

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

**In the Matter of:** )  
 )  
Garay Corporation )  
t/a Corina's Restaurant )  
 )  
Holder of a )  
Retailer's Class CR License )  
 )  
at premises )  
831 Kennedy Street, N.W. )  
Washington, D.C. 20011 )  
 )

Case No. 13-CMP-00476  
License No. ABRA-079873  
Order No. 2014-340

**BEFORE:** Ruthanne Miller, Chairperson  
Donald Brooks, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Amy Schmidt, Assistant Attorney General  
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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The Alcoholic Beverage Control Board (Board) finds that Garay Corporation, t/a Corina's Restaurant, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-113(b)(2)(A) and 25-113(j)(3)(A) and Title 23 of the District of Columbia Municipal Regulations (DCMR) § 1208.3, on August 28, 2013. As a result, the Respondent must pay a \$7,000.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on February 12, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 831 Kennedy Street, N.W., Washington, D.C., on February 20, 2014.

The Notice charged the Respondent with the following violations:

Charge I: The Respondent failed to file a Quarterly Statement, in violation of D.C. Official Code § 25-113(b)(2)(A), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2012 Repl.).

The Respondent's Quarterly Statement for the reporting period of January – March 2013 was due to the ABRA on April 30, 2013.

Charge II: The Respondent failed to keep and maintain books and records for a period of three years showing all sales, purchase invoices, and dispositions, including: sales information that includes the date, the price of food sold, the price of alcoholic beverages sold, and the amount of total sales; purchase information that includes the date and quantity of the purchase, the name, address, and phone number of the wholesaler and or vendor with the original invoice; and register receipts or guest checks, which may be kept daily or weekly that include the food sold, the alcoholic beverages sold, and the amount of total sales, in violation of D.C. Official Code § 25-113(j)(3)(A) (2012 Repl.) and 23 DCMR § 1208.3, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 (1) (2012 Repl.).

The matter came before the Board for a Show Cause Status Hearing on March 26, 2014. There was no settlement of the matter and the Board proceeded to a Show Cause Hearing on June 25, 2014. As a preliminary matter, the Government presented an Offer in Compromise (OIC) to the Board for its consideration. The OIC consisted of the Respondent's agreement to pay a \$4,000.00 fine on both Charges within sixty (60) days. The Board rejected the OIC by a three (3) to three (3) vote and the matter was continued for July 23, 2014.

The Board held a Show Cause Hearing on July 23, 2014, the Respondent failed to appear. Eddie Garona, the Respondent's Manager, appeared on behalf of the Respondent. However, he did not have written authorization to represent the Respondent at the hearing.

The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

## FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated February 12, 2014. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 13-CMP-00476. The Respondent holds a Retailer's Class CR license and is located at 831 Kennedy Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-079873.

2. The Show Cause Hearing was held on July 23, 2014. The Notice charges the Respondent with two violations enumerated above. *See* ABRA Show Cause File No. 13-CMP-00476.

3. The Government presented its case through the testimony of two witnesses, ABRA Compliance Analyst, Monica Clark, and ABRA Investigator Erin Mathieson. *Transcript (Tr.)*, 7/23/14 at 5-6 and 8-9.

4. Upon review of the ABRA records, Mrs. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of January through March, 2013, which was due on April 30, 2013. *Tr.*, 7/23/14 at 7. The Quarterly Statement was filed by the Respondent on September 14, 2013. *Tr.*, 7/23/14 at 8.

5. On August 28, 2013, Investigator Mathieson conducted a regulatory inspection and books and records check at the licensed establishment. *Tr.*, 7/23/14 at 10. Part of Investigator Mathieson's investigation was to determine if the last three years of the Respondent's invoices and books and records were kept on premises. *Tr.*, 7/23/14 at 10-11.

6. Investigator Mathieson identified herself as an ABRA Investigator and asked to speak with an ABC-licensed manager or the owner. *Tr.*, 7/23/14 at 10. The owner, Mrs. Corina Garay, telephonically contacted her daughter and ABC-licensed manger, Ms. Sylvia Garay, and handed Investigator Mathieson the telephone. *Tr.*, 7/23/14 at 11. Investigator Mathieson offered Ms. Sylvia Garay to contact the language line to assist with the interpretation, but she declined. *Tr.*, 7/23/14 at 11.

7. Investigator Mathieson asked Mrs. Corina Garay to produce the last three years of invoices, and books and records housed on the premises. *Tr.*, 7/23/14 at 11-12. Mrs. Corina Garay provided Investigator Mathieson with two garbage pails containing the invoices. *Tr.*, 7/23/14 at 12. Investigator Mathieson attempted to verify if there were three years of the invoices, and books and records in the garbage pails but she was unable to do so. *Tr.*, 7/23/14 at 14. Investigator Mathieson discovered that the invoices were not in order and some guest checks were not dated. *Tr.*, 7/23/14 at 15.

8. Investigator Mathieson informed Ms. Sylvia Garay that the two garbage pails provided by Mrs. Corina Garay did not contain three years of invoices and records and some guest checks were not dated. *Tr.*, 7/23/14 at 15. Ms. Sylvia Garay informed Investigator Mathieson that the establishment was previously cited for the same violation. *Tr.*, 7/23/14 at 15. Investigator Mathieson advised Ms. Sylvia Garay that the Respondent should have rectified the problem and that the three years of invoices and books and records were to be on premises. *Tr.*, 7/23/14 at 15.

9. The Respondent failed to appear at the Show Cause Hearing held on July 23, 2014. The Respondent did not present any testimony or evidence, nor did she refute the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance of the hearing.

#### CONCLUSIONS OF LAW

10. The Board determines that the Respondent committed the violations described in Charge I and Charge II of the Notice.

11. 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 Official Code pursuant to D.C. Official Code § 25-823(1), D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830.

12. The Board finds, as to Charge I, that the Respondent failed to timely file its Quarterly Statement for the period of January through March, 2013. The Board makes this finding based on the testimony of Mrs. Clark and the evidence in the record that shows that the Quarterly Statement was filed by the Respondent on September 14, 2013, after the due date of April 30, 2013.

13. With regard to Charge II, the Board must determine whether the Licensee failed to keep and maintain upon the licensed premises, records which include invoices and delivery slips and which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer, in violation of D.C. Official Code § 25-113(j)(3)(A) and 23 DCMR § 1208.3. In this case, based upon the testimony of Investigator Mathieson, the Board finds that there is sufficient evidence to establish that the Respondent failed to keep and maintain upon the licensed premises, records which include invoices and delivery slips for three years. Specifically, Investigator Mathieson stated that she attempted to verify if sufficient alcoholic beverage invoices existed on the licensed premises to demonstrate that the Respondent maintained its invoices for three years as required by law. However, she was unable to verify due to the fact that the invoices were not organized and some guest checks were undated.

14. The Board takes administrative notice that Charge I is the Respondent's fifth secondary tier violation within four (4) years and Charge II is the Respondent's third primary tier violation within three (3) years. *Licensing File No. ABRA-079873*, Investigative History. Thus, the Board may fine the Respondent between \$2,000.00 and \$4,000.00 for Charge I, and \$4,000.00 and \$6,000.00 for Charge II. *Licensing File No. ABRA-079873*, Investigative History; 23 DCMR §§ 801 and 802.

## **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 17th day of September, 2014, finds that the Respondent, Garay Corporation, t/a Corina's Restaurant, located at 831 Kennedy Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code §§ 25-113(b)(2)(A), 25-113(j)(3)(A), and 23 DCMR § 1208.3.

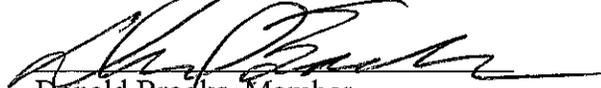
The Board hereby **ORDERS** that:

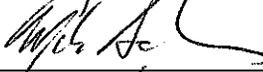
- 1) Charge I: Respondent must pay a fine in the amount of \$2,000.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$5,000.00.
- 3) In total, the Respondent must pay a fine in the amount of \$ 7,000.00 by no later than sixty (60) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

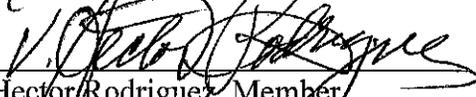
Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

  
Donald Brooks, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

Pursuant to D.C. Official Code § 25-433, 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).