

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

In the Matter of:)
)
Burger 1931, LLC)
t/a Black and Orange)
)
Holder of a)
Retailer's Class CR License)
)
at premises)
1931 K Street, N.W.)
Washington, D.C. 20009)
)

Case Nos. 14-AUD-00094
License No. ABRA-088273
Order No. 2015-097

BEFORE: Nick Alberti, Acting Chairperson
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James N. Short, Member

ALSO PRESENT: 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

The Alcoholic Beverage Control Board (Board) finds that Burger 1931, LLC, t/a Black and Orange (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on August 1, 2014. As a result, the Respondent must pay a \$1,000.00 fine.

Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on December 10, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1931 14th Street, N.W., Washington, D.C., on December 18, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to file a Quarterly Statement, 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(1).

The Respondent's Quarterly Statement for the reporting period of April - June 2014 was due to the ABRA on July 30, 2014.

ABRA Show Cause File No. 14-AUD-00094, Notice of Status Hearing and Show Cause Hearing, 2 (December 10, 2014).

The Respondent failed to appear at the Show Cause Status Hearing held on January 21, 2015. A Show Cause Hearing was scheduled for February 25, 2015.

The Respondent also failed to appear at the Show Cause Hearing held on February 25, 2015. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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 CR License, License No. ABRA-088273. *See* ABRA Licensing File No. ABRA-088273. The establishment's premises are located at 1931 14th Street, N.W., Washington, D.C. *See* ABRA Licensing File ABRA-088273.
2. The Show Cause Hearing was held on February 25, 2015. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 14-AUD-00094.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 2/25/15 at 4-5.
4. Upon review of the ABRA records, Ms. Clark determined that the Respondent failed to file its Quarterly Statement for the period of April through June, 2014, which was due on July 30, 2014. *Tr.*, 2/25/15 at 6-7. The Quarterly Statement remains unfiled and overdue as of the date of the Show Cause Hearing. *Tr.*, 2/25/15 at 9-10.
5. The Respondent failed to appear at the Show Cause Hearing. 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

6. The Board determines that the Respondent committed the violation described in Charge I of the Notice.
7. 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.
8. The Board finds that the Respondent failed to file its Quarterly Statement for the period of April 1 through June 30, 2013. The Board makes this finding based on the testimony of Ms. Clark and the evidence in the record.
9. The Respondent's Investigative History shows that this is the Respondent's third secondary tier violation within three years. *Licensing File No. ABRA-088273*, Investigative History. Thus, the Board may fine the Respondent between \$750.00 and \$1,000.00. *Licensing File No. ABRA-088273*, Investigative History; DCMR § 23-802.

ORDER

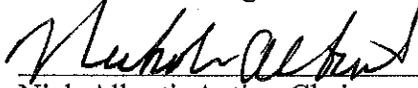
Based on the foregoing findings of fact and conclusions of law, the Board, on this 1st day of April, 2015, finds that the Respondent, Burger 1931, LLC, t/a Black and Orange, located at 1931 14th Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-113(b)(2)(A).

The Board hereby **ORDERS** that:

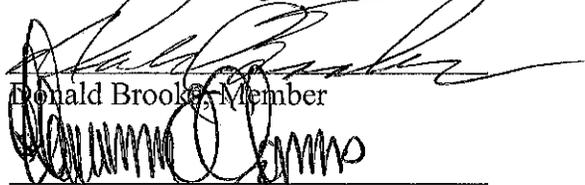
- 1) The Respondent must pay a fine in the amount of \$1,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid; and

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

District of Columbia
Alcoholic Beverage Control Board



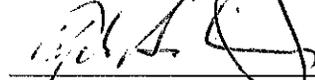
Nick Alberti, Acting Chairperson



Donald Brooks, Member



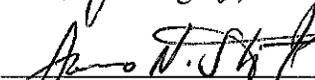
Herman Jones, Member



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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).