

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

In the Matter of:)	
)	
AVC Solutions Corporation)	
t/a Baja Fresh)	
)	Case Nos. 12-CMP-00537
Holder of a)	License No. ABRA-083801
Retailer's Class DR License)	Order No. 2014-057
)	
at premises)	
1333 New Hampshire Avenue, N.W.)	
Washington, D.C. 20036)	

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

ALSO PRESENT: Christine Gephardt, 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 AVC Solutions Corporation, t/a Baja Fresh, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-113(b)(2)(A) and 25-701, on August 29, 2012. As a result, the Respondent must pay a \$1,500.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on September 6, 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 September 20, 2013.

The Notice charged the Respondent with the following violations:

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), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2001).

The Respondent's Quarterly Statement for the reporting period of April – June 2012 was due to the ABRA on July 30, 2012.

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

On August 29, 2012, Citation #7908 was issued to the Respondent in the amount of \$750.00 for violating of D.C. Official Code §§ 25-113(b)(2)(A) and 25-701.

The Respondent did not pay the citation but instead requested a hearing. The Respondent was personally served with a copy of the Notice on September 20, 2013. The Respondent failed to appear at the Show Cause Status Hearing held on October 30, 2013.

The Respondent also failed to appear at the Show Cause Hearing held on January 15, 2014. 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 September 6, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00537. 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 January 15, 2014. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 12-CMP-00537.
3. The Government presented its case through the testimony of two witnesses, ABRA Compliance Analyst, Monica Clark, and ABRA Investigator Erin Mathieson. *Transcript (Tr.)*, 1/15/14 at 4-5 and 10.
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 April through June, 2012, which was due on July 30, 2012. *Tr.*, 1/15/14 at 6. The Quarterly Statement was filed by the Respondent on August 9, 2012. *Tr.*, 1/15/14 at 7; Government's Exhibit 1.
5. On August 29, 2012, Investigator Mathieson visited the Respondent's establishment to issue a citation for the Quarterly Statement violation. *Tr.*, 1/15/14 at 12.

Investigator Mathieson identified herself to an employee and asked to speak to an ABC-licensed manager or the owner. *Tr.*, 1/15/14 at 12. Hussein Najad, the Respondent's employee, informed Investigator Mathieson that the ABC-licensed Manager has just left the establishment. *Tr.*, 1/15/14 at 12.

6. Investigator Mathieson then conducted a regulatory inspection and advised Mr. Najad of the legal requirement to have an ABC-licensed Manager or owner present during the hours of operation. *Tr.*, 1/15/14 at 12-13.

7. The Respondent failed to appear at the Show Cause Hearing held on January 15, 2014. 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

11. 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. Official Code § 25-830 and 23 DCMR. § 800, *et seq.*

12. 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).

13. With regard to Charge I, the Board finds that the Respondent failed to timely file its Quarterly Statement for the period of April through June, 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 August 9, 2012.

9. With regard to Charge II, the Board finds the Respondent liable for permitting the licensed establishment to operate on August 29, 2012 without either the licensee or an ABC-licensed Manager superintending during the hours of operations.

10. ABRA's regulations are clear that either the licensee or an ABC-licensed Manager must be present while the establishment is operating. Title 23 of the DCMR § 707.1 provides that in the absence of a licensee, a Board approved manager shall be present at the licensed premises during the hours that alcoholic beverages are permitted to be sold, served, or consumed on the licensed premises.

11. The unrefuted testimony of Investigator Mathieson indicates that on March 29, 2012, she conversed with the Respondent's employee who stated that an ABC-licensed Manager was not present. The Respondent was operating during Investigator Mathieson's visit.

12. 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, and § 25-701, as set forth in Charge II, of the Notice to Show Cause, dated September 6, 2013, warrants the imposition of a fine set forth below.

13. The Board takes administrative notice that Charge I and Charge II are the Respondent's third secondary tier violations within three years.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of February, 2014, 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) and 25-701.

The Board hereby **ORDERS** that:

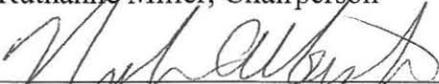
- 1) Charge I: Respondent must pay a fine in the amount of \$750.00.
- 2) Charge II: Respondent must pay a fine in the amount of \$750.00.
- 3) In total, the Respondent must pay a fine in the amount of \$1,500.00 by no later than thirty (30) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.

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

District of Columbia
Alcoholic Beverage Control Board



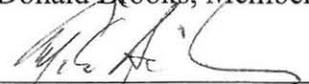
Ruthanne Miller, Chairperson



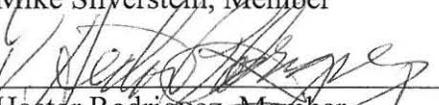
Nick Alberti, Member



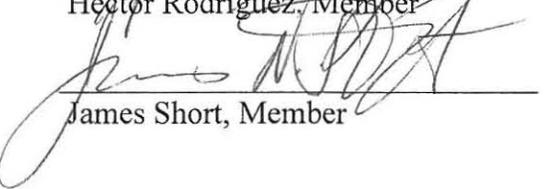
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

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).