

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

In the Matter of:)	
)	
Arias, Inc.)	
t/a My Brother's Place)	
)	
Holder of a Retailer's Class CR License)	Case No. 12-CMP-00538
)	License No. ABRA-071593
)	Order No. 2013-182
at premises)	
237 2 nd Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member

ALSO PRESENT: Christine Gephardt, Assistant Attorney General
Office of Attorney General, 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 Arias, Inc., t/a My Brother's Place, (Respondent), violated District of Columbia (D.C.) Official Code §§ 25-113(j)(3)(A) and 25-711(a) on August 23, 2012. The Respondent must pay a \$6,500.00 fine and have its license suspended for four days. These suspension days are activated from Case No. 12-251-00129. The suspension must run from June 13 to June 16, 2013.

On March 2, 2013, the Board served a Notice of Status Hearing and Show Cause Hearing (Notice), dated February 20, 2013, on the Respondent charging the Respondent with the following violations:

Charge I: The Respondent failed to keep and maintain upon the licensed premises for period of three years, records which include invoices and delivery slips which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer, in violation of D.C. Official Code § 25-113(j)(3)(A) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823 and 23 DCMR § 800 et seq.

Charge II: The Respondent failed to make a copy of its Settlement Agreement immediately accessible an official of ABRA upon request, in violation of D.C. Official Code § 25-711(a) for which the Board may take proposed action pursuant to D.C. Official Code § 25-823.

The Respondent was personally served with a copy of the Notice on March 2, 2013. The Respondent failed to appear at Show Cause Status Hearing held on March 27, 2013. The Respondent also failed to appear at the Show Cause Hearing held on April 17, 2013. The Board proceeded to hearing pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated February 20, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-CMP-00538. The Respondent holds a Retailer's Class CR license and is located at 237 2nd Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-071593.
2. The Show Cause Hearing in this matter was held on April 17, 2013. The Notice to Show Cause charged the Respondent with the two violations enumerated above. *See* ABRA Show Cause File No. 12-CMP-00538.
3. The Government presented its case through the testimony of one witness, ABRA Investigator Tyrone Lawson. *Transcript (Tr.)*, 4/17/13 at 5-6. On August 23, 2012, Investigator Lawson and Investigator Brian Malloy conducted a regulatory inspection at the licensed establishment. *Tr.*, 4/17/13 at 6.
4. Investigators Lawson and Malloy identified themselves as ABRA Investigators and asked to speak with an ABC-licensed manager or the owner. *Tr.*, 4/17/13 at 8. Jose Cardoza identified himself as an ABC-licensed manager. *Tr.*, 4/17/13 at 8. Investigator Lawson informed Mr. Cardoza that the Respondent failed to file its Quarterly Statement for the period of April 1, 2012 through June 30, 2012, which was due on July 30, 2013. *Tr.*, 4/17/13 at 8-9.
5. Investigator Lawson asked Mr. Cardoza to produce the invoices and delivery slips housed on the premises. *Tr.*, 4/17/13 at 9. Mr. Cardoza informed Investigator Lawson that

the invoices were stored in the management office which was locked. *Tr.*, 4/17/13 at 9. Investigator Lawson provided Mr. Cardoza with his business card and requested that the Respondent contact him. *Tr.*, 4/17/13 at 10.

6. Investigator Lawson received a voicemail from the Respondent on August 27, 2012. *Tr.*, 4/17/13 at 10-11. The Respondent's message stated that the establishment's invoices were available for Investigator Lawson's inspection. *Tr.*, 4/17/13 at 11.

7. Investigator Lawson made a second visit to the Respondent's establishment on August 30, 2012, to inspect the Respondent's invoices and delivery slips for all purchases, sales, and deliveries of all alcoholic beverages. *Tr.*, 4/17/13 at 11.

8. Three ABC-licensed managers, Mr. Cardozo, Rachel Traverso, and Chef Israel Arias (ABC-licensed managers) were present during Investigator Lawson's second visit to the establishment. *Tr.*, 4/17/13 at 12. Investigator Lawson asked the ABC-licensed managers to produce the Respondent's Settlement Agreement. *Tr.*, 4/17/13 at 12. The ABC-licensed managers were unfamiliar with the Respondent's Settlement Agreement, so Investigator Lawson provided them with a copy of the Respondent's Settlement Agreement. *Tr.*, 4/17/13 at 12.

9. Investigator Lawson also requested the ABC-licensed managers to produce the last three years of the Respondent's invoices and delivery slips for all purchases, sales, and deliveries of all alcoholic beverages. *Tr.*, 4/17/13 at 14. Chef Arias provided invoices from January 2011 through August 2012. *Tr.*, 4/17/13 at 15. Chef Arias informed Investigator Lawson that the invoices for 2009 and 2010 were stored in Bladensburg, MD. *Tr.*, 4/17/13 at 15.

10. Investigator Lawson advised the ABC-licensed managers that the law requires the Respondent to maintain upon its licensed premises for a period of three years, records of the invoices and delivery slips of all purchases, sales, and deliveries of all alcoholic beverages, except beer. *Tr.*, 4/17/13 at 15. Investigator Lawson further explained to the ABC-licensed managers that the Respondent may store the invoices and delivery slips off-site, but the off-site storage must be pre-approved by the Board. *Tr.*, 4/17/13 at 15. Mr. Cardozo and Chef Arias stated that they would inform the Respondent about the missing invoices for 2009 and 2010. *Tr.*, 4/17/13 at 16.

11. Investigator Lawson made a third visit to the Respondent's establishment on September 7, 2012. *Tr.*, 4/17/13 at 17. During this visit, the Respondent, Nelson Arias, and Martin Scahill, General Manager, were present at the establishment. *Tr.*, 4/17/13 at 18. Mr. Scahill provided Investigator Lawson with invoices for 2010, 2011 and 2012. *Tr.*, 4/17/13 at 18. Mr. Scahill stated that the Respondent did not have the 2009 invoices on premises. *Tr.*, 4/17/13 at 18. Investigator Lawson advised Mr. Arias and Mr. Scahill that the law requires that the establishment maintain upon the licensed premises for a period of three years, records of the invoices and delivery slips of all purchases, sales, and deliveries of all alcoholic beverages, except beer. *Tr.*, 4/17/13 at 18. Additionally, Investigator Lawson explained to Mr. Arias and Mr. Scahill that they may store the invoices and delivery slips

off-site, but the off-site storage must be pre-approved by the Board. *Tr.*, 4/17/13 at 18. Investigator Lawson asked Mr. Scahill once again for the 2009 invoices, but there was no response from Mr. Scahill. *Tr.*, 4/17/13 at 19. Investigator Lawson concluded that the 2009 invoices were not available. *Tr.*, 4/17/13 at 19.

12. The Respondent failed to appear at the Show Cause Hearing held on April 17, 2013. 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

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 Charge I, the Board finds that the Respondent failed to maintain its books and records. Under D.C. Official Code § 25-113(j)(3)(A), a licensee is required to keep and maintain upon the licensed premises for a period of three years, records which include invoices and delivery slips which adequately and fully reflect all purchases, sales, and deliveries of all alcoholic beverages, except beer. The record shows that during Investigator Lawson’s three separate visits to the Respondent’s establishment, the Respondent produced the invoices from 2010 through 2012, but failed to produce the 2009 invoices. Moreover, the Respondent’s general manager confirmed that the Respondent did not have the 2009 invoices on the licensed premises.

16. With regard to Charge II, the Board finds that the Respondent failed to provide a copy of its Settlement Agreement. The Board makes this finding based on the testimony of Investigator Lawson. During Investigator Lawson’s visit to the Respondent’s establishment on August 30, 2012, the Respondent’s ABC-licensed managers were unable to produce a copy of the Respondent’s Settlement Agreement when requested.

17. Therefore, based upon the above, the Board finds that the Respondent’s violation of D.C. Official Code § 25-113(j)(3)(A), as set forth in Charge I, and § 25-711(a), as set forth in Charge II, of the Notice to Show Cause, dated February 20, 2013, warrants the imposition of a fine and the suspension set forth below. The Board also finds that

previously stayed suspension days, imposed in Case No. 12-251-00129, are triggered by the case at hand, and will now be served by the Respondent as set forth more fully below.

18. The Board takes administrative notice that Charge I is the third primary tier violation within three years, and Charge II is the first secondary tier violation within two years. Thus, these violations warrant a graduated fine under D.C. Official Code § 25-830.

ORDER

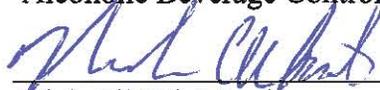
Based on the foregoing findings of fact and conclusions of law, the Board, on this 22nd day of May, 2013, finds that the Respondent, Arias, Inc., t/a My Brother's Place, located at 237 2nd Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code §§ 25-113(j)(3)(A) and 25-711(a).

The Board hereby **ORDERS** that:

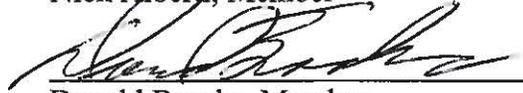
1. Charge I: Respondent must pay a fine in the amount of \$6,000.00.
2. Charge II: Respondent must pay a fine in the amount of \$500.00.
3. In total, the Respondent must pay a fine in the amount of \$6,500.00 by no later than sixty (60) days from the date of this Order. Failure to remit the fine in a timely manner may subject the Respondent to additional sanctions.
4. In addition, the Respondent shall receive a four (4) day suspension of its license. These suspension days are activated from Case No. 12-251-00129.
5. The Respondent's four (4) suspension days will be served from June 13 through June 16, 2013.

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

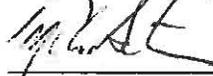
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member



Donald Brooks, Member



Mike Silverstein, Member

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



Ruthanne Miller, Chairperson

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).