

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

In the Matter of:)
)
Justin's Cafe, LLC)
t/a Justin's Cafe)
)
Holder of a)
Retailer's Class CR License)
)
at premises)
1025 1st Street, S.E.)
Washington, D.C. 20003)
)

Case Nos. 14-AUD-00043
License No. ABRA-083690
Order No. 2015-083

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

ALSO PRESENT: Christine Gephardt, 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

The Alcoholic Beverage Control Board (Board) finds that Justin's Cafe, LLC, t/a Justin's Cafe (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on January 31, 2014. As a result, the Respondent must pay a \$5,000.00 fine. Additionally, the Respondent's license will be suspended until all outstanding Quarterly Statements have been filed with the Alcoholic Beverage Regulation Administration (ABRA).

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Alcoholic Beverage Control Board executed on November 12, 2014. The ABRA served the Notice on the Respondent, located at premises 1025 1st Street, S.E., Washington, D.C., on November 22, 2014.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to file a Quarterly Statement, in violation of 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).

The Respondent's Quarterly Statement for the reporting period of October – December 2013 was due to the ABRA on February 1, 2014.

ABRA Show Cause File No. 14-AUD-00043, Notice of Status Hearing and Show Cause Hearing, 2 (November 12, 2014).

The Respondent failed to appear at the Show Cause Status Hearing held on January 7, 2015. A Show Cause Hearing was scheduled for February 4, 2015, which was rescheduled for February 18, 2015.

The Respondent also failed to appear at the Show Cause Hearing held on February 18, 2015. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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 No. ABRA-083690. See ABRA Licensing File No. ABRA-083690. The establishment's premises are located at 1025 1st Street, S.E., Washington, D.C. See ABRA Licensing File ABRA-083690.
2. The Show Cause Hearing was held on February 18, 2015. The Notice charges the Respondent with the single violation enumerated above. See ABRA Show Cause File No. 14-AUD-00043.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 2/18/15 at 6.
4. Upon review of the ABRA records, Ms. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of October through December, 2013, which was due on February 1, 2014. *Tr.*, 2/18/15 at 7-8. The Quarterly Statement remains unfiled and overdue as of the date of the Show Cause Hearing. *Tr.*, 2/18/15 at 7-8.
5. The Respondent failed to appear at the Show Cause Hearing. The Respondent did not present any testimony or evidence, nor did he refute the evidence submitted by the Government. Furthermore, the Respondent did not contact the Office of the Attorney General for the District of Columbia or ABRA to request a continuance of the hearing

CONCLUSIONS OF LAW

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

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.

8. The Board finds that the Respondent failed to timely file its Quarterly Statement for the period of October 1 through December 30, 2013. The Board makes this finding based on the testimony of Ms. Clark and the evidence in the record.

9. The Respondent's Investigative History shows that this is the Respondent's sixth secondary tier violation within five years. *Licensing File No. ABRA-083690*, Investigative History. Thus, the Board may fine the Respondent between \$4,000.00 and \$6,000.00. *Licensing File No. ABRA-083690*, Investigative History; DCMR § 23-802.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 11th day of March, 2015, finds that the Respondent, Justin's Cafe, LLC, t/a Justin's Cafe, located at 1025 1st Street, S.E., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-113(b)(2)(A).

The Board hereby **ORDERS** that:

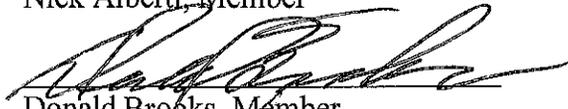
- 1) The Respondent must pay a fine in the amount of \$5,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid;
- 2) The Respondent must file all outstanding Quarterly Statements within five (5) business days of this Order. If the Quarterly Statements are not filed within five (5) business days, the Respondent's license will be suspended and remain suspended until the Quarterly Statements are filed;
- 3) The Respondent will also receive five (5) days suspension of its license, all days stayed for one year provided that no further violations are committed; and
- 4) ABRA's Enforcement Division will conduct a Food and Alcoholic Beverage Sales Audit.

Copies of this Order shall be sent to the Respondent and the Government.

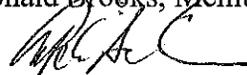
District of Columbia
Alcoholic Beverage Control Board



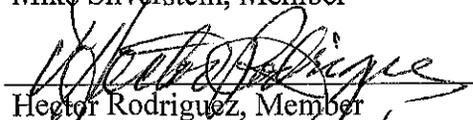
Nick Alberti, Member



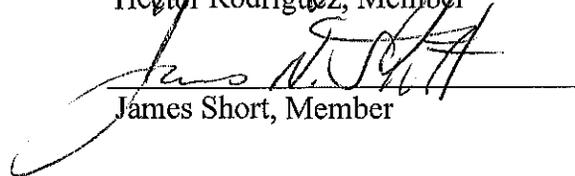
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

I concur with the majority of the Board's decision regarding the establishment's liability. Nevertheless, I dissent as to the suspension imposed by the majority based on the District of Columbia Court of Appeals' direction that suspensions are only warranted when there has been a flagrant disregard for the "public safety and welfare." See 1900 M Rest. Ass'ns, Inc., 56 A.3d. at 486, 493 (D.C. 2012). In my view, a failure to file quarterly statements does not show a disregard for public welfare or safety.



Ruthanne Miller, Chairperson

Under 23 DCMR § 1719.1 (2008), 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, NW, 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, 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).