

Procedural Background

On April 28, 2012, the ABRA served a Notice of Status Hearing and Show Cause Hearing (Notice), dated April 18, 2012, on the Respondent located at premises 2505 Champlain Street, N.W., Washington, D.C. The Notice charged the Respondent with the following violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license:

Charge I: You failed to file . . . 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)

ABRA Show Cause File No., 12-AUD-00005, Notice of Status Hearing and Show Cause Hearing (Apr. 18, 2012).

The Respondent did not attend the Show Cause Status Hearing on May 23, 2012, or the Show Cause Hearing on July 11, 2012, even though ABRA served the Respondent a Notice containing the dates and times of the hearings on April 28, 2012. In the absence of the Respondent, the Board proceeded ex parte with only the Government present, pursuant to D.C. Official Code § 25-447(e).¹

FINDINGS OF FACT

The Board, having considered the substantial evidence contained in the record and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a Retailer's Class CR License, ABRA License Number 60806. *See ABRA Licensing File No. 60806*. The establishment's premises are located at 2505 Champlain Street, N.W., Washington, D.C. *Id.*
2. The Government's only witness in this matter was the ABRA's Compliance Analyst, Adeniyi Adejunmobi. *Transcript (Tr.)*, July 11, 2012 at 9-10. As a Compliance Analyst, Mr. Adejunmobi collects and reviews the quarterly reports submitted by licensed establishments in the District of Columbia. *Tr.*, 7/11/12 at 10-11. As Mr. Adejunmobi testified, the Respondent had to submit its quarterly report for the quarter beginning in July 2011 and ending in September 2011 on October 31, 2011. *Tr.*, 7/11/12 at 11. Nevertheless, the ABRA did not receive the Respondent's quarterly statement for the July to September 2011 quarter. *Tr.*, 7/11/12 at 12-13.
3. The Respondent has failed to submit its required quarterly report twelve times in the past four years. *Investigative History*, M St. Enterprises, Inc., t/a Churreria Madrid Restaurant.

¹ We also note that Ms. Phillips called the establishment's listed telephone number several times to advise them of the hearing; however, the Respondent's voicemail would not allow her to leave a message. *Transcript*, July 11, 2012 at 7-8.

CONCLUSIONS OF LAW

3. The Board has the authority to levy fines, as well as suspend or revoke the license of a licensee who violates any provisions of Title 25 of the D.C. Official Code or Title 23 of the D.C. Municipal Regulations. D.C. Code §§ 25-830, 25-823(1) (West Supp. 2012); see also 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 §§ 25-830, 25-447 (West Supp. 2012).

4. Section 25-113(b)(2)(A) requires Retailer Class CR license holders, such as the Respondent, to timely file quarterly reports with the Board. D.C. Code § 25-113(b)(2)(A) (West Supp. 2012). Here, the Respondent failed to submit the quarterly report required for the July 2011 to September 2011 quarter, which was due on October 31, 2011. Supra, at ¶ 2. Therefore, it is irrefutable that the Respondent violated § 25-113(b)(2)(A).

5. In light of the Respondent’s repeated violations of the law, we cannot allow the Respondent to continue to operate until it submits the delinquent reports, and it undergoes an audit to ensure the accuracy of its records.

6. The law deems the failure to file a quarterly report a secondary tier violation. 23 DCMR § 800 (West Supp. 2012). We further note that “A licensee found in violation of a secondary tier violation for the fourth time within 4 years shall be penalized according to a first primary tier violation (\$ 1,000-2,000). Every subsequent secondary tier offense within 5 years of the first violation shall be fined according to the schedule for primary tier violations.” D.C. Code § 25-830(d)(2) (West Supp. 2012); 23 DCMR § 802.1(D) (West Supp. 2012). Therefore, because this violation is treated as a primary tier violation for determining a fine and the Respondent has twelve prior violations in the past four years, the present violation merits a fine of \$6,000—the highest fine available in the schedule of primary tier violations. 23 DCMR § 801.1(C) (West Supp. 2012).

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 12th day of September 2012, finds that the Respondent, M St. Enterprises, Inc., t/a Churreria Madrid Restaurant, violated D.C. Official Code § 25-113(b)(2)(A). The Board hereby **ORDERS** that

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$6,000.00 no later than thirty (30) days from the date of this Order;
- (2) The Respondent’s license shall be **SUSPENDED** indefinitely until
 - a. The Respondent submits all delinquent quarterly reports to ABRA, which include all of the quarterly reports for 2011 and the third quarter of 2012; and

- b. ABRA's Compliance Analyst completes an audit of the Respondent's books and records.

As such, the Respondent must **CEASE AND DESIST** selling, serving, and delivering alcoholic beverages at premises 2505 Champlain Street, N.W., until the Board issues an Order lifting the suspension. The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson

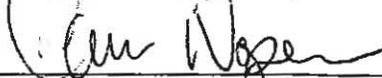


Nick Alberti, Member



Donald Brooks, Member

Herman Jones, 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, 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).