

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

In the Matter of:	)	
Prospect Dining, LLC	)	Case No.: 17-CMP-00020
t/a Chinese Disco	)	License No.: 78058
Holder of a	)	Order No.: 2018-172
Retailer's Class CR License	)	
at premises	)	
3251 Prospect Street, N.W.	)	
Washington, D.C. 20007	)	

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
James Short, Member  
Donald Isaac, Sr., Member

**ALSO PRESENT:** Prospect Dining, LLC, t/a Chinese Disco, Respondent  
  
Ki Jun Sung, Owner and Counsel, on behalf of the Respondent  
  
Walter Adams, 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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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds that Prospect Dining, LLC, t/a Chinese Disco, (hereinafter "Respondent" or "Chinese Disco") violated its obligation under D.C. Official Code § 25-762(b)(1) to ensure that no more than 99 persons entered the premises on February 4, 2017. The Board finds Chinese Disco not guilty of selling or delivering alcohol to a minor or permitting the consumption of alcohol on the premises by a minor in violation of D.C. Official Code § 25-781 based on the lack of evidence in the record that the establishment sold or

delivered alcohol to the two minors observed by Investigator Puente and the failure to sufficiently prove that they consumed alcohol inside the premises. The Board also issues two warnings for failing to take reasonable steps to ascertain the age of its patrons in compliance with D.C. Official Code § 25-783(b) and violating the occupancy provisions of its settlement agreement. The Board imposes a fine of \$3,000 and three stayed suspension days.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on July 13, 2017. *ABRA Show Cause File No. 17-CMP-00020*, Notice of Status Hearing and Show Cause Hearing, 2 (Jul. 13, 2017). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3251 Prospect Street, N.W., Washington, D.C., on July 22, 2017. *ABRA Show Cause File No. 17-CMP-00020*, 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 February 4, 2017,] [y]ou sold and permitted the consumption of alcoholic beverages to persons under 21 years of age in violation of D.C. Code §[§] 25-781(a)(1) . . . [and] 27-781(b)(1) . . .
- Charge II:** [On February 4, 2017,] [y]ou, your agent, or your employee did not take steps reasonably necessary to ascertain whether the persons to whom you sold, served, or delivered alcoholic beverages to were of legal drinking age, in violation of D.C. Code § 25-783(b) . . .
- Charge III:** [On February 4, 2017,] [y]ou failed to obtain approval from the Board before making a [substantial change in] the nature of the operation of the establishment, in violation of D.C. Code § 25-762(a) . . . [by violating the occupancy set by your liquor license].
- Charge IV:** [On February 4, 2017,] [y]ou violated [your] settlement agreement . . . [in violation of] D.C. Code § 25-823(a)(6) . . . .

*Notice of Status Hearing and Show Cause Hearing, 2-4.*

Both the Government and Respondent appeared at the Show Cause Status Hearing on August 16, 2017. The parties proceeded to a Show Cause Hearing and argued their respective cases on January 31, 2018. After the hearing, the parties submitted proposed findings of fact and conclusions of law, which the Board considered in reaching its final decision.

## 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. Chinese Disco holds a Retailer's Class CR License at 3251 Prospect Street, N.W., Washington, D.C. *ABRA License No. 78058*.

### II. Detective David Carter

2. Metropolitan Police Department (MPD) Detective David Carter has been with MPD for 23 years and currently works on enforcing underage drinking laws. *Transcript (Tr.)*, January 31, 2018 at 18. As part of his duties, he routinely enters licensed establishments and identifies people that appear to be under the age of 21 consuming or possessing alcoholic beverages. *Id.* at 19-20. He also works with establishments by arresting people who present fake identifications to doorpersons. *Id.* at 25.

3. Detective Carter has become very familiar with Chinese Disco because he has visited the Georgetown establishment approximately 20 times and conducted fake identification checks near the establishment's entrance. *Id.* at 22, 25-26. During his prior visits, he has made multiple arrests related to underage drinking, including the use of fake identifications. *Id.* at 23, 27. Many of the people he arrests have expressed that Chinese Disco has a reputation among students as a place to engage in underage drinking. *Id.* at 23. He noted that some arrestees indicated that they never had to present identification at the establishment. *Id.* at 27. He further noted that he has been able to make an arrest within 10 to 15 minutes of arriving. *Id.* at 30.

4. During his visits, he has observed Chinese Disco's staff check identification. *Id.* at 28. In the past, he has observed their staff look at the identification and compare it to the individual. *Id.* Sometimes the staff will examine the identification with a black light. *Id.* at 28. He also observed the establishment rely on identification scanners. *Id.* at 32-33.

5. Based on his experience, Detective Carter indicated that fake identifications may be identified in several ways. *Id.* at 28-29. First, some individuals use identifications that lack all of the features and security measures imbedded in modern identifications, which are identified in ABRA's ID Checking Guide. *Id.* Second, some individuals use valid identifications that belong to other people. *Id.* at 29.

6. On prior occasions, Detective Carter has informed staff, managers, and security at Chinese Disco that students at Georgetown identify the establishment as a place to engage in underage drinking. *Id.* at 30-32, 38. He has also advised Chinese Disco to use the ID Checking Guide when checking identifications; however, he has not observed the guide present at Chinese Disco's door on many occasions. *Id.* at 35.

7. Detective Carter is also aware that some fake identifications have barcodes and magnetic strips that can trick an identification scanner into indicating that an identification card is legitimate. *Id.* at 33.

8. On February 4, 2017, Detective Carter was present at Chinese Disco's entrance where patrons were showing identification to the establishment's staff to gain entrance. *Id.* at 36. Within 15 to 20 minutes, he was able to make three arrests related to the possession of false identification. *Id.* He further noticed that after he visibly began making arrests near Chinese Disco's entrance many people in the establishment's admittance line began to leave. *Id.*

### III. ABRA Investigator Kevin Puente

9. ABRA Investigator Kevin Puente indicated that Georgetown University has complained to ABRA that underage students are obtaining alcohol and returning to campus intoxicated after patronizing Chinese Disco. *Id.* at 55-56.

10. On February 4, 2017, Investigator Puente was working with MPD Detective David Carter, ABRA Investigator Mark Brashears, and ABRA Investigator Nicole Langway to conduct identification checks at the entrances of licensed establishments. *Id.* at 59-60. The team decided to visit Chinese Disco based on prior arrests at Chinese Disco a few weeks prior. *Id.* at 60.

11. The ABRA investigators met with Detective Carter at the establishment around 11:30 p.m. *Id.* at 62. At the establishment, Investigator Puente observed a large line in front of Chinese Disco. *Id.* at 62-63. At the front of the line, Detective Carter observed a doorman working for Chinese Disco run patron identifications through an identification scanner. *Id.* at 63. Further, based on his observations, Investigator Puente observed that security were just taking patron identifications, scanning them, and then giving them back. *Id.* at 96.

12. After watching three female patrons have their identifications checked, Detective Carter asked security to hand him the identifications to review. *Id.* at 64. He then took out his badge and asked the female patrons to follow him to his vehicle parked on Prospect Street, N.W. *Id.* Investigator Puente observed that one female patron had identification with poor coloring. *Id.* at 65. At this time, as patrons observed the investigative team operate, at least twenty-five people exited the line. *Id.* The female patrons stopped by Detective Carter admitted that they were 19 years old and attended Georgetown University. *Id.* at 67.

13. In addition, Investigator Puente asked the security at the door to show him the establishment's clickers tracking admittance. *Id.* at 68. The clickers showed the number 205. *Id.* Nevertheless, the capacity listed on Chinese Disco's liquor license is set at 99. *Id.* at 71. Furthermore, Chinese Disco has a settlement agreement that limits the capacity of the premises to 99 people. *Id.* at 87.

14. After the female patrons admitted that they were underage, the ABRA investigators entered Chinese Disco and asked to speak to a manager. *Id.* at 67. Inside, a female bartender was managing the premises along with Greg Bartholomew. *Id.* Once Investigator Puente

introduced himself to Chinese Disco's managers, Investigator Puente announced that ABRA was going to perform identification checks. *Id.*

15. As part of the check, Investigator Puente and the other investigators began walking through the establishment with their badges displayed. *Id.* at 68, 71. Nevertheless, it was difficult to walk around the establishment because it was very crowded. *Id.* at 69, 105. Based on his observations of the crowd, he estimated that the figure matched the 205 figure presented on the establishment's clicker. *Id.* at 106. He also noticed that many patrons appeared to be young and under the age of 21 based on their appearance. *Id.* at 69-70.

16. In the corner of the room, he observed two females looking at the investigators nervously. *Id.* at 72. He further noticed that they had cups in their hands. *Id.* at 76. At Investigator Puente's prompting, Mr. Bartholomew asked the female patrons for their identifications. *Id.* at 72.

17. One female patron handed Investigator Puente a Rhode Island identification card, which she had used to enter the establishment. *Id.* at 74-75. She also indicated that the drink in her hand was a vodka-sprite. *Id.* at 76. He identified the card as fake because the barcode had squiggly lines, rather than straight lines; had a darker color around the photo area; and did not have the correct holograms. *Id.* at 74-75.

18. He also asked for their Georgetown identification, which indicated that the female patrons were freshman based on the graduation date on the cards. *Id.* He then told them that he was going to take a photograph of the identifications and send them to Georgetown for confirmation. *Id.* at 73. He asked the patrons to be honest about their ages. *Id.* In response, one of the females admitted that she was 19 years old. *Id.* Upon making this admission, Mr. Bartholomew escorted the patron from the establishment. *Id.* at 75.

19. Around this time, a security guard advised Investigator Puente that he received a complaint that an intoxicated male was touching female patrons in an inappropriate manner. *Id.* at 76. The security guard then went to look for the male patron and Investigator Puente followed. *Id.*

20. Outside the establishment, security had detained and ejected a male patron that "looked young," and appeared intoxicated because he had trouble standing. *Id.* at 77-78. Investigator Puente asked for the male patron's identification. *Id.* When the male patron opened his wallet, the investigator observed a second identification inside. *Id.* After a few minutes of conversation, the male patron admitted that he had a fake identification. *Id.* Detective Carter then approached and advised the male patron that he could be arrested if he did not cooperate. *Id.* at 78.

21. The male patron produced a fake New Hampshire license. *Id.* Investigator Puente was able to identify the identification as fake, even though it had a picture of the male patron on it, because the barcode did not look right, the color was off, and the holograms were misplaced. *Id.* at 74-75, 78. The male patron also admitted that he was drinking alcohol inside Chinese Disco and had at least one mixed drink. *Id.* at 79. The detective and the investigator then advised the male to go home and that possessing a fake identification is an offense. *Id.* at 80.

22. After the investigation, Investigator Langway served a Sale to Minor Notification form on the establishment. *Id.* Security guards at Chinese Disco indicated to Investigator Puente that they believed the ID scanner could catch fake identifications. *Id.* at 81, 96, 108.

23. Investigator Puente observed that in observing Chinese Disco's identification checking program, security appeared to merely scan identifications without taking the time to examine the identification and the bearer. *Id.* at 81. He also advised security of this and the fact that identification scanners are not a reliable means of catching fake identifications. *Id.* at 80-81. He also recalled advising Mr. Bartholomew on several prior occasions to obtain blue lights and not rely on the ID scanners. *Id.* at 93. The record does not identify the specific brand of ID scanner used by the establishment, provide documentation proving its reliability in identifying fake identifications, or that the scanners have the ability to determine whether the bearer actually owns the presented license.

## CONCLUSIONS OF LAW

24. 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. Official Code § 25-823(a)(1). D.C. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2018).

### I. Standard of Proof

25 In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2018). 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. The Board Dismisses Charge I based on the Failure of the Government to Prove the Sale or Delivery of Alcohol to a Minor or Permitting the Consumption of Alcohol by a Minor.

26. The Board dismisses Charge I because the Government did not prove through substantial evidence a violation of § 25-781.

27. The prohibition on the sale or delivery of alcoholic beverages to a minor is found at D.C. Official Code §§ 25-781(a)(1) and 25-781(b)(1). Section 25-781(a)(1) prohibits the "sale or delivery of alcoholic beverages . . ." to "A person under 21 years of age, either for the person's own use or for the use of any other person . . ." D.C. Code § 25-781(a), (a)(1). Furthermore, § 25-781(b)(1) states that "A retail licensee shall not permit at the licensed establishment the consumption of an alcoholic beverage by any . . . person under 21 years of age." D.C. Code § 25-781(b), (b)(1). The term "permit," among other definitions, means "to allow" or "to give opportunity for." PERMIT, BLACK'S LAW DICTIONARY (10TH ED. 2014).

28. In this case, Investigator Puente did not observe the sale or delivery of alcohol to the identified minors. As a result, this rules out a violation of § 25-781(a)(1), as the minors at issue may have obtained their drinks from third parties. Turning to the alleged violation of § 25-781(b)(1), for different reasons in each case, the Board finds that the Government provided insufficient evidence to demonstrate consumption.

29. Before addressing the consumption issue, the Board notes that there is sufficient evidence to demonstrate permission to consume under § 25-781(b)(1), and had the Government sufficiently established that any minor consumed alcohol inside, the Board would likely have sustained Charge I. As observed by Detective Carter and Investigative Puente, Chinese Disco was checking identifications in front of the establishment. *Supra*, at ¶ 11. There is no indication that anyone allowed inside was given a wristband or other marking denoting their age, or that further identification checking occurred inside. As a result, it is reasonable to infer that anyone allowed inside was given permission to drink inside, whether they bought a drink directly from the bar or were handed the drink by another patron.

30. Nevertheless, there is insufficient evidence to demonstrate consumption. First, inside the establishment, Investigator Puente found a female patron who admitted to being 19 years old and presenting a fake identification to the establishment's security. *Supra*, at ¶ 17. The female patron admitted that the cup in her hand contained vodka-sprite. *Supra*, at ¶ 16. Nevertheless, there is no indication in the record or additional evidence regarding how long she possessed the drink. As a result, while it may be reasonable to infer that she may have consumed it before she was discovered by Investigator Puente, it is also equally reasonable to infer that she could have just received the drink from the bartender, friend, or other third party and did not have time to consume the beverage.

31. Second, it may be reasonable to infer that the intoxicated underage male patron who was ejected from the premises, consumed alcohol inside the establishment based on his admission of having a mixed drink inside. *Supra*, at ¶¶ 20-21. Nevertheless, beyond the patron's statement regarding having a mixed drink, there is no independent evidence corroborating that he consumed alcohol inside, such as observations or video footage of the minor consuming inside. As a result, it is equally reasonable to infer that the minor may have been lying or entered the establishment in an intoxicated state without consuming anything inside. Consequently, in light of these other reasonable possibilities, the Board cannot sustain the violation of § 25-781(b)(1).

**a. Section § 25-781 creates a strict liability offense.**

32. While the Board does not sustain Charge I, the Board finds it appropriate to address various defenses raised by Chinese Disco. First, in defending the violation, Chinese Disco argues that § 25-781 is not a strict liability statute. *Tr.*, 1/31/18 at 11. This is incorrect. As in other jurisdictions, the violations found in § 25-781 are strict liability offenses that have no minimum mental state requirement, such as intentionally or knowingly.<sup>1</sup>

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<sup>1</sup> *Town & Country Lanes, Inc. v. Liquor Control Com'n*, 446 N.W.2d 335, 337-38 (Mich. App. 1989) (saying statute penalizing a licensee for allowing the consumption or possession of alcohol by a minor "is not a penal statute and includes no language indicating that a licensee must have knowingly violated its provisions before being subject to a

33. Both a textual and holistic reading of the statute indicates that § 25-781 is a strict liability offense. In Title 25 of the D.C. Official Code, violations with mental requirements are expressly stated, including offenses dependent on whether the licensee allowed or permitted certain conduct. Compare D.C. Code §§ 25-102(d) (“shall permit”); 25-114 (“shall not permit”); 25-781(b)(1) (“shall not permit”); 25-823(a)(2) (“licensee allows”) with D.C. Code §§ 25-113(a)(2)(ii) (“knowingly allow”); 25-335 (“knowingly permitted”); 25-401(c); 25-401(d); 25-805 (“knowingly permitting”); 25-822 (“knowingly permitted”); 25-833; 25-835. Had the drafters of Title 25 wanted § 25-781 to have a mental state requirement, one could have been added. But they did not. See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 176 (1994) (saying “Congress knew how to impose aiding and abetting liability when it chose to do so . . . . But it did not”); Larry M. Eig, *Statutory Interpretation: General Principles and Recent Trends*, Congressional Research Service, 17 (Sept. 24, 2014) (saying “failure to employ particular terms of art” or Congress knows how to say arguments are “fairly persuasive”).<sup>2</sup> Moreover, if § 25-781 had a mental state requirement, § 807.1’s identification of “intentionally” selling alcohol to a minor as constituting an “egregious” offense meriting no first time warning would make no sense. 23 DCMR § 807.1 (West Supp. 2018); *District of Columbia v. American University*, 2 A.3d 175, 187 (D.C. 2010) (saying that statutes should be read holistically and not be “read . . . in a way that makes them run headlong into one another”).

34. As a matter of policy, strict liability is often used by legislatures in cases where “whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity.” *Gary Investment Corp. v. District of Columbia Dept. of Health*, 896 A.2d 193, 197 (D.C. 2006) citing *Morissette v. United States*, 342 U.S. 246, 256 (1952). In the context of regulating alcohol, strict liability offenses are important because “[t]he harm that alcohol poses to youths is pernicious, pervasive, and deadly . . . .” *Kiriakos v. Phillips*, 139 A.3d 1006, 1011 (M.D. 2016). If a mental state requirement were added to § 25-781, “compliance with underage laws would deteriorate because the motivation to proactively check IDs would disappear.” *MCJS, Inc.*, 311 P.3d at 1150. Further, without strict liability, unscrupulous licensees would be encouraged to engage in negligent supervision or willful blindness. As a result, the District requires strict liability to combat underage drinking and to protect the health, safety, and welfare of the public.

**b. The mere fact that a minor sneaks alcohol into the premises may not provide a defense to a charge based on § 25-781(b).**

35. In defending against the violation, Chinese Disco also argues that it is possible that the male patron observed by Investigator Puente could have brought alcohol from outside the venue to drink. *Chinese Disco Proposed Findings of Fact and Conclusions of Law*, at 4. This is not a

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penalty . . . .”); *MCJS, Inc. v. Kansas Dept. of Revenue*, 311 P.3d 1147, 1148 (Kan. App. 2013) (saying the consumption or possession of alcohol by a minor on a licensed premises is a strict liability offense in Kansas); *State v. Chumbley*, 714 N.E.2d 968, 969 (Ohio App. 1 Dist. 1998) (saying the sale of alcohol to a minor is a strict liability offense in Ohio); *State v. Rohan*, 834 N.W.2d 223, 227-28 (Minn. App. 2013) (saying selling alcohol to a minor is a strict liability offense in Minnesota).

<sup>2</sup> Also available at <https://fas.org/sgp/crs/misc/97-589.pdf> (last visited April 2, 2018).



viable defense because a violation of § 25-781(b) does not require that the establishment provide alcohol to a minor, and includes situations where a third party passes a drink to the minor or brings the alcohol themselves (e.g., BYOB). *See Tr. 1/31/18* at 126. Consequently, because the offense is a strict liability offense, the mere fact that a licensee clears a minor to drink by allowing him or her inside and the minor consumed alcohol, whether provided by the establishment or not, could be sufficient to find a violation of § 25-781(b).

**c. Chinese Disco cannot argue that it was duped by fake identifications when a reasonable licensee should have known that the identifications were fake.**

36. Finally, Chinese Disco cannot argue that it was duped by the use of fake identifications in this case. In the alcohol industry, all licensees know or should know that some minors attempt to evade the legal age requirement by providing a fake identification or the identifications of others. *See D.C. Code § 25-1002(b)-(c)* (making the presenting of a fake identification to procure alcohol a misdemeanor). As a result, it is incumbent upon industry members to ensure that they only accept valid identifications and have reasonable procedures to determine if an identification is authentic. *See D.C. Code §§ 25-783(b)*.

37. As noted by Investigator Puente, there were several indicators that the identifications in this case were fake. First, the fake identifications provided by the male and female patrons were discolored and had incorrect barcodes. *Supra*, at ¶¶ 17, 21-22; *see* Government's Exhibit Nos. 4 and 5. Second, the female patron's identifications lacked holograms, while the holograms on the male patron's identification were misplaced. *Supra*, at ¶¶ 17, 21. As a result, these identifications were obviously fake.

38. It should also be noted that the observations made by Investigator Puente did not rely on any special equipment or techniques not available to the establishment. In this case, Investigator Puente did not run the male and female patrons' identifications through a national database, conduct a background check, or have a special scanner (like Chinese Disco). Instead, he was able to identify the identifications as fake merely by looking at them. *Supra*, at ¶¶ 17, 21

39. Furthermore, the record in this case shows that Chinese Disco's identification checking program is inconsistent. While on some occasions security may reject fake identifications, as noted by Investigator Puente, on the night of the incident security sometimes appeared to be rushing people through the line and relying heavily on an identification scanner without looking carefully at the identification. *Supra*, at ¶ 23. A more rigorous identification program would have resulted in security taking the time to look at each identification, checking out of state or unfamiliar identifications against the identification checking guide provided by ABRA, and using a blue light. *Id.* Security also could have routinely asked patrons that looked young or presented unfamiliar identifications to present a second identification document to compare. Instead, based on the poor quality of the identifications in this case and Chinese Disco's inconsistent identification checking procedures, it appears that Chinese Disco is practicing negligence or willful blindness when it comes to checking identification. *Id.* Indeed, had Chinese Disco been diligent, the minors in this case would not likely have been allowed inside the premises.

40. Consequently, the only thing saving Chinese Disco from being in violation of § 25-781(b) is the fact that Investigator Puente did not observe consumption.

## **II. The Board Issues a Warning for the Violation Described by Charge II.**

41. Under § 25-783(b), “a licensee or his agent or employee shall take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age.” D.C. Code § 25-783(b). Above, the Board determined that Chinese Disco’s identification checking procedures were not adequate and inconsistent, and allowed minors with poor quality identification to enter the establishment. Based on this conclusion, the totality of Chinese Disco’s identification checking procedures and reliance on an identification scanner were unreasonable. *Supra*, at ¶ 23. Nevertheless, in light of the Board’s determination regarding Charge I, the establishment’s lack of prior violations related to underage drinking, and the fact that security at least regularly requested identifications, the Board is persuaded that a warning is warranted for Charge II. *Supra*, at ¶ 8.

## **III. Chinese Disco Violated § 25-762(b)(1) by Permitting More than 99 People Inside the Premises.**

42. The Board finds Chinese Disco in violation of § 25-762(b)(1) for allowing more than 99 people inside the premises in violation of its Board approved occupancy.

43. Under part (a) of the substantial change law, “Before a licensee may make a change in the interior or exterior, or a change in format, of any licensed establishment, which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board in accordance with § 25-404.” D.C. Code § 25-762(a). In part (b), the substantial change law provides that a violation may occur if the license holder “Increase[s] the occupancy of the licensed establishment . . . .” D.C. Code § 25-762(b)(1).

44. Previously, in *Mason Inn*, the Board adjudicated a case involving an allegation that the licensee violated § 25-762(b)(1) by allowing more people inside the licensed premises than permitted by the license. *In re 2408 Wisconsin Avenue, LLC, t/a Mason Inn*, Case No. 12-251-00368, Board Order No. 2013-595, ¶¶ 24-25 (D.C.A.B.C.B. Dec. 11, 2013). There, the Board indicated that “[§] 25-762 does not only apply to physical changes to an establishment, but may also apply to situations where a licensee changes the manner in which the establishment is used.” *Id.* at ¶ 19. The Board noted that the statute contains other examples of violations that refer specifically and only to use, and not permanent physical changes, such as adding nude dancing, providing music, or adding carry-out food sales. *Id.* at ¶ 19 (citing D.C. Code § 25-762(b)(8) through (13) and (15) as examples, including adding nude dancing, providing music, or adding carry-out food sales). Moreover, in *Mason Inn*, the Board indicated that it “has consistently interpreted § 25-762 as applying to single events or incidents.” *Id.* at ¶ 20. The Board further stated that licensees are “required to report its occupancy to the Board in its initial application and any such changes are considered an amendment to the initial or original application for licensure.” *Id.* at ¶ 22. Moreover, any “[Certificate of Occupancy] provided by the [licensee] in ABRA’s records is considered part of the [licensee’s] initial application.” *Id.* at ¶ 22. As a

result, the Board rejected the argument that § 25-762(b)(1) and § 25-762 is limited to physical changes, and found that uses and acts may also constitute a violation. *Id.* at ¶ 19.

45. This interpretation is consistent with the statutory language of §§ 25-762(a) and (b)(1). First, as noted above, presuming that the terms interior, exterior, format, or nature in § 25-762(a) refer only to permanent physical changes is unreasonable and nullifies the statute, in light of clear language in the statute referring only to uses and acts on the premises. *Goba v. District of Columbia Dept. of Employment Services*, 960 A.2d 591, 594 (D.C. 2008) (“An interpretation of the statute that nullifies some of its language is neither reasonable nor permissible”). Second, nothing in the phrase “a change in the interior or exterior, or a change in format” excludes uses and acts in the interior or exterior of the establishment. Moreover, the term “format” means “A *plan* for the organization and arrangement of a specified production,” which refers to more than just the physical layout of a premises, and may include concepts such as how many patrons are allowed in. D.C. Code § 25-762(a); *Webster’s II New College Dictionary* (2001) (“format”) (emphasis added). Third, the term “nature” is defined as the “Essential characteristics and qualities” of a thing, indicates that the phrase “nature of the operation” in § 25-762(b)(1) does not exclude how the property will be used, and may include concepts such as how many patrons are allowed in. D.C. Code § 25-762(a); *Webster’s II New College Dictionary* (2001) (“nature”). As a result, interpreting the phrase “increase the occupancy of the licensed establishment” to refer to uses and acts constitutes a reasonable interpretation. D.C. Code § 25-762(b)(1). In light of this reasoning, the Board rejects Chinese Disco’s proposed interpretation relying on a physical change to the premises. *Chinese Disco Proposed Findings of Fact and Conclusions of Law*, at 5.

46. In this case, Chinese Disco’s Board approved occupancy is 99 persons. *Supra*, at ¶ 13. Investigator Puente observed that the establishment’s clicker tracking admittances was set at 205. *Id.* Chinese Disco argues that this conclusion is not reasonable because he did not observe the exit clicker or engage in a count. *Chinese Disco Proposed Findings of Fact and Conclusions of Law*, at 5. Nevertheless, the Board does not find this argument persuasive, because an investigator or a layperson without specialized training can credibly testify as to crowd size even if the witness cannot provide an exact figure. Moreover, Chinese Disco was free to counter his observations with evidence that the establishment was not overcrowded (e.g., video footage, witness testimony, guest check count) or the exit number. But it did not. As a result, the Board is entitled to rely on the uncontradicted evidence in the record to conclude that Chinese Disco was overcrowded on February 4, 2017.

47. By approving Chinese Disco for a license with a capacity of 99 people, both the Board and the community had reasonable expectations that it would operate within those limitations and avoid the crowd control issues of a much larger establishment. Whether out of ignorance or intentional, allowing more than 99 people inside the premises fundamentally changes the nature of the business and its operations beyond what was approved or what was expected. *Supra*, at ¶ 13. More importantly, this type of violation endangers everyone inside the premises. As a result, the Board sustains Charge II.

#### **IV. Chinese Disco violated its Settlement Agreement by Permitting More than 99 People Inside.**

48. The Board finds Chinese Disco in violation of its settlement agreement on February 4, 2017. Under § 25-446(e), “upon a determinate that a licensee has violated a settlement agreement, the Board shall penalize the licensee. . . .” D.C. Code § 25-446(e). Chinese Disco’s settlement agreement requires that “The establishment shall have a maximum capacity of ninety-nine persons” and that this limit “shall not be exceeded.” *Case Report No. 17-MP-00033, Exhibit No. 4* at Settlement Agreement, § 1. Moreover, the agreement provides that the license holder “shall ensure that a clear passageway is maintained at all times for the safe egress of occupants in case of fire or other emergency.” *Id.*

49. As noted above, the Board credited Investigator Puente’s observation that Chinese Disco had more than 99 persons inside in violation of its Board-approved occupancy and settlement agreement. *Supra*, at ¶¶ 13, 15. The record does not provide sufficient facts to determine whether the establishment had maintained a “clear passageway” or “safe egress.” *Case Report No. 17-MP-00033, Exhibit No. 4* at Settlement Agreement, § 1. In light of the penalty imposed related to Charge III, which is similar to the present charge, and the inconclusive evidence regarding compliance with the obligation to maintain “safe egress,” the Board issues a warning for the violation described in Charge IV.

#### **V. Penalty**

50. In this case, the violation of §§ 25-762 represents the license holder’s second primary tier violation. 23 DCMR § 800 (West Supp. 2018); *Case Report No. 17-MP-00020*, Investigative History. The fine range for the offense falls between \$2,000 and \$4,000. 23 DCMR § 801.1(b) (West Supp. 2018).

### **ORDER**

Therefore, the Board, on this 2nd day of May 2018, finds that Prospect Dining, LLC, t/a Chinese Disco, guilty of violating the substantial change law. The Board imposes the following penalty on Chinese Disco:

- (1) For the violation described in Charge I, shall be found **NOT GUILTY**.
- (2) For the violation described in Charge II, Chinese Disco shall receive a **WARNING**.
- (3) For the violation described in Charge III, Chinese Disco shall receive a fine of \$3,000. Chinese Disco shall also receive three (3) stayed suspension days, which shall go into effect if the Respondent is found to have committed another violation within one (1) year from the date of this Order.
- (4) For the violation described in Charge IV, Chinese Disco shall receive a **WARNING**.

**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 violation found by the Board in this Order shall be deemed a primary tier violation, while the two warnings issued by the Board shall be appropriately recorded in Chinese Disco's investigative history.

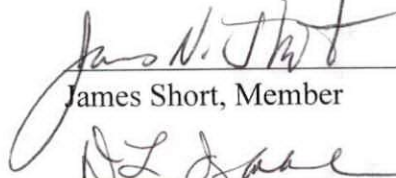
**IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

District of Columbia  
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



James Short, Member

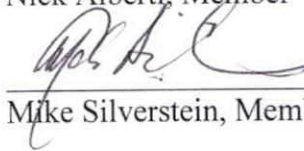


Donald Isaac, Sr., Member

I concur with the majority's decision in Charges II through IV, but dissent as to the majority's decision related to Charge I.



Nick Alberti, Member



Mike Silverstein, 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).