

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

In the Matter of:)	
)	
Omar, LLC)	Case No.: 20-CMP-00059
t/a Costello Restaurant and Lounge)	License No.: ABRA-100259
)	Order No.: 2021-418
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
5201 Georgia Avenue, N.W.)	
Washington, D.C. 20011)	

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

ALSO PRESENT: Omar, LLC, t/a Costello Restaurant and Lounge, Respondent

Jessica Krupke, 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 Omar, LLC, t/a Costello Restaurant and Lounge, (hereinafter "Respondent" or "Costello") violated D.C. Official Code § 25-701 by failing to have a licensed manager or owner present while in operation on January 25, 2020. The Respondent shall pay a fine of \$750 for the offense.

Procedural Background

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

Charge I: [On January 25, 2020,] [y]ou failed to have the establishment’s owner or an ABC Board-approved manager present on the premises during the establishment’s hours of sale, service, and consumption of alcoholic beverages in violation of D.C. Code § 25-701(a-1)(1)

Notice of Status Hearing and Show Cause Hearing, at 2. The Notice charges the Respondent with one violation, 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, 2021. The parties proceeded to a Show Cause Hearing and argued their respective cases on June 16, 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. Costello holds a Retailer’s Class CT License at 5201 Georgia Avenue, N.W., Washington, D.C. *ABRA License No. 100259*. On January 25, 2020, ABRA Investigator Mark Ruiz and ABRA Investigator Jovan Miller received a noise complaint regarding Costello. *Transcript (Tr.)*, June 16, 2021 at 13, 21, 34. Upon arriving at the establishment after 11:00 p.m., they observed a live band playing inside the establishment and patrons listening to the band. *Id.* at 13-14. Investigator Ruiz observed beer on the establishment’s bar and in the possession of patrons. *Id.* at 13. The investigative team approached the bar and asked an employee if a manager or owner was available. *Id.* The employee stated that this was her first night working at the establishment and directed the team to another employee. *Id.* The second employee then called the owner who was not present. *Id.* The team remained on the premises for approximately 15 minutes but did not find or observe any owner or licensed manager present. *Id.* at 21, 26. Amadou Bah, the owner of Costello, explained that a manager was present but left the premises temporarily to obtain a specific bottle of alcohol. *Id.* at 38. The owner further believed the manager only left the establishment for ten minutes. *Id.* at 46-47.

CONCLUSIONS OF LAW

2. 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

3. 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 Failed to Have a Manager Present as Required by Law.

4. Under § 25-701(a) and (a-1),

(a) A person designated to manage an establishment shall possess a manager's license.

(a-1)(1) . . . an establishment’s owner or Board-approved manager shall be present on the premises at all times during the establishment’s hours of sale, service, and consumption of alcoholic beverages.

D.C. Code § 25-701(a), (a-1). Nevertheless, on January 25, 2020, two investigators entered the premises while Costello was in operation and did not find the owner or a licensed manager present. *Supra*, at ¶ 1. While the ownership claimed the manager was only away for ten minutes, the establishment must always have a licensed manager or owner present while alcohol is served. Therefore, the Board sustains Charge I.

III. Penalty

5. Based on the violation identified above, the Respondent shall pay a fine of \$750 for Charge I, which constitutes a second secondary tier violation based on the Respondent’s history of prior violations. 23 DCMR § 800 (West Supp. 2021).

ORDER

Therefore, the Board, on this 21st day of July 2021, finds Costello, guilty of violating § 25-701. The Board imposes the following penalty:

(1) For the violation described in Charge I, the Respondent shall pay a \$750 fine.

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 secondary 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: ac430b0669d5f00e4b730003d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ae3738e209e6ac8d1b3325d2948ec

James Short, Member

eSigned via SeamlessDocs.com
Bobby Cato
Key: 258d3fca0f0e148d7f4b75bd7917d28d

Bobby Cato, Member

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Rafi Aliya Crockett, Member
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Rafi Crockett, Member

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Jeni Hansen, Member
Key: 82172931f0509447491b56fbc2a4189f

Jeni Hansen, Member

Edward S. Grandis, 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).