

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

In the Matter of:)	
)	
Restaurant Enterprises, Inc.)	
t/a Smith Point)	
)	Case No. 13-AUD-00047
Holder of a)	License No. ABRA-060131
Retailer's Class CR License)	Order No. 2014-104
)	
at premises)	
1338 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	
)	

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

ALSO PRESENT: Andrew Kline, on behalf of the Respondent

David Simone, Vice President, 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

The Alcoholic Beverage Control Board (Board) finds that Restaurant Enterprises, Inc., t/a Smith Point, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-113(b)(3)(B)(i), 25-113(j)(3)(A) (2001), and Title 23 of the District of Columbia Municipal Regulations (DCMR) §§ 1204, 2100 and 2101, on May 23, 2013. The Respondent must pay a \$2,000.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 16, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1338 Wisconsin Avenue, N.W., Washington, D.C., on August 16, 2013.

The Notice charged the Respondent with the following violations:

Charge I: The Respondent failed to maintain documentation, including but not limited to, books and records showing all sales, purchase invoices, and dispositions indicating sales information for food and alcoholic beverages which would allow an audit to be conducted to substantiate the quarterly statements filed by the establishment, in violation of D.C. Official Code §§ 25-113(b)(3)(B)(i), 25-113(j)(3)(A) (2001), and 23 DCMR §§ 1204, 2100 and 2101, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1).

Charge II: The Respondent failed to keep and maintain on the premises for a period of three years adequate books and records showing all sales, purchase invoices, and dispositions indicating sales information for food and alcoholic beverages, in violation of D.C. Official Code §§ 25-113(j)(1), (3)(A), and 23 DCMR §§ 1204, 2100 and 2101, for which the Board may take proposed action pursuant to D.C. Official Code §§ 25-113 (C), (D) and 25-823(1) (2001).

The Show Cause Status Hearing occurred on October 9, 2013. The Government and the Respondent appeared at the Show Cause Hearing for this matter on December 4, 2013.

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, ABRA License Number 60131. *See ABRA Licensing File No. 60131.* The establishment's premises are located at 1338 Wisconsin Avenue, N.W., Washington, D.C. *See ABRA Licensing File No. 60131.*
2. On February 15, 2013, an audit was initiated by the Alcoholic Beverage Regulation Administration (ABRA) to verify the licensed establishment's 2012 Quarterly Statements and to examine its alcoholic beverage and food sales percentages. *Notice* at 2. The audit was also conducted to determine whether the establishment met the requirements of a Retailer's Class CR restaurant and complied with ABRA's record keeping regulations. *Notice* at 2. The audited period was January 1, 2012 to December 31, 2012. *Notice* at 2. The audit was assigned to ABRA Compliance Analysts Adeniyi Adejunmobi and Monica Clark, and ABRA Investigator Brian Owens. *Transcript (Tr.)* 12/4/13 at 30; *ABRA Audit File No. 60131.*
3. Mr. Adejunmobi testified on behalf of the Government at the Show Cause hearing. *Tr.*, 12/4/13 at 18. ABRA performs audits to ensure that the Licensee's records support the

figures that the Licensee reports in its Quarterly Statements. *Tr.*, 12/4/13 at 20, 63-64. This particular establishment was selected for an audit because the Respondent filed amended Quarterly Statements. *Tr.*, 12/4/13 at 25.

4. On May 15th, ABRA received three amended Quarterly Statements covering the periods for the second, third and fourth quarters of calendar year 2012. *Tr.*, 12/4/13 at 26, 29-30. To conduct an audit, ABRA's Audit Team sends a letter to the selected Licensee, thirty days in advance, notifying the Licensee of the selection and the date when the audit will be conducted. *Tr.*, 12/4/13 at 26-28, 46; Government's Exhibit 2.

5. When the Audit Team arrived at the establishment on May 23, 2013, Mr. Adejunmobi explained the audit process to David Simone. *Tr.*, 12/4/13 at 31, 46. Mr. Adejunmobi asked Mr. Simone for documents to support the original timely filed Quarterly Statements. *Tr.*, 12/4/13 at 31. Mr. Simone informed Mr. Adejunmobi that he could only provide records to support the Quarterly Statement for first quarter 2012. *Tr.*, 12/4/13 at 31. Mr. Simone could also produce the records to support the amended Quarterly Statements for the second, third and fourth quarter. *Tr.*, 12/4/13 at 31. There was no amended Quarterly Statement filed for the first quarter. *Tr.*, 12/4/13 at 53.

6. Mr. Adejunmobi testified that Mr. Simone's records supported the amended Quarterly Statements for the second, third and fourth quarters of calendar year 2012. *Tr.*, 12/4/13 at 36, 47. All of the appropriate documentation, including guest checks, was available for examination of the three amended Quarterly Statements. *Tr.*, 12/4/13 at 47, 56. The records were incomplete with respect to the first quarter because Mr. Simone could not produce the guest checks. *Tr.*, 12/4/13 at 47-51, 57-64.

7. Mr. Adejunmobi determined that the Respondent failed to provide complete records in order for the Audit Team to satisfactorily perform the audit. *Tr.*, 12/4/13 at 38-39. He was unable to review documents to demonstrate sales for the Quarterly Statement for the first quarter of 2012. *Tr.*, 12/4/13 at 38. Thus, Mr. Adejunmobi determined that the Respondent also did not have complete records for a three year period because three months of records were missing to support first quarter 2012. *Tr.*, 12/4/13 at 40, 66-68, 70.

8. Mr. Adejunmobi admitted that though he did not have the records to verify the figures submitted by the Respondent for first quarter 2012, he could not substantiate that the Respondent did not meet the food sales requirement for that quarter. *Tr.*, 12/4/13 at 71.

CONCLUSIONS OF LAW

9. 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. Code § 25-830 (West Supp. 2013); 23 DCMR § 800, *et seq.* (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "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. Code § 25-447 (West Supp. 2013).

10. The Board determines that the Respondent failed to maintain documentation showing all sales information for food and alcoholic beverages which would allow an audit to be conducted to substantiate the Quarterly Statements filed by the Respondent in violation of § 25-113(b)(3)(B)(i) and § 25-113(j)(3)(A).

11. Section 25-113(b)(3)(B)(i) states, "Licensees must maintain documentation, including but not limited to, books and records, showing all sales, purchase invoices, and disposition indicating sales information for food and alcoholic beverages which would allow an audit to be conducted to substantiate the quarterly statements filed by the establishment." D.C. Code § 25-830(i) (West Supp. 2013).

12. The Respondent was able to provide records and documentation to ABRA's Audit Team supporting its amended Quarterly Statements for the second, third and fourth quarters of 2012. The Respondent could not produce documentation supporting the original Quarterly Statement filed for first quarter, and did not file an amended Quarterly Statement for the first quarter. As a result, Compliance Analyst Adejunmobi could not conduct an audit of the Respondent's books and records for all four quarters of calendar year 2012. It is a violation for the Respondent to fail to maintain those records. Therefore, the Board sustains Charge I and finds that the Respondent committed a violation of §§ 25-113(b)(3)(B)(i) and 25-113(j)(3)(A).

13. The Board determines that the Respondent committed the violations described above in Charge I and will impose a fine of \$2,000 for that Charge.

14. The Board dismisses Charge II, finding that the two charges contained in the Notice are similar and that the same set of facts supports both allegations.

ORDER

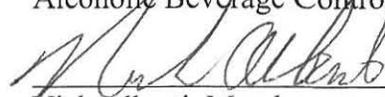
Based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of April, 2014, finds that the Respondent, Restaurant Enterprises, Inc., t/a Smith Point, located at 1338 Wisconsin Avenue, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code §§ 25-113(b)(3)(B)(i), 25-113(j)(3)(A) (2001), and 23 DCMR §§ 1204, 2100 and 2101.

The Board hereby **ORDERS** that:

- 1) Charge I: Respondent must pay a fine in the amount of \$2,000.00 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.
- 2) Charge II: Dismissed.

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

District of Columbia
Alcoholic Beverage Control Board



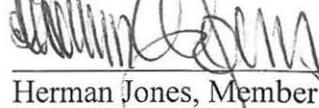
Nick Alberti, Member



Donald Brooks, Member

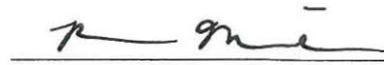


Mike Silverstein, Member



Herman Jones, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I dissent as to the penalty selected by the majority of the Board. In my view a lesser penalty is warranted.



Ruthanne Miller, Chairperson

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).