

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

In the Matter of:)	
)	
Kiss, LLC)	Case No.: 17-CMP-00570
t/a Kiss Tavern)	License No.: 104710
)	Order No.: 2018-329
Holder of a)	
Retailer's Class CT License)	
)	
at premises)	
637 T Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., 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 Kiss, LLC, t/a Kiss Tavern, (hereinafter "Respondent" or "Kiss Tavern") in violation of its settlement agreement on August 24, 2017, by keeping its rear door open while playing music. 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-00570*, 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-00570*, 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: [On August 24, 2017,] [y]ou failed to comply with the settlement agreement . . . in violation of D.C. Official Code §§ 25-446 . . . and . . . 25-823(a)(6)

Notice of Status Hearing and Show Cause Hearing, 2.

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 11, 2018.

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).
2. ABRA Supervisory Investigator Kevin Hargrave was on duty on August 24, 2017. *Transcript (Tr.)*, April 11, 2018 at 9. On that date, ABRA received a noise complaint regarding noise in Kiss Tavern's neighborhood. *Id.* at 12. In response to the complaint, Supervisory Investigator Hargrave went to the neighborhood to conduct an investigation. *Id.* at 13. The Supervisory Investigator arrived outside Kiss Tavern around 10:05 p.m. *Id.* Outside, he heard music coming from the establishment from the other side of the street. *Id.* at 13-14. He also saw that Kiss Tavern's rear door was being held open by stanchions. *Id.* at 13, 29-30, 37. He then entered the establishment and advised Eyob Asbeha, Kiss Tavern's owner, to close the doors. *Id.* at 18-19. The door remained open for the duration of the Supervisory Investigator 15 minute visit, but staff at Kiss Tavern closed the door after he left. *Id.* at 30.

CONCLUSIONS OF LAW

3. 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

4. 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.

5. 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’s settlement required the establishment to keep its door closed when the establishment played music without exception. *Supra*, at ¶ 1. On August 24, 2017, while in the street, Supervisory Investigator Hargrave heard music coming from Kiss Tavern and observed the establishment’s rear door open. *Supra*, at ¶ 2. Consequently, the Board sustains Charge I.

III. Penalty

6. In this case, the violation of the settlement agreement represents the license holder’s first secondary tier violation. 23 DCMR § 800 (West Supp. 2018). The fine range for a first time secondary offense falls between \$250 and \$500. 23 DCMR § 802(A). The Board imposes a fine of \$500 because the offense had a detrimental impact on the neighborhood.

ORDER

Therefore, the Board, on this 9th day of May 2018, finds that Kiss, LLC, t/a Kiss Tavern, guilty of violating its settlement agreement. The Board imposes the following penalty on Kiss Tavern:

(1) For the violation described in Charge I, 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.

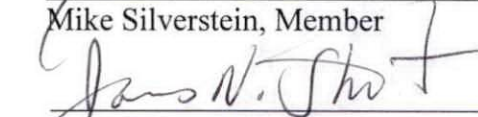
The ABRA shall deliver copies of this Order to the Government and the Respondent.


District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


James Short, Member


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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).