

requires the Board to impose an additional penalty on the Respondent in the amount of \$2,000.00. In addition, the Respondent must pay a \$850.00 fine from the Offers in Compromise (OIC) dated July 10, 2013. Further, the Respondent must pay the outstanding fines imposed by the Board within sixty (60) days or its license shall be immediately suspended until all fines are paid.

This case arises from two Notices of Status Hearing and Show Cause Hearing (collectively the "Notices"), which the Alcoholic Beverage Control Board (Board) executed on November 20, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notices on the Respondent, located at premises 2620 Georgia Avenue, N.W., Washington, D.C., on November 27, 2013. The Notices charged the Respondent with a number of violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

The Notices charge the Respondent with failure to follow an order of the Board, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC license. Specifically, the Notice, charges the Respondent with the following violation:

Specifically, the Notice in Case No. 12-CMP-0568, charged the Respondent with the following violation:

Charge I: [On Wednesday, September 10, 2013,] the Respondent failed to follow its settlement agreement, security plan, or Board order, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(6) (2001).

ABRA Show Cause File No., 12-CMP-0568, Notice of Status Hearing and Show Cause Hearing, 2 (November 20, 2013).

In addition, the Notice in Case No. 12-CMP-0456, charged the Respondent with the following violation:

Charge I: [On Wednesday, September 10, 2013,] the Respondent failed to follow its settlement agreement, security plan, or Board order, for which the Board may take proposed action pursuant to D.C. Official Code § 25-823(6) (2001).

ABRA Show Cause File No., 12-CMP-0456, Notice of Status Hearing and Show Cause Hearing, 2 (November 20, 2013).

The Respondent failed to appear at the Show Cause Status Hearing held on January 22, 2014. The Government and the Respondent appeared at the Show Cause Hearing for this matter on March 12, 2014.

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, ABRA License Number 86892. *See ABRA Licensing File No. 86892.* The establishment's premises are located at 2620 Georgia Avenue, N.W., Washington, D.C. *See ABRA Licensing File No. 86892.* The Respondent was issued a license on November 23, 2011. *See ABRA Licensing File No. 86892.*
2. On July 10, 2013, the Respondent entered into an Offer in Compromise for Case No. 12-CMP-00568, and Case No. 12-CMP-00456, where he agreed to pay a total of \$850.00 fine within 30 days for failure to file Quarterly Statements for the second quarter of 2011 and the first quarter of 2011. *See ABRA Show Cause File No. 12-CMP-00568, and 12-CMP-00456.*

Case No. 12-CMP-00568

3. William Hager, Public Information Officer (PIO), testified on behalf of the Government. *Transcript (Tr)* 3/12/14 at 14. In Mr. Hager PIO capacity, he also serves as the agency's Custodian of Records. *Tr.* 3/12/14 at 14. In that role, he maintains all of the files and records that are held by the agency for every licensee. *Tr.* 3/12/14 at 14.
4. Mr. Hager confirmed that a Notice of Delinquency was sent to the Respondent on September 10, 2013, informing the Respondent that his \$500 fine was due and owing. *Tr.* 3/12/14 at 15; Government Ex. No. 1. The letter was sent to the Respondent's business address. *Tr.* 3/12/14 at 19. This fine stemmed from an Offer in Compromise entered into on July 10, 2013, between the Government and the Respondent for failure to file Quarterly Statements. *Tr.* 3/12/14 at 16. As of the date of the Show Cause Hearing, payment of the \$500 had not been received by ABRA. *Tr.* 3/12/14 at 17.
5. Jose Orozco testified on behalf of the Respondent. *Tr.* 3/12/14 at 21. He acknowledged that he agreed to pay the fine that resulted from the Offer in Compromise. *Tr.* 3/12/14 at 21. He encountered financial hardship and was delinquent in his rental payments. *Tr.* 3/12/14 at 21, 24, 31. He wanted to pay the fine after the deadline, but ABRA would not accept the payment. *Tr.* 3/12/14 at 23.
6. The Respondent testified that he did not receive a copy of the Delinquency Letter, though he knew that he owed the fine. *Tr.* 3/12/14 at 18, 24. He also stated that since the initial underlying offenses, he has not had any additional violations. *Tr.* 3/12/14 at 23. The two Quarterly Statements that he failed to file would not have contained any figures or sales information because he was not open during those two reporting periods. *Tr.* 3/12/14 at 24, 26-29. He was licensed during that period, but he was not open for business, nor was he selling or serving food or alcoholic beverages. *Tr.* 3/12/14 at 32, 34.

7. He is willing to pay the underlying fines at this time, and requests leniency from the Board for the failure to timely pay the fines. *Tr.* 3/12/14 at 25, 31. He has filed all of his Quarterly Statements timely since the initial two quarters. *Tr.* 3/12/14 at 27, 30.

Case No. 12-CMP-00456

8. Mr. Hager further testified that no payment had been received from the Respondent in Case No. 12-CMP-00456. *Tr.* 3/12/14 at 42. The amount owed by the Respondent was \$350.00, and it also resulted from the terms of an OIC entered into on July 10, 2013. *Tr.* 3/12/14 at 42. ABRA sent a Delinquency Letter dated September 18, 2013, to the Respondent notifying him of the overdue fine. *Tr.* 3/12/14 at 43; Government Ex. No. 1. It is the practice of the agency to send correspondence to the licensee's business address unless the agency has another address of record in its files. *Tr.* 3/12/14 at 47. Mr. Hager was unaware whether there was a different address in the agency's files for the Respondent. *Tr.* 3/12/14 at 48.

9. Mr. Orozco relied on his testimony provided in Case No. 12-CMP-00568. *Tr.* 3/12/14 at 49. He was unaware that if he did not pay his fines, that he might be subject to additional penalties. *Tr.* 3/12/14 at 51.

CONCLUSIONS OF LAW

10. The Board determines that the Respondent committed the violation described in Charge I of each of the two Notices.

11. 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.

I. Failure to Follow a Board Order

11. The Board determines that the Respondent violated a Board Order by failing to remit payment on a fine levied by the Board by the required deadline of September 10, 2013, in violation of D.C. Official Code § 25-823(6). The provision states, in part, "The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if...The licensee fails to follow its voluntary agreement, security plan, or Board order." D.C. Official Code § 25-823.

12. The Respondent admitted that he failed to pay the two fines by the specified deadline of September 11, 2013. By failing to remit timely payment of this fine, the Respondent violates the conditions of the Offer In Compromise, which the Board approved on July 10, 2013.

II. Penalty

12. Based on the Respondent's violation, the Board has the authority to "fine, as set forth in the schedule of civil penalties established under § 25-830" and may "suspend, or revoke the license." D.C. Official Code § 25-823. A violation of a Board order is fined as a primary tier violation. D.C. Official Code § 25-830(f).

13. The Respondent's Investigative History shows that the Respondent has not committed any previous primary tier violations. *Licensing File No. ABRA-86892*, Investigative History. Thus, the present violation shall constitute a first primary tier violation and the Board may fine the Respondent between \$1,000.00 and \$2,000.00 for each of the two Charges. *Licensing File No. ABRA-86892*, Investigative History; D.C. Official Code § 23-801.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 9th day of April, 2014, finds that Mama Chuy DC, Inc., t/a Mama Chuy DC, violated D.C. Official Code § 25-823(6).

The Board hereby **ORDERS** that:

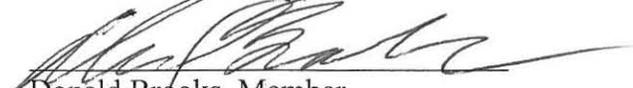
- (1) In Case Number 12-CMP-0568, the Respondent
 - a. shall pay a \$1,000.00 fine.
- (2) In Case Number 12-CMP-0456, the Respondent
 - a. shall pay a \$1,000.00 fine.
- (3) In addition, the Respondent also shall pay the fine from the Offers in Compromise, dated July 10, 2013, in the amount of \$850.00.
- (4) In total, the Respondent must pay a fine in the amount of \$2,850.00 by no later than sixty (60) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

The ABRA shall deliver copies of this Order to the Government and the Respondent

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Donald Brooks, Member



Mike Silverstein, Member

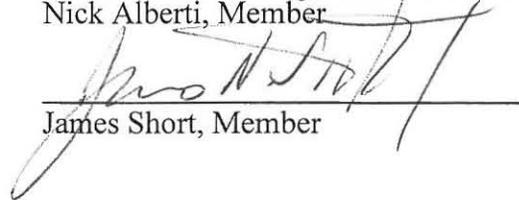


Hector Rodriguez, Member

We concur with the majority's decision as to its finding of the Respondent's liability, but we dissent as to the penalty selected by the majority of the Board.



Nick Alberti, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433, 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 D.C. Official Code § 25-433, 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).