

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

In the Matter of:)	
)	
El Agavetex Mex Rest, LLC)	Case No.: 21-251-00004
t/a Villa Tuscana)	License No.: ABRA-100312
)	Order No.: 2022-067
Holder of a)	
Retailer's Class CR License)	
)	
at premises)	
1723 Columbia Road, N.W.)	
Washington, D.C. 20009)	

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

ALSO PRESENT: El Agavetex Mex Rest, LLC, t/a Villa Tuscana, Respondent

Alexis Larios, Designated Representative, on behalf of the Respondent

Janika Jordan, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that El Agavetex Mex Rest, LLC , t/a Villa Tuscana, (hereinafter "Respondent" or "Villa Tuscana") did not violate D.C. Official Code § 25-823(a)(5) on March 7, 2021, where insufficient evidence was presented that the manager blocked ABRA investigators from entering the premises or that the manager's actions

permitted patrons to attempt to escape before the inspection occurred; therefore, the charge is dismissed.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 22, 2021. *ABRA Show Cause File No. 21-251-00004*, Notice of Status Hearing and Show Cause Hearing, 2 (Oct. 22, 2021). 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 March 7, 2021,] [y]ou failed to allow ABRA investigators and Metropolitan Police Department (MPD) officers to enter and inspect the licensed premises without delay, in violation of D.C. Code § 25-823(a)(5)

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

Both the Government and Respondent appeared at the Show Cause Status Hearing on December 1, 2021. The parties proceeded to a Show Cause Hearing and argued their respective cases on January 12, 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. El Agavetex Mex Rest, LLC, t/a Villa Tuscana, holds a Retailer's Class CR License at 1723 Columbia Road, N.W., Washington, D.C. *ABRA License No. 100312*. On March 7, 2021, ABRA received a complaint regarding after-hours activity and entertainment at the establishment. *Transcript (Tr.)*, January 12, 2021 at 29, 58.
2. At around 1:25 a.m., ABRA Lead Investigator Felicia Dantzler and two other investigators arrived at the premises. *Id.* at 29. From the outside of the premises, the business appeared closed and had no lights on. *Id.* at 30. One of the investigators present shined his flashlight into the premises and saw Alex Larios, the establishment's licensed manager inside. *Id.* at 31. Supervisory Investigator Brashears heard people saying "Let's go, let's go, let's go" inside the establishment. *Id.* at 60. Alex Larios then met the investigators at the establishment's gate, which was opened by Lead Investigator Dantzler. *Id.* at 30, 44. As they were talking, Supervisory Investigator Brashears observed three males dressed in dark clothing carrying black duffle bags walk through the alley and past the front of the establishment. *Id.* at 60-61.

3. The investigative team requested access to the premises to perform a walkthrough, but Mr. Larios argued that the business was closing and one was not needed. *Id.* at 32. The investigative team then requested identification and Mr. Larios went through his wallet and presented his identification. *Id.* He then began searching for his ABRA issued manager's license to present to the investigators. *Id.* at 33.

4. LI Dantzler then requested that they be permitted entry but he continued to insist that an inspection was not necessary. *Id.* The investigators then began to walk to the front door with Mr. Larios who stopped to continue arguing about the inspection. *Id.* Nevertheless, the investigators were permitted inside and the manager turned on the lights when requested. *Id.* Furthermore, Investigator Butler was permitted to walk around the establishment while the other investigators spoke to Mr. Larios. *Id.* at 46. Mr. Larios continued to object to the walkthrough. *Id.* at 34. The investigative team then contacted MPD for support and they arrived a few minutes later. *Id.* at 35.

5. Once MPD officers arrived, the investigators began walking through the establishment. *Id.* at 35. Inside, they saw a table showing food, balloons, gifts, and purses left inside the establishment. *Id.* at 40. They also observed abandoned coats and shoes. *Id.* at 43. Nevertheless, the investigators did not see any person associated with the items. *Id.* at 42. They noted that the kitchen had a rear door that could permit egress from the establishment. *Id.* at 66.

6. Mr. Larios testified that he did not intend to delay the investigators. *Id.* at 82. He indicated that the establishment had a social gathering but left due to the establishment being required to close at midnight. *Id.* at 82. He further stated that the only people that left were employees of the establishment. *Id.* He further indicated that he let the investigators inside the premises. *Id.* at 83. He further explained that one of the women who left items was a bar manager at the establishment, and that the other women were her acquaintances, and that they left to go to Maryland because Maryland had later closing hours. *Id.* at 89-90, *see also id.* at 104. He further noted that the women that left took their wallets, identification documents, and phones before leaving. *Id.* at 92-93. Finally, he noted that the reason food items were left was because the establishment intended to clean up the next day. *Id.* at 99-100.

CONCLUSIONS OF LAW

7. 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

8. 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 Dismisses Charge I for Lack of Evidence.

9. There is insufficient evidence in the record to sustain Charge I. Under D.C. Official Code § 25-823,

(a) The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if:

(5) The licensee fails or refuses to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation

D.C. Code § 25-823(a)(5). In this case, it has not been established that Mr. Larios physically impeded the investigators or that the persons seen leaving the alley were associated with the establishment. Instead, the evidence only shows that Mr. Larios argued with the investigators, the investigators voluntarily engaged with Mr. Larios, and that they were let inside the premises despite Mr. Larios' objections. *Supra*, at ¶ 4. It also cannot be shown that the women who were at the establishment were present when the investigators arrived. *Supra*, at ¶ 6. For these reasons, the Board cannot sustain Charge I where it cannot be sufficiently shown that investigators were physically blocked from entering or that the establishment attempted to hide evidence or witnesses.

ORDER

Therefore, the Board, on this 23rd day of March 2022, finds El Agavetex Mex Rest, LLC, t/a Villa Tuscana, not in violation of D.C. Official Code § 25-823(a)(5); therefore, Charge I is **DISMISSED**.

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

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430b06c9d5f0be4c730009d1dccc8

Donovan Anderson, Chairperson

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James Short
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James Short, Member

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Edward S. Grandis, Member

I dissent from the position taken by the Board.

In this case, the charge was that the ABC manager on duty interfered with an investigation (D.C. Official Code § 25-823(a)(5)) which is a primary tier violation. It is my opinion that Mr. Larios did in fact both physically and verbally obstruct an ABC investigation, and made such an admission on the record. First and foremost, a licensee, or in this case, an ABC manager, does not have the authority to decide whether an investigation or walk-through is necessary. The authority of agency investigators should not be undermined by a licensee or manager being unwilling to acknowledge fault or cause.

The ABRA investigative team also had justifiable cause to search the premises. The Respondent chose to think his opinion of what was (or was not) transpiring inside of his establishment was what could dictate or deny such a search. Mr. Larios physically obstructed ABRA investigators at the door, by not allowing them inside, and he took several minutes to locate his ABC manager's licenses, causing further delay. He both expressed that an investigation was, in his opinion, was not necessary, and that, also in his opinion, MPD's presence was not necessary.

Nevertheless, ABRA investigators received an after-hours complaint that sparked the investigation, and that is grounds enough for the ABRA investigators to follow through with their duties as assigned, which include entering an establishment, and looking for evidence related to the associated complaint.

Mr. Larios chose to conduct himself in a manner that threatened the integrity of the investigation. He complied only after MPD had been called on for assistance with the matter, demonstrating disregard for the authority of agency investigators—which in this case, is the authority that mattered.

Given the facts that support the initial concern—operating after-hours—there is also the additional fact that there was an individual present who was not the owner, nor the licensee, nor anyone essential for closing procedures. The presence of that additional person supports the claim that the establishment was operating after-hours.

It should be noted that investigators do not make visits to establishments unwarranted. The investigators in this case responded to a legitimate complaint regarding after-hours activity during a time when the Mayor had imposed restrictions due to a public health emergency.

It is my opinion that, in this case, the government has met their obligation to prove the Respondent interfered with the investigation. Therefore, I would sustain the Charge.

eSigned via SeambestDocs.com
Jeni Hansen, Member
Key: 82172931c509447491b566c2a41890

Jeni Hansen, 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).