

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

In the Matter of:)	
)	
Brother’s Burger Bar, LLC)	Case No.: 21-CMP-00041
t/a Felicity Lounge)	License No.: ABRA-112502
)	Order No.: 2022-117
Holder of a)	
Retailer’s Class CR License)	
)	
at premises)	
707 H Street, N.E.)	
Washington, D.C. 20002)	

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

ALSO PRESENT: Anthony Celo, 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 Brother’s Burger Bar, LLC, t/a Felicity Lounge, (hereinafter “Respondent” or “Felicity Lounge”) violated D.C. Official Code §§ 25-403 and 25-823(a)(6) for failing to maintain operational security cameras and failing to provide security footage as required by the Respondent’s security plan. Based on these violations, the Respondent shall pay a fine of \$8,000 and receive five (5) stayed suspension days. The Respondent is further advised that ABRA’s Enforcement Division will conduct a walkthrough of the establishment to ensure that the Respondent has functioning security cameras in compliance with the District’s alcohol laws.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 29, 2021. *ABRA Show Cause File No. 112502*, Notice of Status Hearing and Show Cause Hearing, 2 (Oct. 26, 2021). 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 August 19, 2021,] [y]ou failed to maintain an operable security camera, in violation of D.C. Code § 25-403(e)(3)(G)(i)
- Charge II:** [On August 19, 2021,] [y]ou failed to ensure any footage of a crime of violence is maintained for a minimum of 30 days, in violation of D.C. Code §§ 25-403(e)(3)(G)(ii)
- Charge III:** [On August 19, 2021,] [y]ou failed to ensure that security footage was made available within 48 hours upon request, in violation of D.C. Code § 25-403(e)(3)(G)(iii)
- Charge IV:** You failed to follow the terms of your Security Plan and Manual, regarding video surveillance, in violation of [D.C. Code § 25-823(a)(6)]. . . .
- Charge V:** You failed to follow the terms of your Security Plan and Manual, regarding contacting the police in the event of a crime or act of violence, in violation of [D.C. Code § 25-823(a)(6)]. . . .

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

The Government appeared at the Show Cause Status Hearing on December 1, 2021. The case proceeded to a Show Cause Hearing on January 26, 2022. The Respondent failed to appear, and the Government proceeded *ex parte* pursuant to D.C. Official Code § 25-447(e).

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. Felicity Lounge holds a Retailer's Class CR License at 707 H Street, N.E., Washington, D.C. *ABRA License No. 112502*. On August 19, 2021, the Alcoholic Beverage Regulation Administration (ABRA) received notice from the Metropolitan Police Department (MPD) that a shooting occurred in the early morning in the vicinity of Felicity Lounge. *Case Report No. 21-CMP-00041*, at 2.

2. ABRA Investigator Adam Mitchell conducted an evening regulatory inspection at Felicity Lounge on August 19, 2021. *Id.* at 2. Dominique Jones, a manager, indicated that he was unaware an incident had occurred until shell casings were found in front of the establishment by police. *Id.* Mr. Jones was unable to supply camera footage when requested by Investigator Mitchell. *Id.*

3. On August 23, 2021, Investigator Mitchell emailed Mr. Jones and reiterated his request for security footage; nevertheless, no response was received. *Id.* The investigator then called and spoke with Jeffery Miskiri, one of the owners of the business. *Id.* During their conversation Investigator Mitchell again asked for security footage. *Id.* at 2-3. The investigator then sent an email to the Respondent's general account. *Id.* at 3.

4. In response, he received an email from the Respondent stating, "The hard drive on the camera malfunctioned, and we were unable to retrieve the recorded footage from the requested date." *Id.* The email then stated that the Respondent had bought an external hard drive for the system. *Id.*

5. The Respondent's security plan provides the following in Section 3: "Video cameras will be mounted to cover the entrance, exits, and entire premises. Tapes will be made available upon request by the local police department and ABRA." *Id.*

6. The Respondent's security plan provides the following in Section 7: "The Police will be called in a timely manner anytime management . . . has information to believe a crime has been or is about to be committed [and] whenever a threat of or act of violence occurs on or off premises close enough to the establishment." *Id.*

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. The Board Finds the Respondent Liable for All Charges.

9. Under D.C. Official Code § 25-403(e)(3)(G),

(e)(3)(G) In the event that cameras are required to be installed by the Board or in accordance with the Respondent's security plan, the Respondent shall ensure the following:

- (i) The cameras utilized by the establishment are operational;
- (ii) Any footage of a crime of violence or a crime involving a gun is maintained for a minimum of 30 days; and
- (iii) The security footage is made available within 48 hours upon the request of ABRA or the Metropolitan Police Department.

D.C. Code § 25-403(e)(3)(G). In this case, the cameras utilized were not operational on the date of the shooting in violation of the law. *Supra*, at ¶ 4. In light of the camera malfunction, the crime occurring outside the premises, and the two other charges' close relation to Charge I, the Board will issue warnings for the remaining violations. Therefore, the Board sustains Charge I and issues Warnings for Charges II and III.

10. Under D.C. Official Code § 25-823(a)(6), it is a violation for a licensee to “fail[] to follow its . . . security plan D.C. Code § 25-823(a)(6). In this case, Section 3 of the security plan required Felicity Lounge to provide security footage to ABRA; nevertheless, this did not occur. *Supra*, at ¶¶ 4-5. As a result, the Board sustains Charge IV.

11. The Board does not find sufficient evidence in the record that the Respondent was aware of the shooting; therefore, Charge V is dismissed because Section 7's obligation to report the incident cannot be triggered by an incident the Respondent's staff had no awareness of. *Supra*, at ¶ 7.

III. Penalty

12. Felicity Lounge has two prior primary tier violations. A third primary tier violation shall have a fine range of between \$4,000 and \$6,000. 23 DCMR § 801.1(c) (West Supp. 2022). The Board also will impose stayed suspension days for failing to have operable security cameras.

ORDER

Therefore, the Board, on this 23rd day of March 2022, finds the Respondent **GUILTY** of violating D.C. Official Code §§ 25-403 and 25-823(a)(6). The Board imposes the following penalty:

- (1) For the violation described in Charge I, Felicity Lounge shall pay a fine of \$4,000. The Respondent shall receive five (5) stayed suspension days, which shall go into effect if the Respondent is found to have violated the District's alcohol laws within one (1) year from the date of this Order.
- (2) For the violation described in Charge II, Felicity Lounge shall receive a **WARNING**.

(3) For the violation described in Charge III, Felicity Lounge shall receive a **WARNING**.

(4) For the violation described in Charge IV, Felicity Lounge shall pay a fine of \$4,000.

(5) Charge V is **DISMISSED**.

The Respondent is **ADVISED** that ABRA's Enforcement Division will conduct a walkthrough of the establishment to ensure that the establishment has functioning security cameras in compliance with the District's alcohol laws.

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 (West Supp. 2022), 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

eSigned via SeamlessDocs.com
Donovan Anderson
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Donovan Anderson, Chairperson

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James Short
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James Short, Member

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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).