

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

<b>In the Matter of:</b>	)	
	)	
Bardia's, Inc.	)	
t/a New Orleans Café	)	
	)	Case No. 12-CMP-00367
Holder of a Retailer's Class CR License	)	License No. ABRA-021784
	)	Order No. 2013-054
at premises	)	
2412 18th Street, N.W.	)	
Washington, D.C. 20009	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Bardi Ferdowski, on behalf of Bardia's, Inc., t/a New Orleans Café,  
Respondent

Fernando Rivero, 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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On November 9, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated November 7, 2012, on Bardia's, Inc., t/a New Orleans Café (Respondent), at premises 2412 18<sup>th</sup> Street, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Respondent failed to timely file with the Board the required quarterly statements reporting for the preceding quarter: gross receipts for the establishment; gross receipts for sales of alcoholic beverages; gross receipts for food sales; total expenses for the purchase of food and alcoholic beverages; and the expenses for purchases of food and alcoholic beverages separately, in violation of D.C. Official Code § 25-113(b)(2)(A) (2001) and 23 DCMR §

1207.1, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2012).

The Licensee failed to file a quarterly statement for the period of January 1, 2012 through March 31, 2012.

On June 15, 2012, Citation #7883 was issued to the Respondent in the amount of \$500.00 for violating of D.C. Official Code § 25-113(b)(2)(A).

On June 18, 2012, the Respondent declined to pay the citation, and instead requested a hearing. The Board held a Show Cause Status Hearing on December 12, 2012. There was no settlement of the matter and it proceeded to a Show Cause Hearing on February 13, 2013.

The Board having considered the evidence, the testimony of the witnesses, the arguments of parties, 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 November 7, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00367. The Respondent holds a Retailer's Class CR license and is located at 2412 18th Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-021784. Mr. Ferdowski is the owner of Bardia's, Inc., t/a New Orleans Café. *See* ABRA Licensing File No. ABRA-021784.
2. The Show Cause Hearing was held on February 13, 2013. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-CMP-00367.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Adeniyi Adejunmobi. *Transcript (Tr.)*, 2/13/13 at 6-7. Mr. Adejunmobi is a Compliance Analyst for ABRA, and he is responsible for quarterly statement reports filed by ABC-licensed establishments. *Tr.*, 2/13/13 at 8.
4. Mr. Adejunmobi testified that the Respondent did not file with ABRA its quarterly statement for the first quarter of 2012 (January 1, 2012 through March 31, 2012) by the filing deadline of April 30, 2012. *Tr.*, 2/13/13 at 8. Mr. Adejunmobi stated that the quarterly statement for the first quarter of 2012 was filed by the Respondent on June 18, 2012. *Tr.*, 2/13/13 at 10-11. *See* Government's Exhibit 1.
5. The Respondent, Bardi Ferdowski, testified that he timely mailed the quarterly statement for the first quarter of 2012. *Tr.*, 2/13/13 at 15.
6. An ABRA investigator visited Mr. Ferdowski's establishment to issue the citation. *Tr.*, 2/13/13 at 15. Mr. Ferdowski showed the investigator a copy of the quarterly statement for the first quarter 2012 that he had mailed to ABRA. *Tr.*, 2/13/13 at 15.

8. Mr. Ferdowski testified that following the ABRA investigator's visit to his establishment, he met with Mr. Adejunmobi and informed him that he timely filed the quarterly statement for the first quarter of 2012. *Tr.*, 2/13/13 at 15-16. On June 18, 2012, the day of Mr. Ferdowski's visit to ABRA, Mr. Adejunmobi stamped a copy of the Respondent's quarterly statement for the first quarter of 2012. *Tr.*, 2/13/13 at 16.

9. The Board takes administrative notice that Citation #7883 was issued to the Respondent on June 15, 2012, in the amount of \$500.00 for this matter. The Citation should have been issued for \$250.00 because this was the Respondent's first secondary tier violation.

### CONCLUSIONS OF LAW

10. 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.* Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if it 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. Official Code §§ 25-830, 25-447. Moreover, in lieu of a fine, the Board has authority to issue a warning where the Respondent has shown that it has made a good faith effort to correct the violation.

11. With regard to Charge I, the Board must determine whether the Respondent failed to timely file quarterly statements on the dates and in the manner prescribed by the Board, in violation of D.C. Official Code § 25-113(b)(2)(A). Under D.C. Official Code § 25-823(1), the Board has authority to fine, suspend or revoke a license if the licensee violates any of the provisions of District laws and regulations governing the sale of alcoholic beverages. A violation of D.C. Official Code § 25-113(b)(2)(A) is considered a secondary tier violation. The Respondent has not incurred any previous secondary tier violation. In light of Respondent's subsequent efforts to rectify this violation by meeting with the Compliance Analyst and filing its quarterly statement, albeit late, the Board does not agree that a fine is warranted in this matter. Rather, the Respondent should be commended for its efforts in this regard.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 13<sup>th</sup> day of March, 2013, finds that the Respondent, Bardia's, Inc., t/a New Orleans Café, located at 2412 18th Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-113(b)(2)(A) and 23 DCMR § 2107.1.

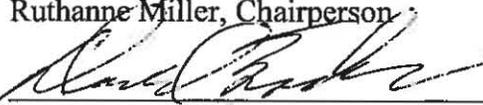
The Board hereby **ORDERS** that:

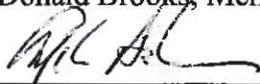
- 1) For the violation described in Charge I, the Respondent is warned against committing this violation in the future.

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

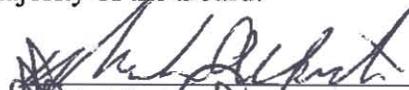
District of Columbia  
Alcoholic Beverage Control Board

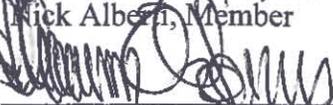
  
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Ruthanne Miller, Chairperson

  
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Donald Brooks, Member

  
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Mike Silverstein, Member

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

  
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Nick Albert, Member

  
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Herman Jones, 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).