

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

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In the Matter of:	)	
	)	
Mad Hatter CT Ave, LLC	)	Case No.: 22-CMP-00035
t/a Mad Hatter	)	License No.: ABRA-082646
	)	Order No.: 2022-839
Holder of a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
1321 Connecticut Avenue, N.W.	)	
Washington, D.C. 20036	)	

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**BEFORE:** Donovan Anderson, Chairperson  
James Short, Member  
Bobby Cato, Member  
Jeni Hansen, Member  
Edward S. Grandis, Member

**ALSO PRESENT:** Mad Hatter CT Ave, LLC, t/a Mad Hatter, Respondent  
  
Andrew Kline, Counsel, on behalf of the Respondent  
  
Kevin Lutes, 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 Mad Hatter CT Ave, LLC, t/a Mad Hatter, (hereinafter "Respondent" or "Mad Hatter") was overcapacity and failed to have a licensed manager or owner present or in charge of the business as required by law on May 6, 2022. The Respondent shall pay a \$1,250 fine for the two offenses.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 8, 2022. *ABRA Show Cause File No. 22-CMP-00035*, Notice of Status Hearing and Show Cause Hearing, 2 (Jun. 8, 2022). 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 violation:

**Charge I:** [On May 6, 2022,] [y]ou exceeded [your] Board-approved occupancy, in violation of D.C. Code § 25-762(a) . . .

**Charge II:** [On May 6, 2022,] [y]ou failed to have the establishment’s owner or Board-approved manager present during hours of sale, service, and consumption of alcohol, in violation of D.C. Code § 25-701 and 23 DCMR § 707.1 . . . .

*Notice of Status Hearing and Show Cause Hearing*, at 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on July 20, 2022. The parties proceeded to a Show Cause Hearing and argued their respective cases on September 14, 2022.

### **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. Mad Hatter holds a Retailer’s Class CT License at 1321 Connecticut Avenue, N.W., Washington, D.C. *ABRA License No. 082646*. ABRA Investigator Mark Ruiz visited Mad Hatter in the early morning hours of May 6, 2022, which was during the Cinco de Mayo holiday. *Transcript (Tr.)*, September 14, 2022 at 10. The establishment’s license lists the occupancy as 224 people. *Id.* at 21. At the establishment, he conducted a count of the number of patrons. *Id.* at 12. Inside, he counted 329 patrons. *Id.* at 12, 21. He indicated that he included people that were “dancing, stationary drinking, and talking” but did not include people “walking through the establishment.” *Id.* at 26. He admitted that his number was not perfectly accurate but, given the short amount of time he took, it was highly unlikely that many people left while he counted. *Id.* at 27-28. He also noted that he did not see an excessive amount of people outside the establishment when he left. *Id.* at 35.

2. During his investigation, Investigator Ruiz asked to speak with a licensed ABC Manager. *Id.* at 16. Nevertheless, the employee that was presented by the establishment displayed a temporary manager’s license that had expired in November of 2021. *Id.* at 16-17, 32. The

establishment was not able to present anyone with an active ABC Manager’s License when Investigator Ruiz renewed his request. *Id.* at 17.

3. During his investigation, Investigator Ruiz further inspected a counter used by the establishment at the front door. *Id.* at 29. Nevertheless, based on his count, the investigator believed the number maintained by the establishment on its counter was inaccurate. *Id.*

## 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. Code § 25-823(a)(1).

### 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. 2022). 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. The Board Sustains Charge I.

6. Under the substantial change law,

(a) Before a licensee may make a change in the interior or exterior, or a change in format, of any licensed establishment, which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board in accordance with § 25-404.

(b) In determining whether the proposed changes are substantial, the Board shall consider whether they are potentially of concern to the residents of the area surrounding the establishment, including changes which would:

(1) Increase the occupancy of the licensed establishment or the use of interior space not previously used . . . .

D.C. Code § 25-762(a)-(b)(1). In this case, the Respondent’s license indicates that the premises has an occupancy of 224 people but that at least 329 people were inside the building on May 6, 2022. *Supra*, at ¶ 1. The Board notes that the Respondent presented no counter evidence or testimony that the clickers showing a different figure were credible in light of the count performed by the investigator. *Supra*, at ¶ 3. Moreover, any discrepancy in the count performed by the investigator would not result in the establishment being at or below its legal capacity based on how the count was conducted. *Supra*, at ¶ 1.

7. The Board further considered the Respondent's legal argument that § 25-762 only applies to permanent changes and cannot be used for cases where the Respondent exceeds its occupancy. *Tr.*, 9/14/22 at 41-43. The Board notes that this argument was previously considered and rejected in *Mason Inn* in 2013 and the Board finds no compelling reason to consider this prior long-standing interpretation of § 25-762. *In re 2408 Wisconsin Avenue, LLC, t/a Mason Inn*, Case No. 12-251-00368, Board Order No. 2013-595, ¶¶ 19-22 (D.C.A.B.C.B. Dec. 11, 2013). Therefore, the Board sustains Charge I.

### III. The Board Sustains Charge II.

8. Under § 25-701(a) and (a-1),

(a) A person designated to manage an establishment shall possess a manager's license.

(a-1)(1) . . . an establishment's owner or Board-approved manager shall be present on the premises at all times during the establishment's hours of sale, service, and consumption of alcoholic beverages.

D.C. Code § 25-701(a), (a-1); 23 DCMR § 707.1 (West Supp. 2022). The Board credits Investigator Ruiz's testimony and the evidence in the record that no licensed manager or owner was present or in charge of the premises. *Supra*, at ¶ 1.

9. The Board further considered the Respondent's argument that the Government failed to meet its burden on this charge because the investigator solely asked for a licensed manager and did not ask for an owner. *Tr.*, 9/14/22 at 39. While this may be true, the Board is not persuaded that the Government failed to meet its burden of proof, failed to present sufficient evidence related to this charge, or otherwise failed to make a prima facie case. First, the Board may infer that no owner was present based on the record because there is no evidence or testimony that the investigator observed an owner on-site despite being present long enough to conduct a patron count. *Supra*, at ¶ 1. Consequently, the mere fact that the investigator did not ask for an owner is not sufficient to undermine the Government's case when he was on-site, observed the premises, and presented no affirmative testimony that he observed an owner present.

10. Second, separate and apart from this first reason, the alcohol industry is a highly regulated industry and someone who holds or has held a manager's license should know that a manager or owner should be present at all times when the business is in operation. *See* D.C. Code § 25-301(a)(1), (a)(6); *In re Shaw's Tavern, LLC t/a Shaw's Tavern*, Case No. 11-CMP-00314, Board Order No. 2012-018, ¶ 30 (D.C.A.B.C.B. Jan. 25, 2012) (saying knowledge of the District's alcohol laws is part of the character and fitness requirement). Based on the tenor of the conversation between the investigator and the unlicensed manager, it is reasonable to presume that an employee would get the owner themselves if they were unable to satisfy the demands of an investigator for any reason. *Supra*, at ¶ 2. Indeed, if someone has held or holds a manager's license it is further reasonable to presume that they know or should know why they are being asked for a licensed manager and know that they could fulfill the demand of the investigator by

presenting an owner as well.<sup>1</sup> Third, turning to the Respondent's case, there is no evidence presented that an owner or manager was actually present or testimony from the unlicensed manager or other employee that he or she would have obtained an owner had she been asked. Therefore, the Board rejects this defense.

11. Separate and apart from the above, whether the owner was present or not, the Board notes that it is required under § 25-701(a) that "A person designated to manage an establishment shall possess a manager's license." § 25-701(a). In this case, where the establishment only presented an employee with an expired temporary manager's license on the day of the incident, this constitutes a violation of § 25-701(a), as the investigator's uncontested observations show that a non-licensed manager was put in charge of the establishment and there is no evidence that anyone else was in charge. *Supra*, at ¶ 2. Consequently, the Board is satisfied that the Government has proven Charge II.

#### **IV. Penalty**

12. The Board declines to issue a warning for the offenses because overcapacity is a serious safety issue, and the mismanagement of crowds can lead to mass casualties. Moreover, the manager requirement is integral in ensuring that establishments operate in accordance with the law. Based on the offenses, the Respondent shall pay a \$1,000 fine for Charge I and a \$250 fine for Charge II.

### **ORDER**

Therefore, the Board, on this 2nd day of November 2022, finds Mad Hatter CT Ave, LLC, t/a Mad Hatter, guilty of violating D.C. Official Code §§ 25-701 and 25-762. The Board imposes the following penalty on Mad Hatter:

- (1) For the violation described in Charge I, Mad Hatter shall pay a fine of \$1,000.
- (2) For the violation described in Charge II, Mad Hatter shall pay a fine of \$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 (West Supp. 2022), the violations found by the Board in this Order shall be deemed a primary tier violation and a secondary 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

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<sup>1</sup> The Board notes that the requirement that a licensed manager or owner be present is an important requirement because (1) it helps ensure the lawful operation of the business; (2) helps prevent the capture of the business by unlicensed third parties; and (3) ensures someone with sufficient authority is present to address immediate requests by government officials (e.g., obtaining security camera footage, displaying identification, providing records, etc.).

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

eSigned via SeamlessDocs.com  
*Donovan Anderson*  
Key: ac430b06c9d5f00e4c730009d1dccc8

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Donovan Anderson, Chairperson

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*James Short*  
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James Short, Member

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Bobby Cato, Member

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*Edward Grandis, Member*  
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Edward S. Grandis, 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).