

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

In the Matter of:)	
)	
Izakaya, LLC)	
t/a Kushi Izakaya)	
)	
Holder of a)	Case Nos. 13-AUD-00072
Retailer's Class CR License)	License No. ABRA-082439
)	Order No. 2014-316
at premises)	
465 K Street, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: Christine Gephardt, 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

The Alcoholic Beverage Control Board (Board) finds that Izakaya, LLC, t/a Kushi Izakaya (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on August 1, 2013. As a result, the Respondent must pay a \$1,000.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on February 5, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 465 K Street, N.W., Washington, D.C., on February 12, 2014.

The Notice charged the Respondent with the following violation:

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).

The Respondent's Quarterly Statement for the reporting period of April – June 2013 was due to the ABRA on July 31, 2013.

ABRA Show Cause File No. 13-AUD-00072, Notice of Status Hearing and Show Cause Hearing, 2 (February 5, 2014).

The Respondent failed to appear at the Show Cause Status Hearing held on March 19, 2014. A Show Cause Hearing was scheduled for May 14, 2014, which was rescheduled for July 23, 2014. The Respondent was served with the Notice on May 5, 2014.

The Respondent also failed to appear at the Show Cause Hearing held on July 23, 2014. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a Retailer's Class CR License, License No. ABRA-082439. *See* ABRA Licensing File No. ABRA-082439. The establishment's premises are located at 465 K Street, N.W., Washington, D.C. *See* ABRA Licensing File ABRA-082439.
2. The Show Cause Hearing was held on July 23, 2014. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 13-AUD-00072.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 7/23/14 at 6-7.
4. Upon review of the ABRA records, Mrs. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of April through June, 2013, which was due on July 30, 2013. 7/23/14 at 8. The Quarterly Statement was filed by the Respondent on August 21, 2013. *Tr.*, 7/23/14 at 8-9; Government's Exhibit 1.
5. The Respondent failed to appear at the Show Cause Hearing. The Respondent did not present any testimony or evidence, nor did he 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

6. The Board determines that the Respondent committed the violation described in Charge I of the Notice.

7. 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.

8. The Board finds that the Respondent failed to timely file its Quarterly Statement for the period of April 1 through June 30, 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 August 21, 2013, after the due date of July 31, 2013.

9. The Respondent's Investigative History shows that this is the Respondent's fourth secondary tier violation within four years. *Licensing File No. ABRA-082439*, Investigative History. Thus, the Board may fine the Respondent between \$1,000.00 and \$2,000.00. *Licensing File No. ABRA-082439*, Investigative History; DCMR § 23-802.

ORDER

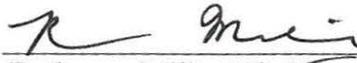
Based on the foregoing findings of fact and conclusions of law, the Board, on this 13th day of August, 2014, finds that the Respondent, Izakaya, LLC, t/a Kushi Izakaya, located at 465 K Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-113(b)(2)(A).

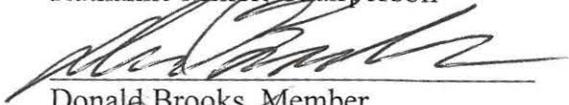
The Board hereby **ORDERS** that:

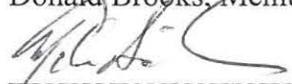
- 1) The Respondent must pay a fine in the amount of \$1,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

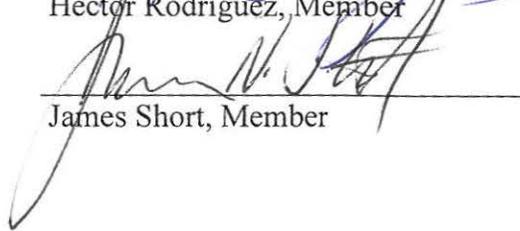
District of Columbia
Alcoholic Beverage Control Board


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 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 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).