THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD

In the Matter of:		
9th Street Lounge, LLC t/a Mirror Lounge	Case No.: License No.:	23-CMP-00096 ABRA-111950
Holder of a Retailer's Class CT License	Order No.:	2024-561
at premises 1920 9th Street, N.W. Washington, D.C. 20001		

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Jr., Member

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

Cameron Mixon, Counsel, on behalf of the Applicant

Anthony Celo, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage and Cannabis Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage and Cannabis Board (hereinafter, "Board") finds that 9th Street Lounge, LLC, t/a Mirror Lounge, (hereinafter "Respondent") violated D.C. Official Code § 25–102(a) on October 29, 2023, when it allowed the sale, service, and consumption of alcoholic beverages on its premises while its Alcoholic Beverage and Cannabis Administration ("ABCA") license had been approved for Safekeeping and was deemed in surrendered status. This violation would be the Respondent's fourth primary tier violation in four years therefore, the Board issues a $30,000 fine to be paid in thirty days and a thirty-day suspension of the license.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (hereinafter, "Notice"), which the Board executed on January 3, 2024. *ABCA Show Cause File No. 23-CMP-00096*, Notice of Status Hearing and Show Cause Hearing, 3 (Jan. 3, 2024). 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 October 29, 2023,] you allowed the sale, service, or consumption of alcohol on the premises after surrendering your ABC license for safekeeping, in violation of D.C. Official Code § 25-102(a), for which the Board may take the proposed action under D.C. Code § 25-823(a)(l).**

Notice of Status Hearing and Show Cause Hearing, at 3.

Both the Government and Respondent appeared at the Show Cause Status Hearing on March 27, 2024. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 8, 2024. The parties subsequently each filed proposed findings of fact and conclusions of law that were also considered by the Board. *See District of Columbia Proposed Findings of Fact and Conclusions of Law* (*Government's PFFCOL*); *Respondent Proposed Findings of Fact and Conclusions of Law* (*Respondent's PFFCOL*).

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

I. Background

1. The Respondent holds a Retailer's Class CT License at 1920 9th Street, N.W., Washington, D.C. 20001. *ABCA License No.* 111950.

2. On October 28, 2023, at approximately 6:30 p.m., ABCA Supervisory Investigator (SI), Mark Brashears, received an anonymous ABCA Hotline report regarding noise from the Respondent's establishment. *Transcript* (*Tr.*), May 8, 2024 at 6; *ABCA Show Cause File No. 23-CMP-00096*, *Case Report* (May 8, 2024) [*Case Report*]. For three consecutive days, the Respondent hosted private events that emanated loud music from its premises and offered alcoholic beverages for sale to patrons. *Tr.* at 6; *Case Report*, Government Exhibit 1.[1] SI

[1] A thorough review of ABCA's records revealed that an earlier noise complaint was filed against Mirror Lounge on the ABCA Hotline on October 27, 2023. *Tr.* at 11. From October 27, 2023 through October 29, 2023, the Respondent hosted private events and offered alcohol sales on its premises. *Id.*

Brashears conducted a preliminary review of the Respondent's ABCA records and discovered that the Respondent's Safekeeping application had been submitted on October 16, 2023, and approved by the Board on October 25, 2024. *Tr.* at 11, *ABCA Show Cause File No. 23-CMP-00096*, Government Exhibit 8. The Respondent informed ABCA on the Safekeeping application form that the establishment was "Closing to the public for longer than 21 days." *Id.* No other information was provided. *Id.* SI Brashears assigned the case to ABCA investigator Mikea Nelson to conduct an investigation. *Tr.* at 6.

3. At approximately 12:15 a.m. on October 29, 2023, Investigator Nelson visited the establishment to monitor its activities. *Id.* at 11. When she arrived, she noted that the premises had been rented out to a third-party, Howard University, to host a Halloween party. *Id.* She observed a queue of patrons waiting to enter the building and a sign on the front door that stated, "Private Event." *Id.*; *Case Report* at 1. She observed each patron in the queue presenting a QR code to the security guard at the front door as proof that they had purchased the event tickets online. *Tr.* at 30. The establishment was advertised as an event space on an online platform called Peerspace. *Id*.

4. Investigator Nelson then proceeded inside the establishment and heard loud music emanating from the second floor. *Id.* There was a disc jockey ("DJ") on the second floor playing loud music and bartenders were offering alcoholic beverages for sale to patrons. *Case Report* at 1. When she requested from the security staff to speak with the owner of the establishment, she was directed to Bruno Casu. *Tr.* at 16. Mr. Casu was present to manage the affairs of the event and to provide staff, a DJ and alcoholic beverages for the event. *Id.* Investigator Nelson inquired from Mr. Casu if he was aware that his ABCA license had been placed in Safekeeping which prohibited him from offering alcohol services to patrons. *Id.* at 19. Mr. Casu acknowledged that his license was placed in Safekeeping but contended that Safekeeping did not prohibit him from hosting private events with alcoholic beverage service. *Id.* at 42-43. He explained that because his license was physically present on the premises, even though his Safekeeping application had been approved, he believed he could host events closed to the public and offer alcoholic beverage sales. *Respondent's PFFCOL*, at ¶ 17-18. Investigator Nelson advised Mr. Casu that the establishment needed an active ABCA license to sell, serve, and allow the consumption of alcoholic beverages on its premises. *Tr.* at 19. She requested that he cease alcohol service for the night, which he obliged and instructed his staff to immediately terminate all operations for the night. *Id.*

5. The following day, at 10:45 a.m., Mr. Casu contacted Sean Gordy, ABCA's Chief Licensing Officer, via email to follow up on the conversation he had with Investigator Nelson. *Id.* at 51. He inquired about the restrictions imposed on his license due to it being placed in Safekeeping. *Id.* Mr. Gordy responded at 11:30 a.m. reiterating Investigator Nelson's position that he was barred from selling, serving, or allowing alcoholic beverage consumption on the premises from October 25, 2023 through March 31, 2024, the timeline in which his Safekeeping application had been approved for. *Id.* at 58-59. Mr. Gordy advised him that he could remove the license from Safekeeping or obtain a one-day temporary permit if he desired to continue providing alcoholic beverage service on the premises. *Id.* In a formal letter to ABCA on January 12, 2024, Mr. Casu opted to remove his license from Safekeeping which was approved on January 31, 2024.

ABCA License File No. 111950; *ABCA Show Cause File No. 23-CMP-00096*, Respondent Exhibit 1.

CONCLUSIONS OF LAW

6. 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). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Official Code § 25-447(f).

I. Standard of Proof

7. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2024). 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 Respondent provided alcoholic beverages for sale, service, and consumption on its premises while its ABCA license had been approved for Safekeeping thereby, violating D.C. Official Code § 25-102(a).

8. The Respondent violated D.C. Official Code § 25-102(a) when it offered alcoholic beverages for sale, service, and consumption on its premises while its ABCA license was inactive due to the license being surrendered for Safekeeping. Pursuant to D.C. Official Code § 25-791(a)(1),

> "If a licensee closes the licensed premises or ceases to operate at the licensed premises for 21 or more calendar days, the licensee shall immediately notify the Board in writing of the closure or cessation of operation and surrender the license for safekeeping. The licensee's written notice shall include the estimated length of closure of cessation of operation and the licensee's future intentions as to the use of the license."

D.C. Official Code § 25-791(a)(1).

9. While the license is inactive in Safekeeping, § 25-102(a) mandates that, "No person shall sell any alcoholic beverage in the District without having first obtained an appropriate license as required by this title." D.C. Official Code § 25-102(a).

10. The Board finds the Respondent liable for violating ABCA's clear statutes on Safekeeping. On October 16, 2023, Mirror Lounge submitted a Safekeeping application to the Board and indicated on the application that the establishment was "Closing to the public for longer than 21 days." *Supra*, at ¶ 2. As required in § 25-791(a)(1), the Respondent failed to physically "surrender

the license for safekeeping" and failed to disclose detailed information on the "future intentions as to the use of the license." *Supra*, at ¶ 2, 8. The Board approved the Safekeeping application nine days after the application was submitted and on October 27, 2023, two days after the approval, ABCA received a noise complaint regarding the establishment's operation. *Supra*, at ¶ 2. A subsequent noise complaint was filed on October 28, 2023 which initiated Investigator Nelson's investigation. *Supra*, at ¶ 2. Further investigation revealed that the Respondent rented the establishment to a third-party, provided the alcoholic beverages available for sale, and provided the staffing for the event including the DJ playing loud music in the premises. *Supra*, at ¶ 4. The Respondent's conduct demonstrates a clear disregard of the law and the intent to withhold necessary information as to the future use of the premises as the license is placed in Safekeeping.

11. The Respondent argues in its Proposed Findings of Fact and Conclusions of Law that § 25-791(a)(1) imposes two conditions on the Respondent: (1) to submit a Safekeeping Application, and (2) if approved, to physically surrender the license. *Respondent's PFFCOL*, at ¶ 17-18. If the first element is satisfied, the statute should provide further guidance on how to satisfy the second element that is, how to physically surrender the license. *Id.* The Board disagrees with this argument. A license enters Safekeeping once the Safekeeping application has been approved. The statute is clear, ". . . . licensee *shall immediately* notify the Board in writing of the closure or cessation of operation *and* surrender the license for safekeeping." *Supra*, at ¶ 8 (emphasis added). Once the application has been approved, the statute compels the Applicant to surrender the license to the Board. *Supra*, at ¶ 8. In this case, the application was approved from October 25, 2023, through March 31, 2024, and two days after it was approved, the license was still present on the premises. *Supra*, at ¶ 2-4. The Respondent's delay in physically surrendering the license is not a legal defense that enables the Respondent to operate with an inactive license. The Board sustains this single charge.

III. Penalty

12. The Board notes that the present violation constitutes a fourth primary tier offense that has occurred in four years. Therefore, the Board imposes a $30,000 fine, payable in thirty (30) days, and a suspension of the license for thirty (30) days. 23 DCMR § 801.1(d) (West Supp. 2024).

ORDER

Therefore, the Board, on this 14th day of August 2024, finds 9th Street Lounge, LLC, t/a Mirror Lounge, liable for violating D.C. Official Code § 25–102(a). The Board imposes the following penalty:

(1) For the violation described in Charge I, Mirror Lounge shall pay a $30,000 fine and shall be suspended for thirty (30) consecutive days, commencing, Monday, September 2, 2024, through Tuesday, October 1, 2024.

IT IS FURTHER ORDERED that all fines shall be paid within 30 days of receipt of this Order or the license shall be immediately suspended until all fines are paid.

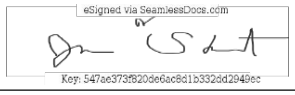
IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800 (West Supp. 2024), the violations found by the Board in this Order shall be deemed four primary tier violations.

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 omission of any testimony or evidence in the Board's Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board's findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

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

District of Columbia
Alcoholic Beverage and Cannabis Board

Donovan Anderson, Chairperson



James Short, Member

Silas Grant, Jr., Member

Pursuant to D.C. Official Code § 25-433(d)(1) (applicable to alcohol matters) or 22-C DCMR § 9720 (applicable to medical cannabis matters), 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 and Cannabis Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section II 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 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 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).