

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

In the Matter of:)	
)	
Kiss, LLC)	Case No.: 17-CMP-00569
t/a Kiss Tavern)	License No.: 104710
)	Order No.: 2018-331
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
637 T Street, N.W.)	
Washington, D.C. 20001)	
)	

BEFORE: Donovan Anderson, Chairperson
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Kiss, LLC, t/a Kiss Tavern, 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 that Kiss, LLC, t/a Kiss Tavern, (hereinafter "Respondent" or "Kiss Tavern") violated its settlement agreement on August 27, 2017, by leaving its rear door open while music was playing and displaying flashing signs on its front window. The Board fines Kiss Tavern \$500 for the offense.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 31, 2018. *ABRA Show Cause File No. 17-CMP-00569*, Notice of Status Hearing and Show Cause Hearing, 2 (Jan. 31, 2018). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 637 T Street, N.W., Washington, D.C., on February 2, 2018. *ABRA Show Cause File No. 17-CMP-00569*, 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 August 27, 2017,] [y]our ABC Manager on Duty . . . failed to have his original license on his person in violation of D.C. Official Code § 25-711(e)

Charge II: [On August 27, 2017,] [y]ou failed to comply with the settlement agreement and the Board's order in violation of D.C. Official Code §§ 25-446 . . . 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 March 7, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on April 4, 2018. At the outset of the hearing, the Government indicated that a warning had previously been issued for Charge I; therefore, the Board dismisses Charge I. *Transcript (Tr.)*, April 4, 2018 at 4.

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*. A settlement agreement attached to the license indicates in § 3(c) that Kiss Tavern "agrees to keep its doors closed when music is being played inside the establishment but may open its window panels during such times, provided that the music is not audible beyond the street curbside." *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-PRO-00004, Board Order No. 2017-151, 2 (D.C.A.B.C.B. Mar. 29, 2017). In regard to trash, § 4(a) provides that "All trash, recyclable materials, and grease stored outdoors at the Establishment shall be in containers that are impervious to vermin, leaks, and odors." *Id.* at § 4(a). Further, "Any damaged or leaking containers shall be repaired or replaced within 72 hours. Outdoor containers shall be kept closed at all times, and no waste or other materials shall be stored outdoors, except

in such containers.” *Id.* at §4(b). Finally, in § 8(a), the establishment is prohibited from using “flashing signs.” *Id.* at § 8(a).

2. On August 27, 2017, around 8:05 p.m., ABRA Investigator Countee Gilliam and Supervisory Investigator Kevin Hargrave were monitoring the 600 block of Florida Avenue, N.W. *Tr.*, 4/4/18 at 19-20, 43. Outside Kiss Tavern, Investigator Gilliam observed the establishment’s rear door open and heard music coming from inside the premises. *Id.* at 20, 24, 42. Investigator Gilliam entered the premises while the Supervisory Investigator began videotaping the establishment from across the street. *Id.* at 20. Investigator Gilliam also observed two flashing signs on the front window pane. *Id.* at 25. One sign flashed “Yes, We Hookah” and the other sign flashed “ATM.” *Id.* at 25-26, 49-50. Finally, outside the establishment, the investigators observed three open trash containers and trash stored outside the containers. *Id.* at 33-36, 50-51; *Exhibit No. 6* (photo of trash area).

3. Inside, Investigator Gilliam advised Kiss Tavern’s manager of the violation. *Tr.*, 4/4/18 at 21. Upon returning to ABRA’s headquarters, the investigator reviewed the establishment’s settlement agreement and identified additional violations. *Id.*

4. At a later date, the investigator returned to the establishment to discuss the violations with Eyob Asbeha, the owner. *Id.* at 45, 47. Mr. Asbeha disabled the flashing lights once the investigator described the violation of the settlement agreement. *Id.* at 47.

5. During the hearing, Mr. Asbeha claimed that the trash observed by the investigator was not his trash and that he puts his trash on a different street. *Id.* at 60, 81. He further admitted that during the investigator’s visit the establishment was playing music off of Pandora. *Id.* at 67. He did not dispute that the two signs were flashing in his window. *Id.* at 70-71, 98.

CONCLUSIONS OF LAW

6. 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. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2018).

I. Standard of Proof

7. 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. Kiss Tavern Violated its Settlement Agreement.

8. Under § 25-446(e), “upon a determination that a licensee has violated a settlement agreement, the Board shall penalize the licensee. . . .” D.C. Code § 25-446(e); *see also* D.C. Code § 25-823(a)(6). In this case, at a minimum, Kiss Tavern’s settlement required the establishment to keep its door closed when the establishment played music without exception. *Supra*, at ¶ 1. The establishment was also prohibited from using flashing signs. *Id.* Even if the Board accepts belonged to someone else, the establishment left its rear door open while music was playing and utilized flashing signs in violation of its settlement agreement. *Supra*, at ¶ 2. Consequently, the Board sustains Charge II.

III. Penalty

9. In this case, the violation of the settlement agreement is Kiss Tavern’s second secondary tier violation based on the licensee’s violation history. 23 DCMR § 800 (West Supp. 2018); *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-CMP-00570, Board Order No. 2018-329, 3-4 (D.C.A.B.C.B. May 9, 2018). The fine range for a second time secondary offense falls between \$500 and \$750. 23 DCMR § 802(B) (West Supp. 2018). The Board imposes a fine of \$500 based on the licensee’s voluntary compliance once he was notified of the violations.

ORDER

Therefore, the Board, on this 16th day of May 2018, finds that Kiss, LLC, t/a Kiss Tavern, guilty of violating its settlement agreement. Specifically, Charge I is dismissed, and for the violation described in Charge II, Kiss Tavern shall pay a fine of \$500.

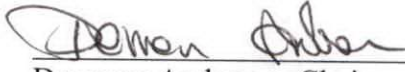
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

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

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.

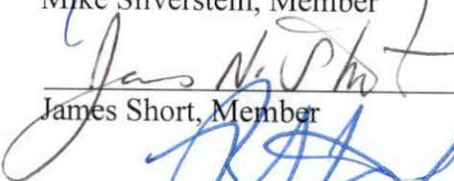
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



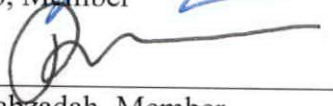
Mike Silverstein, Member



James Short, Member



Bobby Cato, Member



Rema Wahabzadah, 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).