THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Armand's Chicago Pizzeria, Inc.	)	
t/a Armand's Chicago Pizzeria	)	
	)	Case No. 11-CMP-00323
Holder of a Retailer's Class CR License	)	License No. ABRA-826
at premises	)	Order No. 2012-081
4231 Wisconsin Ave., N.W.	)	
Washington, D.C. 20011	)	
	)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member
Jeannette Mobley, Member

ALSO PRESENT: Cal Everett, on behalf of the Respondent

Michael Stern, Senior 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

On November 18, 2011, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated November 16, 2011, on Armand's Chicago Pizzeria, Inc., t/a Armand's Chicago Pizzeria (Respondent), at premises 4231 Wisconsin Avenue, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Respondent permitted the establishment to operate without the presence of a Board-approved manager in violation of D.C. Official Code § 25-701(a) (2001) and DCMR § 23-707.1, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(3) (2001).

Charge II: The Respondent failed to file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages, in violation of D.C. Official Code § 25-113(b)(2)(A) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Board held a Show Cause Status Hearing on January 11, 2012. There was no settlement of the matter and it proceeded to a Show Cause Hearing on February 8, 2012.

The Alcoholic Beverage Control Board (Board), having considered the evidence, the arguments of the 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 16, 2011. *See* ABRA Show Cause File No. 11-CMP-00323. The Respondent holds a Retailer's Class CR license and is located at 4231 Wisconsin Ave., N.W., Washington, D.C. *See* ABRA Licensing File No. 826.

2. The Show Cause Hearing was held on February 8, 2011. *See* ABRA Show Cause File No. 11-CMP-00323. The Notice charges the Respondent with the violations enumerated above, which represents its fourth and fifth secondary tier violations in four years. *See* ABRA Show Cause File No. 11-CMP-00323.

3. The Government and the Respondent stipulated to the facts giving rise to the violations, and presented oral argument on the penalty phase of the hearing. *Transcript (Tr.)*, 2/8/12 at 6. The Respondent admits that it committed the offenses contained in Charge I and Charge II. *Tr.* at 4-6, 15.

4. The Government recommended a penalty in the amount of $1,000.00 for Charge I, and $2,000.00 for Charge II, for a total fine of $3,000.00. *Tr.* at 11. The Government's proposed penalty is commensurate for an establishment that has received a fourth and fifth secondary tier violation with the last four years. *Tr.* at 11.

5. The Respondent stated that it has been in business for almost 38 years. *Tr.* at 11. Though not always timely, the Respondent has filed all of its quarterly reports. *Tr.* at 12. The Respondent's alcohol sales are less than four percent (4%) of the total sales for the establishment. *Tr.* at 13. The Respondent stated that it's ABC-licensed Manager, Eba Mbenga returns to Senegal in Africa once a year, and it was during time of annual travel that Mr. Mbenga's ABC Manager's License expired. *Tr.* at 13-14.

CONCLUSIONS OF LAW

6. 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.*

7. In order to hold a Licensee liable for a violation of the ABC laws, the Government must show that there is substantial evidence to support the charge. Substantial evidence is defined as evidence that a "reasonable mind[] might accept as adequate to support the conclusion" and there must be a "rational connection between facts found and the choice made." 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 52-53 (D.C. 2008).

8. With regard to Charge I, the Board must determine whether the Respondent permitted the establishment to operate without the presence of a Board-approved manager in violation of D.C. Official Code § 25-701(a) (2001) and DCMR § 23-707.1. Here the Respondent admitted the offense listed in Charge I, and as such, the Board finds that the Respondent is liable for violating § 25-701(a) (2001) and DCMR § 23-707.1.

9. With regard to Charge II, the Board must determine whether the Respondent failed to file its quarterly statement for second quarter 2010 on the dates and in the manner prescribed by the Board, in violation of D.C. Official Code § 25-113(b)(2)(A). Here the Respondent admitted the offense listed in Charge II, and as such, the Board finds that the Respondent is liable for violating § 25-113(b)(2)(A).

10. Therefore, based on the Respondent's admission, the Board finds that the Respondent's violation of D.C. Official Code § 25-701(a) (2001) and DCMR § 23-707.1, as set forth in Charge I, and § 25-113(b)(2)(A) as set forth in Charge II, warrants the imposition of a fine.

ORDER

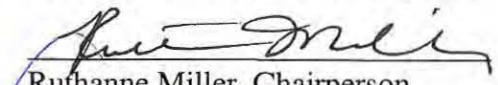
Based on the foregoing findings of fact and conclusions of law, the Board, on this 7thth day of March 2012, finds that the Respondent, Armand's Chicago Pizzeria, Inc., t/a Armand's Chicago Pizzeria, located at 4231 Wisconsin Avenue, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-701(a) (2001) and DCMR § 23-707.1 and § 25-113(b)(2)(A).

The Board hereby **ORDERS** that:

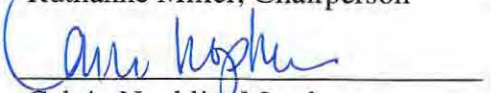
1) The Respondent shall pay a fine in the amount of $2,500.00 no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

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

District of Columbia
Alcoholic Beverage Control Board

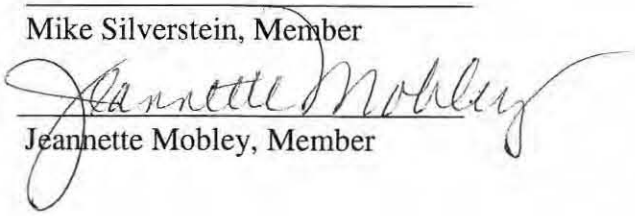


Ruthanne Miller, Chairperson



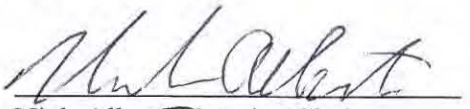
Calvin Nophlin, Member

Mike Silverstein, Member

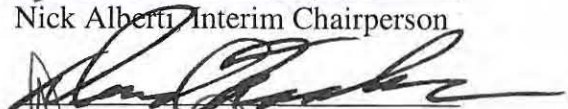


Jeannette Mobley, Member

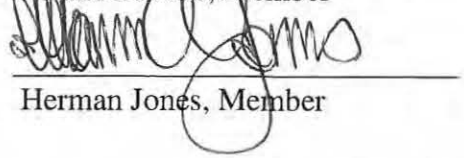
We agree with the majority of the Board as to the finding that the Respondent violated § 25-701(a) (2001) and DCMR § 23-707.1 as set forth in Charge I, and § 25-113(b)(2)(A) as set forth in Charge II, but we dissent as to the penalty.



Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member

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, 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 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).