

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

In the Matter of:	)	
	)	
Mimi & D, LLC	)	
t/a Vita Restaurant and Lounge	)	License No.: ABRA-086037
Penthouse Nine	)	Case No.: 12-CMP-00187(NCBO)
	)	Order No.: 2014-113
Holder of a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
1318 9th Street, N.W.	)	
Washington, D.C. 20001	)	

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

**ALSO PRESENT:** Mimi & D, LLC t/a Vita Restaurant and Lounge/Penthouse Nine,  
Respondent

Abeba Beyene, on behalf of the Respondent

Fernando Rivero, Assistant Attorney General,  
on behalf of 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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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds that Mimi & D, LLC t/a Vita Restaurant and Lounge/Penthouse Nine (Respondent) violated a Board Order by failing to pay a

fine of \$3,000.00 for previous ABRA violations in a timely manner. As a result, D.C. Official Code § 25-823(6) requires the Board to impose an additional penalty on the Respondent in the amount of \$2,000.00.

### ***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 14, 2013. *ABRA Show Cause File No. 12-CMP-00187(NCBO)*. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1318 9th Street, N.W., Washington, D.C. 20001, on August 16, 2013. *ABRA Show Cause File No. 12-CMP-00187(NCBO)*, Service Form.

The Notice charges the Respondent with failure to follow an order of the Board, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC license. Specifically, the Notice, charges the Respondent with the following violation:

Charge I: The Respondent failed to follow a Board Order by not paying a fine, in violation of D.C. Official Code § 25-823(6) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Show Cause Status Hearing occurred on October 9, 2013. On December 4, 2013, the Board continued the Show Cause Hearing to February 5, 2014, and the hearing was again continued to March 5, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on March 5, 2014.

### **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 CT License, License Number ABRA-086037. See Licensing File No. ABRA-086037. The establishment's premises are located at 1318 9th Street, N.W., Washington, D.C. 20001. See Licensing File No. ABRA-086037.
2. On October 24, 2012, the Respondent entered into an Offer in Compromise (OIC) with the Office of the Attorney General to remit a fine of \$3,000.00 no later than January 24, 2013. *ABRA Show Cause File No.12-CMP-00187(NCBO)*, Hearing Disposition Form. The Respondent failed to pay this fine in a timely matter, but ultimately made late payment on August 23, 2013. *ABRA Show Cause File No.12-CMP-00187(NCBO)*, Receipt.
3. At the Show Cause Hearing, the parties stipulated that the Respondent did not pay the levied fine of \$3,000.00 by the deadline of January 24, 2013. *Transcript (Tr.)*, 3/5/14 at 2-4. Both parties also stipulated that the Respondent paid the fine in full by August 23, 2013. *Tr.*, 3/5/14 at 4.

4. The Respondent acknowledged the fine deadline, but stated that the reason she was unable to pay the fine amount on time was her “financial situation.” 3/5/14 at 5. The Respondent indicated that she attempted to pay the fine before August 23, 2013, but ABRA did not accept the payment. 3/5/14 at 5-6. Further, the Respondent stated that another reason for her late payment was because she is not allowed to use promoters for her establishment. 3/5/14 at 8. See Board Order No. 2012-038.

## CONCLUSIONS OF LAW

5. The Board determines that the Respondent committed the violation described in Charge I.

6. 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.

### I. Failure to Follow a Board Order (Charge I)

7. The Board determines that the Respondent violated a Board Order by failing to remit payment on a fine levied by the Board by the required deadline of January 24, 2013, in violation of D.C. Official Code § 25-823(6). The provision states, in part, “The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if...The licensee fails to follow its voluntary agreement, security plan, or Board order.” D.C. Official Code § 25-823.

8. The Respondent stipulated to the fact that while she paid the fine at issue, she failed to do so by the specified deadline of January 24, 2013. By failing to remit timely payment of this fine, the Respondent violates the conditions of the Offer In Compromise, which the Board approved on October 24, 2012.

### II. Penalty

9. Based on the Respondent’s violation, the Board has the authority to “fine, as set forth in the schedule of civil penalties established under § 25-830” and may “suspend, or revoke the license.” D.C. Official Code § 25-823. A violation of a Board order is fined as a primary tier violation. D.C. Official Code § 25-830(f).

10. The Respondent’s Investigative History shows that the Respondent has not committed any previous primary tier violations in the past four years. *Licensing File No. ABRA-086037*, Investigative History. Thus, the present violation shall be fined as a first primary tier violation and the Board may fine the Respondent between \$1,000.00 and \$2,000.00. *Licensing File No. ABRA-86037*, Investigative History; D.C. Official Code § 23-801.

## ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of April, 2014, finds Mimi & D, LLC t/a Vita Restaurant and Lounge/Penthouse Nine, is guilty of Charge I. Accordingly, it is **ORDERED** that:

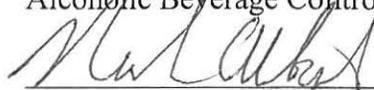
- (I) For the violation described in Charge I, the Respondent shall pay a fine of \$2,000.00 within thirty (30) days from the date of this order.

**IT IS FURTHER ORDERED** that Respondent shall pay the fine levied by the Board within thirty (30) days from the date of this order or its license shall be suspended until all outstanding fines are paid.

**IT IS FURTHER ORDERED** based on the present violation, the Respondent's Investigative History shall show that it committed an unlisted violation on the date of this order.

The ABRA shall deliver copies of this order to the Government and the Respondent.

District of Columbia  
Alcoholic Beverage Control Board



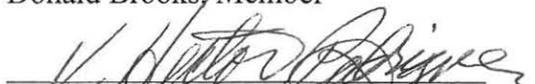
Nick Alberti, Member



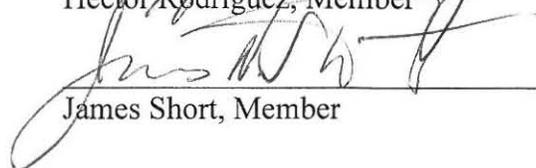
Mike Silverstein, Member



Donald Brooks, Member



Hector Rodriguez, Member



James Short, 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.



Ruthanne Miller, Chairperson

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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 (April 2004) 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).