes that the video provided by the establishment only captures the conclusion of the incident, rather than the full altercation. *Id.* at 33. Investigator Leftwich requested the footage of the entire incident; however, Bliss, to date, has not provided footage of the full incident. *Id.* at 34.

13. During the investigation, no one associated with Bliss indicated that patrons were fighting with each other or denied that the males seen on the video were employees. *Id.* at 27, 30. Furthermore, the incident report contains no indication that a fight occurred between patrons. *Id.* While speaking with the owner, the owner did not indicate that the establishment filed an assault charge against the patrons. *Id.* at 128. There is no indication that Bliss informed MPD that the female patrons or anyone else attempted to assault or assaulted staff. *Id.* at 108.

14. Ahmed Deen further made the following statement to the investigator during a conversation held on February 22, 2018:

Mr. Deen stated that on the night of the incident he was walking through the establishment and noticed a scuffle and that . . . female patrons were causing issues so he stood and observed. Mr. Deen stated that there was a group having [a] conversation with security officers and they were being rowdy. Mr. Deen stated that he stood and watched them leave to ensure that they exited the establishment without causing further issues. Mr. Deen observed verbal altercations between the groups of female patrons and security staff then they exited the establishment.

*Case Report No. 18-251-00067* at 2 (Jan. 15, 2018).

### III. Ahmed Deen

15. Ahmed Deen, the general manager of Bliss, was present at the establishment on January 15, 2018. *Id.* at 159. On the evening of January 15, 2018, he witnessed a commotion near the bathroom. *Id.* According to a bathroom attendant, a woman was “lying down on the floor” but was responsive. *Id.* at 159-60. He offered to call 911 but “friends” of the intoxicated female patron indicated that she was alright. *Id.* at 160. He also claimed that he interacted with other female patron outside the bathroom that were angry that they could not use the bathroom and began yelling. *Id.* at 164, 170-71. He further indicated that the female patrons were arguing with security in front of the bathroom. *Id.* at 226. Nevertheless, he indicated that the female patrons were not acting violently. *Id.* at 169-71.<sup>3</sup>

16. Mr. Deen indicated that he was in the bathroom at around 2:05 a.m. when the altercation inside the establishment occurred. *Id.* at 173, 181. Mr. Deen claimed that the men seen on the video fighting with the female patrons were not on the establishment’s staff. *Id.* at 217.

17. A male patron arrived and claimed the woman on the ground was his girlfriend. *Id.* at 160. The friends of the patron confirmed this, again rejected an offer to call an ambulance, and the male lifted the woman over his shoulder. *Id.* The male patron then proceeded to walk out the door with the intoxicated woman over her shoulder, while one member of the establishment’s security held the door open for them. *Id.* at 161, 163.

18. Mr. Deen later heard from Victor Manning, another head of security, that an altercation had occurred inside the establishment. *Id.* at 178. Later in the evening, after all the patrons involved in the bathroom incident had left, he saw the female patrons near the front of the establishment and attempted to obtain information about the incident. *Id.* at 182. Nevertheless, the patrons only yelled at him and did not provide any information. *Id.*

19. Mr. Deen admitted that he is not aware if anyone at Bliss informed MPD that a woman was so intoxicated that she was carried out by another patron. *Id.* at 218. Mr. Deen further admitted that the incident report prepared by the establishment did not indicate that an intoxicated patron was carried out by another patron or that the matter was reported to MPD. *Id.* at 218-19. Mr. Deen is also not aware if anyone from Bliss reported that two males were involved in a physical altercation with a group of females inside the establishment. *Id.* at 221.

20. Mr. Deen claimed that his security asked the alleged male patrons fighting with the female patrons to leave. *Id.* at 223. Nevertheless, as admitted by Mr. Deen, this does not appear in the establishment’s incident report. *Id.* Mr. Deen further claimed that the two males involved in the fight were asked to leave the establishment at some point in the night and that this was shown on the establishment’s video. *Id.* at 222-23. However, nothing in the record shows that this portion of Bliss’ video footage of the evening was provided to ABRA when it was requested or shown during the hearing. He also admitted that security were engaged in the argument in front of the bathroom while he was in there, but Bliss’ security staff involved in that dispute are not listed in the incident report. *Id.* at 227. Furthermore, Victor Manning is not mentioned in

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<sup>3</sup> See also *Tr.* 11/7/18 at 226 (“ . . . I wouldn’t call it a scuffle, but there were arguments . . . ”).

the report even though he initially reported the incident to Mr. Deen. *Id.* at 186. The report also does not mention that a sick person was carried out of the establishment by a patron or reported to the police. *Id.* at 219.

#### IV. Video Footage

21. Video footage provided at the hearing only shows a portion of the incident. *Tr.*, 11/7/2018 at 70. Specifically, the video footage made available at the hearing does not show the events that instigated the altercation inside Bliss, which occurred in another publicly accessible part of the establishment. *Id.* at 24, 33, 118. As a result, the establishment failed to turn over portions of the video related to the incident. *Id.* at 24, 33; *see also id.* at 238-39.

22. Camera 12 shows footage of an interior area in front of Bliss' double door. *Camera 12*, 00:00:00 (Jan. 15, 2018) (Starting at 2:05:35 AM). Beginning at around 2:05 a.m., the footage shows a female patron with long black hair stumble into view and fall to the floor, as she is pushed by a male security staff member in an unzipped white sweatshirt, shirt, and baseball cap. *Camera 12*, 00:00:00-00:00:04; *Camera 10*, 00:00:01-00:00:04 (Jan. 15, 2018) (Starting at 2:05:35 AM); *Tr.*, 11/7/18 at 110. While the push is not directly seen on the footage, the Board infers that she is pushed based on the direction the female patron stumbles, the direction the male security member is facing, his close proximity to the female patron, and the absence of any other potential aggressors nearby. *Camera 12*, at 00:00:00-00:00:05.

23. The footage then shows the arm of a separate female patron (Patron 1) in black high heels grab the end of the male security member's unzipped white sweatshirt. *Id.* at 00:00:04, 00:00:14. In response, the security guard grabs the shoulder of the woman and shoves her to the ground. *Id.* at 00:00:04-00:00:06. The female patron goes to the ground on her back and tucks her legs up. *Id.* at 00:00:06.

24. After patron in black high heels (Patron 2) is shoved to the ground, a second male security guard with a beard and dreadlocks steps in between the first male security member in the unzipped white sweatshirt, as one male and one female patron approach him. *Id.* at 00:00:05-00:00:07; *Tr.*, 11/7/18 at 110-11. As the two approach the security guard with dreadlocks, he backs up and the other security guard in white moves to the left. *Camera 12*, at 00:00:05-00:00:07.

25. As the security staff member in white moves left, he ducks a punch thrown by another female patron (Patron 3) stepping into view. *Id.* at 00:00:06-00:00:08. The security member in white then pushes her down and the two move off camera further inside the establishment. *Id.* at 00:00:08-00:00:09.

26. As the security staff member in white scuffles with the female patron (Patron 3), the security staff member with dreadlocks is pushed by another female patron wearing a long dress (Patron 4) to the right, who walked around the female patron in black high heels (Patron 2) as the incident unfolded. *Id.* at 00:00:07-00:00:09. After the female patron pushes the security staff member with dreadlocks, she slaps at his face and walks off camera as the security staff member with dreadlocks follows further inside the establishment. *Id.* at 00:00:08-00:00:13.

27. After the scuffle in front of the camera, a male walks off screen further into the establishment and the patron on the ground begins to take off her shoes. *Id.* at 00:00:14-00:26. After she removes her shoes, she goes off camera barefoot further into the establishment. *Id.* at 00:00:26-00:00:30.

28. At around 2:06 p.m., a person wearing a white shirt with the word security emblazoned on the back appears in the view of Camera 12 and walks toward the double door. *Id.* at 00:01:10. She reaches the door and holds it open briefly. *Id.* at 00:01:10-00:01:13. She then walks out of view of Camera 12 outside the premises. *Id.*

29. Behind the security staff member, a person with a female patron flung over his shoulder walks out the door. *Id.* at 00:01:10-00:00:15. Following the person with the patron over his shoulder, are five female patrons that appear to be at least some of the patrons previously seen on Camera 12. *Id.* at 00:01:10-00:00:16. The footage then shows that some of the female patrons followed out of the establishment while some went back inside the establishment. *Id.* at 00:01:13-00:01:28.

30. Camera 10 shows the outside of the door where the individual carried the female patron out of the establishment over his shoulder. *Camera 10*, 00:00:00 (Jan. 15, 2018) (Starting at 2:06:44 AM). As the individual quickly carries the woman over his shoulder legs first through the door, the patron's head strikes the open door. *Id.* at 00:00:02-00:00:04. As the patron is carried out of view, she holds the side of her head with her hand. *Id.* at 00:00:04-00:00:06.

31. About twelve minutes after the incident, the video shows police officers entering the premises. *Tr.*, 11/7/18 at 119. The video further shows that at least some of the female patrons involved in the incident came back into the club after the incident without any further disturbances and were speaking to police officers outside the premises. *Id.* at 119-22.

## **V. Incident Report**

32. Bliss completed an incident report related to the incident on January 15, 2018. *Id.* at 1. The report indicates that the manager on duty on that date was Ahmad Deen and one of the heads of security was Darryl Royal. *Id.* The report indicates that thirty security persons were on duty and six police officers were reported to be on duty nearby. *Id.* The report indicates that it was prepared by Ahmad Deen and that the incident occurred around 2:00 a.m in the "Big Room" or "vip exit." *Id.*

33. The report describes the incident as follows:

There were 3 Females and a male who were acting unruly. They were asked to leave by security, which they refused to and became aggressive towards employees, they then were removed from the venue, and handed off to MPD.

*Id.*



## VI. MPD Officer Kyle Gatewood

34. Metropolitan Police Department Officer Kyle Gatewood was working on the reimbursable detail outside of Bliss on January 15, 2018, when the incident at issue in this case occurred. *Tr.*, 11/7/18 at 137. He does not recall whether Bliss staff or Bliss patrons informed him of the incident inside the club and does not recall whether he spoke to any of Bliss' staff. *Id.* at 137-39. He further recalls speaking to about three or five patrons, but is not aware if they were involved in the altercation inside Bliss. *Id.* at 138, 144-45, 148. Some of the patrons officers spoke with that evening were polite, while others were yelling and were "more aggressive and insulting." *Id.* at 145. Nevertheless, he does not recall the specific individuals that he spoke with. *Id.*

## CONCLUSIONS OF LAW

35. 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). 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. Code § 25-447.

### I. Standard of Proof

36. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2019). 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. Bliss Violated § 25-823(a)(2) on January 15, 2018.

37. The Board finds Bliss in violation of § 25-823(a)(2) based on an employee's use of excessive force on January 15, 2018.

38. It is a violation for the "licensee [to] allow[] the licensed establishment to be used for any unlawful or disorderly purpose" under § 25-823(a)(2). D.C. Code § 25-823(a), (2). An offense under this statute may be found where "(1) . . . 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) (Order Denying Respondent's Motion for Reconsideration).

**a. The Government demonstrated that unlawful activity occurred at Bliss on January 15, 2018.**

39. The record indicates Bliss employees unlawfully assaulted the female patrons on January 15, 2018. Under D.C. law, the misdemeanor of simple assault requires only general intent to perform the assaultive act and does not require that any actual injury be incurred. *In re Kabin Group, LLC, t/a Kabin*, Case No. 17-251-00134, Board Order No. 2018-094, ¶ 20 (D.C.A.B.C.B. Mar. 14, 2018) citing *In re D.P.*, 122 A.3d 903, 908 (D.C. 2015) and D.C. Code § 22-404. At a minimum, at the beginning of the video presented to the Board, a Bliss security staff member pushed a female patron to the ground, which constitutes an unlawful assault. *Supra*, at ¶ 22.

40. It was claimed by Mr. Deen during the hearing that the males seen on the security footage were not Bliss employees; however, the Board does not find this claim persuasive. *Supra*, at ¶¶ 16, 24. Instead, the Board is convinced that males seen on the footage were employees for several reasons. First, the mere fact that security shirts were not visible on the males does not mean the staff were not employees; especially, when Bliss reserved the right to change its dress code, the men involved were wearing outerwear over their shirts, and there is no testimony related to whether all employees were required to wear clothing associated with Bliss. *Supra*, ¶¶ 8, 22. Second, despite having comprehensive security camera coverage of the facility, no footage or testimony presented at trial shows the men involved in the fight getting ejected for their actions, which suggests a relationship to the establishment. *Supra*, at ¶ 9. Third, there is no indication in Mr. Deen's statement to the investigator on February 22, 2018, or in the incident report that any patrons were fighting with each other, despite security being aware of the females engaging in fighting. *Supra*, at ¶¶ 14, 33. Fourth, no adequate explanation has been provided as to how two random male patrons began fighting with the female patrons when they were interacting with security by the bathroom. *Supra*, at ¶¶ 15, 33. Finally, if Bliss sought to establish that the males involved in the fight were not employees, nothing prevented the establishment from providing video footage showing the men acting like patrons, such as paying a cover, dancing, drinking, and other behavior associated with the patronage of a night club. Consequently, in light of the record, the Board cannot credit Mr. Deen's statement regarding their relationship to the establishment.

41. Furthermore, in determining that the male security staff member engaged in an assault, the Board considered the female patrons' aggressive actions after the fact. *Supra*, at ¶¶ 22-26. Nevertheless, this does not excuse pushing one of the female patrons to the ground in the first instance. *Supra*, at ¶¶ 22. The record shows that the assault was unjustified because there is no evidence that the female patrons engaged in any violent or threatening activity before the fight occurred. *Supra*, at ¶ 15. Indeed, it is very suspicious that no video footage shows the initiation of the scuffle, despite footage of the night being available and the presence of multiple cameras in the area where the fight started and ended, which should cover "every portion of BLISS," according to its security plan. *Supra*, at ¶¶ 3-4, 9. Moreover, even though multiple staff members were involved in the ejection of the female patrons and near the bathroom, it is also highly suspicious that no testimony or the incident report provided by Bliss could account for how patrons described as non-violent suddenly became violent or explain how their rowdiness justified security touching them. *Supra*, at ¶¶ 14-15, 20. Consequently, the Board concludes that an unlawful assault initiated by Bliss' employees occurred on January 15, 2018.

**b. The Government demonstrated that Bliss' method of operation caused and contributed to the assault on January 15, 2018.**

42. Section 25-823(a)(2) and (b) requires that the Government show a "method of operation" in order to prove a violation to sustain a violation. *In re Kabin Group, LLC, t/a Kabin*, Board Order No. 2018-247 at 8. Prior case law supports a finding of a method of operation based on the licensee or its agents failure "to contact the police regarding crime or when ejecting patrons ejecting patrons engaging in criminal activity," such as "assault." *Id.* Additionally, the Board has found that a showing of "excessive force" proves a method of operation. *Id.* at 12-13.

43. As noted above, the video shows Bliss staff initiating the fight and no justifiable reason for initially pushing the female patron has been presented to the Board. *Supra*, at ¶ 22. In light of these facts, the Board finds that the use of excessive force alone satisfies the method of operation requirement.

**c. The Government demonstrated a sufficient demonstrable connection to sustain Charge I.**

44. The record shows Bliss employees and management caused and contributed to the incident on January 15, 2018, where security assaulted the patrons and management failed to adequately report and document the incident.

45. In order to prove a demonstrable connection, it must be shown that the licensee or their agents caused, contributed, encouraged, or participated in an illegal incident through a method of operation. *In re Kabin Group, LLC, t/a Kabin*, Board Order No. 2018-247 at 7. This "element requires that the licensee or his or her agents engage in actions or a method of operation that are "conducive" or "[t]end to bring about or cause" the unlawful conduct." *Id.* "Moreover, in proving this element the finder of fact may look to the direct acts of the licensee and their agents and the duration of the acts." *Id.*

46. As noted in *Kabin*, "any action committed directly by the licensee or management or by their agents with the approval, direction, or control of the licensee or his or her management that tends to cause illegal conduct or is illegal itself always qualifies as a demonstrable connection." *Id.* In cases where management has no direct involvement, "a method of operation or action committed by an employee . . . that is itself illegal or causes unlawful conduct . . . requires . . . a continuous course of conduct to demonstrate a demonstrable connection without a showing of . . . complicity . . . [by management or the ownership]." *Id.*

47. In this case, there is no indication in the record that the licensee or management participated directly in the assault against the patrons. Instead, the record shows that only employees were involved. Nevertheless, the Board is satisfied that Bliss' management engaged in various actions that made it complicit in the incident. Specifically, Bliss' management is complicit in its employees actions because they amount to willful blindness and the hiding of security issues within the establishment, which satisfy the requirement that there be a finding of allowing, permitting, or encouraging the illegal behavior at issue. *See In re Kabin Group, LLC*,

*t/a Kabin*, Board Order No. 2018-247 at 7 citing *Am-Chi Restaurant, Inc. v. Simonson*, 396 F.2d 686, 687-88 (D.C. Cir. 1968) (saying “this interpretation is a logical extension of *Am-Chi* where the licensee’s maître d’hotel or “headwaiter” participated in a prostitution scheme inside the premises, even though there was no evidence of prior conduct or knowledge on the part of the ownership”).

48. Specifically, Bliss’ management failed to follow its security procedures and reporting requirements related to the “Level 3” fight that occurred on January 15, 2018. Management in this case comprises anyone holding managerial authority at the establishment on January 15, 2018, which includes Mr. Deen and “Head[s] of Security” Victor Manning and Darryl Royal. *Supra*, at ¶¶ 5, 15, 18, 32. First, under Bliss’ security plan, the head of security was supposed to record the individuals involved, including staff, and the MPD official notified; yet, despite having multiple staff involved in the incident (e.g. security arguing in front of the bathroom or holding the door open), the report contains no names of any staff that responded or handed the group to MPD, and does not identify the notified MPD official. *Supra*, at ¶¶ 5, 15, 24, 29, 33. Second, under the security plan, in response to a person that appears intoxicated, Bliss is obligated to notify MPD and log the incident in its report. *Supra*, at ¶ 6. Yet, despite witnessing an intoxicated person on the floor of the bathroom, Mr. Deen failed to notify police or record it in the log. *Supra*, at ¶¶ 15, 20, 33. And third, Bliss’ camera system is supposed to “cover every portion” of the establishment under its security plan, and required to provide footage to ABRA upon the request of the investigator under D.C. Official Code § 25-402(d)(A)(ii). *Supra*, at ¶ 9. Nevertheless, either the management or ownership of the establishment has failed to install its security cameras in a manner that complies with the security plan or withheld providing specific footage to ABRA in violation of the law. *Supra*, at ¶¶ 12, 21.

49. As a result, the Board is satisfied that management’s method of operation in violation of its security procedures and reporting requirements had a demonstrable connection to the incident. Indeed, these violations on the part of management have a direct relationship to the incident because they involve failures of management to respond appropriately to the incident. Furthermore, the Board is convinced that, if repeated, such behavior creates an unsafe environment conducive to additional violence, interferes with the ability to investigate crime and violence at the establishment, and demonstrates an unwillingness on the part of management to properly superintend the facility.

**d. There is no requirement to show a continuous course of conduct to sustain Charge I.**

50. In this case, there is no requirement that the Government show a pattern of similar behavior or incidents, “prior acts,” or “a continuous course of conduct,” as was previously required before the enactment of § 25-823(b). *In re Kabin Group, LLC, t/a Kabin*, Board Order No. 2018-247 at 10. Section 25-823(b) further provides 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). As the Board noted previously in *Kabin*, the enactment of § 25-823(b) removes the requirement to prove a continuous course of conduct or prior acts in cases of assault, sexual assault, or violence. *In re Kabin Group, LLC, t/a Kabin*,

Board Order No. 2018-247 at 11. As this case involves an assault, the Government is relieved from making a showing of a pattern or continuous course of conduct, and may rely on a “single instance.” *Id.* at 10, 12.

## **II. Bliss Security Unjustifiably Pushed a Female Patron to the Ground on January 15, 2018 in Violation of its Security Plan.**

51. Under § 25-823(a)(6), a licensee is obligated to comply with the terms of its security plan. D.C. Code § 25-823(a)(6). Under the licensee’s security plan, staff “will only physically intercede to prevent or stop a violent individual from physically assaulting another person.” *Supra*, at ¶ 7. As noted above, the record shows security pushing a female patron to the ground at the beginning of the video. *Supra*, at ¶ 22. There is no evidence of prior violence by any female patron. *Supra*, at ¶¶ 39-41. As a result, there is no indication in the record that security had any justification for initially touching the female patrons. *Supra*, at ¶¶ 39-41. Therefore, the Board sustains Charge II.

## **III. The Board Dismisses Charge III.**

52. In Charge III, the Government charged Bliss with interfering with an investigation under D.C. Official Code § 25-823(a)(5) for Mr. Darryl Royal’s failure to respond to voicemail messages. *Notice*, at 3. While demonstrating a general sense of uncooperativeness, this type of action does not rise to the level of interference under the law. *1900 M Rest. Associations, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 56 A.3d 486, 496 (D.C. 2012) (“a lack of dispatch without evidence of more does not amount to a failure to allow an investigator to examine the books and records of the business in violation of D.C. Code § 25–823(5)”). The Board notes that interference includes, but is not limited to, those licensees or their agents that physically block police or investigators from entering an area they have a right to enter, violence against a government official, destroying or hiding evidence, failing to submit required documents or video footage, tampering with witnesses, offering bribes, and lying.

## **IV. Conditions**

53. In light of the offenses listed above, the Board imposes conditions on the licensee in accordance with D.C. Official Code § 25-447. Specifically, the licensee is required to retrain its staff and maintain a list of employees and their job titles on the premises. These requirements will ensure that security act appropriately and that incidents may be properly investigated.

## **V. Penalty**

54. The offenses charged in this case constitute primary tier offenses. Bliss has two prior primary tier violations on its record; therefore, the fine level for these offenses is between \$4,000 and \$6,000.

## ORDER

Therefore, the Board, on this 30th day of January 2019, finds Lemma Holdings, LLC, t/a Bliss, guilty of violating D.C. Official Code §§ 25-823(a)(2) and 25-823(a)(6). The Board imposes the following penalty on Bliss:

- (1) For the violation described in Charge I, Bliss shall pay a fine of \$4,000.
- (2) For the violation described in Charge II, Bliss shall pay a fine of \$4,000.
- (3) The license shall holder shall comply with the following:
  - a. Within 30 days from receipt of this Order, the licensee shall conduct training on its security plan with all employees and managers. At least within two days of the training, Bliss shall provide notice to ABRA regarding the date of the training or training sessions. Bliss shall permit ABRA staff to be present at all training sessions related to this Order. Bliss shall issue each employee attending the training a certificate upon completion of the training and make the certificates available to ABRA and the Board and provide proof of attendance (e.g., sign-in sheet). All employees and managers currently employed at Bliss are required to attend the training required by this Order.
  - b. Bliss shall maintain on the premises a list of all current employees and managers. This list shall immediately be provided to ABRA and police upon request.


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

**IT IS FURTHER ORDERED**, in accordance with 23 DCMR § 800.1, the violations found by the Board in this Order shall be 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.

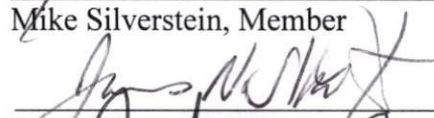
The ABRA shall deliver copies of this Order to the Government and the Respondent.

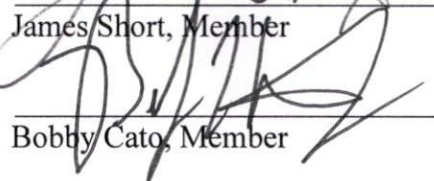
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Donovan Anderson, Chairperson

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

  
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Mike Silverstein, Member

  
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James Short, Member

  
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Bobby Cato, Member

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

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).