

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice) for Case No. 22-CMP-00059. *ABCA Show Cause File No. 22-CMP-00059*. The Alcoholic Beverage and Cannabis Administration (ABCA) served the Notice on the Respondent on March 23, 2023. 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 July 8, 2022], you changed the hours of operation without Board approval as required by D.C. Official Code §§ 25-762(a) and (b)(13), for which the Board may take the proposed action under D.C. Official Code § 25-823(a)(1).

Charge II: [On July 8, 2022], you provided a false statement on your ABCA license application in violation of D.C. Official Code § 25-401(c), for which the Board may take the proposed action under D.C. Official Code §§ 25-401(c) and 25-823(a)(1).

Charge III: [On July 8, 2022], you failed to comply with the structural requirements of D.C. Official Code § 25-761 because the establishment contains direct access to a part of the building being used as a dwelling, for which the Board may take the proposed action under D.C. Official Code § 25-823(a)(1).

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

Both the Government and Respondent appeared at the Show Cause Status Hearing on March 22, 2023. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 4, 2023.

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

1. Kidy Lounge, LLC t/a Kidst Lounge ("Respondent") holds a Retailer's Class CR License and is located at 5503 Georgia Avenue, N.W., Washington, D.C. 20011. *ABCA Licensing File No. 119361*.

2. While conducting a regulatory inspection on July 8, 2022, at approximately 2:20 a.m., ABCA Investigator Tavrill Prout observed Kidst Lounge operating and serving alcoholic beverages

after Board approved hours. *Transcript (Tr.)*, May 4, 2023, at 14. He contacted a second ABCA Investigator, Mark Ruiz, to assist with the investigation. *Id.* Investigator Ruiz met with Investigator Prout outside the establishment at approximately 2:35 a.m. *Id.*

3. When Investigator Ruiz arrived, Investigator Prout entered the establishment in an undercover capacity while Investigator Ruiz waited outside. *Id.* Once inside, he observed that the building had a stairwell leading to three floors, the basement, first floor, and second floor. *Id.* at 37. The gates for the first floor and basement were locked. *Id.* at 55. However, on the second floor, there was loud music emanating from the premises as well as patrons entering and existing the premises. *Id.* at 37. Investigator Prout followed the patrons inside the second floor and observed a party with about thirty-four people present. *Id.* at 34. The second floor was set up like a lounge and he observed some patrons consuming alcoholic beverages. *Id.*

4. Investigator Prout approached the bar and asked to be served a beer. *Id.* at 14-15. He gestured to pay for the beer but his server, the party host, refused to accept payment. *Id.* at 59. The host said to him, “This is not for sale. . . Friends are celebrating Ethiopian Day. . . This is a private party, and we don’t accept money.” *Id.* Investigator Prout then confirmed via telephone with Investigator Ruiz the presence of alcoholic beverages and the party. *Id.* at 15. Investigator Ruiz was still waiting outside the building at the time. *Id.* Investigator Ruiz immediately notified the Metropolitan Police Department (hereinafter, “MPD”) via radio to assist with the investigation. *ABCA Show Cause File No, 22-CMP-00059*, Government Exhibit 1. MPD Officers arrived at the location at approximately 2:45 a.m. and followed Investigator Ruiz inside the building to join Investigator Prout. *Tr.* at 15.

5. Upon entering the second floor, Investigators Prout and Ruiz asked the patrons to exit the building. *ABCA Show Cause File No, 22-CMP-00059*, Government Exhibit 1. The host approached the investigators to reiterate that she was hosting a private party. *Id.* She stated that she was renting the second floor from the licensee as a dwelling unit and that she was hosting a house party in her apartment. *Id.* Investigator Ruiz informed her that the entire building was leased as a commercial property therefore, per statute, no alcoholic beverage was permitted to be served or consumed in the commercial property after 2:00 a.m. on a weekday. *Id.* While examining the premises, Investigator Ruiz did not observe any furniture that indicated that the second floor was leased as a dwelling unit. *Tr.* at 20. Rather, he saw lounge chairs, a bar, a back room labeled as an office, and a refrigerator. *Id.* at 15; *see also ABCA Show Cause File No, 22-CMP-00059*, Government Exhibit 2, 4, 5, 6, 10.

6. Following up on the investigation, Investigator Ruiz interviewed Ayele Beleke at the establishment on July 13, 2022, at approximately 7:30 p.m. *ABCA Show Cause File No, 22-CMP-00059*, Government Exhibit 1. Mr. Beleke, a manager at Kidst Lounge, was present at the regulatory inspection conducted on July 8th. *Id.* He informed Investigator Ruiz that he was a co-tenant on the property lease and married to the licensee. *Id.* Mr. Beleke explained to Investigator Ruiz that the second floor was occupied as a dwelling unit when he and his wife leased the building and that they rented it to the present tenant as an apartment. *Tr.* at 17-18. He added that the alcoholic beverages served at the party were purchased from a third-party liquor store. *Id.* at 45. He provided the receipt to prove the purchase.¹ *ABCA Show Cause File No, 22-CMP-00059*,

¹ The Government entered into evidence Respondent’s receipt of alcohol purchase that had a total of \$1,251.11.

Government Exhibit 10. Mr. Beleke concluded his testimony arguing that Kidst Lounge’s license to sell and serve alcoholic beverages regulated activities on the first floor but did not include the second floor. *Tr.* at 45. The second floor has an independent house number, entrance, and emergency exist therefore, it should be considered a separate unit. *Id.* at 78.

7. On question 8 of the Respondent’s ABCA license application, the Respondent answered “no” to the following questions:

“Will any portion of the premises be used for a dwelling or a lodging house?”
“If yes, is there interior access to the living quarters from the licensed area?”

ABCA Show Cause File No, 22-CMP-00059, Government Exhibit 11.

CONCLUSIONS OF LAW

8. 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

9. In this matter, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2023). 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). It should be noted that “. . . hearsay evidence is admissible in administrative proceedings” and may constitute “substantial evidence.” *Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 476 (D.C. 2004). In that vein, “The weight to be given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility.” *Id.* at 477.

II. Kidst Lounge Violated D.C. Official Code §§ 25-762(a) and (b)(13) When It Extended Its Hours of Operation After Board Approved Hours.

10. The Board finds Kidst Lounge in violation of §§ 25-762(a) and (b)(13) for extending its hours of operation without a Board approval.

11. Under part (a) of the substantial change law, "Before a licensee may make a change in the interior or exterior, or a change in format, of any licensed establishment, which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board in accordance with § 25-404." D.C. Official Code § 25-762(a). In part (b)(13), the substantial change law stipulates that a violation may occur if the license holder "Extend[s] the hours of operation. . ." D.C. Official Code

§ 25-762(b)(13). The allowable hours of operation for an on-premises licensee per D.C. Official Code § 25-723(b) is 2:00 a.m. on a weekday.²

12. The Respondent illegally extended its hours of operation without first obtaining an approval from the Board by renting its facility to a third party to host a party where alcohol was served and consumed after its approved hours. The testimonies presented by Investigators Ruiz and Prout as well as the pictures entered into evidence clearly establish that Kidst Lounge was in operation well after the 2:00 a.m. allowed time in the statute. *Supra*, at ¶ 5. The pictures of the beer served to Investigator Prout, the proof of receipt of the large alcohol purchase, and the testimony of the loud music emanating from the second floor show that the Respondent permitted the renter to host a party after Board approved hours. *Id.*

13. The Respondent argues that the second floor is a residential unit with its own entrance, emergency exist, and house number therefore, it should be considered a separate unit. *Supra*, at ¶ 6. The Board is not persuaded by this argument. The lease entered between the landlord and the Respondent indicates that it is a commercial lease that covers the entire property. *ABCA Show Cause File No, 22-CMP-00059*, Government Exhibit 9. Nothing in the lease indicates that the second floor is a residential unit. *Id.* Furthermore, Kidst Lounge rented the second floor to a third party, making Kidst Lounge responsible for the renter's actions on the property, which they allowed and permitted. *Supra*, at ¶ 5. Consequently, the Respondent had control of all three floors on the night in question and is liable for allowing and permitting the renter to engage in alcohol activity after the establishment's approved hours.

14. For these reasons, the Board finds that the Respondent violated D.C. Official Code §§ 25-762(a) and (b)(13) therefore, sustains Charge I.

III. Kidst Lounge Violated D.C. Official Code § 25-401(c) When It Presented False Statements on its ABCA's License Application.

15. Turning to Charge II, the Board finds that Kidst Lounge violated § 25-401(c) when it made false representations on question 8 of its ABCA application.

16. Pursuant to D.C. Official Code § 25-401(c),

“An individual applicant, all of the general partners of an applicant partnership, all of the members of a limited liability company, or the president or vice-president of an applicant corporation shall sign a statement with an original signature, which may be a signature by

² D.C. Official Code § 25-723 states,

(b) Except as provided in § 25-724 and subsections (c) and (e) of this section, the licensee under an on-premises retailer's license, a manufacturer's license that holds a on-site sales and consumption permit, or a temporary license may sell, serve, or permit the consumption of alcoholic beverages on any day and at any time except between the following hours:

(1) 2:00 a.m. and 6:00 a.m., Monday through Friday, excluding District and federal holidays; and
(2) 3:00 a.m. and 6:00 a.m. on Saturday and Sunday, excluding District and federal holidays. D.C. Official Code § 25-723 (2022).

wet ink, an electronic signature, or a copy thereof, certifying that the application is complete and accurate. Any person who knowingly makes a false statement on an application, or in any accompanying statement under oath that the Mayor or the Board may require, shall be guilty of the offense of making false statements. The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license.”

D.C. Official Code § 25-401(c)(2022).

17. The Board remains convinced that the applicant misrepresented the facts on her license application. When asked on question 8 of the application, “Will any portion of the premises be used for a dwelling or a lodging house?” The applicant falsely responded “no.” *Supra*, at ¶ 7. When asked in the follow up question, “If yes, is there interior access to the living quarters from the licensed area?” The applicant once again falsely stated “no.” The applicant argues that at the time the application was filled out, the second floor was not rented out as a residential unit. *Tr.* at 79. She states that she temporarily resided in the unit with her husband after she received her ABCA license and subsequently rented it out to the present tenant at the time of the regulatory inspection. *Id.* She argues that because the second floor was empty at the time she submitted her application, she responded “no” to both questions. *Id.* The Board is not persuaded by this argument either. The questions asked do not only address the current use of the premises but also, the prospective uses. Therefore, the applicant failed to disclose and misrepresented the intended use of the second floor on her license application as a dwelling by later renting it out as a residence after filing the application. *Supra*, at ¶ 6. This constitutes a false statement. *Id.*

18. For these reasons, the Board finds that the Respondent violated D.C. Official Code § 25-401(c) therefore sustains Charge II.

IV. The Board Dismisses Charge III.

19. The Government did not present any argument on the record to substantiate the claim that the Respondent violated D.C. Official Code § 25-761. Therefore, the Board dismisses Charge III.

V. Penalty

20. The Board notes that Charges I and II represent primary tier offenses and will impose a penalty of \$1,000 for each Charge payable in thirty (30) days. 23 DCMR § 801.1(a) (West Supp. 2023).

ORDER

Therefore, the Board, on this 26th day of July 2023, finds Kidy Lounge, LLC t/a Kidst Lounge guilty of violating D.C. Official Code §§ 25-762(a), (b)(13), and § 25-401(c). The Board does not find Kidst Lounge guilty of violating D.C. Official Code § 25-761. The Board imposes the following penalty on the Kidst Lounge:

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$1,000 (D.C. Official Code § 25-823(a)(1)).
- (2) For the violation described in Charge II, the Respondent shall pay a fine of \$1,000 (D.C. Official Code § 25-823(a)(1)).
- (3) For the violation described in Charge III, the Board **DISMISSES** the Charge.

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 (West Supp. 2023), 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 ABCA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage and Cannabis Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430b06b9d5f0b64c730003d1cccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f820de6ac8d1b332ad2948ec

James Short, Member

Bobby Cato, Member

Jeni Hansen, Member

I dissent from the opinion reached by the majority of the Board on Charges I and II because I do not believe the Government's evidence sustained both charges.

eSigned via SeamlessDocs.com
Edward Grandis, Member
Key: 5027bda7ff0040ec14adeb52541ce5

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).