

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

In the Matter of:)
)
 Sofenias Amde)
 t/a Queen Makeda)
)
 Holder of a Retailer's Class CR License)
)
 at premises)
 1917 9th Street, N.W.)
 Washington, D.C. 20001)
)

Case Nos. 12-AUD-00039
License No. ABRA-060510
Order No. 2013-222

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

ALSO PRESENT: 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

The Alcoholic Beverage Control Board (Board) finds that Sofenias Amde, t/a Queen Makeda, (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on May 1, 2012. The Respondent must pay a \$6,000.00 fine. In addition, the Respondent must have its license suspended for seven (7) days. The Respondent's license will be suspended for an additional seven (7) stayed days, which shall not go into effect unless the Board finds that the Respondent committed a violation within one year from the date of this Order. Further, the Respondent must file all of its outstanding Quarterly Statements. The license shall remain suspended until such time as the Respondent submits the outstanding Quarterly Statements to ABRA, but shall serve no fewer than seven (7) days commencing June 14, 2013.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on December 12, 2012. The Alcoholic Beverage

Regulation Administration (ABRA) served the Notice on the Respondent, located at 1917 9th Street, N.W., Washington, D.C., on December 18, 2012.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to file his Quarterly Statement by the due date in violation of D.C. Official Code § 25-113(b)(2)(A) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Quarterly Statement for the Respondent for the period of January – March 2012 was due to the ABRA on April 30, 2012 and was not filed by that date.

The Respondent was personally served with a copy of the Notice on December 12, 2012. The Respondent failed to appear at the Show Cause Status Hearing held on February 13, 2013. The Respondent also failed to appear at the Show Cause Hearing held on April 10, 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 December 12, 2012. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 12-AUD-00039. The Respondent holds a Retailer's Class CR license and is located at 1917 9th Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-060510.
2. The Show Cause Hearing was held on April 10, 2013. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 12-AUD-00039.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 4/10/13 at 4-5.
4. After reviewing ABRA records, Mrs. Clark determined that the Respondent failed to file his Quarterly Statement for the period of January through March, 2012, which was due on April 30, 2012. *Tr.*, 4/10/13 at 5-6. The Quarterly Statement had still not been filed by the Respondent as of the date of the Show Cause Hearing. *Tr.*, 4/10/13 at 6-7.
5. The Respondent failed to appear at the Show Cause Hearing held on April 10, 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

6. 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.*

7. 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).

8. With regard to Charge I, the Board finds that the Respondent failed to file his Quarterly Statement for the period of January through March, 2012. The Board makes this finding based on the testimony of ABRA Compliance Analyst Monica Clark. It also appears, from the record and the Board’s own administrative files, though not charged in the Notice, that the Respondent did not file additional Quarterly Statements.

9. The Board takes administrative notice that this is the Respondent’s twelfth secondary tier violation, nine of which were for failing to file Quarterly Statements. Thus, this violation warrants a graduated fine under D.C. Official Code § 25-830. Given the repeated history of the Respondent’s failure to file Quarterly Statements or to file them timely; namely nine Quarterly Statement violations within four years, the Board is disinclined to believe that any penalty short of a suspension will produce the desired compliance of the Respondent.

10. Therefore, 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 to Show Cause, dated December 12, 2012, warrants the imposition of a fine and the suspension set forth below.

ORDER

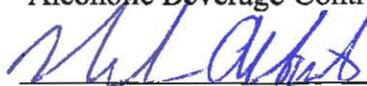
Based on the foregoing findings of fact and conclusions of law, the Board, on this 29th day of May, 2013, finds that the Respondent, Sofenias Made, t/a Queen Makeda, located at 1917 9th Street, N.W., Washington, D.C., holder of a Retailer's Class CR license, violated D.C. Official Code § 25-113 (b)(2)(A).

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$6,000.00 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.
- 2) The Respondent shall have its license suspended for fourteen (14) days; seven (7) days to be served, and seven (7) days to be stayed. The stayed suspension days shall go into effect if the Respondent commits any violations within a one-year period, starting from the date of this Order.
- 3) The Respondent must file all its outstanding Quarterly Statements.
- 4) Additionally, the Respondent's license shall be suspended until such time as he submits the outstanding Quarterly Statements to ABRA, but shall serve no fewer than seven (7) days commencing June 14, 2013.

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

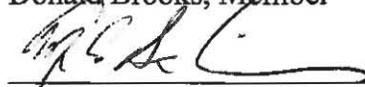
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member

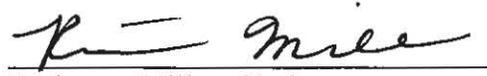


Donald Brooks, Member



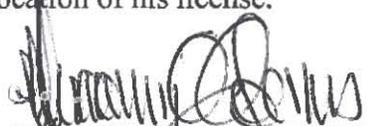
Mike Silverstein, Member

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



Ruthanne Miller, Chairperson

I concur with the decision reached by the majority of the Board as to the Respondent's guilt. Nevertheless, I dissent as to the punishment selected by the majority, because I believe the Respondent's violation merits revocation of his license.



Herman Jones, 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).