

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

_____)	
In the Matter of:)	
)	
Café Japone Limited Partnership)	License Number: 010581
t/a Café Japone)	Case Number: 12-AUD-00046
)	Order Number: 2013-326
)	
Holder of a Retailer's Class CR License)	
at premises)	
2032 P Street, NW)	
Washington, D.C. 20036)	
_____)	

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

ALSO PRESENT: Louise Phillips, Assistant Attorney General, on behalf of the District of Columbia

Kenji Akiho, on behalf of the Respondent

Emanuel Mpras, on behalf of the Respondent

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

PROCEDURAL BACKGROUND

On January 3, 2013, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated December 21, 2012, on Café Japone Limited Partnership t/a Café Japone (Respondent), at premises 2032 P Street, NW, Washington, D.C. 20036, charging the Respondent with the following violation:

Charge I: The Respondent failed to file a Quarterly Statement for the period of April through June, 2012 in violation of D.C. Official Code § 25-113(b)(2)(A). This violation was noted by ABRA on August 1, 2012.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and all documents comprising the Board's official file, makes the following findings:

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated December 21, 2012. (*See Alcoholic Beverage Regulation Administration Show Cause File Number 12-AUD-00046*). The Respondent holds a Retailer's Class CR License and is located at 2032 P Street, NW, Washington, D.C. 20036.
2. The Show Cause Hearing in this matter was held April 17, 2013. The Respondent was charged with one violation: failure to file a Quarterly Statement for the period of April through June, 2012 in violation of D.C. Official Code § 25-113(b)(2)(A).
3. The Government presented its case through the testimony of ABRA Compliance Analyst Monica Clark. *Transcript, 4/17/13* at 6. Regarding the quarterly statements required to be filed by restaurants and hotels, Ms. Clark testified concerning the numerous ways in which an establishment can file its statement: mail, e-mail attachment, electronically utilizing ABRA's on-line filing system, facsimile transmission and personal delivery. *Tr.* at 8. Ms. Clark stated that Respondent utilized the on-line filing system method of filing but did not file its quarterly statement until August 16, 2012. *Tr.* at 9. She testified that she entered the information from the on-line submission on the following day, August 17, 2012. *Tr.* at 14. She further testified that each quarterly statement is required to be filed within 30 days after the end of the quarter, in this case, July 31, 2012. *Tr.* at 15-16. Ms. Clark also testified that she had re-checked the on-line filing system submissions in preparation for the Show Cause Hearing and had not found any other filings from Respondent for that quarter other than the one filed with ABRA on August 16, 2012. *Tr.* at 23. Also, in preparation for the Show Cause Hearing, Ms. Clark reviewed the on-line filing records for July 26, 2012, the date on which Respondent claimed that it electronically filed its quarterly report with ABRA. *Tr.* at 45-46. She did not find any record of Respondent filing its quarterly report on that date. *Id.* She did, however, find that well over 20 other establishments had filed quarterly reports on that date. *Id.* Ms. Clark also stated that the on-line filing system had worked properly from the time she was first employed by ABRA. *Tr.* at 49-50. In reviewing a copy of the form that Respondent claimed to have electronically transmitted to ABRA, Ms. Clark noted that the form could not have been accepted by the on-line filing system because all of the required information was not filled out on the form. *Tr.* at 57-58.

4. The next witness was Kenji Akiho, the Respondent's owner, who testified that his accountant had told him that the quarterly report had been timely filed. *Transcript* at 77-82. He also stated that his accountant had told him that there had been a mistake when he first attempted to file the form and that he was present on another date when the accountant filed the form with ABRA but that he did not actually see the accountant fill out the electronic form or file it. *Tr.* at 80-81. Mr. Akiho was asked to produce the form that he stated showed that Respondent's quarterly statement was timely filed but was unable to produce a copy of the form. *Tr.* at 81.

CONCLUSIONS OF LAW

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)(2001). 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 D.C.M.R. 800, *et seq.*

The Board finds, as to Charge I that there is sufficient credible evidence to establish that the Respondent failed to timely file its quarterly statement for the second quarter of 2012 in violation of D.C. Official Code § 25-113(b)(2)(A). Respondent did not provide any evidence to show that the quarterly statement was timely filed. Moreover, the Government has shown that it is unlikely that there was a system error that would have prevented the timely filing of the quarterly statement by Respondent. The record in this matter also shows that this is not the first time that Respondent has failed to file its quarterly statement on time, despite the fact that Respondent, as all Class CR establishments, has thirty days after the end of the quarter to file its report and such filing can be done electronically.

ABRA relies on timely receipt of these reports in order to determine whether a licensed Class CR establishment is in compliance with the statutory requirements for a restaurant, e.g., the establishment is operating primarily as a food service establishment by showing that at least 45% of its gross receipts is from the sale of food and that it is meeting the minimum food sales requirements for a restaurant. D.C. Official Code § 25-101(43). Without this information, ABRA has no way of knowing whether a restaurant is actually operating in accordance with its license. Therefore, it is incumbent on Respondent to ensure its timely filing of the quarterly food sales report.

The Government asked that the Board impose a fine of \$2,000 for the violation. The Board finds, however, that given the repeated failure of Respondent to timely file its report, a fine in the amount of \$4,000 is warranted.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 10th day of July, 2013, finds that the Café Japone Limited Partnership t/a Café Japone, holder of a Retailer's Class CR License, violated D.C. Official Code § 113(b)(2)(A). The Board hereby **ORDERS** that:

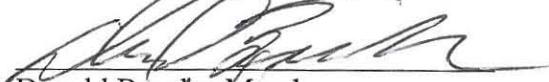
1. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$4,000 for the violation of D.C. Official Code § 113(b)(2)(A).

The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Government and to the Respondent.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Donald Brooks, Member



Mike Silverstein, Member

I concur with the Board's decision as to Respondent's liability. However, I believe that, in this instance, the penalty is insufficient for the violation of D.C. Official Code § 113(b)(2)(A). My decision is based on the fact that this violation is the licensee's tenth secondary violation within the preceding four years, six of which are violations of statutory requirements for restaurants that allow the Board to determine if the establishment is operating primarily as a food service establishment and that it is meeting the minimum food sales requirements for a restaurant.



Nick Alberti, Member

Under 23 DCMR § 1719.1 (2008), 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under 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 under 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).