

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

_____)	
In the Matter of:)	
Love Des, LLC)	License No.: 84726
t/a Love)	Case No.: 12-251-00100
)	Order No.: 2013-007
)	
)	
Holder of a Retailer's Class CT License)	
at premises)	
1350 Okie Street, N.E.)	
Washington, D.C. 20002)	
_____)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member

ALSO PRESENT: Love Des, LLC, t/a Love, Respondent

Michael Stern, Esq., Senior Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

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

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), dated June 13, 2012, served on the Respondent, located at premises 1350 Okie Street, N.E., Washington, D.C., on June 30, 2012. The Notice charged the Respondent with the following violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

Charge I: You allowed the establishment to be used for an unlawful or disorderly purpose when security [personnel] failed to intervene during a physical altercation between patrons on February 19, 2012;

- Charge II: You failed to follow [Section IV of] your security plan as required when an altercation broke out on February 19, 2012 and the patrons were not removed from the premises . . . ; [and]
- Charge III: You failed to follow [Sections IV and VII of] your security plan as required by allowing the security [personnel] to carry and use handcuffs on patrons on February 19, 2012 . . .

ABRA Show Cause File No., 12-CMP-00112, Notice of Status Hearing and Show Cause Hearing (Jul. 11, 2012).

The Government and the Respondent appeared before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on August 1, 2012. The Board conducted the Show Cause Hearing in this matter on November 7, 2012.

The three charges against the Respondent allege that the Respondent violated D.C. Official Code §§ 25-823(2) and 25-823(6), which prohibits licensees from permitting unlawful and disorderly conduct in their establishments and requires licensees to follow the terms of their security plans at all times. D.C. Code §§ 25-823(2), (6) (West Supp. 2012).

After the close of the record on November 7, 2012, the District of Columbia Court of Appeals issued its ruling in 1900 M Restaurant Association, Inc., t/a Rumors Restaurant v. District of Columbia Alcoholic Beverage Control Board on November 29, 2012, which clarified the interpretation of both §§ 25-823(2) and 25-823(6). See generally, 1900 M Restaurant Association, Inc., t/a Rumors Restaurant v. District of Columbia Alcoholic Beverage Control Bd., 2012 WL 5950582 (D.C. 2012). We are bound to apply the court's decision in Rumors to this matter, because it was not final at the time the court issued its decision. Cosby v. Shoemaker, 34 A.2d 27, 28 (D.C. App. 1943) ("a change in the law between nisi prius and an appellate decision requires the appellate court to apply the changed law").

Under the court's decision in Rumors, in order to show that a licensee allowed unlawful and disorderly conduct to occur in its establishment or that it violated its security plan, the Government must show that the "incidents in question have a demonstrable connection to the operation of the establishment." Rumors, 2012 WL 5950582 at *6. In order to show such a connection, the substantial evidence in the record must demonstrate that the licensee engaged in "a continuous course of conduct," which indicates the licensee engaged in "a pattern or regular method of operation," which encourages, causes, or contributes "to the unlawful or disorderly conduct at issue." Id. According to the court, "In the absence of evidence of a continuous course of conduct, it may be sufficient that the licensee's method of operation created an environment that fostered or was conducive to the unlawful or disorderly conduct that inevitably took place." Id. The court was also emphatic that "isolated" incidents of violence do not lead to a violation of §§ 25-823(2) or 25-823(6). Id. at *6, *8.

Under the Rumors test, even if the facts presented by the Government are true, the isolated incidents of unlawful and disorderly conduct and violations of the Respondent's security plan that occurred on one day—February 19, 2012—are an isolated incident, which does not

demonstrate a “continuous course of conduct” or a “method of operation” conducive to violence. In lieu of finding the licensee in violation of the charges contained in the Notice, the Board will issue the Respondent a warning. The express purpose of this warning is to put the Respondent on notice that we would have sufficient evidence to find a “continuous course of conduct” or “method of operation” should the behavior highlighted in this Order continue or repeat in any fashion in the future.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 16th day of January 2012, issues a **WARNING** to Love Des, LLC, t/a Love, for the violations of D.C. Official Code §§ 25-823(2) and 25-823(6) described in the Notice. The Board warns the licensee that the following behavior on the part of the licensee’s security or its agents is unacceptable and unlawful under Title 25 of the D.C. Official Code:

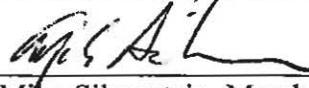
- (1) The failure to render assistance to injured patrons;
- (2) The failure to contact the police upon witnessing an act of violence;
- (3) The use of force against patrons without just cause and not as a last resort;
- (4) The failure to follow the establishment’s security plan; especially, sections IV and VII;
and
- (5) Permitting security to carry weapons and restraining devices (i.e., handcuffs) during operating hours.

We urge the Respondent takes steps to ensure that its security staff is trained to render aid to patrons in need of assistance, to contact the police anytime an act of violence is witnessed, to use force only when appropriate and as a last resort, to follow the establishment’s security plan at all times, and to refrain from carrying weapons or restraining devices while working at the establishment. The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Donald Brooks, Member


Mike Silverstein, Member

I dissent from the decision reached by the majority of the Board:


Nick Alberti, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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 (April 2004) 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).