

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

In the Matter of:)	
)	
9th Street Lounge, LLC)	Case No.: 22-251-00012
t/a Mirror Lounge)	License No: ABRA-111950
)	Order No: 2022-228
Holder of a)	
Retailer’s Class CT License)	
)	
at premises)	
1920 9th Street, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: 9th Street Lounge, LLC, t/a Mirror Lounge, Respondent

Paul Strauss, Counsel, on behalf of the Respondent

Antoine Williams and Anthony Celo, 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) affirms the suspension of the Retailer’s Class CT License held by 9th Street Lounge, LLC, t/a Mirror Lounge (Respondent) based on an incident on April 24, 2022, where a member of security got into an altercation while on duty that resulted in the victim receiving a stab wound. Based on this incident, the suspension of the license shall continue until certain conditions related to the security of the establishment are fulfilled to the Board’s satisfaction. The Board’s reasoning and order are provided below.

Procedural Background

On April 29, 2022, the Board executed a notice issued by the Office of the Attorney General for the District of Columbia informing the Respondent that the suspension would continue based on the continuing danger to the public. *Notice of Summary Suspension*, 1-4 [Notice]. Specifically, the notice alleges that on April 24, 2022, at around 1:00 a.m., a man outside of the Respondent's establishment requested aid from Metropolitan Police Department (MPD) Officer Abreham Gebrehiwot because he received a stab wound to the torso. *Id.*, at 2. When police arrived at the establishment, the investigation revealed that the alleged aggressor was James Burwell, an ABC-licensed Manager, who also worked for the establishment as security. *Id.* at 2-3. The notice alleges that the Respondent refused to provide video footage upon request, failed to have the required number of security cameras in operation, failed to follow its security plan, failed to contact the police regarding the incident, may have assisted the suspect in hiding in a shed, and failed to preserve a crime scene. *Id.* at 2-3. Based on these facts, the Government requested the indefinite suspension of the Respondent's license pending the outcome of a show cause hearing.

The question before the Board is whether “. . . the operations of a licensee present an imminent danger to the health and safety of the public,” and if so, “. . .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).

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

1. 9th Street Lounge, LLC, t/a Mirror Lounge, holds a Retailer's Class CT License at 1920 9th Street, N.W. *Case Report No. 22-251-00012*, at 1. The parties do not dispute that James Burwell, an employee of the establishment, engaged in fighting and caused the stabbing injury to the victim in this case on April 24, 2022. Specifically, the fight began near the establishment's front door and may have begun inside the establishment. The suspect then entered or re-entered the establishment. After the incident, MPD Officer Abreham Gebrehiwot was approached by the victim, and the officer entered the establishment but was not aware at the time who the suspect was.
2. While inside he observed a person near a disc jockey booth that may have been Mr. Burwell. The officer informed the man of the incident and requested to see video footage. The man indicated that no incident had occurred and denied repeated requests to see the video. Based on this interaction, MPD contacted ABRA to respond.

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 3 business days of the Summary Suspension Hearing. D.C. Code § 25-826(c).

3. When ABRA investigators arrived, an owner present at the establishment permitted ABRA and MPD to review security footage. *Id.* at 3. During this time, Kevin Owens, one of the owners, determined that not all of the video cameras were not accessible through the establishment's computer system, which meant the police were not able to observe certain areas of the premises when they requested. Nevertheless, after investigating the matter on his own, the owner determined that the remaining cameras angles were available through his phone. After reviewing the missing footage, Mr. Owens showed the police footage showing the suspect hiding in the shed.

4. The police then sought to enter the shed, which was locked. The shed was locked by a padlock that could only be locked from the outside. A barback working for the establishment testified that he locked the shed before leaving and was unaware anyone was hiding inside it. He further indicated that he accidentally left the premises with the keys to the shed due to the early closing of the establishment. Nevertheless, he was able to return to the establishment and provide the keys before police officers on the scene attempted to breach the door. Once the keys were obtained, the suspect surrendered into police custody.

CONCLUSIONS OF LAW

5. "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. Additionally, the Board may keep the licensee in the summary suspension proceeding to monitor the licensee to make a determination if the conditions placed by the Board on the licensee are effective.

23 DCMR § 1613.1 (West Supp. 2022).

6. In this case, the Board finds that the establishment remains an imminent danger because an employee of the establishment engaged in fighting that led to a torso wound. Under § 25-823, it is a violation for a "licensee" to "allow[] the licensed establishment to be used for any unlawful or disorderly purpose." D.C. Code § 25-823(a)(2). Furthermore, "A single incident of assault . . . or violence shall be sufficient to prove a violation of subsection (a)(2) of this section; provided, that the licensee has engaged in a method of operation that is conducive to unlawful or disorderly conduct." D.C. Code § 25-823(b). In this case, where the illegal fighting and assault was committed by an employee of the establishment this constitutes a violation of § 25-823(a)(2).

7. Nevertheless, the Board is not persuaded that the Government made its case on other points. First, the Government has not shown that the establishment failed to contact the police where no one other than the suspect was initially aware of the violent incident that had occurred, and police were almost immediately on the scene. Second, the Government did not overcome a showing by the Respondent that the shed was locked inadvertently and that the key was merely temporarily misplaced. Third, the Government did not overcome the Respondent's showing that the suspect

himself initially denied MPD the ability to review camera footage and that an owner of the establishment on the same night provided the requested footage. Fourth, while not all cameras were immediately available for review, the Government did not overcome the Respondent's showing that the owner was able to eventually access all the cameras through another means. Finally, the Government did not persuade the Board that the Respondent failed to preserve a crime scene where it is unclear that specific evidence was spoiled or unavailable or potential evidence was likely to be made spoiled or unavailable by what occurred.

8. Consequently, the imminent danger in this case stems from the violence caused by the establishment's employee and the inability to provide all security footage to ABRA and MPD in a clear and consistent manner. The Board notes that employees that commit violent acts are a threat to everyone in and around the establishment and cannot be trusted to provide security. Moreover, when employees commit violence, it demonstrates that the Respondent lacks appropriate hiring and training protocols. Additionally, a camera system where some footage must be reviewed from devices or systems not accessible to MPD or ABRA, such as the owner's phone, undermines the establishment's security where the failure to provide critical footage immediately allowed the suspect to wander the establishment, which endangered everyone in and around the establishment. Therefore, without conditions and other reforms, the Respondent could rehire the suspect at any time, hire inappropriate people for security roles, and otherwise provide a camera system that does not adequately support timely investigations during emergencies.

9. Based on the above, the Board will permit the establishment to reopen upon satisfaction of various conditions. First, based on Mr. Burwell's actions, the Board will not permit the establishment to reopen until it legally bars Mr. Burwell from the premises and upholds such a bar. Second, the Respondent shall present proof that its camera system is fully operational, and that all footage is immediately viewable when requested by ABRA or MPD. Third, the establishment shall conduct criminal background checks of all employees as part of its employment practices. Finally, the Respondent shall conduct appropriate training for security staff.

ORDER

Therefore, the Board, on this 16th day of May 2022, hereby **SUMMARILY SUSPENDS** the Retailer's Class CT License held by 9th Street Lounge, LLC, t/a Mirror Lounge subject to the following conditions:

1. The Respondent shall execute and maintain a barring notice against James Burwell and enforce the barring notice whenever Mr. Burwell is present at the establishment. The Respondent shall provide a copy of the executed barring notice to the Board. The Respondent may apply to the Board to have this provision lifted upon a showing that Mr. Burwell does not pose a threat to the security of the establishment.²

² The Board notes that the result of the criminal proceeding against Mr. Burwell was not completed as of the date of the Hearing. Therefore, the Board is willing to consider additional evidence related to the incident (e.g., self-defense, etc.).

2. The Respondent shall ensure all installed cameras are operational and that the footage from all individual cameras are immediately viewable upon request of MPD or ABRA. ABRA shall inspect the camera system and provide a written report on their status.
3. No employee or person providing security services shall be permitted to work at the Respondent's establishment until he or she has undergone a criminal background check whether conducted by the Respondent or a third party. The Respondent shall conduct at least one criminal background check of all current employees if it has not done so already. The Respondent shall provide an affidavit listing all employees and affirm that a criminal background check has been conducted. In addition, the Respondent shall provide adequate proof that it paid for and used a criminal background check service (e.g., proof of payment, contract). The Board advises the Respondent that it does not have to submit the results of the criminal background check at this time.
4. No person shall provide security services for the establishment without being trained on the establishment's security plan.
5. Before reopening, the Respondent shall provide security training to all current security staff, including the establishment's security plan, and provide an affidavit stating that all security staff have received training and the date and time that such training occurred.
6. Upon the filing of all required submissions, the Board will review the filings, and if satisfied, the Board will issue an order lifting the suspension.

IT IS FURTHER ORDERED that the following case be referred to the OAG for an expedited show cause proceeding.

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: ac43cb9b59d5f0e4b730060d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f820de6ac81b332d42949e

James Short, Member

eSigned via SeamlessDocs.com
Edward Grandis, Member
Key: 5027bda7ff9f0040ec14adeb52541ce5

Edward S. Grandis, Member

I concur with the finding of the majority that the Respondent constitutes an imminent danger but disagree as to the penalty imposed. I would impose the indefinite suspension of the liquor license proposed by the Government.

eSigned via SeamlessDocs.com
Jeni Hansen, Member
Key: 82172931c509447491b56f9c3a4180f

Jeni Hansen, 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).