

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

In the Matter of:)	
)	
Kiss, LLC)	Case No.: 20-CMP-00110
t/a Kiss Tavern)	License No: ABRA-10470
)	Order No: 2020-655
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
637 T Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member

ALSO PRESENT: Kiss, LLC, t/a Kiss Tavern, Respondent

Richard J. Bianco, Counsel, on behalf of the Respondent

Shahzeb Asim and John Lui, Assistant Attorneys General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER LIFTING SUMMARY SUSPENSION

INTRODUCTION

On October 7, 2020, a shooting likely occurred inside Kiss, LLC, t/a Kiss Tavern, (Respondent) and an investigation related to the shooting uncovered what appeared to be a cannabis “pop-up” event. Nevertheless, as of the date of this Order, evidence and facts related to the shooting and the alleged drug dealing event remain privileged and unavailable due to an ongoing criminal investigation. Based on this information gap, a continued indefinite suspension or revocation of the license cannot be supported at this time. Nevertheless, the record reveals

that the establishment's security procedures related to weapons, violence, and drugs are sorely inadequate. Therefore, the Board will lift the current suspension on the condition that the Respondent file and comply with a new security plan that reflects the conditions imposed by the Board below. The Board notes that this Order does not prevent this matter and additional evidence related to the incident on October 7, 2020, from being included in a future show cause enforcement proceeding or during the Respondent's renewal.

Procedural Background

This matter comes before the Board after Metropolitan Police Department (MPD) Chief of Police Peter Newsham suspended the Respondent's Retailer's Class CT License on October 7, 2020, under the authority granted by District of Columbia Official Code § 25-827. *Letter from Metropolitan Police Department, Chief of Police, Peter Newsham, 1 (Oct. 7, 2020).*

On October 9, 2020, the Board executed a notice issued by the Office of the Attorney General for the District of Columbia informing the establishment that the suspension would continue based on the continuing danger to the public. *Notice of Summary Suspension, 1-3 (Oct. 9, 2020) [Notice]*. Specifically, the notice, in pertinent part, alleges that on October 7, 2020, a fight broke out between two patrons that resulted in the discharge of a firearm inside the establishment. *Id.*, at 2. The notice further alleges that a security guard interviewed by police officers on the scene lied about a fight occurring on the scene and no one at the establishment called 911. *Id.* The notice also alleges that MPD further attempted to review video footage at the establishment but the owner, Eyob Asbeha, first denied that he had security footage and then failed to provide a password for the establishment's system, which then required MPD to seize the security system. *Id.* Finally, the notice alleges that an illegal cannabis "pop up" event occurred at the establishment where cannabis products were offered for sale or distribution. *Id.*

The parties came before the Board for a summary suspension hearing on October 28, 2020. The question before the Board is whether ". . . the operations of a licensee present an imminent danger to the health and safety of the public," and if so, ". . .the Board may summarily revoke, suspend, fine, or restrict . . . the license to sell alcoholic beverages in the District." D.C. Code § 25-826(a).

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, the arguments of the parties, and the documents comprising the Board's official file, makes the following findings:¹

¹ The full transcript in this matter was not available at the time this Order was written; however, the Board is sufficiently versed in the evidence and testimony after holding the summary suspension hearing to make the findings of fact and conclusions of law contained in this Order. This action was necessary on the part of the Board, because § 25-826(c) requires the Board to issue an Order within 3 business days of the Summary Suspension Hearing. D.C. Code § 25-826(c). After the hearing, the Government filed an additional document notifying the Board that it believed the Respondent lied on the record regarding the security license status of one of its employees and the license status of its manager. The Respondent did not file a formal response. Even if true, this does not appear to

I. Stipulations

1. During the hearing, the parties agreed to the following stipulations:
 1. The parties' exhibits are deemed authentic and admissible, except the parties reserve the right to raise objections where appropriate; and
 2. The two officers subpoenaed by the Respondent will not testify to the underlying ongoing criminal investigation.
2. Based on the stipulations, withheld information, and other unavailable evidence due to an ongoing criminal investigation, important witnesses and information related to the events that transpired on October 7, 2020, were not available for review by the Board.

II. October 7, 2020

3. The Respondent, Kiss, LLC, t/a Kiss Tavern, holds a Retailer's Class CT License located at 637 T Street, N.W., Washington, D.C. *ABRA License No. 10470*.
4. According to a Metropolitan Police Department Report, a 911 call was made around 3:30 p.m. on October 7, 2020. *Case Report No. 20-CMP-00110*, at 2 (Oct. 7, 2020). Metropolitan Police Department patrol units in the vicinity responded to the call, which was reported to be a response to the "Sounds of Gunshots." *Id.* Responding MPD officers observed an individual run from the scene as they approached the establishment.
5. Metropolitan Police Department Patrol Captain David Augustine responded to an alleged shooting at the Respondent's establishment as well. Inside he observed a bullet hole in a chair and tables and chairs tipped over and various items that appeared to be cannabis, such as leaf matter, oil, and syrups. MPD further recovered digital scales. He also observed hookah and alcoholic beverages in customer areas of the establishment. Finally, MPD recovered shell casings, and live bullets were found in the establishment. He also believes that security and the owner lied about some aspects of the incident and the availability of camera footage.
6. Captain Augustine believed that the establishment was hosting a cannabis "pop-up" event where illegal vendors temporarily gather to distribute and sell cannabis to members of the public. He indicated that these events sometimes lead to violence and have guns present.
7. ABRA Investigator Kevin Puente arrived at the scene around 5:00 p.m. with a supervisory investigator and another investigator. *Case Report No. 20-CMP-00110*, at 2. At the scene, he observed what appeared to be "loose marijuana scattered throughout the establishment, pre-rolled marijuana joints, marijuana syrup, containers of THC oil, digital scales, vendor

impact the Board's decision; as a result, the Board will not depart from the decision announced on the record at the hearing. The Board notes that if the Government's allegations are true, then it is free to address the matters in a future enforcement proceeding or under D.C. Official Code 25-442(d).

advertisements, and boxes of baggies, packages of paper bags, [and] a bag of marijuana.” *Id.* A bottle of syrup on the floor was labeled “Premium Cannabis Syrup” and indicated that it had “1000MG THC.” *Id.* at Exhibit No. 30. Some vendor flyers advertised a vendor called “Benedetta” and had the words “Premium Cannabis” printed on the advertisement. *Id.* at Exhibit No. 35.

8. After the incident, the owner spoke with MPD detectives. MPD attempted to review video footage but could not access the footage on the Respondent’s system. The owner indicated that he called a technician to assist. Yet, instead of continuing to attempt to access the system at the establishment, MPD seized the system as part of a criminal investigation.

9. At this juncture, there is insufficient evidence in the record to determine whether a fight between the shooter and another person preceded the gun shots, whether there was return fire, whether the shooter was outside the establishment and sought to kill or hurt a specific person, and whether shell casings were moved as patrons and others fled the scene. Further, no field tests or lab reports related to the alleged cannabis products have been introduced into the record. Finally, video footage of the interior of the establishment related to the shooting and cannabis event were not made available during the hearing.

10. On the night of the incident, the owner indicated that at least two security were present at the establishment.

11. The establishment has a security plan but it does not appear to mandate any significant action related to violence, weapons, or drugs. *Id.* at Exhibit No. 59. In regards to camera footage, the plan indicates that “All videos will be made available for viewing immediately to any law enforcement entity or to ABRA. Copies of all such videos shall be available to any law enforcement entity or to ABRA within Forty-Eight (48) hours upon request.” *Id.*

CONCLUSIONS OF LAW

12. “If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public, the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District.” D.C. Code § 25-826(a).

In rendering a decision on a summary suspension hearing, the Board may suspend or restrict the license of the licensee. Additionally, the Board may keep the licensee in the summary suspension proceeding to monitor the licensee to make a determination if the conditions placed by the Board on the licensee are effective.

23 DCMR § 1613.1 (West Supp. 2020).

13. The major allegations brought forward by the Government related to the continuing danger include (1) the illegal cannabis event; (2) the owner’s failure to cooperate with law enforcement; (3) the failure of the establishment’s security to prevent a firearm from entering the

premises; (4) the violation of the establishment's security plan; (5) the shooting that occurred; and (6) the failure of the establishment to alert police about the incident.

14. Yet these allegations are not sufficiently supported in the record. First, there is insufficient evidence to support the conclusion that the establishment withheld or failed to provide security camera footage when MPD seized the recording system where it is contained. Second, there is insufficient information about how weapons entered the premises, the establishment's role in any events that preceded the shooting, and the nature of those prior events to reach a supportable conclusion regarding the Respondent's responsibility for the shooting. Third, it appears that MPD responded immediately to the gun shots heard at the establishment; therefore, it is not reasonable to conclude that the Respondent attempted to hide the incident when MPD appears to have responded to the incident within an appropriate amount of time. Finally, while it is likely a third party attempted to sell or distribute cannabis on the premises, the indefinite suspension or revocation of the license is not the sole remedy for this violation. Therefore, there is insufficient evidence to sustain an indefinite suspension or revocation of the license at this time.

15. Nevertheless, there is sufficient evidence to conclude that the establishment's security is sufficiently inadequate to allow for the proper monitoring of activity within the establishment. First, establishments have an obligation under D.C. Official Code § 25-822(b) to prevent the illegal sale and use of cannabis and other controlled substances. D.C. Code § 25-822(b). In addition, establishments cannot permit possession of cannabis and other controlled substances except for personal use on the premises. In this case, the large amount of items that appeared to be cannabis, labeled cannabis, and paraphernalia related to commercial cannabis distribution (e.g., scales and advertisements), as well as the amount of materials that were strewn about, belie any argument that such substances were for personal use or not easily seen by security. Instead, the appearance of these items should have triggered security to take action to ensure compliance with § 25-822; yet, that does not appear to be the case. Second, in light of the shooting incident and the finding of bullets inside the establishment, it is reasonable to presume that there is a risk weapons will be found at the establishment in the future. And finally, based on the seizure of the Respondent's security system, the Respondent needs to ensure that it has an operable security system before returning to operation in order to ensure adequate security camera coverage of its customer areas when it returns to operation.

16. Therefore, the Board concludes that without the changes to the Respondent's security plan outlined below the establishment will continue to pose a danger to patrons, employees, and other members of the community.

ORDER

Therefore, the Board, on this 2nd day of November 2020, **LIFTS THE SUSPENSION** on the condition that the Respondent submits a security plan that meets the approval of the Board, and which contains the following elements that shall be followed by the Respondent as a condition of reopening:

1. The establishment shall ensure that it has a security camera system capable of recording and saving recordings in compliance with D.C. Official Code § 25-402(d)(1)(4)(A). It shall further ensure that the camera system is operational when the establishment is open and operating or has people on the premises.
2. The establishment shall ensure that security footage taken within 48 hours of any verbal or written request by an official with the Metropolitan Police Department or the Alcoholic Beverage Regulation Administration is available for immediate review by the requesting official when present at the establishment.
3. No customer shall be permitted inside the establishment unless they have been screened by a metal detector or metal detecting wand, receive a pat down, and a bag search.
4. The establishment, its employees, and security personnel, or other agents shall contact MPD whenever they observe a firearm or other weapon on the premises.
5. The establishment, its employees, and security personnel, and other agents shall contact MPD whenever they observe cannabis or illegal narcotics or items that appear to be cannabis or illegal narcotics.
6. The establishment shall display a sign in a clearly visible location advising customers that the possession of weapons, cannabis, and other illegal narcotics is prohibited at the venue.
7. The establishment shall deny entry or attempt to eject any patron observed carrying a weapon, cannabis, or other illegal narcotics. If the establishment is not able to safely do so, then the establishment or its agents shall immediately contact MPD for assistance.
8. The establishment shall ensure that all areas accessible to patrons are continuously visually monitored by at least one member of the Respondent's security team, except for the interior of any bathroom on the premises.

A copy of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com

Donovan Anderson

Key: a40b6415545704b7556541d4d5

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com

James Short

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James Short, Member

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Bobby Cato

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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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section II 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 (2008) 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).