

In the Matter of:

at premises  
637 T Street, N.W.  
Washington, D.C. 20001

Case No.: 17-CMP-00683  
License No.: 104710  
Order No.: 2018-357

Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
James Short, Member  
Donald Isaac, Sr., Member  
Bobby Cato, Member

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

## INTRODUCTION

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### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 25, 2018. *ABRA Show Cause File No. 17-CMP-00683*, Notice of Status Hearing and Show Cause Hearing, 3 (Jan. 25, 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 January 26, 2018. *ABRA Show Cause File No. 17-CMP-00683*, Service Form. The Notice charges the Respondent with one violation, 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 violation:

**Charge I: [Between June 12, 2017 through October 14, 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 February 28, 2018. The parties proceeded to a Show Cause Hearing and argued their respective cases on March 28, 2018.

After the close of the record, the Board reopened the matter to obtain clarification from the parties regarding the case; specifically, whether the charge was limited to October 14, 2017 or the time period of June 12, 2017, through October 14, 2017, and whether adequate notice of the time frame had been provided. *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-CMP-00683, Board Order No. 2018-148, 1-2 (D.C.A.B.C.B. Apr. 4, 2018). In response, the Government provided the notice, which identified the time period between June 12, 2017, and October 14, 2017, as part of the factual basis justifying the charge and witness testimony related to that time period. *Resp.* at 1-4; *Transcript (Tr.)*, March 28, 2018 at 159 (arguing in closing "he was not in compliance with the settlement agreement . . . for long periods of time . . . ."), 161. Kiss Tavern did not respond to the Government's submission and raised no objections during the hearing or in response to the Government's filing. In light of the facts raised by the Government, the Board is satisfied that the charge covered the June to October time period, and that Kiss received adequate notice of the scope of the hearing under D.C. Official Code § 2-509(a).

### **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 § 6(b)



that Kiss Tavern “shall participate in the . . . Metropolitan Police Department [(MPD)] Reimbursable Detail Program; whereby police officers will be assigned to patrol the immediate environs of the Premises from 11:30 p.m. to 3:30 a.m. on Friday and Saturday night. *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-PRO-00004, Board Order No. 2017-151, § 6(b) (D.C.A.B.C.B. Mar. 29, 2017). Further, § 6(b) also provides that the provision “shall expire on April 2019, unless sooner renewed or extended by the parties . . .” *Id.* Finally, “In the event that the Licensee intends to discontinue [the detail under the expiration provision] . . . the Licensee shall afford the [Advisory Neighborhood Commission (ANC)] sixty (60) days advance written notice of such intention.” *Id.*

2. Kiss Tavern executed the agreement to have MPD provide reimbursable detail service officers at the establishment on March 30, 2017. *Tr.* 3/28/18 at 49, 54. The agreement notifies owners that MPD requires at least two days’ notice in order to provide detail officers. *Id.* at 54-55, 133. The program began providing officers to the establishment during the first week of April and on the appropriate days thereafter until the establishment was suspended from the program. *Id.* at 56, 106, 142-43.

3. Brenda Smith, in her role as the coordinator of the MPD Reimbursable Detail Program, later learned that Kiss Tavern had failed to pay for services previously rendered under the program. *Id.* at 56. Based on this information, Ms. Smith sent Kiss Tavern a delinquency notice on May 22, 2017, and suspended Kiss Tavern from the program on June 12, 2017. *Id.* at 56-57. During this period, Ms. Smith sent various reminders to Kiss Tavern’s owner reminding him that he was in arrears with the program. *Id.* at 52.

4. Kiss Tavern did not satisfy its debts to the program until October 12, 2017. *Id.* at 57. The owner requested that MPD provide reimbursable detail officers for October 13, 2017, and October 14, 2017. *Id.* at 57. While Ms. Smith attempted to accommodate the request, MPD was unable to provide detail officers on such short notice. *Id.* at 58, 108.

5. On October 4, 2017, ABRA Investigator Mark Brashears received a report that Kiss Tavern had failed to pay required fees to have the MPD provide officers under the Reimbursable Detail Program. *Id.* at 11-12. Based on this report, Investigator Brashears contacted Brenda Smith. *Id.* at 11-12, 83-84. Ms. Smith confirmed that Kiss Tavern had failed to make payments for the period between June and October 12, 2017. *Id.* at 11-12. Ms. Smith further indicated that the program ceased providing services between June 12, 2017, and October 12, 2017, for non-payment. *Id.* at 39.

6. Investigator Brashears visited the establishment on October 14, 2017. *Id.* at 13. Kiss Tavern’s licensed manager was present. *Id.* He indicated that Kiss Tavern had made the required payments, but the detail would not be present on October 14, 2017, and would restart October 20, 2017. *Id.* at 13, 34-35, 40. On October 26, 2017, Ms. Smith confirmed that MPD had restarted providing reimbursable detail police officers to the establishment after the establishment paid on October 12, 2017, and that services would resume on November 3, 2017. *Id.* at 13, 25, 40, 89-90.



7. On October 26, 2018, Investigator Brashears asked a commissioner with ANC 1B about Kiss Tavern's reimbursable detail. The commissioner indicated that ANC 1B had not been made aware of the cancellation of reimbursable detail services at the establishment. *Id.* at 15.

8. During the hearing, Eyob Asbeha, the owner of Kiss Tavern, testified. *Id.* at 119. He explained that he did not pay for the detail because he believes MPD did not properly handle altercations that occurred at the establishment and officers were not reporting for duty on time. *Id.* at 120-21, 146. Mr. Asbeha admitted that during his dispute with MPD over payments, he owed money for multiple weekends. *Id.* at 152.

## **CONCLUSIONS OF LAW**

9. 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**

10. 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.**

11. 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, Kiss Tavern is obligated to hire the MPD Reimbursable Detail every Friday and Saturday until April 2019 without exception. *Supra*, at ¶ 1. The Board credits evidence that MPD suspended services to the establishment between June 12, 2017, and October 12, 2017, and that they did not resume at the very least until November 3, 2017. *Supra*, at ¶¶ 5-6. While the owner indicated that the delinquency was caused by a dispute with MPD over the quality of the services, this does not excuse Kiss Tavern's failure to comply with express language of the settlement agreement or unilaterally violate the agreement. *Supra*, at ¶ 8. Consequently, the Board sustains Charge I based on the multiple violations that occurred between the period of June 12, 2017, and October 14, 2017.

### **III. Penalty**

12. In this case, the violation of the settlement agreement is Kiss Tavern's third 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); *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-CMP-00569, Board

Order No. 2018-331, 4 (D.C.A.B.C.B. May 16, 2018). Nevertheless, because the prior offenses were adjudicated after the date of occurrence, the offense is fined as if it were a first time secondary tier offense. The fine range for a first time secondary offense falls between \$250 and \$500. 23 DCMR §§ 802(A), 808 (West Supp. 2018). The Board imposes a fine of \$500, because the failure to provide the required reimbursable detail officers has a negative impact on public safety.

### **ORDER**

Therefore, the Board, on this 23rd day of May 2018, finds that Kiss, LLC, t/a Kiss Tavern, guilty of violating its settlement agreement. In light of this violation, 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



Nick Alberti, Member



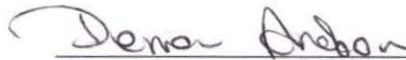
Mike Silverstein, Member

James Short, Member

Donald Isaac, Sr., Member

Bobby Cato, Member

I concur with the decision of the majority to find Kiss Tavern liable for the violation. Nevertheless, I dissent from the penalty imposed and would impose a lower fine for the violation.



Donovan Anderson, Chairperson

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).