

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

In the Matter of:)	
)	
COLUMBIA STATION, INC)	Case No.: 14-AUD-00025
t/a Columbia Station)	License No.: 024834
)	Order No.: 2015-064
Holder of a Retailer's Class CR License)	
)	
at premises)	
2325 18th Street, NW)	
Washington, D.C. 20009)	

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

ALSO PRESENT: Mahari Woldermariam, on behalf of Columbia Station, Inc. t/a Columbia Station, Respondent

Maureen Zaniel, Senior Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING RESPONDENT'S MOTION TO VACATE ORDER & REHEAR
MATTER**

Procedural History

On January 14, 2015, the Alcoholic Beverage Control Board accepted an Offer-in-Compromise (OIC) entered into by Columbia Station, Inc. t/a Columbia Station (Respondent) of a \$2,000 fine to be paid on or before February 13, 2015. *Licensing File No. ABRA-024834*,

Investigative History; *See also Hearing Disposition Form*, Case No. 14-AUD-00025, (D.C.A.B.C.B. Jan. 14, 2015). The OIC accepted by the Board resolved the charges brought against the Respondent in Case No. 14-AUD-00025 and constituted a waiver of appeal and judicial review. *Hearing Disposition Form*, Case No. 14-AUD-00025; *See also* 23 D.C.M.R. §§ 1604.5 and 1604.6. That same day, the Respondent received a copy of the Order Approving the OIC stating that the OIC had been accepted per the bold print at the bottom of the OIC; therefore, the Respondent was served with a copy of the OIC on January 14, 2015.

Respondent's Arguments

On February 5, 2015, the Board received a Motion to Vacate Order and Motion to Rehear Matter from Gina Mondesir, Esq. on behalf of the Respondent. In its Motion, Ms. Mondesir argued that the “counsel of record” did not receive notice of the hearing and as a result, was not present to represent the Respondent during the proceedings in this case. *Mot. to Vacate*, 1. Further, Ms. Mondesir argues that the Respondent has a viable case which if heard by the Board, the Board would not find that the Respondent is guilty of committing the violations alleged in this matter. *Id.*¹

Government's Arguments

On February 10, 2015, the Office of the Attorney General for the District of Columbia filed a response to the Respondent's Motion asking the Board to affirm its prior decision, because (1) the Respondent did not challenge the underlying legal and factual basis underpinning the Board's acceptance of the OIC; (2) the Licensee's continual self-representation at every stage of the proceeding; (3) the failure of the Respondent to substantiate that there is an “attorney of record” in this matter; and (4) the failure of the Respondent to acknowledge that there was not an evidentiary hearing in this matter, but rather an OIC. *Gov't Resp.*, 1-2.

Supplemental Findings of Fact

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

1. ABRA's records reveal that the Respondent “telephonically” attended a staff settlement conference on August 21, 2014 without counsel. *ABRA Show Cause File No., 15-AUD-00025*, Request for a Show Cause Hearing, 1.
2. On August 22, 2014, the Respondent rejected the terms of the staff settlement and requested a Show Cause Hearing. *ABRA Show Cause File No., 15-AUD-00025*, Request for a Show Cause Hearing, 1. This form was dated and signed by the Respondent and there is no indication that the Respondent was represented by counsel. *Id.* Shortly thereafter, Ms. Mondesir sent a copy of the Respondent's Request for a Show Cause Hearing signed by the Respondent to ABRA. *Gov't Resp.*, 2.

¹ Counsel did not provide the Board with any specifics as to the nature of the Respondent's defense if the Motion were to be granted.

3. During the Show Cause Hearing, the Respondent acknowledged that he received proper notice of this proceeding. *Transcript (Tr.)*, 1/14/15 at 1. Furthermore, the Respondent affirmed his understanding of all terms indicated in the OIC including the requirement to pay a \$2,000 fine. *Tr.*, at 4. Additionally, on February 13, 2015, the Respondent paid the \$2,000 fine as required by the OIC. *Licensing File No. ABRA-024834*, Investigative History.

4. The Respondent's allegation that on or about August 21, 2015, the Counsel for Respondent filed an Attorney/Agent Designation form with ABRA through paralegal Yazmin Delgado is factually incorrect. *Mot. to Vacate*, 1, at ¶ 4. Specifically, the Board has not found such a record in its file.

Discussion

5. The Board affirms its prior Order and denies the Respondent's Motion to Vacate Order and Motion to Rehear Matter due to the untimeliness of the motion, the Board finds that there is not a counsel of record in this matter at the time the Respondent entered into the OIC; therefore, it was appropriate to effectuate service directly on the Respondent. Finally, the Board denies the motion because the Respondent has failed to provide sufficient legal or factual support justifying his request.

I. THE RESPONDENT'S MOTION FAILS AS A MATTER OF LAW BECAUSE IT IS UNTIMELY.

6. The Board finds that the Respondent's motion fails as a matter of law because it was untimely filed. In its motion, the Respondent is challenging the Board's acceptance of an OIC entered into by the Respondent and the Government on January 14, 2015. *Mot. to Vacate*, 1. Under 23 DCMR § 1719.1, any party adversely affected by the decision rendered in a Board Order may file a Motion for Reconsideration within ten days of service of the Order. As outlined above, the Respondent was duly served on January 14, 2015. Yet, Ms. Mondesir, on behalf of the Respondent, filed a Motion to Vacate Order on February 5, 2015, twenty-two calendar days after service of the Order. Therefore, this motion was untimely filed.

II. THE RESPONDENT'S MOTION FAILS AS A MATTER OF LAW DUE TO THE FAILURE TO CHALLENGE THE BOARD'S DECISION ON A LEGAL OR FACTUAL BASIS.

7. The Board finds that the Respondent's motion fails due to the failure to conform to the requirements of a petition for reconsideration. Under 23 DCMR 1719.3, a petition for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. 23 DCMR § 1719.3. Here, the Respondent fails to acknowledge that the Board did not enter a decision based on a record of an evidentiary hearing, rather an agreement was entered into by the Respondent and the Government. *Gov't Resp.*, 1-2. The Respondent entered into the agreement affirming its understanding of its terms and signed attesting to this understanding. *Supra* at ¶ 2. For these reasons, this motion fails as a matter of law on this basis.

III. THE BOARD CONCLUDES THAT THERE IS NOT A “COUNSEL OF RECORD” FOR THE RESPONDENT IN THIS MATTER.

8. The Board finds that there is not a “counsel of record” listed within ABRA records. Under 23 DCMR § 1707.3, any attorney appearing as counsel in any proceeding shall execute a notice of appearance containing his or her name...and the nature of representation. 23 DCMR § 1707.3. In the instant case, the Board finds that Ms. Mondesir has failed to meet this requirement. The Board takes administrative notice of its records which reveal that Ms. Mondesir did not file a notice of appearance as required by ABRA regulations. *ABRA Show Cause File No., 15-AUD-00025; Supra*, at ¶ 3. As a result, the Board finds that there is not a counsel of record for this matter and accordingly concludes that the motion filed on behalf of the Respondent is inappropriate.

IV. DUE TO LACK OF COUNSEL, IT WAS APPROPRIATE TO DULY SERVE THE RESPONDENT

9. Since the Board finds that there is no “counsel of record” in this matter, the Board finds that it was appropriate to duly serve the Respondent in all dealings with ABRA and the Government. *Supra* at ¶ 4. Further, during each proceeding in this case, from the initial staff settlement conference until the final OIC agreement between the Respondent and the Government, at no point did the Respondent indicate that he was represented by counsel. *Supra* at ¶ ¶ 1-3.

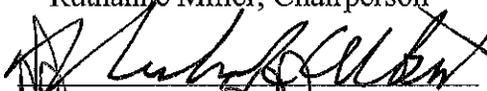
10. In addition, it is the Board’s usual practice to determine whether the Respondent received proper notice prior to beginning any contested proceeding. During the Show Cause Hearing, the Respondent acknowledged that he received proper notice of this proceeding. *Supra* at ¶ 3. Furthermore, the Respondent affirmed his understanding of all terms indicated in the OIC including the requirement to pay a \$2,000 fine. *Id.* Additionally, on February 13, 2015, the Respondent paid the \$2,000 fine as required by the OIC. *Id.* For these reasons, the Board finds that the process served directly on the Respondent throughout this matter was appropriate.

ORDER

Therefore, based on the foregoing, the Board, on this 4th day of March 2015, **DENIES** the Motion to Vacate Order and Motion to Rehear Matter filed by Columbia Station, Inc. t/a Columbia Station. ABRA shall deliver copies of this Order to the Government and the Respondent.

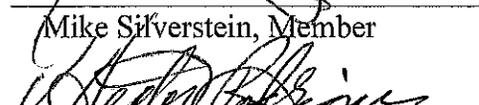
District of Columbia
Alcoholic Beverage Control Board

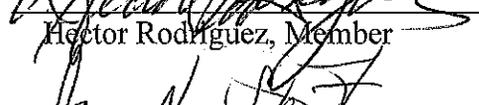

Ruthanne Miller, Chairperson


Nick Alberti, Member


Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, 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).