

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

In the Matter of:)	
)	
Island Cafe, Inc.)	License No.: ABRA-60578
t/a Island Café)	Case No.: 11-CMP-00179
)	Order No.: 2012-280
Holder of a Retailer's Class CT License)	
at premises)	
829 Upshur Street N.W.)	
Washington, D.C. 20001)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member

ALSO PRESENT: Island Café, Inc. t/a Island Café, Respondent

Michael Fonseca, on behalf of the Respondent

Amy Schmidt, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

On February 8, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated January 25, 2012, on Island Café, Inc. t/a Island Café (Respondent), at premises 829 Upshur Street, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent failed to maintain upon the licensed premises, records that reflect all purchases, sales, and deliveries of all alcoholic beverages, for a period of three years from date of delivery in

violation of D.C. Municipal Regulations § 23-1204 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1). The date of this incident is May 19, 2011.

Charge II: The Respondent violated the terms of the Voluntary Agreement by failing to comply with all ABRA regulations, by not maintaining upon the licensed premises records that reflect all purchases, sales and deliveries of all alcoholic beverages for a period of three years from date of delivery in violation of D.C. Official Code § 25-446 (e) (2001) for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6). The date of this incident is May 19, 2011.

The Board held a Show Cause Status Hearing on March 7, 2012 and a Show Cause Hearing on April 18, 2012. At the conclusion of the Show Cause Hearing, the Board held a closed meeting pursuant to §405 (b)(13) of the Open Meetings Act. The Board, having considered the evidence, the arguments of the parties, and all 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 January 25, 2012. See ABRA Show Cause File No. 11-CMP-00179, The Respondent holds a Retailer's Class CT License and is located at 829 Upshur Street, N.W., Washington, D.C. See ABRA Licensing File No. 60578.
2. A Status Hearing related to this matter was held on March 7, 2012. *ABRA Show Cause File No. 11-CMP-00179*. The Notice to Show Cause, dated January 25, 2012, charges the Respondent with the two violations enumerated above. See ABRA Show Cause File No. 11-CMP-00179.
3. The Government presented its only witness, ABRA Investigator Tyrone Lawson. *Transcript, April 18, 2012* (hereinafter "*Tr.*"), at 16. Investigator Lawson was present at the Respondent's establishment on May 19, 2011, to conduct a regulatory inspection. *Tr.* at 18. The regulatory inspection included a review of the Respondent's books and records for the previous three years. *Tr.* at 18.
- 4.. Investigator Lawson requested that the owner, Nevaldo Bailey, and the ABC-licensed manager, Darryl Smith, produce alcoholic beverages purchase invoices for the previous three years; namely, 2008, 2009, and 2010. *Tr.* at 19, 27, 34. In response to that request, he received purchase invoices for March 2010 to April 2011. *Tr.* at 19, 29. Mr. Bailey informed Investigator Lawson that he did not have the invoices for 2008 on the premises, and that the invoices were stored at his home. *Tr.* at 19.

5. Investigator Lawson offered to return to the establishment at a later date to further inspect the outstanding invoices. *Tr.* at 19, 21, 35-36. He returned on May 24, 2011, and again on June 18, 2011. *Tr.* at 37. When Investigator Lawson returned to the establishment on the later dates, he learned that there were no invoices for 2008. *Tr.* at 19, 36. Investigator Lawson provided his contact information to the Respondent in the event the Respondent located the 2008 invoices. *Tr.* at 36-37. Investigator Lawson was never provided with the 2008 invoices. *Tr.* at 40.

6. Mr. Bailey testified on behalf of the Respondent. *Tr.* at 41. As a result of an incident at the establishment in 2008, his license was suspended from March 16, 2008 to April 14, 2008, and he was not open for business during that time. *Tr.* at 42, 52, 66. He informed Investigator Lawson that due to the suspension in 2008, he did not have very many receipts for that year. *Tr.* at 45, 49, 54, 57, 60, 66, 104-105. He sold very little alcohol when he was open, but he admitted that he made a couple of alcoholic beverage purchases in 2008. *Tr.* at 53-55, 57, 63, 91, 94. He stated that he didn't need to purchase liquor because he wasn't selling any. *Tr.* at 60, 91, 98.

7. Mr. Bailey purchased beer in 2008 from D.C. Cash and Carry, a Washington, D.C. Wholesaler, but he did not purchase spirits. *Tr.* at 45, 50, 58, 62, 92. Mr. Bailey contacted his wholesalers to retrieve copies of the invoices, but he was informed that the records for 2008 were too old, and they were no longer maintained. *Tr.* at 49-50, 88. He received a printout that reflected three sales entries, but he did not get copies of any receipts. *Tr.* at 49-50, 88-89, 93-94, 99-100. He did not bring the printout to the Show Cause Hearing. *Tr.* at 90.

8. When Mr. Bailey reopened for business following the suspension, he agreed to work with the Advisory Neighborhood Association, and operate the establishment more like a restaurant than a tavern. *Tr.* at 42, 45, 49, 69, 97. He undertook significant renovations from March through September in 2008. *Tr.* at 42, 50, 97, 104-105. During this period he closed the bar and only sold food. *Tr.* at 43, 107

9. Mr. Bailey testified that Investigator Lawson only talked to the ABC-licensed manager, Mr. Smith. *Tr.* at 44, 56. He stated that he would have shown the receipts to Investigator Lawson, but did not because Investigator Lawson ignored him. *Tr.* at 46, 55-56.

10. The Respondent stipulated that he did not provide any receipts or invoices to Investigator Lawson for the year 2008. *Tr.* at 59-60, 74, 94-95. Additionally, he did not bring any 2008 receipts to the Show Cause Hearing. *Tr.* at 72.

11. The terms of the Respondent's Voluntary Agreement require that the establishment comply with the laws of the District of Columbia. *Tr.* at 22-23. Mr. Bailey agreed to abide by the terms of his Voluntary Agreement. *Tr.* at 62.

CONCLUSIONS OF LAW

12. 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) (2001). 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.*

13. The Board based its factual findings on the substantial evidence contained in the record. 23 DCMR § 1718.3 (West Supp. 2012). The courts define substantial evidence as evidence that “reasonable minds might accept as adequate to support the [Board’s] conclusions.” 2641 Corp. v. District of Columbia Alcoholic Beverage Control Bd., 950 A.2d 50, 52 (D.C. 2008) citing Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1387 (D.C. 1977).

14. D.C. Municipal Regulations § 23-1204 provides that:

1204.1 Each holder of a Retailer's license shall 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, made to it.

1204.2 Records shall include and distinctly show the following information:

- (a) The quantity in gallons of each kind of beverage purchased in each purchase;
- (b) The date of each purchase;
- (c) The name and business address of the person from whom purchased with the license number of the vendor, if licensed under the Act;
- (d) The price of each kind of beverage purchased with the total price; and
- (e) The character and brand and quantity in gallons of all beverages, except beer, acquired other than by purchase.

1204.3 All invoices and delivery slips required by § 1204.1 and all importation permits after cancellation as required by D.C. Official Code § 25-119, shall be systematically filed and maintained for a period of three (3) years from date of delivery and shall show a true, accurate and complete statement of terms and conditions on which each purchase was made.

15. The Board finds that the Respondent failed to maintain the books and records required by D.C. Municipal Regulation § 23-1204 based on Investigator Lawson’s

testimony that during a routine compliance check, the Respondent failed to produce any records for 2008 and that he failed to produce them to Inspector Lawson at a later time.

16. The Board finds that despite Respondent's testimony that he had a printout from a wholesaler that showed three entries of alcohol purchases in 2008, he failed to bring this printout or any other records related to alcohol purchases during 2008 to the Show Cause Hearing, and has produced no records at all to date.

17. Regardless of Respondent's excuse that he had very few purchases for the year 2008, that excuse does not explain Respondent's failure to produce the records for any purchases in 2008.

18. Finally, Respondent, himself, admitted to his failure to produce the required books and records.

ORDER

Based on the foregoing findings of facts and conclusions of law, the Board, on this 20th day of June 2012, finds that the Respondent, Island Cafe, t/a Island Cafe, at premises 827 Upshur Street, N.W., Washington, D.C., holder of a Retailer's Class CT License, violated D.C. Municipal Regulations § 23-1204 (2001), and is liable for Charge I.

The Board hereby **ORDERS** that:

1. The Respondent shall pay a fine in the amount of \$4,000.00 by no later than thirty (30) days from the date of this Order;
2. Additionally the Respondent shall receive a suspension of four (4) days; all four days stayed for one year, provided that the Respondent does not commit any additional ABC violations.
3. The Respondent shall receive a suspension of its license for four (4) days; all four days served. These suspension days are activated from the four stayed days imposed by the Board on May 24, 2010, in Case No. 10-CC-00022.
4. The served suspension days shall run from Thursday, July 19, 2012, through Sunday, July 22, 2012; and
5. Charge II is dismissed.

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

District of Columbia
Alcoholic Beverage Control Board

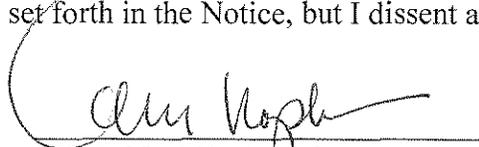

Ruthanne Miller, Chair


Nick Alberti, Member


Donald Brooks, Member

Herman Jones, Member

I agree with the majority of the Board as to the finding that the Respondent violated D.C. Municipal Regulations § 23-1204 (2001), as set forth in the Notice, but I dissent as to the penalty.


Calvin Nophlin, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, NW, 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, 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)