

Charge II: The Licensee failed to keep and maintain on the premises for a period of three years adequate books and records showing all the sales, purchase invoices, and dispositions, in violation of D.C. Official Code § 25-113(j)(3)(A), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 and 23 DCMR § 800 et seq.

The Board held a Show Cause Status Hearing on June 13, 2012. There was no settlement of the matter and it proceeded to a Show Cause Hearing on July 25, 2012. The Board having considered the substantial evidence contained in the record, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Respondent holds a Retailer's Class DR License, ABRA License Number 20067. *See ABRA Licensing File No. 20067.* The establishment's premises are located at 1014 Vermont Avenue, N.W., Washington, D.C. *See ABRA Licensing File No. 20067.*
2. The Government presented two witnesses in this matter; ABRA Investigator Jabriel Shakoor, and ABRA's Compliance Analyst, Adeniyi Adejunmobi. *Transcript (Tr.)*, July 25, 2012 at 5, 25.
3. Investigator Shakoor conducted a regulatory inspection of the Respondent's establishment on December 15, 2011. *Tr.*, 7/25/12 at 10. He reviewed the Respondent's books and records, and informed the Respondent that he had failed to timely file his quarterly statement for third quarter 2011 (July – September 2011). *Tr.*, 7/25/12 at 10-12.
4. Investigator Shakoor returned to the establishment on December 27, 2011, to conduct a second regulatory inspection. *Tr.*, 7/25/12 at 13. He again reviewed the books and records, and checked for three years worth of invoices, purchase and sales information, guest checks, and register receipts. *Tr.*, 7/25/12 at 13-14, 16. The Respondent did not have sales information or register receipts. *Tr.*, 7/25/12 at 13-14, 21-22.
5. The Respondent informed Investigator Shakoor that it is his business practice to tally the handwritten sales receipts in his head at the end of the day, and then discard the receipts. *Tr.*, 7/25/12 at 13-14, 16, 19-21. Investigator Shakoor advised the Respondent that he needed to maintain three years of receipts and sales information on site. *Tr.*, 7/25/12 at 14-15. Investigator Shakoor returned to the establishment several times to ensure that the Respondent was maintaining his books and records. *Tr.*, 7/25/12 at 38, 40.
6. As a Compliance Analyst, Mr. Adejunmobi collects, reviews, and maintains the quarterly statements submitted by licensed establishments in the District of Columbia. *Tr.*, 7/25/12 at 25. The quarterly statement for the third quarter of 2011 is due October 30, 2011. *Tr.*, 7/25/12 at 24. The Respondent submitted its quarterly report for the third quarter on November 14, 2011. *Tr.*, 7/25/12 at 24-25; Government Exhibit No. 1.

7. The Respondent's quarterly statement was received by ABRA in an envelope postmarked November 9, 2011. *Tr.*, 7/25/12 at 26. The envelope was addressed to ABRA at its previous location, 1250 U Street, N.W. *Tr.*, 7/25/12 at 26. The handwritten date recorded on the quarterly statement was October 19, 2012. *Tr.*, 7/25/12 at 27. The agency's date-stamp machine recorded a date on the quarterly statement of November 14, 2011. *Tr.*, 7/25/12 at 32-33.

8. Mr. Adejunmobi records the "filed date" as the date he receives the quarterly statement, not the date of the postmark, or the date written by the licensee on the quarterly statement. *Tr.*, 7/25/12 at 31. If a quarterly statement is not received by Mr. Adejunmobi by the 30th day following the end of the reporting quarter, Mr. Adejunmobi deems the submission to be untimely filed. *Tr.*, 7/25/12 at 31.

9. The Respondent did not know that he is required to have three years worth of books and records on the premises. *Tr.*, 7/25/12 at 36. He has been operating the establishment for 21 years, and ABRA investigators have never advised him in previous regulatory inspections to keep three years of books and records. *Tr.*, 7/25/12 at 39, 46. He now maintains his sales receipts in compliance with the books and record requirement. *Tr.*, 7/25/12 at 46.

10. The Respondent received a citation for failing to have books and records at the time of Investigator Shakoor's first inspection. *Tr.*, 7/25/12 at 42. Investigator Shakoor returned to the establishment to retrieve the citation. *Tr.*, 7/25/12 at 44. The citation was subsequently voided. *Tr.*, 7/25/12 at 44. The Respondent believed the citation was voided because it was just a warning, and not a fine. *Tr.*, 7/25/12 at 46.

11. The Respondent has a long history of compliance with respect to filing his quarterly statement. *Tr.*, 7/25/12 at 48-50. He operates a family-owned business that has limited seating. *Tr.*, 7/25/12 at 51-52. They do not have problems with ABRA or their patrons. *Tr.*, 7/25/12 at 50-51. He has been in business for 21 years. *Tr.*, 7/25/12 at 52.

12. The Respondent admitted that his sales receipts are handwritten and that he totals them at the end of the day. *Tr.*, 7/25/12 at 55. The Respondent's accountant uses the deposit slips and bank statements to compute the establishment's total food and alcohol sales. *Tr.*, 7/25/12 at 56. The accountant knows the amount of sales that are attributable to alcohol because the Respondent keeps the alcohol purchase invoices. *Tr.*, 7/25/12 at 58.

13. The Respondent mailed the quarterly statement to ABRA prior to October 23, 2011. *Tr.*, 7/25/12 at 59. This was a day or two after he signed and dated the quarterly statement. *Tr.*, 7/25/12 at 59. He now files his quarterly statement in person. *Tr.*, 7/25/12 at 59. The quarterly statement is dated October 19, 2011, which is the date the Respondent signed it. *Tr.*, 7/25/12 at 60.

CONCLUSIONS OF LAW

14. The Board has the authority to levy fines, as well as suspend or revoke the license of a licensee who violates any provisions of Title 25 of the D.C. Official Code or Title 23 of the D.C. Municipal Regulations. D.C. Code §§ 25-830, 25-823(1) (West Supp. 2012); see also 23 DCMR § 800, *et. seq.* (West Supp. 2012). 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. Code §§ 25-830, 25-447 (West Supp. 2012).

15. Section 25-113(b)(2)(A) requires the Respondent to timely file quarterly reports with the Board. D.C. Code § 25-113(b)(2)(A) (West Supp. 2012). Here, the Respondent failed to timely submit the quarterly statement required for the third quarter, which was due on October 31, 2011. The Board relies on the credible testimony of ABRA’s Compliance Analyst, Mr. Adejunmobi, who stated that the Respondent’s Quarterly Statement was not received by the agency until November 14, 2011. Additionally, the envelope containing the Respondent’s quarterly statement was post marked on November 9, 2011. Therefore, the Board finds that the establishment failed to timely file its Quarterly Statement for third quarter 2011.

16. Section 25-113(j)(3)(A) requires the Respondent to keep and maintain on the premises for a three year period adequate books and records. 23 DCMR §§ 1204, 1208 (West Supp. 2012). Here, Investigator Shakoor discovered upon conducting a regulatory inspection that the Respondent had no record of his sales information or his register receipts. The Respondent informed Investigator Shakoor that his sales receipts are handwritten, totaled at the end of the day, and then discarded. He also admitted that he was unaware that he is required to maintain three years worth of books and records on his premises. Therefore, the Board finds that the establishment failed to maintain adequate books and records that show all of the Respondent’s alcoholic beverage purchases.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of September 2012, finds that the Respondent, Cesar Guzman t/a Casa Blanca Restaurant, Inc., violated D.C. Official Code § 25-113(b)(2)(A). The Board hereby ORDERS that:

- (1) For the violation set forth above in Charge I, the Respondent shall pay a fine of \$250.00 no later than thirty (30) days from the date of this Order; and
- (2) For the violation set forth above in Charge II, the Respondent shall pay a fine of \$1,000.00 no later than thirty (30) days from the date of this Order;

The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

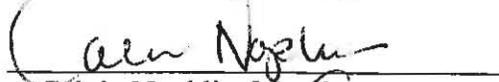
District of Columbia
Alcoholic Beverage Control Board



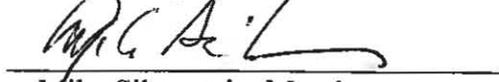
Ruthanne Miller, Chairperson



Donald Brooks, Member

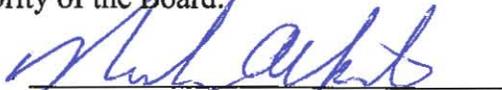


Calvin Nophlin, Member



Mike Silverstein, Member

We concur with the majority's decision with respect to the Respondent's liability, but we dissent as to the penalty selected by the majority of the Board.



Nick Alberti, Member

Herman Jones, 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).