

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

In the Matter of:)	
Kiss, LLC)	Case No.: 17-CMP-00397
t/a Kiss Tavern)	License No.: 104710
Holder of a)	Order No.: 2018-047
Retailer's Class CT License)	
at premises)	
637 T Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Donald Isaac, Sr., Member

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

Makan Shirafkan, Counsels on behalf of the Respondent

Louise Phillips, 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 Kiss, LLC, t/a Kiss Tavern, (hereinafter "Respondent" or "Kiss Tavern") in violation of one count of violating D.C. Official Code § 25-823(a)(6) for permitting the consumption of alcohol on the premises after 2:00 a.m. in violation of a Board Order on June 25, 2017.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 5, 2017. *ABRA Show Cause File No. 17-CMP-00397*, Notice of Status Hearing and Show Cause Hearing, 2 (Sept. 5, 2017). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 637 T Street, N.W., Washington, D.C., on September 6, 2017. *ABRA Show Cause File No. 17-CMP-00397*, 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 June 25, 2017,] [y]ou violated a Board order . . . for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(a)(1) . . .

Charge II: [On June 25, 2017,] [y]ou failed to follow your settlement agreement, security plan, or Board order in violation of D.C. Official Code § 25-823(a)(6) . . .

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

Both the Government and Respondent appeared at the Show Cause Status Hearing on October 4, 2017. The parties proceeded to a Show Cause Hearing and argued their respective cases on November 29, 2017. The Board notes that all of the facts and violations outlined in Charge I and II amount to a single violation of a Board order in violation of D.C. Official Code § 25-823(a)(6); therefore, the Board will dismiss all of the redundant charges except for the violation of § 25-823(a)(6).

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. Kiss Tavern holds a Retailer's Class CT License at 637 T Street, N.W., Washington, D.C. *ABRA License No. 104710*. In issuing a license to Kiss Tavern, the Board issued a Board Order that further conditioned licensure on Kiss Tavern ceasing operations and the sale, service, and consumption of alcohol at 2:00 a.m. *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-CMP-00397, Board Order No. 2017-152, 8 (D.C.A.B.C.B. Mar. 22, 2017); *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-CMP-00397, Board Order No. 2017-169 (D.C.A.B.C.B. Mar. 29, 2017). According to the establishment's license, Kiss Tavern's legal hours of operation and the sale, service, and consumption of alcoholic beverages ends at 2:00 a.m. on Saturday going into Sunday morning. *ABRA License No. 104710*.

I. ABRA Investigator Kevin Puente

2. ABRA Investigator Kevin Puente and ABRA Investigator Mark Brashears responded to a noise complaint in the early morning of Sunday, June 25, 2017, near the Howard Theater. *Tr.*, November 29, 2017 at 9. While parking, the investigators observed a large crowd outside Kiss Tavern. *Id.* The investigators also observed individuals entering and exiting the premises. *Id.*
3. At around 2:35 a.m., the investigators exited their vehicle. *Id.* at 10. Investigator Brashears walked across the street to investigate the noise complaint, while Investigator Puente went to the back of Kiss Tavern. *Id.* Behind Kiss Tavern, Investigator Puente looked through the window and saw people inside the premises. *Id.* Inside, he observed people who were smoking hookah and had cups in their hand. *Id.* at 11.
4. Investigator Puente then met Investigator Brashears and walked through an alley towards the entrance. *Id.* at 11, 59. Both investigators were openly wearing their ABRA badges on a chain around their necks. *Id.* at 60. The owner spotted the investigators and turned the corner. *Id.* at 60. Camera footage shows that the owner walked casually at first but then ran inside. *Id.* at 61. Inside, the owner attempted to kick a stool holding the door open but the stool did not move much. *Id.* at 61, 72.
5. The investigators entered the establishment around 2:45 a.m. *Id.* at 11. Once inside, Investigator Puente observed open bottles of Moet champagne on a table and in someone's hand. *Id.* at 12, 50, 52, 79, 104-05. Exhibit No. 6 is a photograph taken by the Investigator Puente that shows a female standing in the middle of the picture. *Government Exhibit No. 6.* Behind the woman's left elbow is a portion of a white sleeve and a hand holding a bottle at a table with a group of patrons sitting around it. *Id.* The Board infers that the man is sitting at the table because if he were standing, he would be visible behind the woman's shoulders and his arm would not be at the same height as the women sitting across the table. *Id.* The Board further infers that he is a patron because it is unlikely that an employee would sit with other patrons. *See id.*
6. Investigator Puente estimated that there were 20 people inside the premises. *Id.* Some of the people were employees dressed in black outfits. *Id.* at 26. He identified other people as patrons because they were wearing suits, heels, and dresses. *Id.* at 26, 84.
7. Investigator Puente and the owner, Eyob Asbeaj, spoke outside. *Id.* at 12. The owner advised the investigator that he was trying to get patrons to close their tabs and leave. *Id.*
8. Later, Investigator Puente returned to ABRA's headquarters. *Id.* at 13. There, he contacted the owner by email and requested video footage for June 25, 2017, from 1:45 a.m. to 2:45 a.m. *Id.* at 13-14. In response, Mr. Asbeaj only sent video footage from outside the premises. *Id.* at 15.
9. On June 27, 2017, Investigator sent a second request for the video footage of the interior portions of the establishment. *Id.* He noticed that Kiss Tavern's cameras were showing an inaccurate time. *Id.* at 15, 100. He also requested footage from Camera No. 1 and Camera No.

10 based on Kiss Tavern's security plan that provided a diagram of the establishment's security cameras. *Id.* at 16. Upon receiving the video, Investigator Puente reviewed the footage. *Id.* at 19-20. Nevertheless, the new submission stopped close to when Investigator Brashears and Investigator Puente entered the premises on June 25, 2017. *Id.* at 20, 22, 64. No footage received by ABRA shows the majority of the patrons' activity inside the premises. *Id.* at 64-65.

II. Meron Salhe

10. Meron Salhe works as a waitress at Kiss Tavern. *Id.* at 124. She was working at Kiss Tavern on June 25, 2017. *Id.* at 125. Ms. Salhe indicated that she closed her tabs and stopped selling alcohol at 1:45 a.m. *Id.* at 126, 128. She indicated that people were still in the establishment after 2:00 a.m. because she was trying to split customer checks and process payments for a large wedding party. *Id.* at 126, 153, 161. She reported that she had difficulty processing the payments because customers requested that she split the check, provided her with multiple credit cards, gave her cash, and required her to wait for customers in the bathroom. *Id.* at 182-83. She indicated that five waitresses, three security staff, two bartenders, two kitchen staff, and two cleaners were working on June 25, 2017. *Id.* at 205.

III. Michael Simatos

11. Michael Simatos patronized Kiss Tavern on June 25, 2017. *Id.* at 218. On that night, he was attending a pre-wedding party at the establishment. *Id.* at 219. He indicated that he arrived at the establishment around 10:00 p.m. *Id.*

12. At the end of the party, the establishment had difficulty processing his group's payments. *Id.* He and others remained in the establishment past 2:00 a.m. in order to settle their checks. *Id.* at 220. He was not aware of anyone drinking past last call. *Id.* at 221. He left Kiss Tavern approximately ten minutes after the investigators left. *Id.* at 230.

13. During his testimony, Mr. Simatos indicated that while he was waiting to pay there were no bottles of alcohol on the table. *Id.* at 234. Nevertheless, a picture provided by Investigator Puente shows that champagne bottles were present on the tables when the investigators entered the premises. *Government Exhibit No. 6.*

IV. Eyob Asbeaj

14. Eyob Asbeaj owns Kiss Tavern. *Id.* at 240. He was present on the night of the incident. *Id.* at 241. He indicated that the establishment usually announces last call at 1:30 a.m. and closes all tabs by 1:45 a.m. *Id.* at 242. He further indicated that Kiss Tavern's general policy is to clear the tables of drinks between 1:45 a.m. and 2:00 a.m. *Id.* at 288-89. Mr. Asbeaj also indicated that staff do not always wear uniforms. *Id.* at 247.

15. Mr. Asbeaj admitted that he ran back to the establishment and kicked the stool when he saw Investigator Puente. *Id.* at 243, 246. He indicated that he kicked the stool in order to close the door because the door was supposed to be closed. *Id.* at 246.

16. On the night of the incident, his servers initially presented the check to the wedding party at 1:45 p.m. *Id.* at 250. Because members of the group requested that the check be split, his servers were not able to finish processing the payments until 2:10 a.m. *Id.* at 250-51.

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. Official Code § 25-823(a)(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2018).

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 June 25, 2017 the Applicant violated the conditions attached to its license by permitting the consumption of alcoholic beverages after 2:00 a.m.

19. On June 25, 2017 the Applicant violated the conditions attached to its license by permitting the consumption of alcoholic beverages after 2:00 a.m. It is a violation for a licensee to violate a Board Order. D.C. Code § 25-823(a)(6). In this case, Kiss Tavern’s license contains a condition barring the establishment from permitting the consumption of alcohol after 2:00 a.m. *Supra*, at ¶ 1. It is true that during his brief visit Investigator Puente did not see Kiss Tavern provide alcohol or any patrons consume alcohol inside the establishment on June 25, 2017. *Supra*, at ¶¶ 3, 7. Nevertheless, even though the establishment was supposed to be closed at 2:00 a.m., open bottles of champagne were on the tables and patrons had cups in their hand. *Supra*, at ¶¶ 3, 5. Furthermore, one patron sitting at a table had a champagne bottle in his hand. *Supra*, at ¶ 5. As a result, there is sufficient circumstantial evidence to infer that patrons were consuming alcohol between 2:00 a.m. and the time that the investigators observed the establishment.

20. The Board notes that it found Kiss Tavern’s evidence unpersuasive. First, despite having a policy of clearing bottles from tables before the close of business, the business left open alcohol containers in the possession of customers after its approved hours. *Supra*, at ¶¶ 3, 5, 13-14. Second, while Kiss Tavern argues that it was merely settling customer checks, the evidence shows that patrons were still in a position to consume drinks while they were waiting. *Supra*, at ¶¶ 3, 5. Third, Kiss Tavern had more than enough employees inside the premises to take the open containers of alcohol from patrons and off the tables before the end of the establishment’s hours. *Supra*, at ¶ 10. Fourth, while Mr. Simatos indicated that he did not observe anyone drinking the Board is not satisfied that he was in a position to testify to every patron’s actions inside the premises or was aware that alcohol bottles were still on tables. *Supra*, at ¶¶ 12-13. Fifth, evidence that Mr. Asbeaj engaged in furtive behavior by running away when he saw the

investigators and kicking a stool to prepare the establishment for the investigator's impending visit is further persuasive evidence in support of the Government's case.

III. Penalty

21. This case represents a first time primary tier violation for which the Board may impose a fine of no less than \$1,000 and no more than \$2,000. 23 DCMR § 800; 23 DCMR § 801.1(a) (West Supp. 2018).

ORDER

Therefore, the Board, on this 14th day of February 2018, finds that Kiss, LLC, t/a Kiss Tavern, guilty of violating D.C. Official Code § 25-823(a)(6). The Board imposes the following penalty on Kiss Tavern:

(1) For the violation described in Charge II, Kiss Tavern shall pay a fine of \$1,250.

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.

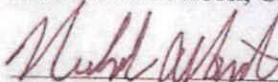
IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violation found by the Board in this Order shall be deemed a primary tier violation.

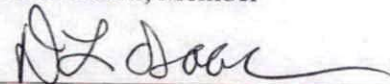
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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


Donald Isaac, Sr., 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).