

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

In the Matter of:)	
)	
MST Enterprises, Inc.)	Case No.: 20-251-00036
t/a Churreria Madrid)	License No.: ABRA-60806
)	Order No.: 2021-338
Holder of a)	
Retailer's Class CR License)	
)	
at premises)	
2505 Champlain Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: MST Enterprises, Inc., t/a Churreria Madrid, Respondent

John Lui, 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 MST Enterprises, Inc., t/a Churreria Madrid, (hereinafter "Respondent" or "Churreria Madrid") violated D.C. Official Code § 25-823(a)(2) by permitting an unlawful pop-up cannabis event at the establishment on November 2, 2020. The Respondent shall pay a fine of \$6,000 for the offense and receive a warning for the violation of D.C. Official Code § 25-823(a)(7).

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which charges the Respondent with the following violations:

- Charge I:** [On November 2, 2020,] [y]ou allowed the establishment to be used for an unlawful purpose, in violation of D.C. Code § 25-823(a)(2)
- Charge II:** [On November 2, 2020,] [y]ou failed to follow the terms of your Board-approved license by operating on a Monday, in violation of D.C. Code § 25-823(a)(7).

Notice of Status Hearing and Show Cause Hearing, at 2-3. 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. The Show Cause Status Hearing in this matter was held on January 6, 2020. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 5, 2021.

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. Churreria Madrid holds a Retailer’s Class CR License at 2505 Champlain Street, N.W., Washington, D.C. *ABRA License No. 60806*.
2. The parties stipulated to the following facts:
 1. On Monday, November 2, 2020, at approximately 5:00 p.m., Alcoholic Beverage Regulation Administration Supervisory Investigator Mark Brashears (SI Brashears) arrived at the establishment to investigate a report of a marijuana “pop-up” party.
 2. SI Brashears met with Metropolitan Police Department (MPD) at the establishment.
 3. Standing outside, SI Brashears observed several people on the first floor.
 4. SI Brashears had difficulty entering the establishment because the front door was locked.
 5. ABC Manager Edgar Amaya told SI Brashears that the establishment was closed for a private event.
 6. SI Brashears advised ABC Manager Edgar Amaya that he could still inspect the establishment.
 7. When SI Brashears and the MPD officers entered the establishment, they observed a marijuana-related event taking place.

8. SI Brashears and MPD officers observed people on the first and second floors of the establishment.

9. On the second floor, SI Brashears observed jars containing marijuana buds, rolled marijuana cigarettes, and marijuana edibles containing THC, along with marijuana paraphernalia. These items were displayed on tables or bagged.

10. SI Brashears also observed a firearm on a chair on the second floor.

11. The establishment's license does not allow operation on Mondays.

Stipulation of Facts, at 1-4; *Transcript (Tr.)*, May 5, 2021 at 7, 15.

CONCLUSIONS OF LAW

3. 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

4. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2021). 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 Respondent Permitted Marijuana to be Sold and Possessed in Violation of D.C. Law.

5. Under § 25-823(a)(2), it is a violation for the “licensee [to] allow[] the licensed establishment to be used for any unlawful or disorderly purpose.” D.C. Code § 25-823(a), (2). In *Levelle*, the court indicated that to sustain a violation of § 25-823(a)(2), the facts should not just discuss “. . . what occurred, but also about how the club's regular method of operating caused or contributed to the incidents.” *Levelle, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 924 A.2d 1030, 1037 (D.C. 2007). Moreover, in some cases, a single incident may be sufficient to find a violation. *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). Finally, “any illegal act committed by management amounts to a *per se* use of the premises for an illegal purpose and [satisfies the demonstrable connection element] required by § 25-823(a)(2)” *Id.* at 7, 13.

6. Section 25-822(a)(2) makes it illegal for an establishment to allow or permit the “possession”; “negotiations for sale”; “use”; of controlled substances, such as cannabis, or drug paraphernalia, “in violation of the CSA or Chapter 11 of Title 48.” D.C. Code §§ 25-822(a)(2); 48-901.02; 48-902.08(a), (1), (6). In this case, the Respondent's manager was present and large amounts of marijuana were present and very visibly displayed in a manner that indicated that marijuana was for sale. *Supra*, at ¶ 2(Nos. 7, 9). As a result, where the Respondent or their

management knew or should have known of the illegal activity, the Respondent had an obligation to stop the event, eject the customers displaying marijuana, or report the drugs to the police—not allow the event to proceed. Therefore, the incident cited by the Government is sufficient to sustain Charge I, as the illegal activity was obvious, and the knowledge and permission of the licensee and his or her management may be reasonably inferred.

III. Penalty

7. Therefore, the Respondent shall pay a fine of \$6,000 for Charge I, which constitutes a third level primary tier violation based on the Respondent's history of violations. The Board issues a warning for Charge II.

ORDER

Therefore, the Board, on this 15th day of July 2021, finds MST Enterprises, Inc., t/a Churreria Madrid, guilty of violating § 25-113a(b)(1). The Board imposes the following penalty on Churreria Madrid:

- (1) For the violation described in Charge I, Churreria Madrid shall pay a \$6,000 fine.
- (2) For the violation described in Charge II, Churreria Madrid shall receive a **WARNING**.

IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within one-hundred and twenty (120) 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 offense.

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

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430b9b59d5f0e4b730060d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
Bobby Cato
Key: 256d3fca02e146d7f4b75bd7917d20d

Bobby Cato, Member

eSigned via SeamlessDocs.com
Rafi Aliya Crockett, Member
Key: b580de91845e1f9e4016155e5c12f81cc

Rafi Crockett, Member

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Edward Grandis, Member
Key: 5027bda7f09f0040ec14adeb52541ce5

Edward S. Grandis, Member

I concur with the decision of the Board to find the establishment liable, but dissent from the penalty selected by the majority of the Board.

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f820de6ac81b332d42049ec

James Short, Member

I abstain from the position taken by the majority of the Board.

eSigned via SeamlessDocs.com
Jeni Hansen, Member
Key: 8217299150509447401b56f6c2a4189f

Jeni Hansen, 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).