

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

In the Matter of:)		
)		
Tsion Market, LLC)	Case No.:	22-251-00006
t/a Martha's Market)	License No:	ABRA-116862
)	Order No:	2022-153
Holder of a)		
Retailer's Class B License)		
)		
at premises)		
2400 Minnesota Avenue, S.E.)		
Washington, D.C. 20020)		
)		

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

ALSO PRESENT: Tsion Market, LLC, t/a Martha's Market, Respondent

Richard Bianco, Counsel, on behalf of the Respondent

Walter Adams II and Christopher Southcott, Assistant Attorneys General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER AFFIRMING SUMMARY SUSPENSION

INTRODUCTION

The Alcoholic Beverage Control Board (Board) indefinitely suspends the Retailer's Class B License held by Tsion Market, LLC, t/a Martha's Market, pursuant to D.C. Official Code § 25-826, based on compelling evidence that the continued operation of the store presents an imminent and ongoing danger to the community. Specifically, the indefinite suspension of the license is warranted because the narcotics trafficking and shooting that occurred at the store on March 4, 2022, was the natural result of the failure of the ownership to report the prior presence of firearms at the store, the owner's failure to prevent a person known to have had a firearm in

the store and who had provided the firearm to an employee for safekeeping access to the property, and intentionally failing to comply with the requirement to properly superintend the store in person or through a licensed ABC Manager on a regular basis. Consequently, an indefinite suspension is warranted because the ownership cannot be trusted to properly superintend the store and take the actions needed to prevent the store from being effectively taken over by narcotics traffickers and becoming a target for drug related violence that puts the larger community at risk. The suspension shall remain in effect until this matter is adjudicated through the show cause process and the Board decides as to whether revocation or other action is warranted.

Procedural Background

On March 18, 2022, the Board executed a notice undertaken by the Office of the Attorney General (OAG) suspending the Retailer’s Class B License held by the Respondent, under the authority granted by D.C. Official Code § 25-826. *Notice of Summary Action*, 1 (March 18, 2022) [*Notice*]. Specifically, the notice alleges that on March 4, 2022, a robbery occurred at the establishment, and someone was shot in the leg. *Id.* at 2. When police arrived, they found money, a firearm, narcotics, and drug paraphernalia inside the establishment, which indicated that illegal narcotics trafficking was occurring on the premises. *Id.* No licensed ABC manager or owner was present as well, which indicated that the business was not being properly supervised as required by law. *Id.*

The Respondent subsequently requested a hearing, which the parties agreed to hold on April 6, 2022. The question now before the Board is whether “. . . the operations of [the] licensee present an imminent danger to the health and safety of the public” D.C. Code § 25-826(a).

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, the arguments of the parties, and the documents comprising the Board’s official file, makes the following findings:¹

I. Stipulation of Facts

The parties submitted the following stipulation of facts into the record:

1. Tsion Market, LLC, t/a Martha’s Market (the licensee) has a Class B-Retail Grocery license to sell alcoholic beverages issued by the District of Columbia Alcohol Beverage Control Board (the Board).

¹ The full transcript in this matter was not available at the time this Order was written; however, the Board is sufficiently versed in the evidence and testimony after holding the summary suspension hearing to make the findings of fact and conclusions of law contained in this Order. This action was necessary on the part of the Board because § 25-826(c) requires the Board to issue an Order within three business days of the Summary Suspension Hearing. D.C. Code § 25-826(c); 23 DCMR § 810.11.

2. The licensee's registered business address is 2400 Minnesota Ave., S.E., Washington, D.C. 20020.
3. The licensee operates a small market with a sealed-off booth area and several aisles.
4. The licensee's establishment sells merchandise, including loose rolling papers, single plastic sandwich bags, and digital pocket weight scales.
5. The licensee's establishment also sells individual, loose cigarettes from an open pack of cigarettes.
6. On March 4, 2022, at approximately 6:11 p.m., an adult male (the victim) was shot in the leg during an attempted armed robbery in the licensee's establishment.
7. The robbery occurred during the licensee's hours of operation.
8. The owner was not present during the robbery.
9. The only employee present during the robbery was a clerk inside the booth.
10. The clerk is not an ABC manager licensed by the Board.
11. During the attempted robbery, the clerk reached into a cubby hole, took out a black plastic bag with a pistol, and held it.
12. After the shooting, the assailants fled the establishment, and the clerk opened the booth door and handed the pistol to the victim.
13. The victim left the establishment with the pistol he received from the clerk to pursue the assailants and then returned to the establishment with the pistol.
14. After the victim returned to the establishment, the clerk helped the victim into the store's booth area.
15. The victim placed a wad of cash on a counter inside the booth that was later found by the Metropolitan Police Department (MPD).
16. The pistol was found in a box inside the booth.
17. At that time, the victim had a digital scale, cash, an open container of plastic bags, and a plastic bag containing a green leafy substance.
18. The victim entered the booth twice and conversed with the clerk before the robbery.
19. At one point, the victim placed his items on the counter.

20. Before the attempted robbery, the victim entered the booth and stashed a black plastic bag with a semiautomatic pistol in a cubby hole inside the booth.
21. The pistol remained in the same location until the clerk retrieved the pistol during the attempted robbery.
22. Beginning at approximately 6:07 p.m., the victim engaged in at least three hand-to-hand transactions with individuals in the establishment.
23. During the transactions, the victim weighed material on a digital pocket scale, placed them in a plastic sandwich bag, and exchanged the items for cash.
24. On prior dates, the owner was not present at the establishment.
25. MPD officers arrived at the scene shortly after the attempted robbery.
26. MPD officers reviewed security footage of the attempted robbery and searched the establishment.
27. In the search, MPD officers found the pistol the clerk passed to the victim hidden in a cardboard box inside the booth.
28. In the search, MPD officers found narcotics containing 7, 247, and 925 [sic] plate-blue stamped 30/M pills of the prescription drug Oxycodone Hydrochloride, five items of a rock-like white substance, two bottles of the prescription drug Promethazine (a common ingredient in the drug known as “lean”), and a clear plastic bag containing a green leafy substance similar in appearance to marijuana.
29. The establishment has no license to sell or distribute the items found by MPD.
30. On March 13, 2022, at approximately 8:10 p.m., ABRA Investigator Mark Ruiz inspected the establishment and spoke with the owner.
31. The owner admitted to leaving the establishment on March 4, 2020, at approximately 2:30 p.m., so the store clerk was the only employee.
32. The owner admitted knowing the clerk had no ABC manager’s license.
33. The owner admitted knowing it was illegal to sell individual cigarettes and said he only did so in the evenings.
34. When asked about selling individual rolling papers, open plastic bags, and the digital pocket weight scales, the owner admitted that he sells what the community buys.
35. The licensee’s store clerk produced a pistol from a concealed location in a secured booth of the establishment and handed the pistol to a shooting victim in the establishment.

36. The licensee failed to have an ABC manager or owner present during licensed hours of sale.

Stipulation of Fact, 1-36.

II. Hearing Testimony and Evidence

37. Sergeant Greg Morrison works for the Metropolitan Police Department (MPD) and is assigned to the Sixth District. The Respondent's establishment is in the portion of the city that Sgt. Morrison regularly patrols. Sgt. Morrison and other officers have been inside the establishment on multiple occasions.

38. During prior business checks, he has observed that people inside the market appeared uncomfortable with MPD's presence. Additionally, on one occasion, staff inside the market accused officers of loitering when inside and told police to leave. The behavior was observed on other occasions.

39. On March 4, 2022, Sgt. Morrison responded to the shooting. The owner, Anteneh Fantaye, arrived at the scene, and Sgt. Morrison had a conversation with the owner after the shooting. During the conversation, the owner admitted that in the past he observed through the store's camera footage that someone had passed a firearm to another one of the store's clerks. The owner said he told the clerk not to hold firearms for other people.

40. ABRA Investigator Mark Ruiz conducted an inspection of the Respondent's establishment on March 13, 2022. During his inspection, Investigator Ruiz observed the sale of a single cigarette. When he notified the owner of this action, the owner admitted that this was a frequent practice at the establishment.

41. During the investigation, Investigator Ruiz observed security footage from the date of the incident. Video footage (Exhibit 4) from the March 4 incident shows the shooting victim standing in the customer area at the cashier booth in the convenience store. Sitting on the cashier booth counter is a green notebook, a digital scale, and a box of sandwich bags. The video then shows the victim weighing an item on the cashier booth counter, placing it in a bag, and then handing it to a female wearing a blue scarf on her head. The video then shows the victim conduct another transaction with a male wearing a white hat and orange shirt. After the male and female leave, the victim stands by the counter with a clear plastic bag with a white substance inside.

42. Later in the video, two people, who are suspects related to the shooting and robbery, walk in wearing black masks. The victim begins speaking with one of the suspects at the counter. The two suspects suddenly pull out pistols and the victim backs away quickly into the back corner of the store. While not fully captured by the video, the victim is trapped in the corner and a struggle ensues. During the struggle, one of the suspects fires shots at the victim and then the suspects flee.

43. After the shooting, the cashier emerges from the cashier booth's door with a handgun in his right hand. From the booth door, the cashier hands the gun to the victim. The victim, displaying a limp, quickly runs out of the store, and then returns. The victim then enters the cashier booth door. The video footage also shows the plastic bag held by the victim broken on the floor.

44. Another video (Exhibit 5) shows the incident from the perspective of the cashier booth where the cashier was sitting. The footage shows that the victim's activities during the incident were visible from the interior of the cashier booth. The video shows that during the robbery, the cashier grabbed a black bag, and pulled out a firearm from the bag. After the clerk opens the door to the booth and the victim enters, the victim puts a bunch of cash on the booth's counter.

45. Another video (Exhibit 10) from the same date of the incident shows the victim inside the booth. The video shows the victim place a digital scale on the counter in front of the cashier. The victim then removes a green notebook, a clear plastic bag with a white substance, and plastic sandwich bags from a black bag. The video then shows the victim store a black bag in a cubby area inside the cashier booth and then conceal the area with a box. After the robbery, the video shows the victim giving something to the cashier.

46. As part of his investigation, Investigator Ruiz examined video footage from March 1, 2022, through March 3, 2022. As part of his review, he observed the victim and clerk inside the store on March 1, 2022, and March 3, 2022. They appeared to be acting in a similar manner on those days. Specifically, the footage shows the victim enter the cashier booth with a black bag and standing in front of the booth area.

47. Anteneh Fantaye is the owner of the convenience store and has owned the business for two and half years. He usually works there five days per week for about half a day. The store has five employees. The employee involved in the incident on March 4, 2022, is named Stefanos Threat. Mr. Threat began working for the Respondent approximately three months ago. The owner admits that he did not conduct any background checks when hiring Mr. Threat. Mr. Fantaye testified that he fired Mr. Threat based on his conduct on March 4, 2022.

48. Mr. Fantaye indicated that he never observed Mr. Threat or anyone else engage in narcotics trafficking at the store. Mr. Fantaye admitted that he has the ability to check his security cameras from his phone whenever he wants, but in the past has only checked it one time per day.

49. Mr. Fantaye indicated he has taken and will take steps to improve security at the store. First, the owner installed two more security cameras with alarms. Second, the owner installed more anti-loitering signs. Third, the business will perform background checks of all employees before hiring them. Fourth, the business will create written rules and policies for employees. Fifth, the business will provide employees with security training. Sixth, the owner will check the camera footage more frequently. Seventh, he has given the landlord access to the cameras system so that another person can check activity at the premises as well.

50. Mr. Fantaye described his conversation with Sgt. Morrison. Mr. Fantaye confirmed that he told Sgt. Morrison that, on an earlier date, he had observed another employee pass a firearm to the victim approximately five months before the incident on March 4, 2022. He then confirmed that he told the employee not to engage in that type of behavior anymore. He further indicated that he is not aware as to whether the employee he observed was acting under coercion or intimidation. Nevertheless, he admitted that the victim was frequently present in the store, even after the victim was observed receiving a gun from one of his employees in the past. The owner further admitted that he took no legal steps to bar the victim from the property after he was observed with a firearm in the store before the incident on March 4, 2022. He further admitted that he never reported the prior incident to the police.

51. Mr. Fantaye admitted that he knew he needed an owner or licensed manager present to sell alcohol. He noted that he was aware that Mr. Threat had applied for but did not complete his application for an ABC manager's license. He further admitted that he allowed Mr. Threat to work alone in the evenings since December 2021. Mr. Fantaye indicated that he occasionally would be in and out of the establishment during Mr. Threat's shifts. The owner further admitted that no other employees at the store have an ABC manager's license at this time.

CONCLUSIONS OF LAW

52. "If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public, the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District." D.C. Code § 25-826(a). "In rendering a decision on a summary suspension hearing, the Board may suspend or restrict the license of the licensee." 23 DCMR § 1613.1 (West Supp. 2022). As part of the Government's case-in-chief, the Government requested that the license stay in suspension until this matter is resolved by a show cause action. In response, the Respondent requested that the suspension be lifted in conjunction with the imposition of various conditions, including mandatory criminal background checks, improved security protocols, additional training, mandatory checking of security camera footage, the addition of new security cameras, and the posting of additional anti-loitering signs, and other concessions, which the Board considered in making its determination in this case.

I. The Respondent's Continued Operation Poses an Imminent Danger to the Health, Safety, and Welfare of the Public.

53. The Board is further persuaded that the continued operation of represents an imminent danger to the public based on the ownership's failure to contact the police regarding the presence of firearms at the store in the past and knowingly failing to properly superintend the store, which renders the continued operation of the business a threat to public safety.

54. District law places various obligations on persons and businesses holding an alcohol license. Among these obligations, a licensee cannot "allow[] the licensed establishment to be used for any unlawful or disorderly purpose." D.C. Official Code § 25-823(a)(2). As part of this requirement, the court has stated that the "failure to properly communicate with police about incidents" is ". . . the type[] of omission[] that [is] conducive to an unlawful and disorderly environment" *Levelle, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 924 A.2d 1030, 1037

(D.C. 2007). In *Kabin*, the Board further indicated that a demonstrable connection between illegal conduct and the licensee could be established by evidence “showing a pattern of illegal behavior that continued over time,” which demonstrates “negligent supervision” or “willful blindness . . . that may be conducive to the conduct at issue.” *In re Kabin Group, LLC, t/a Kabin*, Case No. 17-251-00134, Board Order No. 2018-247, 8 (D.C.A.B.C.B. Apr. 25, 2018). The Board also wrote in *Kabin* that the Board “foresees that methods of operation that could lead to a violation of § 25-823(a)(2) include situations where a . . . licensee or its agents know or should know that patrons are bringing weapons onto the premises . . . and the licensee fails to take adequate steps to curb this practice” *Id.* at 8-9.

55. Furthermore, the licensee must “superintend in person, or through a manager approved by the Board, the business for which the license was issued.” D.C. Official Code § 25-823(a)(3). As part of the supervision requirement, the licensee is required to ensure that all persons hired to manage the business “shall possess a manager’s license . . . and 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); *see also* 23 DCMR § 707.1 (West Supp. 2022).

56. In this case, while the owner was not present, the shooting on March 4, 2022, has a demonstrable connection to the ownership’s method of operation. On March 4, 2022, the victim was openly engaging in narcotics trafficking in the store’s customer area in plain view with the participation of the store’s cashier before the victim was shot inside the store. *Supra*, at ¶¶ 6, 11-13, 18-23, 28, 41-45. The ownership helped create this situation through several acts. First, the ownership was aware that the victim in this case had possessed a firearm in the past and on a prior occasion the victim had one of his employees hold a firearm for him in the store. *Supra*, at ¶¶ 39, 50. The owner further admitted that the victim was a frequent patron and loiterer at the store before this incident. *Id.* at 50. Nevertheless, the owner never reported the prior firearm transfer to the police, which could have resulted in an arrest or additional police monitoring of the store; took no legal steps to legally bar the victim from the premises; did not increase the frequency of checking the store despite knowing the past behavior of the victim and his continued presence; or otherwise investigate whether his store or employees were at risk of harm or being used to further criminal activity. In fact, the only thing the ownership did was provide a verbal warning to the employee, which was a wholly insufficient response to the dangerous or criminal activity implicated by what the owner had observed in the past. Second, the ownership’s actions in this case further led to the incident at issue because Mr. Threat was not authorized to operate the store by himself; therefore, by failing to properly superintend the store, the ownership allowed it to be effectively taken over by criminals and become a target for drug related violence. As a result, had the ownership responded reasonably to the earlier incident, then it can be reasonably inferred that the drug dealing and shooting that occurred on March 4, 2022, would not have occurred.

57. The Board notes that it considered the Respondent’s proposed conditions to permit the reopening of the establishment; nevertheless, the Board found the proposal fundamentally flawed because it relies on the ownership’s diligence in monitoring and reporting illegal conduct. As the Board wrote in *The Big Board*, “the essence of [the District’s] licensing system is that the [license] holder can be trusted to comply with the law even when ABRA is not watching.” *In re Dane Flannery Restaurant, LLC, t/a The Big Board*, Case No. 22-CMP-00006, Board Order No. 2022-057, ¶ 21 (D.C.A.B.C.B. Feb. 14, 2022). Yet, the owner failed to take meaningful action

when he became aware that a frequent patron had brought a weapon to the establishment and coopted an employee into holding it for him; knowingly violated the ABC manager requirement; and knowingly sold single cigarettes in violation of the law. *Supra*, at ¶¶ 5, 32-33, 50. Under these circumstances, where the ownership was directly involved in a prior failure to contact the police and knowingly violated the law on previous occasions, the Board simply cannot trust the Respondent “to comply with the law [or any Board imposed conditions] when left to his own devices.” *In re Kiss, LLC, t/a Kiss Tavern*, Case No. 21-CMP- 00008, Board Order No. 2021-134, ¶ 49 (D.C.A.B.C.B. Mar. 17, 2021). Moreover, as the record in this case shows, the result of the owner’s negligent supervision, was narcotics trafficking and drug related violence that puts the community at risk of additional violence if not properly addressed. Therefore, an indefinite suspension of the Respondent’s license is warranted until the Board adjudicates any related show cause action and determines whether revocation of the license is warranted.

ORDER

Therefore, the Board, on this 11th day of April 2022, hereby **SUMMARILY SUSPENDS** the Retailer’s Class B License held by Tsion Market, LLC, t/a Martha’s Market.

IT IS FURTHER ORDERED that the summary suspension ordered by the Board shall remain in effect **INDEFINITELY** until the conclusion of a future show cause hearing related to this summary suspension. At the conclusion of the show cause hearing, the Board will consider whether to lift the suspension, revoke the license, or take other appropriate action. The removal of the suspension shall require an affirmative vote by the Board and the issuance of a written Order.

IT IS FURTHER ORDERED that this matter and all pending matters related to the Respondent are forwarded to the Office of the Attorney General for review as to whether a show cause action is warranted, and if so, to expedite the filing of a show cause action.

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.

A copy of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb9eb9d5f09e4b730093d1dccc8

Donovan Anderson, Chairperson

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Edward S. Grandis, Member

Pursuant to 23 DCMR § 1719.1, 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, N.W., 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, District of Columbia 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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). Finally, in the case of a summary suspension, “A person aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.” D.C. Code § 25-826(d); 23 DCMR § 810.12.