

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

In the Matter of:	)		
	)		
Kiss, LLC	)	Case No.:	18-CMP-00020
t/a Kiss Tavern	)	License No.:	104710
	)	Order No.:	2018-524
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

**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

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**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 November 18, 2017. The Board fines Kiss Tavern \$350 for the offense.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 24, 2018. *ABRA Show Cause File No. 18-CMP-00020*, 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 June 2, 2018. *ABRA Show Cause File No. 18-CMP-00020*, 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:** [November 18, 2017], [y]ou failed to comply with the settlement agreement and the Board's order in violation of D.C. Official Code §§ 25-446, 25-446.01 and 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 July 11, 2018. The parties proceeded to a Show Cause Hearing on August 1, 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 the "Applicant agrees to keep its doors closed when music is being played inside the establishment buy 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, § 3(c) (D.C.A.B.C.B. Mar. 29, 2017).
2. On November 18, 2017, ABRA Investigator Felicia Dantzler visited Kiss Tavern. *Transcript (Tr.)*, August 1, 2018, at 13. After parking her vehicle on 7th and T Street, N.W., she approached the establishment. *Id.* at 14, 18. Outside, she heard music emanating from the establishment and saw two police officers standing near the front. *Id.* at 14-15. She then approached the establishment, spoke with the officers, and asked an employee to get the owner or manager. *Id.* at 15-16. She estimated that she was approximately 70 feet away when she first heard music coming from Kiss Tavern, which was beyond Kiss Tavern's curb. *Id.* at 18, 32-33. She also noticed that when she spoke to the police, she observed Kiss Tavern's front door being held open by a string or wire. *Id.* Investigator Dantzler further observed that a second inside door leading inside to the establishment was closed. *Id.* at 22-23, 35. She also noted that when

she was near the second inside door she heard the same music inside the establishment that she heard outside the establishment. *Id.* at 37.

3. Eyob Asbeha, the owner of Kiss Tavern, indicated that the establishment keeps the door open to improve patron access and does not believe any noise was coming from the establishment. *Id.* at 67, 70.

## CONCLUSIONS OF LAW

4. 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

5. 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 by Keeping its Door Open on November 18, 2017.

6. 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 keep its door closed under its settlement agreement. *Supra*, at ¶ 1. Based on the language of the agreement, there is no exception based on the amount of noise heard or if the second door is closed. Therefore, there is sufficient evidence to find Kiss Tavern in violation based on Investigator Dantzler’s observations on November 18, 2017, that the establishment’s door was open while music was played inside. *Id.*

### III. Penalty

7. In this case, the violation of the settlement agreement constitutes a secondary tier violation. 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). Despite having prior violations, because the prior offenses were adjudicated after the date of occurrence of the present violation, the current 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 \$350.

## ORDER

Therefore, the Board, on this 12th day of September 2018, finds Kiss, LLC, t/a Kiss Tavern, guilty of violating its settlement agreement. In light of this violation, Kiss Tavern shall pay a fine of \$350.

**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

  
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Donovan Anderson, Chairperson

  
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Mike Silverstein, Member

  
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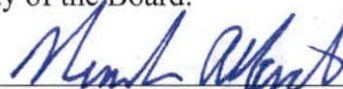
James Short, Member

Donald Isaac, Sr., Member

  
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Bobby Cato, Member

I abstain from the position taken by the majority of the Board.

  
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Nick Alberti, 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).