

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

In the Matter of)	
)	
CSBT, Inc.)	License No: 024682
t/a Town House Tavern Restaurant)	Case No.: N/A
)	Order No: 2015-061
at premises)	
1637 R Street, N.W.)	
Washington, D.C. 20009)	
)	
Sami Kahn and Jennifer Smith)	
4021 Oxford Street)	
Annandale, VA 22003)	

- TO:** Doug Edgerton, on behalf of
CSBT, Inc., t/a Town House Tavern Restaurant
1637 R Street, N.W.
Washington, D.C. 20009
- TO:** Sami Kahn and Jennifer Smith
4021 Oxford Street
Annandale, VA 22003

CEASE AND DESIST AND ORDER DENYING TRANSFER APPLICATION

INTRODUCTION

On February 12, 2015, the Alcoholic Beverage Control Board (Board) reviewed compelling evidence that CSBT, Inc., t/a Town House Tavern Restaurant (hereinafter “Respondent” or “THT”) has illegally transferred its Retailer’s Class CR License to Sami Kahn, the former operator of NY NY Diva—a person not authorized to own or control a licensed establishment in the District of Columbia. *In re JC 7, LLC, t/a NY NY Diva*, Case Nos. 14-CMP-00110, 14-CMP-00103, 14-CMP-00048, 14-CMP-00085, 14-CMP-00089, Board Order No. 2014-435, 10 (D.C.A.B.C.B. Oct. 29, 2014).

This situation presents an imminent and immediate danger to the public, and may cause irreparable harm, because as operator of NY NY Diva, Mr. Kahn “. . . operate[d] with a reckless,

if not intentional, disregard for the law and the safety of the public, making [NY NY Diva] one of the most poorly operated businesses in the District of Columbia.” *Id.* at 1.¹ It is well known that during his notorious tenure as owner of NY NY Diva, he allowed several large scale fights to occur that required the Metropolitan Police Department (MPD) to send twenty to thirty police officers to quell the violence on multiple occasions. *Id.* at ¶ 31. Furthermore, Mr. Kahn permitted the use of illegal narcotics inside the premises on multiple occasions. *Id.* at ¶ 35. Consequently, based on these facts, Mr. Kahn was barred from owning a licensed establishment for five years. *Id.* at 10. The record further shows that current owner, Mr. Edgerton, lacks the legal right to control the establishment, and has not done so since 2009. *Infra*, at ¶ 7. As a result, neither Mr. Edgerton or Mr. Kahn and his associates are authorized to operate the establishment.

Under these circumstances the Board finds it necessary to issue a cease and desist order that requires the following: (1) the surrender or seizure of THT’s license into safekeeping pursuant to D.C. Official Code § 25-791; (2) the denial of the transfer application pursuant to D.C. Official Code §§ 25-301, 25-316, 25-405, and 25-821; (3) a halt on all temporary and one-day substantial change activity on the premises pursuant to D.C. Official Code §§ 25-115(c) and 23 DCMR § 1003.1; (4) a finding Mr. Kahn unfit for licensure pursuant to § 25-301; and (5) the referral of this matter to the Office of the Attorney General for prosecution.

The Board’s reasoning and order is provided below.

FINDINGS OF FACT

The Board issues the following findings of fact:²

1. ABRA’s records indicate that CSBT, Inc., owned by William D. Edgerton, currently holds a Retailer’s Class CR License at premises 1637 R Street, N.W., Washington, D.C. *ABRA Licensing File No. 024682*, Application for ABC License (marked received on Jan. 28, 1997), ABRA Renewal Application (accepted May 22, 2013).

2. Sami Kahn is the former owner of JC 7, LLC, t/a NY NY Diva, at premises 2406 18th Street, N.W., Washington, D.C. *In re JC 7, LLC, t/a NY NY Diva*, Case Nos. 14-CMP-00110, 14-CMP-00103, 14-CMP-00048, 14-CMP-00085, 14-CMP-00089, Board Order No. 2014-435, ¶ 5 (D.C.A.B.C.B. Oct. 29, 2014). The Board revoked the license based on multiple instances of brawling, overcrowding, and lack of security and for permitting the use of illegal narcotics on the premises. *Id.* at ¶¶ 31, 36. Based on this finding against Mr. Kahn, the Board revoked the license and prohibited Mr. Kahn from holding a liquor license in the District of Columbia for five years pursuant to D.C. Official Code § 25-821. *Id.* at 10.

¹ Procedurally, this matter shall be adjudicated under § 25-829. The Board reserves the right to convert this matter to a summary suspension or summary revocation proceeding pursuant to D.C. Official Code § 25-826, should it become necessary.

² The Board incorporates Case Report No. 15-CMP-00023, authored by ABRA Investigator Zachary Vick, and all of the exhibits described in the report by reference.

3. Mr. Kahn indicated that he became the owner of THT in October 2014. *Case Report No. 15-CMP-00023*, at 2. He indicated that he purchased the establishment from the former owner. *Id.*
4. Sami Kahn signed the service form in a recent show cause action filed against THT. *Show Cause File No. 14-AUD-00078*, ABRA/ABC Board Service Form (Jan. 16, 2015). On the form, he lists himself as an “OWNER” of THT. *Id.*
5. ABC Manager Athena Coleman, ABRA License No. 097450, identified Sami Kahn as the owner of the establishment. *Case Report No. 15-CMP-00023*, at 2.
6. Mr. Kahn told ABRA Investigator Zachary Vick that he submitted the required applications to transfer ownership over the business and the license to himself and his wife. *Case Report No. 15-CMP-00023*, at 2. He admitted that he knew the applications had not been approved. *Id.*
7. ABRA Investigator Zachary Vick contacted Doug Edgerton, the authorized owner of THT. *Id.* at 3. Mr. Edgerton stated that he gave Harvey Harrigan power of attorney in all ownership affairs of THT. *Id.* Mr. Edgerton admitted that he has had no involvement in the management of the establishment, and believed he had sold the business in 2009. *Id.* In October 2014, Mr. Edgerton learned through the landlord, Robert Callahan, that the license had never transferred. *Id.*³ Mr. Edgerton then executed documents to transfer the license to Sami Khan and, his wife, Jennifer Smith. *Id.* Mr. Edgerton further admitted that he currently has no involvement in the ownership or management of THT. *Id.*
8. ABRA’s records show that on January 16, 2015, THT, Sami, Khan, and Jennifer D. Smith filed an executed Alcoholic Beverage License Transfer Agreement and Stock Purchase Agreement. *Id.* This agreement has never been approved by the Board. *Id.* There is also no evidence that a transfer application was submitted or approved related to the alleged 2009 sale of the business. Finally, there is no evidence that THT or the transferees have applied for and received a temporary operating permit.

CONCLUSIONS OF LAW

9. Title 25 of the District of Columbia (D.C.) Official Code (Title 25) provides the Board with the authority to order any individual or licensee to immediately cease “. . . violating any provision of . . . [Title 25 when] the violation has caused, or may cause, immediate and irreparable harm to the public” D.C. Official Code § 25-829(a).

³ It should be noted that this statement is contradicted by the 2013 renewal application that Mr. Edgerton executed and submitted to the Board under penalty of perjury.

I. IN ACCORDANCE WITH § 25-791, THE LICENSEE MUST CEASE OPERATIONS BECAUSE THE AUTHORIZED OWNER OF THE ESTABLISHMENT HAS DISCONTINUED OPERATIONS SINCE AT LEAST 2009.

10. In this case, at a minimum, the actions of Mr. Edgerton demonstrate that THT has discontinued operations.

11. Pursuant to § 25-791, “[a] license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping. The Board shall hold the license until the licensee resumes business at the licensed establishment or the license is transferred to a new owner.” D.C. Official Code § 25-791.

12. The record before the Board shows that Mr. Edgerton does not have control over the business and turned over possession of the license to the transferees. Mr. Edgerton admitted that he has not managed the business since 2009. *Supra*, at ¶ 7. He further believed that he had sold the business in 2009. *Id.* He again attempted to transfer the business in 2014 to Mr. Kahn and Ms. Smith, and has not operated the business since. *Id.* During this transfer, he executed a transfer agreement and stock purchase agreement, which took away his legal rights to the business. *Id.* at 8. Moreover, as discussed below, the current transfer application before the Board cannot be approved. *Infra*, at ¶¶ 13-17. Therefore, until Mr. Edgerton establishes that he has the authority and intent to manage and operate the business, the license must, at the very least, remain in safekeeping.

II. THE TRANSFER APPLICATION MUST BE DENIED AS A MATTER OF LAW.

13. The Board denies the transfer pursuant to D.C. Official Code §§ 25-301, 25-316, 25-821, and 25-405.

a. The transfer must be denied, because Sami Kahn is unfit for licensure pursuant to §§ 25-301 and 25-316.

14. The Applicant bears the burden of showing it qualifies for licensure under § 25-301(a)(1) through substantial evidence. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2014). Furthermore, “[t]his obligation is not dependent upon whether or not anyone makes a character challenge” *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998). Therefore, when the Board has doubts regarding an applicant’s character and fitness, “it may call for evidence to remove that doubt.” *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d at 672 (Hood, Chief Judge, concurring).

15. “In determining the appropriateness of the transfer of a licensed establishment to a new owner, the Board shall consider only the applicant's qualifications as set forth in § 25-301. D.C. Official Code § 25-316(a).” Under § 25-301(a)(1), a license shall not be transferred unless it is shown that “[t]he applicant is of good character and generally fit for the responsibilities of

licensure.” D.C. Official Code § 25-301(a)(1). In order to make this determination, the Board “shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District’s alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.” § 25-301(a-1).

16. The record in this case shows that Sami Kahn had his license revoked based on the operations of an establishment that contributed to violence and mayhem. *Supra*, at ¶ 2. Under these facts, the Board finds Mr. Kahn unfit for licensure pursuant to §§ 25-301 and 25-316. Therefore, the applicant in this case is disqualified from holding a liquor license in the District of Columbia, and the transfer application must be denied.

b. The transfer must be denied pursuant to § 25-821.

17. Pursuant to § 25-821(c), “If the Board revokes a license, no license shall be issued to the same person or persons whose license is so revoked for any other location for 5 years following the revocation” D.C. Official Code § 25-821(c). Mr. Kahn had his prior license revoked as part of a show cause action; therefore, he is not entitled to hold another license pursuant to D.C. Official Code § 25-821(c) for five years from the date of the Board Order revoking his license. *Supra*, at ¶ 2.

c. The Board further denies the transfer pursuant to § 25-405.

18. The Board further denies the transfer application, because the parties in this case consummated the transfer before it was approved by the Board. Under § 25-405(b), “[a]n application to transfer a license to a new owner shall be filed by the transferee and approved by the Board before the consummation of the transfer.” D.C. Official Code § 25-405(a). Further, § 25-405(e) states, “[i]f the Board finds that the licensee is in violation of this title or regulations promulgated under this title, the Board shall deny the application for transfer.” D.C. Official Code § 25-405(e). As the facts demonstrate, Mr. Edgerton gave the transferees the license and allowed them to operate the business before the agreement was approved by the Board. Therefore, the Board is entitled to deny the transfer pursuant to § 25-405(e). *Supra*, at ¶¶ 7-8.

III. THT AND THE TRANSFEREES HAVE FAILED TO COMPLY WITH § 703 BY FAILING TO OBTAIN A TEMPORARY OPERATING PERMIT.

19. The record further shows that the transferees in this case have not obtained a temporary operating permit, which would authorize them to operate the establishment while the transfer is pending. 23 DCMR § 703 *et. seq.* (West Supp. 2014); *supra*, at ¶ 8. Therefore, this further merits denial of the transfer application pursuant to D.C. Official Code § 25-405(e). Finally, it also further justifies this issuance of this cease and desist order, because illegally operating the business without approval constitutes an irreparable harm to the public.

IV. THE LICENSE SHALL REMAIN IN SAFEKEEPING PENDING THE RESOLUTION OF A SHOW CAUSE ACTION.

20. The facts in this case call into question basic facts about the ownership and control of THT. Under the law, it is the responsibility of all applicants for licensure to demonstrate to the satisfaction of the Board during renewal that

the applicant is the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself or herself and not as the agent of any other individual, partnership, association, limited liability company, or corporation not identified in the application.

D.C. Official Code § 25-301(a)(5). Based on this record, this has not been the case since at least 2009.

21. It should also be noted that THT's investigative history shows that it currently has committed three primary tier violations in the past two years. *Investigative History*, License No. 024682 (Case Nos. 14-CMP-0040, 13-CC-00037, 13-AUD-00004). As a result, based on the resolution of the charges in this case, and others, it may result in the revocation of THT's license. Under these circumstances, the Board cannot permit the establishment to continue operating until all outstanding issues are resolved in a show cause action.

ORDER

Therefore, the Board on this 25th day of February 2015, hereby orders CSBT, Inc., t/a Town House Tavern Restaurant, Sami Kahn, and Jennifer Smith to **CEASE AND DESIST** distributing, purchasing, selling, serving, or otherwise permitting the consumption of alcoholic beverages at 1637 R Street, N.W., Washington, D.C.

IT IS FURTHER ORDERED that THT shall surrender its license to the Board for safekeeping pursuant to § 25-791. In the alternative, ABRA is simultaneously authorized to seize the license in order to place it in safekeeping.

IT IS FURTHER ORDERED that ABRA shall not release the license from safekeeping until the ownership issues identified in this Order are resolved by the issuance of a final Order in a show cause action. If no show cause action is filed by the Office of the Attorney General within ninety days from the date of this Order, THT may request a hearing before the Board to request removal of the license from safekeeping.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-115(c) and 23 DCMR § 1003.1, that ABRA shall no longer issue temporary licenses and one-day substantial change licenses for 1637 R Street, N.W.

IT IS FURTHER ORDERED, pursuant to D.C. Official Code § 25-801(e), that ABRA refer this matter to the Office of the Attorney General for the District of Columbia (OAG) for

prosecution. The Board further requests that OAG seek the enforcement of this Order in the Superior Court of the District of Columbia under D.C. Official Code §§ 25-829(f) (cease and desist orders) and 25-805 (nuisance).⁴

IT IS FURTHER ORDERED, that the transfer application related to THT is **DENIED** pursuant to D.C. Official Code § 25-821.

IT IS FURTHER ORDERED that all future transfer applications filed for this license shall be **STAYED** pending the issuance of a final order in a show cause action.

IT IS FURTHER ORDERED that Sami Kahn is deemed unfit for licensure pursuant to D.C. Official Code § 25-301(a)(1) for the reasons stated in this Order.

Please be **ADVISED** that a copy of this Order is being forwarded to the Metropolitan Police Department to ensure compliance. If it is found that you are continuing to sell, serve, or permit the consumption of alcoholic beverages without approval from the Board, you may be subject to both civil and criminal penalties.

ABRA shall serve notice by certified mail or personal delivery on the following entities:

CSBT, Inc.
t/a Town House Tavern Restaurant
1637 R Street, N.W.
Washington, D.C. 20009

Sami Kahn and Jennifer Smith
4021 Oxford Street
Annandale, VA 22003

⁴ The nuisance provision states,

(a) Any building, ground, or premises where an alcoholic beverage is manufactured, sold, kept for sale, or permitted to be consumed in violation of this title shall be a nuisance.

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the Corporation Counsel in the Civil Branch of the Superior Court of the District of Columbia against any person conducting or maintaining such nuisance or knowingly permitting such nuisance to be conducted or maintained.

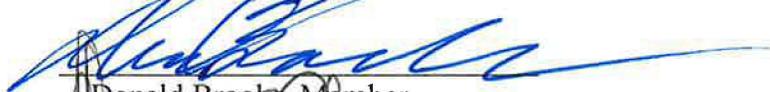
D.C. Official Code § 25-805.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

You have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. Pursuant to D.C. Official Code § 25-829(b)(1), you may submit a written request to the Board for a hearing within fifteen (15) days of service of this Order. Additionally, you also have the option of submitting a written request to the Board for an expedited hearing pursuant to D.C. Official Code § 25-829(c)(1) within ten (10) days of service of this Order. Please note that if you fail to request a hearing, this Order shall be deemed final. D.C. Official Code § 25-829(d).

If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

Finally, 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).