

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

In the Matter of:)	
)	
New York Avenue Beach Bar, LLC)	Case No.: 18-CMP-00069
t/a Halftime Sports Bar)	License No.: 94107
)	Order No.: 2018-712
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
1427 H Street, N.E.)	
Washington, D.C. 20002)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member

ALSO PRESENT: New York Avenue Beach Bar, LLC, t/a Halftime, Respondent

Keith Lively and Camelia Mazard, Counsels, of the firm Doyle, Barlow, and Mazard PLLC, on behalf of the Respondent

Christine Gephardt, 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 New York Avenue Beach Bar, LLC, t/a Halftime, (hereinafter "Respondent" or "Halftime") violated D.C. Official Code §§ 25-823(a)(2) and 25-823(a)(6) when its bouncer struck and stomped on a patron outside the establishment on February 25, 2018, and failed to record the incident in its incident log, as

required by its security plan. In light of Halftime's extensive history of violations, the Board imposes a fine of \$60,000 for the offenses.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 19, 2018. *ABRA Show Cause File No. 18-CMP-00069*, Notice of Status Hearing and Show Cause Hearing, 2 (Jun. 19, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1427 H Street, N.E., Washington, D.C., on June 26, 2018. *ABRA Show Cause File No. 18-CMP-00069*, 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 25, 2018,] [y]ou allowed the establishment to be used for an unlawful or disorderly purpose by permitting an incident of assault or violence to occur on the premises by a member of your security staff, in violation of D.C. Official Code § 25-823(a)(2) or D.C. Official Code § 25-823(b)
- Charge II:** [On February 25, 2018,] [y]ou failed to comply with the terms of your Security Plan (SP) . . . by failing to maintain a log of the violent incident occurring on February 25, 2018, in violation of D.C. Official Code § 25-823(a)(6) and D.C. Official Code § 25-823(c)
- Charge III:** [On February 25, 2018,] [y]ou failed to comply with the terms of your Security Plan (SP) in violation of D.C. Official Code § 25-823(a)(6) and D.C. Official Code § 25-823(c)

Notice of Status Hearing and Show Cause Hearing, 2-3.

Both the Government and Respondent appeared at the Show Cause Status Hearing on September 19, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on October 3, 2018. The Board further reviewed the Proposed Findings of Fact and Conclusions of Law filed by Halftime after the hearing.

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. Halftime holds a Retailer's Class CT License at 1427 H Street, N.E., Washington, D.C. ABRA License No. 94107.

II. Officer Daniel Koch

2. Metropolitan Police Department (MPD) Officer Daniel Koch works in MPD's First District. *Transcript (Tr.)*, October 3, 2018 at 15. On February 25, 2018, at 11:00 p.m., Officer Koch and his partner were driving past Halftime. *Id.* at 16. Outside the establishment, they observed an altercation occurring in front of Halftime. *Id.* At the time Officer Koch observed the altercation, a large male was standing over a smaller male. *Id.* The smaller man had tucked himself in the fetal position as the larger man struck him several times with a closed fist. *Id.*

3. In response, the officers stopped their vehicle and Officer Koch exited the vehicle. *Id.* Outside the vehicle, Officer Koch ordered the larger male to back away from the victim. *Id.* at 16-17. The male complied with this order. *Id.* at 17. Officer Koch observed that the male was wearing street clothes and had on no attire identifying him as an employee of Halftime. *Id.* at 26.

4. Nevertheless, the larger male identified himself as a bouncer at Halftime. *Id.* at 17. The bouncer explained his actions by indicating that he was dealing with an unruly patron. *Id.* The bouncer indicated that the patron he was kicking was intoxicated inside the establishment, was disturbing Halftime's patrons, and had been removed several times. *Id.* The bouncer explained that the altercation observed by the officers started after Halftime removed the patron for the last time. *Id.* at 17-18. A patron outside Halftime also told the officers that the victim was being disorderly inside the establishment. *Id.*

5. In response to this information, the officers placed the bouncer under arrest for the crime of simple assault. *Id.* at 18. An ambulance was also called for the victim. *Id.* at 21. Officer Koch did not believe that assault charges were filed against the bouncer. *Id.* at 25, 39.

III. Officer Scott Possinger

6. MPD Officer Scott Possinger also works in MPD's First District. *Id.* at 29. He arrived at Halftime with Officer Koch. *Id.* at 30. In addition to Officer Koch's observations, Officer Possinger observed the bouncer stomp on the victim's head at least twice before exiting his vehicle. *Id.* at 30-31. He did not observe the victim attempt to defend himself at all during the assault. *Id.* at 45. After separating the parties, Officer Possinger observed that the victim was highly intoxicated and "had extreme difficulty standing . . ." *Id.* at 32.

7. Officer Possinger further interviewed the bouncer and victim. *Id.* at 33. During his interview, the bouncer told the officer that the victim had previously entered the establishment on two separate occasions and removed him on both occasions. *Id.* at 34. During the third removal, the bouncer stated that the victim grabbed his shirt. *Id.* In contrast, the victim was not able to provide details regarding the incident. *Id.*

IV. ABRA Investigator Cameron Royster

8. ABRA Investigator Cameron Royster received a report regarding the assault from MPD on March 6, 2018. *Id.* at 52. In response, Investigator Royster spoke to Officers Koch and Possinger. *Id.* at 52-53. He also found and reviewed Halftime's security plan in ABRA's files. *Id.* at 53.

9. Halftime's security plan requires the establishment to have five cameras at specific points on the premises, a 13-inch viewing monitor, and the capability to record for 30 days. *Security Plan*, at 5. The security plan also requires Halftime to "maintain a log and report for all relevant incidents in or around the establishment," which includes "Injuries"; "Fights"; and "Violent Acts." *Id.*

10. Investigator Royster visited the establishment later in the week. *Tr.*, 10/3/18 at 53. At the establishment, he met with Kenneth Woodley, the establishment's licensed manager. *Id.* at 54. Mr. Woodley indicated that he was managing the premises on February 25, 2018. *Id.* Mr. Woodley indicated that the bouncer involved in the incident was the head of the establishment's security. *Id.* at 54, 90.

11. During his conversation with Mr. Woodley, the investigator requested that the manager make the incident log available for review. *Id.* at 56. In response, Mr. Woodley was not aware as to whether the establishment maintained an incident log. *Id.* The manager then got the owner. *Id.* at 60. The owner, Kimberly Rose, informed the investigator that a water leak had destroyed the incident log a month prior to the incident. *Id.* at 61. The investigator then asked if Halftime had created a new incident log. *Id.* The owner responded that Halftime had not created a new incident log in the interim. *Id.* at 61, 67.

12. Mr. Woodley further informed the investigator that the establishment had a total of eight cameras. *Id.* at 62. Nevertheless, he also informed the investigator that two to three cameras were not working. *Id.* The manager did not indicate which cameras were defective. *Id.* at 69-70. Furthermore, when the investigator requested the establishment's footage, the owner informed him that only her husband could access the footage. *Id.* at 62. She further informed him that the investigator could not obtain the footage until later in the week. *Id.* at 62-63. The investigator then left the establishment. *Id.* at 63.

13. After visiting the establishment, the investigator watched body camera footage record by the officers at the scene. *Id.* at 63. Based on his observations, the footage matched the description of the incident provided by the officers. *Id.* at 63, 80.

V. Kimberly Rose

14. Kimberly Rose is a part owner of Halftime. *Id.* at 102. She owns 80 percent of the business. *Id.* She became an owner of Halftime on December 14, 2016. *Id.* at 104. Karl Graham owns the remaining 20 percent. *Id.*

15. Ms. Rose was not present during the incident. *Id.* at 104-05. She spoke to the investigator after the incident. *Id.* at 107. During their conversation, they discussed the Halftime's logbook. *Id.* She recalls that during their conversation, she informed the investigator that a flood had destroyed the logbook. *Id.* She further admitted that she could not provide the logbook when requested by the investigator. *Id.* at 108. She has been in control of the daily operations from February 2018. *Id.* at 114. Ms. Rose further indicated that on the day of the incident, there was only one security person present. *Id.* at 126.

16. Ms. Rose indicated that she saw video related to the altercation between a customer and her security. *Id.* at 109. She indicated that the customer was antagonizing her security by repeatedly opening and closing the establishment's door and through verbal statements. *Id.* She is not aware of any prior incident where her security staff has assaulted a customer. *Id.* at 112. She further indicated that she terminated the security member involved due to this incident. *Id.* She also fired Mr. Woodley for separate reasons. *Id.* at 115, 124. She had also heard that the patron in question in this case spit on the bouncer. *Id.* at 125.

CONCLUSIONS OF LAW

17. 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

18. 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. On February 25, 2018, Halftime Allowed the Establishment to be Used for an Unlawful or Disorderly Purpose.

19. The Board finds that the assault committed by Halftime's bouncer against a patron on February 25, 2018 violated § 25-823(a)(2).

20. 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). Section 25-823(a)(2) requires the government to establish three elements. Specifically, "(1) it is a violation for a licensee or their agents to cause, contribute, encourage, or participate (*demonstrable connection*) (2) in an unlawful or disorderly incident that occurs within or around the licensee's premises (*unlawful or disorderly purpose*) (3) through a method of operation (*method of operation*)." *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). Section 25-823(b) further provides that "A single incident of assault, sexual assault, or violence shall be sufficient to prove a violation of

subsection (a)(2) of this section; provided, that the licensee has engaged in a method of operation that is conducive to unlawful or disorderly conduct.” D.C. Code § 25-823(b).

a. The government has established a demonstrable connection.

21. Turning to this case, the Board is satisfied that the government has established a demonstrable connection. As noted in *Bakalis*, the finder of fact may consider the direct acts of the licensee and their agents. *James Bakalis & Nickie Bakalis, Inc. v. Simonson*, 434 F.2d 515, 519 (D.C. Cir. 1970). Elaborating on this reasoning further, the Board, in *Kabin*, wrote that “any action committed directly by the licensee or management or by their agents with the approval, direction, or control of the licensee or his or her management that tends to cause illegal conduct or is illegal itself always qualifies as a demonstrable connection.” *In re Kabin Group, LLC, t/a Kabin*, Board Order No. 2018-247 at 7. On February 25, 2018, the bouncer engaged in assaulting the patron outside the premises was Halftime’s “head” of security. *Supra*, at ¶ 10. In light of the bouncer’s role, his direct participation in the assault satisfies the demonstrable connection prong of the test.

b. The government has established that the incident on February 25, 2018, was unlawful.

22. The record in this case establishes that the bouncer’s actions constituted an illegal assault. In the District of Columbia, simple assault constitutes a “misdemeanor” that does not require that any actual injury be incurred and requires only general intent to perform the assaultive act. *In re D.P.*, 122 A.3d 903,908 (D.C. 2015); *see also* D.C. Code § 22-404. As testified by the officers, the bouncer struck and stomped on the patron multiple times outside the establishment with a closed fist as the patron laid on the ground in the fetal position. *Supra*, at ¶¶ 2, 6.

23. The Board further notes that the mere fact that no criminal charges or convictions related to this incident were obtained is irrelevant. The present charges are separate and independent from any criminal case and the standard of proof required by the criminal system does not apply in an administrative proceeding before the Board. Moreover, the Board, as an independent entity, can make its own determination and findings regarding an incident as they pertain to the laws and regulations administered by the Board. It should also be noted that even if the Board was hypothetically forced to classify the bouncer’s actions as not qualifying as an assault, this would not change the result, as the incident still satisfies the “disorderly purpose” language of § 25-823(a)(2). Indeed, even if legal in and of itself, the act of unnecessarily beating a patron on the ground is conducive to the commission of an assault, and risks future illegal assaults, if allowed to be repeated over time. Therefore, there is sufficient evidence in the record to satisfy the second prong of the test.

24. Furthermore, the Board does not agree with Halftime’s description of the assault as “unforeseeable” or “outside the scope of his responsibilities.” *Halftime’s Proposed Findings of Fact and Conclusions of Law*, at ¶ 24-25. It is a well-known risk in the industry that intoxicated patrons may act in an obnoxious manner or refuse to obey instructions. It is the duty of licensed establishments to ensure security are trained to properly deal with this type of situation or seek

police assistance—not engage in “street justice.” *Levelle, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 924 A.2d 1030, 1036 (D.C. 2007) (saying finding of violation of § 25-823(a)(2) warranted where licensee failed to provide adequate supervision, security, and security training to its staff). Furthermore, the bouncer in this case was hired to be, and working as, security on the night of the incident and was acting to eject the patron on behalf of the establishment when the assault occurred. As a result, Halftime, as the employer, bears full responsibility for the incident. *See Brown v. Argenbright Sec., Inc.*, 782 A.2d 752,757 (D.C. 2001) (describing the “doctrine of *respondeat superior*”).

c. The government has established a method of operation.

25. Finally, the government has shown that the incident on February 25, 2018, was caused by Halftime’s method of operation. Any action committed by a licensee or his or her agents automatically satisfies the method of operation prong of the test. In *Kabin*, the Board further indicated that “the use of excessive force constitutes a method of operation sufficient to constitute a violation under § 25-823, as the use of excessive force shows inadequate training and security.” *In re Kabin Group, LLC, t/a Kabin*, Board Order No. 2018-247 at 12-13. Turning to this case, the assault at issue was committed by the bouncer, an agent of Halftime. *Supra*, at ¶ 6. Moreover, striking and stomping on a patron on the ground that poses no threat is an excessive, inappropriate, and unreasonable method of operation.

26. The Board also does not agree with Halftime’s description of the patron’s actions as an “extreme provocation.” *Halftime’s Proposed Findings of Fact and Conclusions of Law*, at ¶ 25. While the patron may have failed to follow instructions, acted obnoxiously, spit on the bouncer, grabbed his shirt, and engaged in other inappropriate behavior, none of that merited the severe beating that occurred outside the establishment; especially, after the patron stopped resisting the bouncer in any fashion. *Supra*, at ¶¶ 2, 6-7, 16. Therefore, for these reasons, the Board sustains Charge I.

III. Halftime Violated the Requirement to Maintain a Logbook and Failed to Report the February 25, 2018, Incident in its Logbook.

27. As noted above, it is a violation for a licensee to violate the terms of its security plan. § 25-823(a)(6). In this case, Halftime’s security plan requires it to maintain a log and report injuries, fights, and other acts of violence in the log. *Supra*, at ¶ 9. While prior versions of the log may have been destroyed, nothing prevented the establishment from starting a new log and properly recording the assault that occurred outside the establishment on February 25, 2018, and involved one of the establishment’s own employees. *Supra*, at ¶ 15. Under these circumstances, the establishment should have recorded the incident in its log and been able to present it to the investigator. *Id.* Therefore, the Board sustains Charge II.

IV. The Board Finds Insufficient Evidence to Sustain Charge III.

28. It is a violation for a licensee to violate the terms of its security plan. D.C. Official Code § 25-823(a)(6). Halftime’s security plan requires it to have five cameras. *Supra*, at ¶ 9. In this case, there is insufficient evidence to determine that Halftime had less than the required cameras

working or that they were not working in the places where they were supposed to be working. *Supra*, at ¶ 12. Therefore, the Board dismisses Charge III.

V. Penalty

29. The regulations indicate that the two violations of D.C. Official Code § 25-823 found in this matter constitute two separate primary tier violations. 23 DCMR § 800 (West Supp. 2018). Halftime's investigative history indicates that the present violations constitute fourth level offenses. *Case Report No. 18-CMP-00069*, at 3-4. Under the Board's penalty schedule, a fourth primary tier offense carries a penalty of revocation or a fine of \$30,000. 23 DCMR §§ 801.1(d) (West Supp. 2018). The Board in this case imposes a fine of \$30,000 for each offense.

30. The Board does not adopt the government's recommendation of revocation because the Board does not believe barring the ownership from holding additional alcohol licenses is warranted. D.C. Official Code § 25-821(c).

31. The Board further rejects Halftime's suggestion that the Board should treat this matter as anything but a fourth level offense. *Proposed Findings of Fact and Conclusions of Law*, at 2. Halftime basis this argument on the fact that Ms. Rose had nothing to do with the prior offenses and Mr. Graham had no daily role in the establishment at the time of the incident. *Id.* at 2-3. While this may be factually correct, this ignores the fact that the previous owner, Mr. Graham was still on the license (and potentially profiting from it) at the time of the offense; therefore, it appears perfectly fair to hold Halftime's prior offenses against it in assessing the current fine. *Supra*, at ¶ 14. It should be further noted that this argument is also legally irrelevant, as the Board has never interpreted its regulations as allowing the Board to select a fine amount outside of the listed fine range.

32. Therefore, based on Halftime's history of prior violations, the Board finds that the fine in this case is appropriate and warranted.

ORDER

Therefore, the Board, on this 5th day of December 2018, finds New York Avenue Beach Bar, LLC, t/a Halftime, guilty of violating D.C. Official Code §§ 25-823(a)(2) and 25-823(a)(6). The Board imposes the following penalty on Halftime:

- (1) For the violation described in Charge I, Halftime shall pay a fine of \$30,000.
- (2) For the violation described in Charge II, Halftime shall pay a fine of \$30,000.
- (3) Charge III is **DISMISSED**.

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 violations found by the Board in this Order shall be deemed one primary tier violation and one secondary tier violation.

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

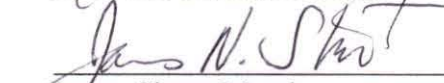


Donovan Anderson, Chairperson

Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



Bobby Cato, 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).