

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

In the Matter of:)	
)	
C. Fields Group, LLC)	
t/a District Lounge and Grille)	
)	Case No. 11-AUD-00001
Holder of a Retailer's Class CR License)	License No. ABRA-081908
at premises)	Order No. 2011-457
2473 18 th Street, N.W.)	
Washington, D.C. 20009)	
)	

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: C. Fields Group, LLC, t/a District Lounge and Grille, Respondent

Andrew J. Kline, on behalf of the Respondent

Louise Phillips, 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

On May 19, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated May 4, 2011, on C. Fields Group, LLC, t/a District Lounge and Grille (Respondent), at premises 2473 18th Street, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Licensee failed to show that the establishment has gross annual food sales of at least \$2,000 per occupant or have the sale of food account for at least 45% of the establishment's gross annual receipts, in violation of the D.C. Official Code § 25-113(b)(3)(B)(i), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 and 23 DCMR § 800 et seq.

Charge II: The Licensee failed to keep and maintain on the premises for a period of 3 years adequate books and records showing all the sales, purchase invoices, and dispositions, in violation of D.C. Official Code § 25-113(j)(3) and 23 DCMR § 1204, 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 August 17, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on September 14, 2011. The Board having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated May 4, 2011. See Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-AUD-00001. The Respondent holds a Retailer's Class CR license and is located at 2473 18th Street, N.W., Washington, D.C. See ABRA Licensing File No. ABRA-081908.
2. The Show Cause Hearing was held on September 14, 2011. The Notice charges the Respondent with the two violations enumerated above. See ABRA Show Cause File No. 11-AUD-00001.
3. The Government called Adeniyi Adejunmobi as its first witness. *Transcript, September 14, 2011* (hereinafter "*Tr.*"), at 8. Mr. Adejunmobi is a Compliance Analyst for ABRA and is a certified internal auditor and a certified information system auditor. *Tr.* at 8. He is certified to review books and financial statements of organizations and business entities. *Tr.* at 8. He has worked at ABRA for two years, and he has over 25 years of audit experience. *Tr.* at 9. He has conducted approximately 15 ABRA audits. *Tr.* at 40, 46, 83. It is Mr. Adejunmobi's responsibility to verify whether the figures reported on the quarterly reports are accurate. *Tr.* at 47-49.
4. Mr. Adejunmobi was tasked with performing an audit of the Respondent's books and records. *Tr.* at 10-11. ABRA audits are initiated when Mr. Adejunmobi sends an engagement letter, called a Notice of Audit, to the Respondent. *Tr.* at 13; Government Exhibit No. 2. He sent a Notice of Audit to the Respondent on January 6, 2011, and he requested a meeting for February 7, 2011. *Tr.* at 14. The Notice of Audit sets forth the period sought to be audited and requests production of the documentation that supports the figures contained in the Respondent's quarterly statements. *Tr.* at 14-15, 65. In this instance, Mr. Adejunmobi indicated that the audit period was from January to December 2010. *Tr.* at 14. Mr. Adejunmobi testified that the Respondent timely filed all four quarterly statements for 2010. *Tr.* at 16.
5. The Notice of Audit was hand-delivered to the Respondent by ABRA Investigator Tyrone Lawson. *Tr.* at 17-18. The Notice informs licensees that they may seek additional time to comply with the audit if needed, in order to gather documentation and organize

their records in preparation for the audit. *Tr.* at 19. Mr. Adejunmobi stated that the Respondent did not seek additional time to prepare for the audit. *Tr.* at 19.

6. Mr. Adejunmobi stated that he and Supervisory Investigator Jermaine Matthews went to the establishment on February 7, 2011, and they met with Benjamin Dalley and Mr. Sadeghi, the Respondent's Certified Public Accountant (CPA), to conduct the audit. *Tr.* at 20, 64-65. This initial meeting was one and a half hours long. *Tr.* at 24.

7. Mr. Adejunmobi requested to review documentation that supported the figures reported by the Respondent in its third quarter food sales report. *Tr.* at 20, 65. Mr. Sadeghi responded by stating that the prepared records were a commingling of receipts from two different establishments, Saki and District Lounge. *Tr.* at 21-24, 50, 66-67. Saki has a Retailer's Class CT (tavern) License and District Lounge has a Retailer's Class CR (restaurant) License. *Tr.* at 21.

8. Mr. Adejunmobi explained the audit process and what documentation was needed to perform the audit to Mr. Dalley and Mr. Sadeghi. *Tr.* at 22, 65. Mr. Sadeghi informed Mr. Adejunmobi that the Respondent had not prepared their quarterly statements based on information solely from District Lounge. *Tr.* at 22. Mr. Adejunmobi stated that Mr. Sadeghi then requested additional time, and indicated that the Respondent would prepare quarterly statements based on figures reported from sales made by District Lounge. *Tr.* at 22, 67. Mr. Dalley then requested to reschedule the audit. *Tr.* at 24. The parties agreed to meet again on February 24, 2011. *Tr.* at 25.

9. On February 24, 2011, Mr. Adejunmobi returned to the establishment for a second audit meeting accompanied by Johnnie Jackson, ABRA's Chief of Enforcement. *Tr.* at 26. They met with Mr. Dalley and again requested the books and records used to support the figures that were reported in the Respondent's quarterly food and alcohol sales statements for calendar year 2010. *Tr.* at 27, 46-47, 68. Mr. Dalley pointed to the computer and stated that he would need somebody to access the documents to provide them to ABRA for the audit. *Tr.* at 27-28, 72-73. Mr. Dalley did not attempt to contact anybody to assist him to access the computer records. *Tr.* at 28, 73-74. Mr. Adejunmobi testified that this second meeting lasted one hour and nothing was accomplished. *Tr.* at 28-29, 74. Mr. Dalley had not requested to postpone the February 24, 2011 meeting. *Tr.* at 27. The issue of accessing the computer to retrieve the audit information did not arise at the first meeting on February 7, 2011. *Tr.* at 75-76.

10. A third audit meeting was scheduled for March 3, 2011. *Tr.* at 27; Government Exhibit No. 3. Chief Jackson again accompanied Mr. Adejunmobi to this meeting. *Tr.* at 29. At no time did anyone from the establishment contact Mr. Adejunmobi or ABRA requesting a postponement of the March 3, 2011, meeting. *Tr.* at 30.

11. On March 3, 2011, Mr. Adejunmobi discovered the establishment was locked. *Tr.* at 30. Mr. Adejunmobi waited 15 minutes for someone to answer the door when he knocked. *Tr.* at 31. He stated that nothing was accomplished on this third visit to the establishment. *Tr.* at 31. It wasn't until after Mr. Adejunmobi completed his report that the Mr. Dalley contacted him three to four weeks after the third scheduled audit meeting. *Tr.* at 32-33, 62-63. Mr. Adejunmobi did not schedule a fourth meeting with the Respondent. *Tr.* at 33, 63.

12. Mr. Adejunmobi testified that he made three separate trips to the establishment and none of the visits resulted in the production of documents or records to support the Respondent's filed quarterly reports. *Tr.* at 37. Mr. Adejunmobi reached a conclusion that the books and records didn't exist, because the Respondent never produced them. *Tr.* at 37. At no point was Mr. Adejunmobi ever shown, nor did he ever observe, three years worth of books and records on the premises. *Tr.* at 39, 68, 89.

13. The only time Mr. Adejunmobi was directed to records was when Respondent's staff pointed to boxes at the initial meeting on February 7, 2011. *Tr.* at 38, 69-70. Mr. Adejunmobi stated that he did not go through the boxes, because it is incumbent upon the Respondent to demonstrate that the records support the quarterly report figures. *Tr.* at 38, 46, 70. Additionally, Mr. Sadeghi interceded and stated that the boxes contained comingled records. *Tr.* at 39.

14. Mr. Adejunmobi was never provided any documentation that he requested from the Respondent, so he was unable to perform the audit. *Tr.* at 42. He did not recall receiving an email from the Respondent after the third scheduled meeting indicating that the Respondent would like to reschedule it. *Tr.* at 43, 45. Nor does Mr. Adejunmobi recollect discussing an email received by Chief Jackson from the Respondent. *Tr.* at 46.

15. Mr. Adejunmobi testified that he is familiar with restaurants' use of point of sales (POS) systems, which is a computer software program. *Tr.* at 46. He admitted that it would not be unusual for a restaurant that uses this software to have all of its sales information stored on the computer. *Tr.* at 46. He was not aware that the "point of sales" system used by Saki was separate from the one used by District Lounge. *Tr.* at 50-51.

16. Mr. Adejunmobi's audit report reflected the practice by District Lounge to sell food to Saki and invoice Saki for the food sales. *Tr.* at 51. The Respondent offered to file amended quarterly statements to address the concern of the comingled sales reporting, but Chief Jackson and Mr. Adejunmobi indicated that it would not be acceptable. *Tr.* at 51-54.

17. Mr. Adejunmobi testified that he does not review purchase information for a sales audit, even though purchase information is listed in the Notice of Audit sent to the Respondent. *Tr.* at 55-56. He admitted that the purpose of the audit of the expenditures is to verify that there was a sufficient purchase of food to support the reported sales. *Tr.* at 57, 71. He stated that he cannot make any conclusion as to what figures he would be looking for until he sees the documentation. *Tr.* at 57-58.

18. Mr. Adejunmobi stated that a receipt is a third-party document that indicates that a sale was made. *Tr.* at 60. He described a guest check as a list of items ordered by a customer that is provided to the customer by the establishment. *Tr.* at 61. He admitted that restaurants that use "point of sale" systems electronically capture and store guest check and receipt information. *Tr.* at 61. He also acknowledged that restaurants with electronic POS systems use computers and not guest checks. *Tr.* at 81.

19. Mr. Adejunmobi testified that several of the audits he has conducted were at restaurants that utilize the POS system to track food and alcohol sales. *Tr.* at 83. He stated

that it is generally understood that when he requests guest checks, restaurants will either produce hard copies of the sales receipts or some form of a printout from the electronic POS system. *Tr.* at 86.

20. The Respondent called Matthew Cronin as its first witness. *Tr.* at 90. Mr. Cronin is part owner and a member of management for the Respondent. *Tr.* at 91. His responsibilities include oversight of most functions such as front-house operations, opening and closing of the business, ensuring staff performs their duties on a daily basis, opening sales logs, generating sessions reports, and setting up the computer for staff access. *Tr.* at 91. Mr. Cronin has been in the restaurant business for twelve years. *Tr.* at 91, 115. He has worked at other restaurants to include Bennigans, Lupo's and Copeland's. *Tr.* at 92.

21. Mr. Cronin described Licensee's Exhibit No. 3 as a screen shot from the Respondent's POS system, dated January 7, 2010, at 10:16 p.m. *Tr.* at 105. Mr. Cronin had never seen the screen shot before the hearing. *Tr.* at 128. The screen shot showed the date of the report generated, an order number, an employee number, and the aggregate of the individual sales totals. *Tr.* at 106-107, 125-126. The order numbers on the screen shot represent all the orders from that day. The information listing food or beverages is itemized on the print-out. *Tr.* at 111-112.

22. Mr. Cronin stated that the document at the top of the computer screen shot would look like a typical guest check, which is what the customer receives at the end of the dining experience in order to pay the bill. *Tr.* at 117-118, 165. The top portion of the screen shot is not retained, because the other portion is stored in the computer. *Tr.* at 119.

23. Mr. Cronin stated that the computerized system is advantageous, because it is a more accurate method for tracking sales. *Tr.* at 112. Employees must log in with their employee number, and they cannot simply scribble orders down. *Tr.* at 112. The computerized system also produces flash reports that detail what has been keyed in, what is still open, and what has been closed out. *Tr.* at 113. Mr. Cronin uses the POS system throughout the night to make adjustments to staffing levels and monitor activity. *Tr.* at 113. At the end of the night, each revenue center is closed out after generating a print-out of that night's transactions. *Tr.* at 113. The printout is wrapped around the receipts for that night, placed in a manila envelope, and placed in a box labeled for that month. *Tr.* at 113-114.

24. Mr. Cronin speculated that food costs in a restaurant such as District runs anywhere from 28% to 35%, and industry standard is about 30%, meaning that a particular food item would be bought for \$5.00 and sold to the patron for \$15.00. *Tr.* at 115. The \$10.00 differential covers bills, expenses, rent, salaries, and labor. *Tr.* at 116.

25. Mr. Cronin stated that Saki Sushi Bar is still in operation, and some people call it Underground. *Tr.* at 122-123. The canopy outside of the Saki establishment now reads Underground. *Tr.* at 124. Mr. Cronin is not aware whether the new trade name has been approved by the Board. *Tr.* at 123.

26. Mr. Cronin stated that he has access to the computer system in general, but he does not know how to perform all of the software functions. *Tr.* at 127. He would need

instruction to be able to pull up all of the information that supports the figures reported on the third quarter food sales statement. *Tr.* at 127, 167. The computer system is very complex, so his knowledge is limited to day-to-day operations, price changes, generating session summaries, and he could generate an itemized report for a particular day. *Tr.* at 128, 167. Mr. Cronin didn't know whether he would have been able to access the computer system on the day of the audit, because he does not prepare the quarterly reports. *Tr.* at 130. Mr. Dalley is responsible for filing the quarterly statements. *Tr.* at 130, 135. Mr. Cronin has never filed a quarterly statement, and he is not familiar with the process. *Tr.* at 132.

27. Mr. Cronin explained that he and Mr. Dalley have access to the computer system, but they may not have the ability to access the system to generate certain reports. *Tr.* at 132. Mr. Cronin has the authorization and ability to access any record contained on the POS system. *Tr.* at 133, 166. He believes that Mr. Dalley has the same access, and they both have administrator-level passwords. *Tr.* at 133. Mr. Cronin primarily uses the system to produce session summary reports, employee data and time card information, and the establishment's menu. *Tr.* at 166.

28. There are four District employees who have administrator-level access to the POS: Joshua Gray, Benjamin Dalley, Patrick Dildine, and Matt Cronin. *Tr.* at 134, 262. All four of these employees handle day-to-day operations. *Tr.* at 134-135. Both District and Saki use the same POS software, but they are not networked to one another such that the information would be commingled between the two establishments. *Tr.* at 135-136, 163-164. To the best of Mr. Cronin's knowledge, business records for Saki and District have never been commingled. *Tr.* at 143.

29. Sales information is entered into the computer by the person accessing that computer revenue center. *Tr.* at 136. As staff is ringing in sales information, management prints the daily session summary reports for each revenue center, and files it with the credit card receipts. *Tr.* at 137-139; 164. Only hard copies of the credit card receipts are maintained by the establishment. *Tr.* at 138. The summary session reports represent a total of the transactions for that night's business. *Tr.* at 140, 148. The daily summary session reports are stapled and kept in a file cabinet. *Tr.* at 140-141, 164. The file cabinet is housed in an office at District. *Tr.* at 141.

30. Mr. Cronin is aware that Mr. Dalley wanted to submit amended quarterly statements to ABRA. *Tr.* at 143. He believed that the amended reports would reflect food purchase invoices between District and Saki, but it would not reflect sales information. *Tr.* at 144-145. He stated that it was the accountant's idea to have District sell food to Saki's patrons. *Tr.* at 146.

31. The daily summary session reports combine all of the revenue centers data together. *Tr.* at 147-148. The data includes gross sales, net sales, discounts, compensated sales, sales of food, wine, beer and spirits. *Tr.* at 148-149. The daily summary session reports are two pages long and any of the four managers can produce these reports. *Tr.* at 148-149. Similar summary reports can be printed containing weekly and monthly data totals too. *Tr.* at 149-150. Mr. Cronin stated that the ABRA quarterly reports are derived from adding the different reports together. *Tr.* at 154.

32. Benjamin Dalley is one of the owners of the Respondent's establishment, and he is responsible for the day-time management. *Tr.* at 171. He is the "back of the house" manager as opposed to Mr. Cronin, who is the "front of the house" manager. *Tr.* at 172. With the assistance of the establishment's accountant, he is responsible for keeping records of food purchased, and for compiling the information used for the Respondent's quarterly statements. *Tr.* at 172, 207, 266. Mr. Dalley compiled the information for the four quarterly statements submitted to ABRA in 2010. *Tr.* at 172-173.

34. Mr. Dalley explained that the information used for the quarterly statement is housed in the establishment's POS system. *Tr.* at 173. There are different report options on the system. *Tr.* at 173. There are session summaries that can be run for one day, two days, or a week, depending on how much information is needed for the summary. *Tr.* at 172. For a quarterly report filing, Mr. Dalley will generate a report for that quarter, and the report would contain the total sales for the quarter in each of the categories, such as total cash sales, total credit card sales, total amount of tips, and total amount of taxes paid. *Tr.* at 173-174. The report also contains sales data including food and alcohol sales. *Tr.* at 174.

35. Mr. Dalley reviewed Licensee's Exhibit No. 4, which were the summary session reports for 2010. *Tr.* at 174. The first report contained in Exhibit No. 4 was the annual cumulative report for 2010. *Tr.* at 175. The other three reports represented the second, third, and fourth quarters for 2010. *Tr.* at 175. These summary session reports form the basis of the quarterly statements. *Tr.* at 175.

36. Mr. Dalley stated that in 2010, the Respondent also had food sales that resulted from food being sold from District Lounge, to Saki, which was in turn, sold to Saki patrons. *Tr.* at 176. The food sold by District through Saki to Saki customers were recorded as food sales for District's reporting purposes. *Tr.* at 176. The idea to sell food from District to Saki was conceived, because District's food sales in first quarter 2010 were a little slow, and it provided an opportunity to sell hot food to what was otherwise primarily a sushi bar at Saki. *Tr.* at 176-177.

37. The food sold to Saki was invoiced to District. *Tr.* at 177; Licensee's Exhibit No. 5. The total invoice then would be recorded on the quarterly sales reports for District. *Tr.* at 177. Mr. Dalley believes that this process may have contributed to the confusion over what was referred to as commingling. *Tr.* at 177. Saki sold certain menu items that were created in District's kitchen. *Tr.* at 178. This was food that was purchased by District from food vendors. *Tr.* at 178-180.

38. Mr. Dalley was advised by his accountant that the District food items sold to Saki patrons could be included with District's quarterly food sales totals, because the food items were produced by District. *Tr.* at 178.

39. Mr. Dalley stated that the POS system tracks every item that is sold. *Tr.* at 180. Every quarter he sorts all of the items sold by District that were produced in District's kitchen; he then tallies the totals and adds it as food sales for that quarter. *Tr.* at 180. At the end of each quarter, he prints the summary and the invoice, and he stores the hardcopy in the file. *Tr.* at 181.

40. Mr. Dalley stated that he had the session summaries available at both of the meetings scheduled with ABRA's auditor, and the invoices were available at the second meeting. *Tr.* at 182-183. He believed that his accountant would have the invoices available at the first meeting. *Tr.* at 184. Mr. Dalley testified that the auditor was not interested in the session summaries and only requested to see guest checks. *Tr.* at 183, 277. He further stated that all of the necessary data was present for Mr. Adejunmobi to review, but the auditor did not look at it. *Tr.* at 227.

41. Mr. Dalley described the session summary for year 2010, indicating that the first section denotes payment types such as credit card or cash. *Tr.* at 185. The total of all the transactions are recorded at the bottom of that section. *Tr.* at 185. The second section lists the items sold by group such as food, beer, wine, and spirits. *Tr.* at 185, 285. The totals are provided at the bottom of the section and it also includes discounts and gross sales. *Tr.* at 185. The third section lists the tax types and totals the amount of sales taxes paid to the District of Columbia for 2010. *Tr.* at 186. The fourth section lists the total tips and includes credit card tips that are run through the system for servers and bartenders. *Tr.* at 186. He stated that all of the transactions listed on the session summary were run through the District's POS system for 2010. *Tr.* at 186. The total food sales for 2010 were \$242,360.42. *Tr.* at 186. This amount is less than what was reported in District's quarterly statements of \$272,000. *Tr.* at 187. Mr. Dalley is confident that the amount of \$242,360.42 is the accurate figure for food sales for 2010. *Tr.* at 192.

42. Mr. Dalley also produced a food sales summary report that tracked all sales and included the first, second, and third quarter, as well as the yearly total. *Tr.* at 187; Licensee's Exhibit No. 6. This report was based on the information reported to ABRA in the 2010 quarterly statements. *Tr.* at 188. This report reflected total food sales of \$272,104.19. *Tr.* at 188. This figure differs from the other document that was generated from the POS system, by about \$30,000. *Tr.* at 188-189. Mr. Dalley stated that the discrepancy between the two reports was due to the District/Saki invoiced amounts. *Tr.* at 189.

43. Mr. Dalley explained that there was no commingling of records between District and Saki food sales. *Tr.* at 190. He believes the confusion may have existed because District invoiced Saki for food sales, and those sales were recorded on District's reports. *Tr.* at 191, 283-286, 297-299. He stated that the two licensed establishments have two completely separate POS systems, and all food sales are tracked separately. *Tr.* at 191, 287-288, 299-302. An employee cannot use the District POS system to ring up sales for Saki. *Tr.* at 191, 301. He stated that there was no effort, to hide the District food sales to Saki patrons from ABRA. *Tr.* at 191. There was discussion at the first meeting with the Mr. Adejunmobi and Mr. Sadeghi regarding the legality of selling food produced in one licensee's kitchen to another licensee's patrons. *Tr.* at 192, 238.

44. When Mr. Dalley received the letter from Mr. Adejunmobi to schedule the first meeting, he was never advised regarding how much time the meeting would involve. *Tr.* at 192-193. Mr. Dalley stated that all of the accountant's data was available at that first meeting, as were the session summaries for each quarter and the full year. *Tr.* at 193, 210, 225, 231, 241. He also had a box of the third quarter credit card receipts available, and the invoice reports for the food items prepared by District and sold to Saki patrons. *Tr.* at 194, 210-211, 225, 227-228, 242.

45. Mr. Dalley stated that the auditor was initially sorting through the receipts and asking questions regarding what the different receipts represented. *Tr.* at 194, 229. It was then that the auditor advised Mr. Dalley that the audit could take several hours. *Tr.* at 194, 229. Mr. Dally mentioned to the auditor that he had another appointment, and they then decided to schedule a second meeting to continue the audit. *Tr.* at 194-195, 229.

46. At the second meeting, Mr. Dalley met with the auditor and Johnnie Jackson, Chief of Enforcement, for about an hour. *Tr.* at 196, 200, 243. Mr. Dalley stated that the second meeting was also consumed by the discussion of what food sales could be legally recorded for District. *Tr.* at 196, 200, 232, 238-239, 252. Mr. Dalley stated that Mr. Adejunmobi told him only guest checks could be included, and no session or summary reports were requested. *Tr.* at 196, 198, 225, 323 241. He stated that there was a lot of confusion as to what constitutes a guest check. *Tr.* at 196, 200, 252-253. He was confused about the term, because the Respondent doesn't use a guest check system, and he didn't understand why invoiced items could not be counted. *Tr.* at 196, 226. When Mr. Dalley figured out what the Mr. Adejunmobi actually wanted from him, he was willing to produce the guest checks at the third meeting. *Tr.* at 252.

47. Mr. Dalley testified that he has access to the POS system, and he can generate any summary report that is available through the software. *Tr.* at 197. He was requested to produce guest checks, and at the time of the meeting, he did not know how to access that information from the POS system. *Tr.* at 197, 200, 214, 240. He stated that another business partner, Patrick Dildine, was needed to produce that, and he was not present at the second meeting. *Tr.* at 240. Rather than calling Mr. Dildine to attend the meeting, Mr. Adejunmobi suggested that the meeting be rescheduled. *Tr.* at 264-265.

48. Mr. Dalley stated that Mr. Adejunmobi emailed him suggesting a date of March 3, 2011, for the third meeting. *Tr.* at 201. Mr. Dalley was at Saki working with a contractor on March 3, 2011, and he did not hear anyone knocking on the door. *Tr.* at 201-201. He missed the third meeting because he thought it was scheduled for March 8, 2011. *Tr.* at 202. When he realized he missed the meeting, he called and emailed the auditor to discuss rescheduling the meeting. *Tr.* at 203; Licensee's Exhibit No. 1. He did not receive a reply from the auditor to his email. *Tr.* at 205. Mr. Dalley directed his attorney to send an email to Chief Jackson and Fred Moosally, Director of ABRA, explaining the mix up on the meeting date and requesting a new meeting date. *Tr.* at 206; Licensee's Exhibit No. 1. His attorney never received a response from Mr. Jackson or Mr. Moosally. *Tr.* at 206.

49. Mr. Dalley testified that all of the restaurants records are kept in two forms. *Tr.* at 207. The Respondent has used Quickbooks since the beginning of 2010, and every invoice is maintained in the database. *Tr.* at 207, 225. Quickbooks produces transaction reports for all food items purchased in 2010. *Tr.* at 207. The Respondent also maintains paper records, and the 2010 sales invoices for food purchases are kept in boxes. *Tr.* at 207. Mr. Dally also maintains records for food purchases for Saki. *Tr.* at 208; Licensee's Exhibit No. 8. There are two separate Quickbooks accounts for the two establishments. *Tr.* at 208.

50. Mr. Dalley stated that the summary for food purchased for District was \$133,474.85 and \$50,731.02 for Saki. *Tr.* at 209; Licensee's Exhibits No.s 7 and 8. Those figures are supported by invoices, whose hard copies are kept in stored boxes. *Tr.* at 212. There is a box for every month of 2010, and they reside in a closet at the establishment.

Tr. at 212. He stated that the box containing the invoices for third quarter 2010 was available to the auditor at each of the two meetings. *Tr.* at 213, 240.

51. Mr. Dalley believes that a lot of the confusion at the two meetings centered on what invoiced amounts could be attributed to District's food sales. *Tr.* at 213, 232. There was also confusion regarding what the auditor meant by guest check and what information or data he truly needed to conduct the audit. *Tr.* at 214-215, 233, 240. Mr. Dalley thinks that improved and enhanced communication could have prevented a lot of the confusion. *Tr.* at 213, 243. There was less confusion after Chief Jackson explained at the second meeting what invoiced amounts could be counted. *Tr.* at 216, 244. Mr. Dalley then offered to file amended quarterly reports, and he was told that he could not do that. *Tr.* at 216, 239-240. There was no communication between the first two meetings, and Mr. Dalley never followed up with the auditor following the first meeting to get an explanation of what was needed. *Tr.* at 244.

52. When Mr. Dalley believed that the third meeting was scheduled for March 8, 2011, he made arrangements for his business partner, Patrick Dildine, to be present too. *Tr.* at 215. Mr. Dildine is the one partner who is most familiar with the POS system. *Tr.* at 215. Mr. Dalley doesn't believe that he understood at the time that he was supposed to produce the figures that supported the quarterly reports. *Tr.* at 233. He was just getting familiar with the audit process at the time and had no idea what the process was. *Tr.* at 233.

53. Mr. Dalley acknowledged that he received the Notice of Audit and he believes that he had all of the information that was listed in the Notice, ready for the meeting. *Tr.* at 234-235. He states that it is more accurate to say that Mr. Adejunmobi didn't request the information in a way Mr. Dalley understood, rather than that Mr. Dalley didn't provide it to him. *Tr.* at 235. The data was not requested in a manner that allowed Mr. Dalley to synthesize or produce it. *Tr.* at 235. Mr. Dalley was eventually able to define guest checks as daily receipts. *Tr.* at 240.

54. Mr. Dalley sought to reschedule the missed third meeting, but he was told by the Mr. Adejunmobi that he couldn't. *Tr.* at 248. He admitted that he did not speak with Mr. Adejunmobi about the definition of a guest check, or seek clarification about what information was required for the audit. *Tr.* at 249. Mr. Dalley had a detailed meeting with his attorney, and he also sought a meeting with ABRA Director, Fred Moosally to discuss the food audit confusions. *Tr.* at 249. Mr. Moosally directed Mr. Dalley to meet with ABRA's Community Resource Officer, Cynthia Simms. *Tr.* at 250.

55. Mr. Dalley was clear on what information he needed for the third meeting with the auditor, but because he thought the meeting was a different day, he never met with the auditor to discuss the information. *Tr.* at 250. He was prepared to produce the necessary receipts from the POS system. *Tr.* at 251. He said he understood what was required of him, as a result of a discussion with Chief Jackson at the second meeting. *Tr.* at 251.

56. Mr. Dalley stated that when he sat down with the auditor, he asked what was needed for the audit. *Tr.* at 255. The auditor indicated that he needed guest checks. *Tr.* at 255. The auditor never requested summary reports or any other documentation. *Tr.* at 255. Mr. Dalley stated that he came to the meetings prepared to demonstrate how he arrived at the figures used in the quarterly reports through the use of the sales session

summary reports and purchase receipts, not guest checks. *Tr.* at 255-256, 258-259. He stated that part of the auditor's job is to confirm the figures used to support the quarterly reports. *Tr.* at 256.

57. The total amount of food and alcohol sales for 2010 representing cash and credit card transactions is \$2.237 million. *Tr.* at 270. Mr. Dalley acknowledged a discrepancy of \$30,000 between the \$470,000 reported on the first quarter report, and the \$500,000 session summary for the same period. *Tr.* at 272. He stated that the discrepancy was attributable to the missing first two days of the year totaling \$20,000 and also an omitted invoice amount of \$8,600.00. *Tr.* at 272. The session summary report for that period starts on January 3, 2010 and does not include the first two days of the year. *Tr.* at 273-275.

58. The District provided catering services in 2010 and those sales are not reflected in District's quarterly food sales reports. *Tr.* at 281. Mr. Dalley remains confused as to whether carry-out or delivery is an outside sale and, thus, not permitted to be counted as part of the food sales figures. *Tr.* at 283.

59. Mr. Dalley believed that the food costs ran higher than what Mr. Cronin speculated at 30-40%, and is much closer to 50%. *Tr.* at 293. District purchases items such as water, juice, and Red Bull from Washington area wholesalers. *Tr.* at 296.

CONCLUSIONS OF LAW

60. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2009). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 DCMR § 800, *et. seq.*

61. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a "reasonable mind[] might accept as adequate to support the conclusion" and there must be a "rational connection between facts found and the choice made." 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008)

62. With regard to Charge I set forth in the Notice to Show Cause, dated May 4, 2011, the Board must determine whether the Licensee failed to meet the food requirements. Ordinarily, this violation is a matter of numerical calculation – either the licensee did or did not meet the threshold requirement of \$2,000 in food sales per seat or 45 percent of gross annual receipts in food sales.

63. Unfortunately, as demonstrated by the cases put forward by both the Government and the Respondent, the Board has insufficient evidence to make a finding whether the Respondent met its statutorily required food sales. The Respondent went to great lengths during the hearing to describe its technologically sophisticated POS system that provides detailed records of food and alcoholic beverage purchases and sales. This testimony however, was not helpful to the Board for purposes of determining whether the food sales

requirements were met. The concern for the Board is whether Mr. Adejunmobi had access to these detailed records and the evidence in the hearing record indicates that either no attempt or a feeble attempt was made to produce these same food and sales documents to Mr. Adejunmobi at the time of the audit meetings. Thus, the Board will hold this matter open for an additional thirty (30) days until a full and complete audit can be undertaken by ABRA.

64. With regard to Charge II, that the Respondent 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) and 23 DCMR § 1204, the Board finds that the Respondent did violate this statute and regulation. The Board makes this finding based on the testimony of Compliance Analyst Neal Adejunmobi. Nothing in the record indicates that three (3) years worth of books and records were produced for regulatory inspection. On the contrary, Mr. Adejunmobi testified that he made three separate visits to the establishment, and at no time did he receive or review three years of books and records. Thus the Board draws the same conclusion as Mr. Adejunmobi, and finds that the Respondent failed to keep and maintain on the premises for three years, adequate books and records demonstrating sales and purchase invoices.

65. The Board is disappointed by the behavior of the Respondent in its failure to produce for the Compliance Analyst any documentation that would assist the Compliance Analyst in performing the audit. After being put on notice by ABRA regarding the requirements of the audit process, the Respondent failed to provide the necessary documentation after three meeting attempts. The Board takes this failure to cooperate very seriously and is put off by Respondent's claim of confusion regarding the audit requirements even though it acknowledged receipt of the Notice of Audit. Respondent provided no real explanation as to why the break-down in communication regarding guest checks or any other requested documentation for that matter, could not be resolved short of wasting the Board's time at a Show Cause hearing. The Board does not relish serving in the role of referee when both parties could have resolved the issues of communication and production of documents outside of the hearing room.

66. In summary, the Board finds that the Respondent's violation of D.C. Official Code § 25-113(j)(3) and 23 DCMR § 1204, as set forth in Charge II, warrants both the imposition of a monetary fine and a suspension of the license. As to Charge I, regarding § 25-113(b)(3)(B)(i), the Board holds this matter open until a full and complete audit can be undertaken. The Board mandates that the Respondent cooperate with ABRA's Compliance Analyst for the conduct of an audit of the four 2010 quarterly reports.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** on this 2nd day of November 2011, that the Respondent, C. Fields Group, LLC, t/a District Lounge and Grille, Holder of a Class CR Retailer's License located at 2473 18th Street N.W., Washington, D.C., shall incur the following penalties:

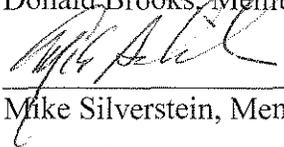
1. The Respondent shall pay a fine in the amount of \$2,000.00 within thirty (30) days from receipt of this Order. Failure to remit the amount in full within the time specified may result in the imposition of additional sanctions.
2. The Respondent shall receive a suspension of its license for five (5) days, with two (2) days served and three (3) days stayed for one year pending no further violations. The two suspension days will be served on December 1, 2011 and December 2, 2011.
3. The Respondent will cooperate fully and completely with an audit undertaken by ABRA's Compliance Analyst within thirty (30) days from the date of this Order.
4. The Board will revisit this matter at the conclusion of the audit and will not hesitate to subject the Respondent to additional hearings if the Respondent does not cooperate with the auditor or comply with the requirements of the audit.

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

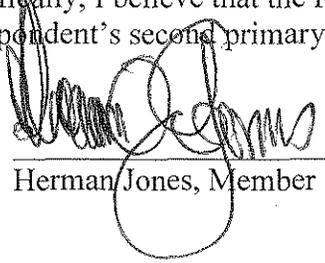
District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson

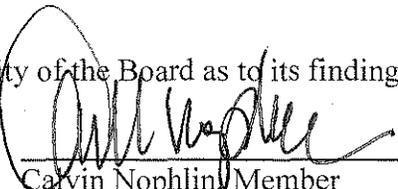

Donald Brooks, Member


Mike Silverstein, Member

I concur with the majority position of the Board regarding its findings that the Respondent violated § 25-113(j)(3) and 23 DCMR § 1204 . I write separately to dissent on the penalty agreed to by the majority of the Board. Specifically, I believe that the Respondent should be assessed a \$4,000.00 fine as this is the Respondent's second primary tier violation within two years.


Herman Jones, Member

I dissent from the position taken by the majority of the Board as to its findings.



Calvin Nophlin 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, 2000 14th 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 23 DCMR § 1719.1 (2008) 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).