

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

In the Matter of:)	
)	
Yami, LLC)	
t/a Bistro Du Coin)	
)	Case No. 10-CMP-00594
Holder of a Retailer's Class CR License)	License No. ABRA-076495
at premises)	Order No. 2011-243
1738 Connecticut Avenue, N.W.)	
Washington, D.C. 20009)	

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Michel Verdon, on behalf of Bistro Du Coin, Respondent

Walter Adams, 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 March 11, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated March 2, 2011, on Yami, LLC, t/a Bistro Du Coin (Respondent), at premises 1738 Connecticut Avenue, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee failed to file with the Board the required quarterly statements reporting for the preceding quarter, in violation of the D.C. Official Code § 25-113(b)(2)(A) and 23 DCMR 1207.1, 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 April 6, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on May 4, 2011. The Board having considered the evidence, the testimony of the witnesses, the arguments of 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 March 2, 2011, to the Respondent on March 11, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00594. The Respondent holds a Retailer's Class CR license and is located at 1738 Connecticut Ave., N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-076495.
2. The Show Cause Hearing was held on May 4, 2011. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 10-CMP-00594.
3. The Government called its first witness, ABRA Compliance Officer, Ademiyi Adejunmoei. *Transcript, (Tr.) 5/4/11 at 10.* Mr. Adejunmoei is a Compliance Analyst with ABRA. *Tr., 5/4/11 at 10-11.* Part of his job responsibilities include reviewing quarterly statements submitted by licensed establishments and entering the quarterly report information into ABRA's database. *Tr., 5/4/11 at 11.* He testified that license classes CR, DR, CH, and DH are required to file reports on a quarterly basis throughout the calendar year. *Tr., 5/4/11 at 11-12.*
4. Mr. Adejunmoei explained that ABRA accepts quarterly reports in one of three ways: submission by hand (in-person), through the U.S. Postal Service, or via facsimile. *Tr., 5/4/11 at 12, 26, 28.* He testified that information is provided to licensees on the quarterly report forms about the filing process. Additionally, ABRA conducted a training in 2010 for licensees who are required to submit quarterly reports. *Tr., 5/4/11 at 13.*
5. Mr. Adejunmoei testified that if a quarterly report is received by ABRA's front desk personnel, then it was most likely hand-delivered. *Tr., 5/4/11 at 13.* In that instance, the quarterly report is date and time stamped, and a copy of the quarterly report with the date and time stamp is provided to the licensee for their records. *Tr., 5/4/11 at 13.* If the quarterly report is received by ABRA through the U.S. Postal Service, it is also date and time stamped and delivered to Mr. Adejunmoei for processing. *Tr., 5/4/11 at 14.*
6. Mr. Adejunmoei explained that he captures the date stamp from the filed quarterly report and inputs the information into his database. *Tr., 5/4/11 at 14-15.* He also records the date that he physically processes the quarterly report, because it is not always the same date as the day the quarterly report is received by ABRA. *Tr., 5/4/11 at 14.* Mr. Adejunmoei maintains a file on every licensed establishment required to file a quarterly report. *Tr., 5/4/11 at 17.* These files contain the quarterly reports, which become the records within the ordinary course of business for the Agency. *Tr., 5/4/11 at 17.*
7. Mr. Adejunmoei testified that he knows when a licensee has not filed its quarterly report, because the database contains filters that, when queried, will highlight the

establishments that have not filed. *Tr.*, 5/4/11 at 16. Mr. Adejunmoei testified that the quarterly reports for second quarter 2010 (April, May and June 2010) were due July 30, 2010. *Tr.*, 5/4/11 at 16.

8. Mr. Adejunmoei stated that after he determines which licensees have not filed its quarterly reports, he prepares a list of those licensees, and delivers it to the Supervisory Investigators within ABRA's Enforcement Division. *Tr.*, 5/4/11 at 168. The licensees on the list will receive a citation for failure to file a quarterly report. *Tr.*, 5/4/11 at 18. Mr. Adejunmoei checks his records to ensure that the licensees have not filed between the filing deadline and the date he prepares the list. *Tr.*, 5/4/11 at 18-19.

9. Mr. Adejunmoei testified that the Respondent eventually filed its second quarter 2010 report on October 22, 2010. *Tr.*, 5/4/11 at 19-22; see Government Exhibits 1A and 1B. He stated that the Respondent timely filed its first quarter 2010 report. *Tr.*, 5/4/11 at 23-25, 49. Mr. Adejunmoei read the text from the quarterly report form that stated, "you may submit the form by either 1) scanning the document and attaching it to an email addressed to quarterlyfilingsofABRA.dc.gov or mailing the form to ABRA, 1250 U Street, NW, Washington, DC, 20002." *Tr.*, 5/4/11 at 32. Mr. Adejunmoei admitted that the address provided on the quarterly report form was incorrect, specifically, the zip code was wrong. *Tr.*, 5/4/11 at 33.

10. The Government then called Investigator Vincent Parker as its next witness. *Tr.*, 5/4/11 at 34. Investigator Parker testified that part of his responsibilities as an ABRA investigator is to issue citations to licensed establishments. *Tr.*, 5/4/11 at 34. He testified that he issued a citation to the Respondent for failure to file a quarterly report for second quarter 2010. *Tr.*, 5/4/11 at 35-36. Investigator Parker stated that he also wrote a report of the alleged violation. *Tr.*, 5/4/11 at 36. The investigative report was served on the Respondent on September 23, 2010. *Tr.*, 5/4/11 at 37; see ABRA Investigative Report #10-CMP-00594.

11. Michel Verdon testified on behalf of the Respondent. *Tr.*, 5/4/11 at 39. Mr. Verdon testified that he has filed his quarterly reports with ABRA by U.S. Mail for 11 years, and the first quarter report 2010 was the first one that was ever delivered and returned to him. *Tr.*, 5/4/11 at 39. All of his other report filings for 11 years have been timely filed. *Tr.*, 5/4/11 at 45, 53, 63. He stated that when ABRA moved to its 1250 U Street N.W. location, it also allowed for the submission of the quarterly reports by electronic filing. *Tr.*, 5/4/11 at 40. He stated that the zip code on the form for the 1250 U Street N.W. address was wrong and that is why the quarterly report was returned by the U.S. Postal Service. *Tr.*, 5/4/11 at 41, 45, 56.

12. When he received the returned quarterly report, Mr. Verdon contacted Sandra Anthony, an ABRA employee, who stated that she did not know why the form did not have the correct zip code. *Tr.*, 5/4/11 at 39. Ms. Anthony informed Mr. Verdon that he could file his quarterly report electronically through the ABRA website. *Tr.*, 5/4/11 at 41, 51, 56. Mr. Verdon stated that his General Manager then submitted the quarterly report information online, but he did not receive any confirmation that the information had been received by ABRA. *Tr.*, 5/4/11 at 41-42, 47, 54.

13. Mr. Verdon acknowledged that the date stamp on the second quarterly report was October 22, 2010, but stated that was because it was not received by ABRA even after he attempted to file it electronically. *Tr.*, 5/4/11 at 47. He stated that they attempted to send it electronically twice but, again, there was no confirmation of receipt. *Tr.*, 5/4/11 at 48, 50, 57. His General Manager then filed it in person in October. *Tr.*, 5/4/11 at 48. Mr. Verdon stated that when he filed his quarterly report 2011, he received an email confirmation of the receipt, but that was not the case for first and second quarter 2010. 5/4/11 at 59-60.

CONCLUSIONS OF LAW

14. 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.*

15. 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)

16. With regard to Charge I set forth in the Notice to Show Cause, dated March 2, 2011, the Board must determine whether the Licensee failed to file its quarterly report in violation of D.C. Official Code § 25-113. In this case, based upon the law and the testimony, the Board finds that there is sufficient evidence to establish that the Respondent failed to timely file its quarterly report for second quarter 2010.

17. The Board relies on the credible testimony of Investigator Parker and Compliance Officer Adejunmoei, who established that the Respondent’s quarterly report filing, due July 30, 2010, was not received by ABRA until October 22, 2010.

18. The Board also finds the testimony of the Respondent’s witness, Mr. Verdon, to be credible when he states that in 11 years of filing quarterly reports, only one of them has been returned as undelivered. It was because of the glitch that Mr. Verdon encountered, due to his reliance on ABRA’s incorrect zip code on the quarterly report form, that the quarterly report for first quarter 2010 was not timely filed. Mr. Verdon then relied on another ABRA staff person who advised him to file his quarterly reports electronically. Mr. Verdon testified that he filed two quarterly reports electronically, but he wasn’t aware that the second quarter was not accepted because there was no electronic confirmation of receipt. It was only when he received the citation from Investigator Parker that he learned his second quarter report had not been successfully filed.

19. Based upon the above testimony and the evidence in the record, the Board finds that the Respondent did violate D.C. Official Code § 25-113(b)(2)(A) and 23 DCMR 1207.1, as set forth in Charge I of the Notice to Show Cause, dated March 2, 2011.

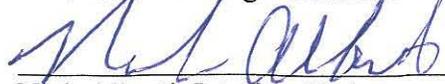
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 29th day of June 2011, finds that:

1. For Charge I, failure to file with the Board the required quarterly statements reporting for the preceding quarter, the Respondent shall pay a fine in the amount of \$500.00, by no later than thirty (30) days from the date of this Order.

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

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member

Calvin Nophlin, Member



Mike Silverstein, 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).