

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

<b>In the Matter of:</b>	)	
	)	
Rainbow Inn, Inc.	)	
t/a Jackey Café	)	
	)	Case No. 10-CMP-00602
Holder of a Retailer's Class CR License	)	License No. ABRA-074004
at premises	)	Order No. 2011-180
611 H Street, N.W.	)	
Washington, D.C. 20001	)	

**BEFORE:** Charles Brodsky, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Nathan Chow, on behalf of the Respondent

Michael Stern, Senior 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 January 12, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice) dated January 5, 2011 on Rainbow Inn, Inc., t/a Jackey Café (Respondent), at premises 611 H Street N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee failed to file a quarterly report with the Board as required by D.C. Official Code § 25-113(b)(2)(A) (2001), for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 (2001).

The Board held a Show Cause Status Hearing on February 16, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on March 16, 2011.

The Government presented evidence through the testimony of witnesses and the submission of documentary evidence. The Board having considered the evidence, the testimony of witnesses, the arguments of counsel, 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 January 5, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00602. The Respondent holds a Retailer's Class CR license and is located at 611 H Street N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-074004.
2. The Show Cause Hearing was held on March 16, 2011. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 10-CMP-00602.
3. The government called its first witness, Adenni Adejunmobi. *Transcript (Tr.)* 3/16/11 at 8. Mr. Adejunmobi is a Compliance Analyst for the Enforcement Division at ABRA. *Tr.* 3/16/11 at 9. His responsibilities include reviewing the quarterly reports submitted by licensees who are statutorily required to file them. *Tr.* 3/16/11 at 9. He reviews them to ensure that they are filed correctly and timely on a quarterly basis. *Tr.* 3/16/11 at 9. Mr. Adejunmobi makes a list at the end of every quarter for those licensees for whom he has not received a quarterly report. *Tr.* 3/16/11 at 9.
4. Mr. Adejunmobi testified that he did not receive a quarterly report for the Respondent, Jacky Café for the second quarter of 2010. *Tr.* 3/16/11 at 10, 15. He identified a carbon copy of the citation issued to the Respondent for the failure to file the quarterly report for second quarter 2010. *Tr.* 3/16/11 at 10. *See* Government Exhibit 1. The citation was issued on September 29, 2010. *Tr.* 3/16/11 at 11-13. The quarterly report was due July 30, 2010. *Tr.* 3/16/11 at 11-12, 16.
5. Mr. Adejunmobi testified that he subsequently received the Respondent's quarterly report on November 5, 2010. *Tr.* 3/16/11 at 12, 15, 19. Mr. Adejunmobi stated that the Respondent also failed to file a quarterly report in 2007. *Tr.* 3/16/11 at 13. He explained that licensees who are required to file quarterly reports have thirty (30) days following the end of the reporting quarter to file their quarterly reports. *Tr.* 3/16/11 at 17.
6. Mr. Adejunmobi testified that in this particular case, the Respondent was to file a report for April, May, and June 2010 by July 30, 2010. *Tr.* 3/16/11 at 18. The licensees who are required to file quarterly reports are licensed hotels and restaurants. *Tr.* 3/16/11 at 18. The Respondent is a licensed CR (restaurant) and is required to file quarterly reports. *Tr.* 3/16/11 at 19.
7. The Respondent presented one witness, Nathan Chow. *Tr.* 3/16/11 at 20. Mr. Chow works for Jackey's Café. *Tr.* 3/16/11 at 20. Mr. Chow acknowledged that he received a citation in 2007 for failure to file a quarterly report. *Tr.* 3/16/11 at 21. He stated that the Respondent recognized it was at fault in 2007 and thus they paid the citation

immediately. *Tr.* 3/16/11 at 21. Mr. Chow testified that as a result of the 2007 incident, the Respondent ensures that its quarterly reports are now filed timely. *Tr.* 3/16/11 at 21.

8. Mr. Chow testified that although he filed the 2000 quarterly report on time, he did not receive confirmation or a receipt from ABRA that the report was filed. *Tr.* 3/16/11 at 21-22. He stated that it is difficult to know whether ABRA receives the Respondent's filings. *Tr.* 3/16/11 at 21. Mr. Chow has no proof to demonstrate the timely filing because the quarterly report was sent by regular mail. *Tr.* 3/16/11 at 21, 29. Now the Respondent files its quarterly reports by certified mail. *Tr.* 3/16/11 at 22, 27.

9. Mr. Chow testified that the Respondent recently received a third citation on February 1, 2011, for failure to file a quarterly report. *Tr.* 3/16/11 at 22-23. He was able to demonstrate to Mr. Adejunmobi that he had mailed the report by certified mail and so ABRA dismissed the citation. *Tr.* 3/16/11 at 22. Mr. Chow stated that the Respondent regularly sends its quarterly reports on time and that they are not habitual offenders. *Tr.* 3/16/11 at 23.

10. Mr. Chow acknowledged that the quarterly reports can be filed online through ABRA's website. *Tr.* 3/16/11 at 24. He also acknowledged that he can print the computer screen indicating submission of the report from his computer or print a copy of the email transmission. *Tr.* 3/16/11 at 24, 27-28.

11. Mr. Chow testified that another employee, Mr. Ko, signed the back of the citation on September 29, 2010, requesting a hearing. *Tr.* 3/16/11 at 24-25; *See* Government Exhibit 1. He stated that Mr. Ko did not deliver the citation to Ms. Ko right away and that is why the report wasn't filed until November 5, 2010. *Tr.* 3/16/11 at 26.

12. Although Mr. Chow testified that he maintains copies of the filed quarterly reports, he did not produce a copy at the time of the hearing. *Tr.* 3/16/11 at 26, 29. He explained that he did not bring the quarterly report to the hearing because he did not believe the Board would accept a copy rather than the original. *Tr.* 3/16/11 at 26. Mr. Chow admitted that he does not use ABRA's electronic online filing system, because he doesn't receive confirmation that the report is actually filed. *Tr.* 3/16/11 at 27.

### CONCLUSIONS OF LAW

13. 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.*

14. 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).

15. With regard to the Charge set forth in the Notice to Show Cause dated January 5, 2011, the Board must determine whether the Respondent failed to file its Quarterly Report in violation of D.C. Official Code § 25-113(b)(2)(A). D.C. Official Code § 25-113(b)(2)(A) provides that “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.”

16. In this case, the Board finds, based on the testimony of Adenni Adejunmobi that there is sufficient evidence to establish that the Respondent failed to file its quarterly report for second quarter 2010. Mr. Adejunmobi testified that he did not receive the quarterly report for the second quarter of 2010 from the Respondent. Mr. Adejunmobi testified that the Respondent’s second quarter report for 2010 for the months of April, May, and June was due July 30, 2010, but was not received by ABRA until November 5, 2010. Though the Respondent stated that he mailed the Quarterly Report to ABRA, he could not prove it.

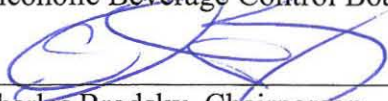
17. Based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-113(b)(2)(A) as set forth in Charge I of the Notice dated January 5, 2011 warrants the payment of a \$500.00 fine payable within thirty (30) days from the date of this Order.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board, on this 13<sup>th</sup> day of April 2011, finds that the Respondent, Rainbow Inn, Inc., t/a Jackey Cafe, at 611 H Street N.W., Washington, D.C., holder of a Retailer’s Class CR license, violated § 25-113(b)(2)(A).

The Respondent shall pay a fine in the amount of \$500.00 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. Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia  
Alcoholic Beverage Control Board

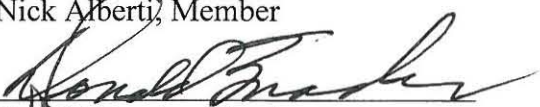


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Charles Brodsky, Chairperson

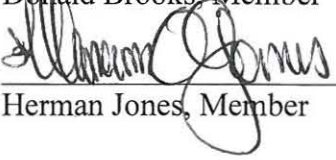
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Nick Alberti, Member



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Donald Brooks, Member

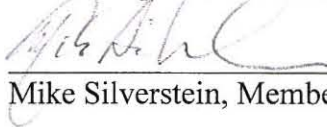


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Herman Jones, Member

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Calvin Nophlin, Member



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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, 2000 14<sup>th</sup> Street, N.W., Fourth Floor, 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).