

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

In the Matter of:)	
)	
Esteban Ramirez & Francisco Nunez)	License No.: 21055
t/a Carolina Palace)	Case No.: 11-CMP-00308
)	Order No.: 2013-50
)	
Holder of a Retailer's Class CR License)	
at premises)	
3700 14th Street, N.W.)	
Washington, D.C. 20010)	

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

ALSO PRESENT: Esteban Ramirez & Francisco Nunez, t/a Carolina Palace, Respondents

Esteban Ramirez, Owner, on behalf of the Respondents.

Fernando Rivero, Assistant Attorney General,
on behalf of the District of Columbia

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

We find the Respondents, Esteban Ramirez & Francisco Nunez, t/a Carolina Palace, guilty of failing to submit their quarterly reports for the quarters ending on March 31, 2011, and June 30, 2011. Based on the Respondents' history of past violations, we impose a fine of \$4000, and we impose two (2) stayed suspension days, which will be stayed for one (1) year from the date of this Order, so long as the Respondents do not commit any additional violations.

Procedural Background

On February 29, 2012, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 22, 2012, on the Respondents located at premises, 3700 14th Street, N.W., Washington, D.C. The Notice charged the Respondents with the following violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondents' Retailer's Class CR License. *ABRA Show Cause File No. 11-CMP-00308*, Notice of Status Hearing and Show Cause Hearing, 2 (Feb. 22, 2012).

According to the charge, the Respondents violated D.C. Official Code § 25-113(b)(2)(A) and 23 DCMR § 1207.1 by failing to file quarterly statements for the quarters ending on March 31, 2011, (First Quarter), and June 30, 2011, (Second Quarter) in a timely fashion. *Id.* at 2.

The parties came before the Alcoholic Beverage Control Board (Board) for a Show Cause Status Hearing on April 4, 2012. The matter was originally set for a Show Cause Hearing on May 16, 2012, but the Respondents failed to appear. The Show Cause Hearing was then rescheduled for October 31, 2012, but was later rescheduled for November 14, 2012. The parties then filed a Consent Motion for Continuance, which the Board granted. This matter finally proceeded to a Show Cause Hearing on January 16, 2013, where the Government sought to prove the charge through substantial evidence.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, the arguments of the parties, and the documents comprising the Board's official file, makes the following findings:

1. The Respondents hold a Retailer's Class CR License, ABRA License Number 21055. *See ABRA Licensing File No. 21055*. In 2011, all restaurant license holders were required to file a quarterly statement for the First Quarter by April 30, 2011. Government Exhibit No. 1. In the Second Quarter, all restaurant license holders had to file their quarterly reports by July 30, 2011. *Id.* The date stamp on the Respondents' quarterly report for the First Quarter shows that the Respondents delivered the report to the ABRA on December 30, 2011, at 3:57 p.m. *Id.* The date stamp on the Respondents' quarterly report for the Second Quarter shows that that the Respondents delivered the report to ABRA on December 30, 2011, at 3:57 p.m., as well. Government Exhibit No. 2. Therefore, the Respondents' filed both quarterly reports for the First and Second Quarter after the filing deadline. Government Exhibits Nos. 1 and 2.

2. Raphael Rodriguez, the individual who prepared the reports, testified on behalf of the Respondents. *Transcript (Tr.)*, January 16, 2013 at 13. Mr. Rodriguez claimed that he believed he filed the reports electronically, but claimed that some form of computer error prevented the ABRA from receiving it. *Id.* at 15. Nevertheless, no credible evidence exists in the record that ABRA's computer systems were incapable of receiving the quarterly reports, or explain why Mr. Rodriguez was not concerned enough to contact ABRA when he did not receive a receipt or

other electronic notification after he attempted to submit the establishment's quarterly reports electronically. *Id.* at 32.

CONCLUSIONS OF LAW

3. 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 District of Columbia Official Code § 25-823, D.C. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2012). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Code § 25-447 (West Supp. 2012).

4. The Respondents' failure to file its quarterly reports for the First and Second Quarter of 2011 on April 30, 2011, and July 30, 2011, are clear violations of the law. *Supra*, at § 1. It is uncontroverted that the establishment failed to submit the quarterly reports required by D.C. Official Code § 25-113(b)(2)(A). Under that section,

The licensee shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages.

D.C. Code § 25-113(b)(2)(A) (West Supp. 2013). As such, we sustain the charge brought by the Government.

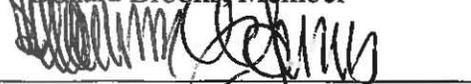
ORDER

Therefore, the Board, on this 13th day of March 2013, finds that the Respondents, Esteban Ramirez & Francisco Nunez, t/a Carolina Palace, violated D.C. Official Code § 25-113(b). As the Respondent's twelfth secondary tier violation within four years, the Board hereby **ORDERS** that the Respondent shall pay a fine of \$4000 and receive two (2) stayed suspension days, which will be stayed for one (1) year from the date of this Order, so long as the Respondents do not commit any additional violations. The Respondent must pay the fine within sixty (60) days from the date of this Order. The ABRA shall deliver copies of this Order to the Government and the Respondent.

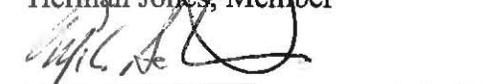
District of Columbia
Alcoholic Beverage Control Board



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

I concur with the decision of the Board regarding the liability of the Respondent and regarding the imposition of the fine. However, I dissent to the additional penalty of stayed suspension days given the administrative nature of the violation. I do not find “that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed.” D.C. Code § 25-447 (West Supp. 2012).



Ruthanne Miller, Chairperson

I concur with the decision of the majority of the Board. Because the Licensee has committed such a large number of violations in the past four years, including repeated violations of D.C. Official Code § 25-113(b), I support the imposition of two suspension days, which are stayed for one year, in hopes that it will provide additional incentive for the Licensee to abide by the requirements of the District of Columbia’s liquor licensing statutes, including the requirement to timely file quarterly reports. Because the Licensee will not serve any suspension days if they remain in compliance for one year, it is their future conduct alone that governs whether a suspension of the license is imposed.



Nick Alberti, 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, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia 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 (April 2004) 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).