

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

In the Matter of:)	
)	
Brightwood Bistro, LLC)	
t/a Brightwood Bistro)	
)	Case No. 11-CMP-00075
Holder of a Retailer's Class CR License)	License No. ABRA-082911
at premises)	Order No. 2011-351
5832 Georgia Avenue, N.W.)	
Washington, D.C. 20011)	

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

ALSO PRESENT: Brightwood Bistro, LLC, t/a Brightwood Bistro

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 May 19, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated May 4, 2011, on Brightwood Bistro, LLC, t/a Brightwood Bistro (Respondent), at premises 5832 Georgia Avenue, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee failed to timely file with the Board the required quarterly statements reporting for the preceding quarter: gross receipts for the establishment; gross receipts for sales of alcoholic beverages; gross receipts for food sales; total expenses for the purchase of food and alcoholic beverages; and the expenses for purchases of food and alcoholic beverages separately, in violation of D.C. Official Code § 25-113(b)(2)(A) and 23 DCMR § 1207.1, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Board held a Show Cause Status Hearing on June 15, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on July 13, 2011. The Board held a Show Cause Hearing on July 13, 2011. The Respondent failed to appear at the Show Cause Hearing and the Board proceeded ex parte pursuant to D.C. Official Code § 25-447(e).

The Board having considered the evidence, the testimony of the Government's witness, the arguments of counsel, 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 May 4, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-CMP-00075. The Respondent holds a Retailer's Class CR license and is located at 5832 Georgia Avenue, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-082911.
2. The Show Cause Hearing was held on July 13, 2011. *See* ABRA Show Cause File No. 11-CMP-00075. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 11-CMP-00075.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Adeniyi Adejunmobi. *Transcript (Tr.)*, 7/13/11 at 8.
4. Mr. Adejunmobi testified that he is a Compliance Analyst for ABRA and in the course of his duties, he regularly reviews the quarterly statements filed by certain ABC-licensed establishments. *Tr.*, 7/13/11 at 8-9. He testified that ABRA has no record of a quarterly statement from the Respondent for the fourth quarter of 2010. *Tr.*, 7/13/11 at 9-10.
5. Mr. Adejunmobi further testified that the Respondent has not filed a quarterly report for the first quarter of 2011. *Tr.*, 7/13/11 at 11-12. Mr. Adejunmobi also testified that he had not received the quarterly report for the second quarter of 2010. *Tr.*, 7/13/11 at 14-15. He stated that the Respondent did file quarterly reports for the first and third quarters of 2010. *Tr.*, 7/13/11 at 15.
6. The Respondent failed to appear at the Show Cause Hearing held on July 13, 2011, and did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. *Tr.*, 7/13/11 at 8-17.

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 DCMR § 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 must determine whether the Respondent failed to file Quarterly Statements on the dates and in the manner prescribed by the Board, in violation of D.C. Official Code § 25-113(b)(2)(A).

10. The Board credits some of the testimony of ABRA Compliance Analyst, Adeniyi Adejunmodi, who testified that the Respondent did not file the statutorily required quarterly statements for the fourth quarter of 2010.

11. The Board cannot credit the testimony of Mr. Adejunmobi regarding the other quarterly reports for 2010, because the ABRA’s own administrative files reflect that the Respondent did not file the quarterly statement for the first quarter of 2010, but the Respondent did file the quarterly statements for the second and third quarter of 2010. Additionally, the Respondent failed to appear at the Show Cause Hearing and did not contact the Office of the Attorney General or ABRA to request a continuance.

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 of the Notice to Show Cause, dated May 4, 2011, to warrant the imposition of a fine and the suspension of the Respondent’s Class CR Retailer’s License s further set forth below.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 10th day of August 2011, finds that the Respondent, Brightwood Bistro, LLC, t/a Brightwood Bistro, located at 5832 Georgia Avenue, N.W., Washington, D.C., holder of a Retailer’s Class CR license, violated D.C. Official Code § 25-113 (b)(2)(A) and 23 DCMR § 2107.1.

The Board hereby **ORDERS** that:


- 1) The Respondent shall pay a fine in the amount of \$1,000.00 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.

- 2) The Respondent shall file all outstanding quarterly statements within thirty (30) days.
- 3) The Respondent's license shall be delivered to ABRA's Program Manager for the Licensing Division and placed in Safekeeping until the Respondent is ready to return to operations and has complied with all outstanding fees, fines, and the submission of its quarterly statements.

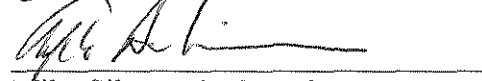
Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson


Donald Brooks, Member


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).