

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

In the Matter of:)	
)	
Rotini, Inc.)	
t/a Ristorante Piccolo)	
)	
Holder of a)	Case No.: 16-CMP-00447
Retailer's Class CR License)	License No.: ABRA-014125
)	Order No.: 2016-666
at premises)	
1068 31st Street, N.W.)	
Washington, D.C. 20007)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Mafara Hobson, Member
Jake Perry, Member

ALSO PRESENT: Diane Kowkabi, Respondent's Representative, Inc., t/a Ristorante Piccolo, Respondent

Amy Schmidt, 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 Rotini, Inc., t/a Ristorante Piccolo (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on February 1, 2016. As a result, the Respondent must pay a \$250.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on July 20, 2016. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1068 31st Street, N.W., Washington, D.C., on July 27, 2016.

The Notice charged the Respondent with the following violation:

Charge I: [Y]ou failed to file Quarterly Statements for the period of October – December 2015, in violation of D.C. Official Code § 25-113(b)(2)(A)...

ABRA Show Cause File No., 16-CMP-00447, Notice of Status Hearing and Show Cause Hearing, 2 (July 20, 2016).

On May 3, 2016, Citation #3615 was issued to the Respondent in the amount of \$250.00 for violating D.C. Official Code § 25-113(b)(2)(A).

On June 14, 2016, the Respondent refused to pay the citation and instead, requested a hearing.

The Respondent failed to appear at the Show Cause Hearing held on September 28, 2016. A Show Cause Hearing was scheduled for November 2, 2016.

The Office of the Attorney General (OAG) and the Respondent appeared at the Show Cause Hearing on November 2, 2016, where the parties argued their respective cases.

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:

I. Background

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated July 20, 2016. *See* ABRA Show Cause File No. 16-CMP-00447. Rotini, Inc., t/a Ristorante, holds a Retailer's Class CR License, ABRA License No. ABRA-014125. *See* ABRA Licensing File No. ABRA-014125. The establishment's premises is located at 1068 31st Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-014125.

2. The Show Cause Hearing was held on November 2, 2016. The Notice charges the Respondent with a single violation enumerated above. *See* ABRA Show Cause File No. 16-CMP-00447.

II. Testimony of ABRA Compliance Analyst Monica Clark

3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 11/2/16 at 5. In addition, the Government entered into evidence the Investigative Report authored by ABRA Investigator Tasha Cullings. *Tr.*, 11/2/16 at 12-13. Government's Exhibit No. 1.

4. Upon review of the ABRA records, Ms. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of October through December, 2015 which was due on January 30, 2016. *Tr.*, 11/2/16 at 6.

5. Ms. Clark stated that she prepared a report of the establishments that failed to file the fourth quarter of 2015, and the Respondent was on that list. *Tr.*, 11/2/16 at 6-7. She then provided the report to ABRA investigators. *Tr.*, 11/2/16 at 7. The investigators issued a citation to the Respondent for failure to file a quarterly report. *Tr.*, 11/2/16 at 7.

6. Ms. Clark indicated that on June of 2016, Diane Kowkabi telephonically contacted her about the quarterly citation. *Tr.*, 11/2/16 at 7. Ms. Kowkabi informed Ms. Clark that she timely faxed the Quarterly Statement for the fourth quarter of 2015. *Tr.*, 11/2/16 at 7-8. Ms. Clark advised Ms. Kowkabi that ABRA did not receive it and that she needed to produce proof of filing. *Tr.*, 11/2/16 at 7. Ms. Kowkabi was unable to produce a fax confirmation showing that the Quarterly Statement was timely submitted to ABRA. *Tr.*, 11/2/16 at 8.

7. On June 6, 2016, Ms. Kowkabi e-mailed Ms. Clark the Quarterly Statement as an attachment. *Tr.*, 11/2/16 at 8.

8. Ms. Clark indicated that in the past, the Respondent had filed the Quarterly Statements either online or via fax. *Tr.*, 11/2/16 at 10. Ms. Clark stated that if the Quarterly Statement is timely submitted she does not require a fax confirmation. *Tr.*, 11/2/16 at 11.

III. Testimony of Diane Kowkabi

9. Diane Kowkabi is the Respondent's Representative. *Tr.*, 11/2/16 at 11. She stated that they have owned the establishment for thirty (30) years and they have never submitted a late Quarterly Statement. *Tr.*, 11/2/16 at 14.

10. Ms. Kowkabi indicated that in the past, ABRA had a system which provided an automatic confirmation when a Quarterly Statement was scanned and submitted via e-mail. *Tr.*, 11/2/16 at 14. She commenced faxing the Quarterly Statements when the e-mail system stopped functioning. *Tr.*, 11/2/16 at 14. She had an old fax machine which produced a confirmation report showing when the fax was successfully sent and to whom it was sent. *Tr.*, 11/2/16 at 14-15. When the fax machine stopped producing the confirmation report, she was not concerned because she never had filing issues before. *Tr.*, 11/2/16 at 15.

11. Ms. Kowkabi stated that she timely faxed the Quarterly Statement to ABRA on January 29, 2016. *Tr.*, 11/2/16 at 15. She did not learn that ABRA did not receive the Quarterly Statement until she received a citation. *Tr.*, 11/2/16 at 15. She did not immediately contact ABRA about the citation because it was served on the manager and the manager did not provide her with the citation until some days later. *Tr.*, 11/2/16 at 18.

12. As soon as Ms. Kowkabi received the citation from the manager, she telephonically contacted Ms. Clark and e-mailed her a copy of the Quarterly Statement. *Tr.*, 11/2/16 at 15-18. Ms. Clark informed Ms. Kowkabi that ABRA has a new online reporting system

which produces an instant confirmation. *Tr.*, 11/2/16 at 15. Ms. Kowkabi stated that she is now using this new online system. *Tr.*, 11/2/16 at 15.

13. Ms. Kowkabi indicated that on January 29, 2016, she signed the Quarterly Statement, and that she normally submits the Quarterly Statements after she signs them. *Tr.*, 11/2/16 at 24. *Tr.*, 11/2/16 at 24-25.

14. Ms. Kowkabi requested leniency arguing that at the time of the filing, ABRA knew that there was a confirmation issue with their system. *Tr.*, 11/2/16 at 15-16. Therefore, she should receive a reduced fine rather than be required to pay a \$500 fine. *Tr.*, 11/2/16 at 16.

15. The Respondent entered into evidence the e-mail sent to Ms. Clark on June 6, 2016, regarding the Quarterly Statement for the period of October through December, 2015. *Tr.*, 11/2/16 at 25-26. Respondent's Exhibit No. 1.

CONCLUSIONS OF LAW

16. 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 District of Columbia Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board 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 § 25-447.

I. THE RESPONDENT VIOLATED § 25-113(b)(2)(A)

17. The Board finds that the Respondent failed to timely file its Quarterly Statement for the period of October through December, 2015 in violation of D.C. Official Code § 25-113(b)(2)(A).

18. The Board makes this finding based on the testimony of Ms. Clark and the evidence in the record that shows that the Quarterly Statement was not e-mailed by the Respondent until June 6, 2016, after the due date of January 30, 2016. Also, Ms. Kowkabi was unable to produce proof that the Quarterly Statement was submitted to ABRA via fax before or by the due date.

19. Additionally, the Respondent admitted that she was not absolutely certain that the fax was sent to ABRA because she used an old fax machine that stopped producing a confirmation report.

II. PENALTY

20. The Respondent's Investigative History shows that this is the Respondent's first secondary tier violation. *Licensing File No. ABRA-014125*, Investigative History. Thus, the Board may fine the Respondent between \$250.00 and \$500.00. *Licensing File No. ABRA-014125*, Investigative History; DCMR § 23-802.

ORDER

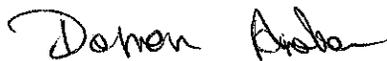
Based on the foregoing findings of fact and conclusions of law, the Board, on this 30th day of November, 2016, finds that the Respondent, Rotini, Inc., t/a Ristorante Piccolo, located at 1068 31st Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-113(b)(2)(A).

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$250.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended indefinitely until this fine is paid.

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

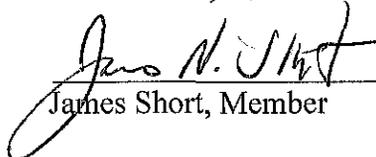
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



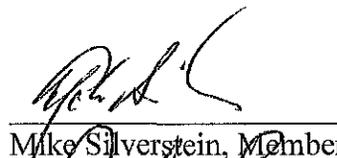
Nick Alberti, Member



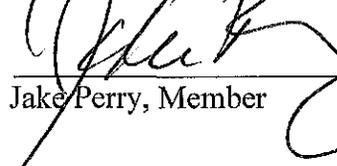
James Short, Member

Mafara Hobson, Member

We dissent from the Board's decision.



Mike Silverstein, Member



Jake Perry, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).