

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

**In the Matter of:** )  
 )  
AVC Solutions Corporation )  
t/a Baja Fresh )  
 )  
Holder of a Retailer's Class DR License )  
 )  
at premises )  
1333 New Hampshire Avenue, N.W. )  
Washington, D.C. 20036 )  
 )

Case Nos. 12-CMP-00443  
License No. ABRA-083801  
Order No. 2013-308

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

**ALSO PRESENT:** Chrissy Gephardt, 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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The Alcoholic Beverage Control Board (Board) finds that AVC Solutions Corporation, t/a Baja Fresh, (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on May 1, 2012. The Respondent must pay a \$750.00 fine. In addition, the Respondent shall have its license suspended for one (1) stayed day, which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on January 30, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 1333 New Hampshire Avenue, N.W., Washington, D.C., on February 8, 2013.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to file with the Board the required Quarterly Statements reporting for the preceding quarter, 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 Respondent's Quarterly Statement for the reporting period of January – March 2012 was due to the ABRA on April 30, 2012.

On August 8, 2012, Citation #7297 was issued to the Respondent in the amount of \$500.00 for violating of D.C. Official Code § 25-113(b)(2)(A).

On August 20, 2012, the Respondent did not pay the citation but instead requested a hearing. The Board held a Show Cause Status Hearing on March 20, 2013. There was no settlement of the matter and it proceeded to a Show Cause Hearing on May 22, 2013.

The Respondent failed to appear at the Show Cause Hearing held on May 22, 2013. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

#### FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated January 30, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00443. The Respondent holds a Retailer's Class DR license and is located at 1333 New Hampshire Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-083801.
2. The Show Cause Hearing was held on May 22, 2013. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-CMP-00443.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 5/22/13 at 5-6.
4. Upon her review of the ABRA records, Mrs. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of January through March, 2012, which was due on April 30, 2012. *Tr.*, 5/22/13 at 8-9. Mrs. Clark stated that the Quarterly Statement was filed by the Respondent on June 12, 2012. *Tr.*, 5/22/13 at 10.
5. The Government submitted into evidence a copy of the electronic filing of the Quarterly Statement for the period of January through March, 2012, which was dated June 12, 2012. *Tr.*, 5/22/13 at 12. *See* Government's Exhibit 1.
6. The Respondent failed to appear at the Show Cause Hearing held on May 22, 2013. The Respondent did not present any testimony or evidence, nor did he refute the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance of the hearing.

## CONCLUSIONS OF LAW

7. 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 D.C.M.R. 800, *et seq.*
8. 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).
9. With regard to Charge I, the Board finds that the Respondent failed to timely file his Quarterly Statement for the period of January through March, 2012. The Board makes this finding based on the testimony of Mrs. Clark and the evidence in the record that shows that the Quarterly Statement was filed by the Respondent on June 12, 2012.
10. The Board takes administrative notice that this is the Respondent’s second secondary tier violation, both for failing to timely file Quarterly Statements. Thus, this violation warrants a graduated fine under D.C. Official Code § 25-830.
11. Therefore, based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-113(b)(2)(A), as set forth in Charge I of the Notice to Show Cause, dated January 30, 2013, warrants the imposition of a fine set forth below.

## ORDER

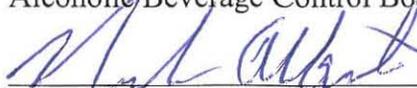
Based on the foregoing findings of fact and conclusions of law, the Board, on this 10<sup>th</sup> day of July, 2013, finds that the Respondent, AVC Solutions Corporation, t/a Baja Fresh, located at 1333 New Hampshire Avenue, N.W., Washington, D.C., holder of a Retailer’s Class DR license, violated D.C. Official Code § 25-113 (b)(2)(A).

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$750.00 by 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. The Respondent’s license shall also be suspended for one (1) day; which stayed for one year, provided that the Respondent does not commit any further ABC violations.

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

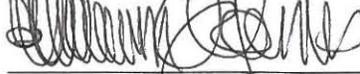
District of Columbia  
Alcoholic Beverage Control Board



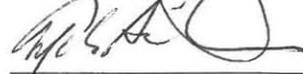
Nick Alberti, Member



Donald Brooks, Member

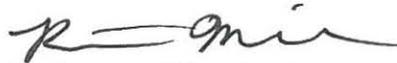


Herman Jones, Member



Mike Silverstein, Member

I concur with the majority's decision as to its finding of the Respondent's liability and as to the imposition of the monetary penalty. I dissent only as to the majority's imposition of the 1-day suspension. In my view, an administrative violation of this sort does not warrant an additional nonmonetary penalty.



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 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).