THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of: Esteban Ramirez & Francisco Nuñez t/a Carolina Palace Holder of a Retailer's Class CR License at premises 3700 14th Street, N.W. Washington, D.C. 20010	License No.: ABRA-021055 Case No.: 12-AUD-00006(NCBO) Order No.: 2014-116	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Donald Brooks, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Esteban Ramirez & Francisco Nuñez, t/a Carolina Palace, Respondent

Donny Gonzalez, on behalf of the Respondent

Esteban Ramirez, on behalf of the Respondent

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

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Esteban Ramirez & Francisco Nuñez, t/a Carolina Palace (Respondent) violated a Board Order by failing to pay a fine of

$2,000.00 for previous ABRA violations in a timely manner. As a result, D.C. Official Code § 25-823(6) requires the Board to impose an additional penalty on the Respondent in the amount of $1,000.00.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on December 11, 2013. *ABRA Show Cause File No. 12-AUD-00006(NCBO).* The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 3700 14th Street, N.W., Washington, D.C. 20010, on December 17, 2013. *ABRA Show Cause File No. 12-AUD-00006(NCBO),* Service Form.

The Notice charges the Respondent with failure to follow an order of the Board, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC license. Specifically, the Notice, charges the Respondent with the following violation:

Charge I: The Respondent failed to follow a Board Order by not paying a fine, in violation of D.C. Official Code § 25-823(6) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Respondent failed to appear at the Show Cause Status Hearing held on January 22, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on March 12, 2014.

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 Number ABRA-021055. See *Licensing File No. ABRA-021055.* The establishment's premises are located at 3700 14th Street, N.W., Washington, D.C. 20010. See *Licensing File No. ABRA-021055.*

2. On May 1, 2013, the Respondent entered into an Offer in Compromise (OIC) with the Office of the Attorney General to remit a fine of $2,000.00 no later than August 1, 2013. *ABRA Show Cause File No. 12-AUD-00006(NCBO),* Hearing Disposition Form. The Respondent failed to pay this fine in a timely matter, but ultimately made late payment on February 10, 2014. *ABRA Show Cause File No. 12-AUD-00006(NCBO*, Receipt.

3. At the Show Cause Hearing, the Government submitted to the Board, an Offer In Compromise (OIC). *Transcript (Tr.)*, 3/12/14 at 2. The Respondent acknowledged its consent to the terms of the OIC and waived its right to a hearing. *Tr.*, 3/12/14 at 3-4. The OIC further provided that the Respondent shall receive a suspension of its license for two (2) days, both days

served on March 18 and 19, 2014. *Tr.*, 3/12/14 at 3. By a 3-3 vote, the Board denied the terms of the OIC. *Tr.*, 3/12/14 at 14.

4. At the hearing, the parties stipulated that the Respondent ultimately made late payment on February 10, 2014. *Tr.*, 3/12/14 at 16-18.

5. Donny Gonzalez testified on behalf of the Respondent. *Tr.*, 3/12/14 at 2. Mr. Gonzalez stated that the reason for the Respondent's inability to pay the fine amount on time was the Respondent's "financial situation." *Tr.*, 3/12/14 at 20. Mr. Gonzalez stated that the Respondent pays the establishment's rent and the food supplies on time. *Tr.*, 3/12/14 at 23.

CONCLUSIONS OF LAW

6. The Board determines that the Respondent committed the violation described in Charge I.

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.

I. Failure to Follow a Board Order

8. The Board determines that the Respondent violated a Board Order by failing to remit payment on a fine levied by the Board by the required deadline of August 1, 2013, in violation of D.C. Official Code § 25-823(6). The provision states, in part, "The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if...The licensee fails to follow its voluntary agreement, security plan, or Board order." D.C. Official Code § 25-823.

9. The Respondent stipulated to the fact that while he paid the fine at issue, he failed to do so by the specified deadline of August 1, 2013. By failing to remit timely payment of this fine, the Respondent violates the conditions of the Offer In Compromise, which the Board approved on May 1, 2013.

II. Penalty

10. Based on the Respondent's violation, the Board has the authority to "fine, as set forth in the schedule of civil penalties established under § 25-830" and may "suspend, or revoke the license." D.C. Official Code § 25-823. A violation of a Board order is fined as a primary tier violation. D.C. Official Code § 25-830(f).

11. The Respondent's Investigative History shows that the Respondent has not committed any previous primary tier violations in the past four years. *Licensing File No. ABRA-021055*, Investigative History. Thus, the present violation shall be fined as a first primary tier violation

and the Board may fine the Respondent between $1,000.00 and $2,000.00. *Licensing File No. ABRA-021055*, Investigative History; D.C. Official Code § 23-801.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of April, 2014, finds Esteban Ramirez & Francisco Nuñez, t/a Carolina Palace, is guilty of Charge I. Accordingly, it is **ORDERED** that:

(I) For the violation described in Charge I, the Respondent shall pay a fine of $1,000.00 within thirty (30) days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall pay the fine levied by the Board within thirty (30) days from the date of this order or its license shall be suspended until all outstanding fines are paid.

IT IS FURTHER ORDERED based on the present violation, the Respondent's Investigative History shall show that it committed an unlisted violation on 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

Ruthanne Miller, Chairperson

Mike Silverstein, Member

Hector Rodriguez, Member

James Short, Member

We concur with the majority's decision as to its finding of the Respondent's liability, but we dissent as to the penalty selected by the majority of the Board.

Nick Alberti, Member

Donald Brooks, 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).