

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

In the Matter of:)	
)	
Empire DC, LLC)	Case No.: 21-CMP-00060
t/a Empire Lounge)	License No.: ABRA-110702
)	Order No.: 2022-207
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
1909 9th Street, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: Empire DC, LLC, t/a Empire Lounge, Respondent

Richard Bianco, Counsel, on behalf of the Respondent

James Jordan, 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) dismisses the charge that Empire DC, LLC, t/a Empire Lounge, (hereinafter "Respondent" or "Empire Lounge") violated D.C. Official Code § 25-725(a) on October 27, 2021, for lack of sufficient evidence. Specifically, in this case, the record lacked specific information regarding the address where the noise was heard, and the record could not definitively show the source of the noise because the investigators did not enter

the Respondent's premises during their investigation. The Board advises the agency, in the future, to provide the specific address of the complainant, to definitively determine the source of the noise, and to rule out specific defenses such as the occasional opening and closing of doors during noise investigations. Therefore, for these reasons, the charge is dismissed.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on December 15, 2021. *ABRA Show Cause File No. 21-CMP-00060*, Notice of Status Hearing and Show Cause Hearing, 2 (Dec. 15, 2021). 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.

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

Charge I: [On October 27, 2021,] [y]ou played music at such an intensity that was heard in a premises outside of the licensed establishment, in violation of D.C. Code § 25-725(a)

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

Both the Government and Respondent appeared at the Show Cause Status Hearing on February 9, 2022. The parties proceeded to a Show Cause Hearing and argued their respective cases on March 9, 2022. After the hearing, the parties filed proposed findings of fact and conclusions of law.

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. Empire Lounge holds a Retailer's Class CT License at 1909 9th Street, N.W., Washington, D.C. *ABRA License No. ABRA-110702*. On October 27, 2021, at 10:45 p.m., ABRA Supervisory Investigator John Fiorentine received a noise complaint through the ABRA Noise Complaint Hotline. *Transcript (Tr)*. at 28 (March 9, 2022). Supervisory Investigator Fiorentine tasked ABRA Investigator Adam Mitchell to assist with responding to the complaint. *Id.* at 28. Prior to responding to the location, he entered the complainant's address within the interactive zoning map system and determined that it was a residential property. *Id.* at 28-29, 32.
2. Supervisory Investigator Fiorentine and Investigator Mitchell arrived at 8th Street, N.W. and heard music emanating from an alley between 8th and 9th Streets. *Id.* at 11. The complainant's residence is on 8th Street, N.W., immediately behind 1909 9th Street or kitty-corner to it where two residences split, and the garage door of the residence is within 8-10 feet of

the establishment. *Id.* at 11, 34. The record does not contain the address of the complainant. Supervisory Investigator Fiorentine and Investigator Mitchell entered the complainant's apartment to determine if noise was audible inside and confirmed that the windows and exterior doors were closed. *Id.* at 11. Supervisory Investigator Fiorentine next determined that music did not emanate from other units in that building. *Id.* at 30.

3. Supervisory Investigator Fiorentine and Investigator Mitchell visited two bedrooms in the complainant's apartment and music was audible. *Id.* at 11, 29. The audible music had consistent bass rhythms. *Id.* at 11, 29. The investigators went to the complainant's garage, where the music was louder. *Id.* at 29. They could not identify the lyrics of the music. *Id.*

4. The investigators entered the alley separating 8th and 9th Streets and heard loud music from the building directly behind the condo complex. *Id.* at 11-12, 24. The investigators could hear the same bass music coming from the third floor of the building at the Respondent's location, where Respondent is the only establishment there. *Id.* at 22-23, 30-31. Investigator Mitchell identified the building as 1909 9th Street, N.W., from the address on the rear of the building. *Id.* at 12. Nevertheless, a locked gate prevented the investigators from entering the rear of the establishment. *Id.* at 29.

5. Investigator Mitchell identified the source of the music as the second and third floors of the establishment and stated that the "noise was coming over the second level down and . . . into that alley [from] 1909 9th Street." *Id.* (alteration added). Supervisory Investigator Fiorentine identified the source of the music as the second and third floors of the establishment. *Id.* at 29-30. Investigator Mitchell then went to the front of the establishment, asked to speak to an ABC manager or owner, and advised the owner of the substantiated complaint. *Id.* at 12.

6. The Board notes that the investigators in this case did not enter the Respondent's establishment and confirm the source of the music being played inside the establishment. *Id.* at 24-25, 38. The investigators could also not identify whether the music was leaking from the establishment's doors, windows, or roof. *Id.* at 30. The Board further notes that another licensed establishment operates out of the first floor. *Id.* at 31, 37. There were also other establishments in the area that were open and that have entertainment endorsements on their license. *Id.* at 43.

CONCLUSIONS OF LAW

7. 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

8. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). 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. Standard of Proof

9. The Board agrees with the Respondent that the Government failed to substantiate the charge for several reasons. Under D.C. Official Code § 25-725:

(a) The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any:

(1) Mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise;

(2) Bell, horn, gong, whistle, drum, or other noise-making article, instrument, or device; or

(3) Musical instrument.

(b) This section shall not apply to:

(3) Any premises other than the licensed establishment that are located within a commercial or manufacturing zone, as defined in the zoning regulations and shown in the official atlases of the Zoning Commission for the District;

(4) Sounds, noises, or music occasioned by normal opening of entrance and exit doors for the purpose of ingress and egress; or

D.C. Code § 25-725(a)-(b). First, in this case, the Board agrees with the Respondent that the Government failed to provide the address of the complainant; therefore, it cannot be sufficiently demonstrated that the noise was heard in a residence or a residence not subject to the zoning defense provided by (b)(3). *Respondent's Proposed Findings of Fact and Conclusions of Law*, at ¶ 31. The Board requires this level of specificity because the Respondent is entitled to specific information about the source and location of the complaint so that it can mount an appropriate defense; therefore, the information provided indicating the general vicinity of the complainant is not sufficient to sustain the charge. Second, by not entering the establishment, the Government cannot show that the establishment was using any of the devices listed in part (a) or that the sound was merely from the occasional opening of doors for the use of ingress and egress. *Id.* at ¶¶ 27-29. Therefore, there is insufficient evidence to sustain the charge.


ORDER

Therefore, the Board, on this 11th day of May 2022, finds Empire DC, LLC, t/a Empire Lounge not liable and **DISMISSES** the charge in this case. 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: ac43cb0eb6ed5f09e4b736003d1dccc8

Donovan Anderson, Chairperson

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Key: 256d3fca1f5e145d7f4b75bd7817d20d

Bobby Cato, Member

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Rafi Aliya Crockett, Member
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Rafi Crockett, Member

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Edward Grandis, Member
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Edward S. Grandis, Member

I dissent from the position taken by the majority in this case. Based on the facts, the Respondent merits a warning for the violation and not dismissal of the charge.

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Key: 547ae373f820de6ac8d1b3325d2949ec

James Short, Member

eSigned via SeamlessDocs.com
Jeni Hansen, Member
Key: 82172031f0509447491b56f9c2a41899

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).