

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

In the Matter of:)
)
M St. Enterprises, Inc.)
t/a Churreria Madrid Restaurant)
)
Holder of a Retailer’s Class CR License)
at premises)
2505 Champlain Street, N.W.)
Washington, D.C. 20009)
)

Case No. 10-AUD-00029
License No. ABRA-060806
Order No. 2011-191

BEFORE: Charles Brodsky, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: M St. Enterprises, Inc., t/a Churreria Madrid Restaurant, Respondent

Louise Phillips, 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 February 23, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 16, 2011, on M St. Enterprises, Inc., Inc., t/a Churreria Madrid Restaurant (Respondent), at premises 2505 Champlain Street, N.W., Washington, D.C., charging the Respondent with the following violations:

Charge I: The Licensee failed to file Quarterly Statements, on the dates and in the manner prescribed by the Board, in violation of the 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) (2001).

Charge II: The Licensee failed to keep and maintain on the premises for a period of three years adequate books and records showing all sales, purchase

invoices, and dispositions indicating sales information for food and alcoholic beverages, in violation of D.C. Code § 25-113 (j)(3)(A) and 23 D.C.M.R. 1204 and 2101, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 (2001).

The Respondent was personally served with the Notice on February 23, 2011, and the Board held a Show Cause Status Hearing on March 16, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on April 20, 2011. The Respondent failed to appear at the Show Cause Hearing and the Board proceeded pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding. The Government presented evidence through the testimony of one witness.

The Board having considered the evidence, the testimony of the Government's witness, the Government's arguments, 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 February 16, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-AUD-00029. The Respondent holds a Retailer's Class CR license and is located at 2505 Champlain Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-060806.
2. The Show Cause Hearing was held on April 20, 2011. The Notice charges the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 10-AUD-00029. The Notice states that on Wednesday, July 26, 2010, an audit of the Respondent's establishment was initiated to verify the establishment's D.C. Alcoholic Beverages and Food Quarterly Statements. A review of ABRA's records revealed that the establishment had not filed quarterly statements for the calendar years 2009 and 2010. *See* ABRA Show Cause File No. 10-AUD-00029.
3. The Government presented its case through the testimony of one witnesses, ABRA Compliance Analyst Adeniyi Adejunmobi. *Transcript (Tr.)*, 4/20/11 at 4.
4. Mr. Adejunmobi testified that on June 20, 2010, he sent a Notice of Audit to the Respondent. *Tr.*, 4/20/11 at 5. He stated that the purpose of the Notice was to set an appointment with the Respondent for July 26, 2010 to review and audit the Respondent's books and records. *Tr.*, 4/20/11 at 6. Upon arriving at the establishment on July 26, 2011, Mr. Adejunmobi met with the owner, Ernesto Giron. *Tr.*, 4/20/11 at 6, 10.
5. Mr. Adejunmobi testified that when he requested to review the books and records, Mr. Giron pointed to a box full of 2009 and 2010 guests checks that were not arranged in any meaningful order for audit purposes. *Tr.*, 4/20/11 at 6. Mr. Adejunmobi informed Mr. Giron that he would have to account for all of the guest checks for 2009 and 2010, and have them arranged in a meaningful order along with other information related to the books and records. *Tr.*, 4/20/11 at 7.

6. Mr. Adejunmobi stated that Mr. Giron responded that his accountant would organize the records. *Tr.*, 4/20/11 at 7. Mr. Adejunmobi and Mr. Giron then scheduled a second appointment for July 30, 2010. *Tr.*, 4/20/11 at 7. When Mr. Adejunmobi arrived at the establishment on July 30, 2010 to conduct the audit, he found the establishment locked. *Tr.*, 4/20/11 at 8. Mr. Adejunmobi returned to the office and attempted to call Mr. Giron, but the telephone number had been disconnected and was no longer in service. *Tr.*, 4/20/11 at 8.

7. Mr. Adejunmobi testified that he received a voice mail message from Milagro Salmeron, who represented that she was to be the wife of Ernesto Giron, the owner of the licensed establishment. *Tr.*, 4/20/11 at 9. Mr. Adejunmobi testified that the voicemail message indicated that Mr. Giron was out of the country. *Tr.*, 4/20/11 at 9. Mr. Adejunmobi did not attempt to make a third appointment with the Respondent to audit the books and records. *Tr.*, 4/20/11 at 9.

8. Mr. Adejunmodi testified that the Respondent has not filed quarterly reports for the four quarters of 2009 or for the four quarters of 2010. *Tr.*, 4/20/11 at 10. The last quarterly report filed by the Respondent was for first quarter 2008. *Tr.*, 4/20/11 at 11-12. The Government requested that the Board take judicial notice of the Respondent's investigative history to subsume ABRA Show Cause File No. 10-CMP-120. *Tr.*, 4/20/11 at 13. Additionally, the Government recommended a penalty consisting of a \$4,000 fine and a suspension of the Respondent's license until the fine is paid in full and all outstanding quarterly reports have been filed with ABRA. *Tr.*, 4/20/11 at 15-16.

9. The Respondent failed to appear at the Show Cause Hearing held April 20, 2011 and did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. *Tr.*, 4/20/11 at 2-18.

CONCLUSIONS OF LAW

10. 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 D.C.M.R. 800, *et. seq.*

11. 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)

12. 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).

13. The Board credits the irrefutable testimony of ABRA Compliance Analyst Adeniyi Adejunmodi who testified that the Respondent did not file the statutorily required Quarterly Statements for all four quarters of 2009 or for all four quarters of 2010. Equally disturbing to the Board is the unwillingness of the Respondent to either respond to Mr. Adejunmodi's request to meet to discuss the Respondent's record keeping or to proactively contact Mr. Adejunmodi to schedule an alternative date to address the record keeping and the failure to file Quarterly Statements. 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. Given the repeated history of the Respondent's failure to file Quarterly Reports and his recalcitrance to produce its books and records, the Board is disinclined to believe that any penalty short of a suspension will produce the desired compliance of the Respondent.

14. With regard to Charge II, the Board must determine whether the Respondent failed to keep and maintain on the premises for a period of three years adequate books and records showing all sales, purchase invoices and dispositions indicating sales information for food and alcoholic beverages. The Board again relies on the credible testimony of Mr. Adejunmobi who testified that he provided more than a month's notice to the Respondent that the Respondent's books and records would be audited. When Mr. Adejunmobi arrived on the appointed date, the Respondent showed him a box of 2009 and 2010 guest checks. Not only was the record keeping incomplete, but what was made available to Mr. Adejunmobi was in no organized order as to lend itself to a thorough audit. When Mr. Adejunmobi made arrangements to return for a second visit, he arrived to find a locked door, no response from the establishment, and disconnected phone service to the Respondent.

15. It is evident to the Board that the Respondent's evasive tactics have thwarted Mr. Adejunmodi's execution of his responsibilities as the agency's auditor. Based on the evidence in the records, the Board finds that the Respondent does not maintain his books and records and his noncompliance frustrates both Mr. Adejunmodi and the Board as well. It is no wonder to the Board that the Respondent has failed to file his Quarterly Statements for two straight years inasmuch as his record keeping would form the basis of the information necessary to complete the Quarterly Statements.

16. 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 and D.C. Official Code § 25-113(j)(3)(A) and 23 D.C.M.R. 1204 and 1201 as set forth in Charge II of the Notice to Show Cause, dated February 16, 2011, to warrant the imposition of a fine and the suspension of the Respondent's Class CR Retailer's License as described below.

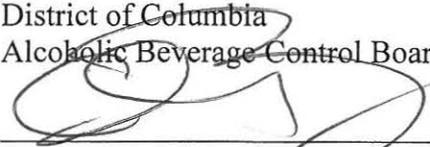
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 25th day of May 2011, finds that the Respondent, M St. Enterprises, Inc., t/a Churreria Madrid Restaurant, located at 2505 Champlain Street, N.W., Washington, D.C., holder of a Retailer's Class CR license violated D.C. Official Code § 25-113 (b)(2)(A), § 25-113 (j)(3)(A), and 23 D.C.M.R. 1204 and 2101.

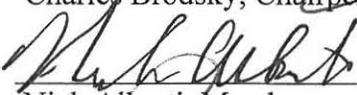
The Board hereby **ORDERS** that:

- 1) The Respondent shall pay a fine in the amount of \$4,000.00 by 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) Additionally, the Respondent's license shall be suspended until such time as he submits all Quarterly Statements for 2009 and 2010 to ABRA, but shall serve no fewer than ten (10) days commencing June 10, 2011.

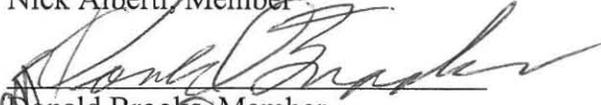
District of Columbia
Alcoholic Beverage Control Board



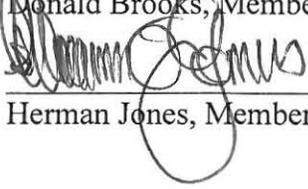
Charles Brodsky, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, 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).