

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

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In the Matter of:)	
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Queen of Sheba, Inc)	License Number: 073644
t/a Queen of Sheba)	Case Number: 12-AUD-00033
)	Order Number: 2013-350
)	
Holder of a Retailer's Class CR License)	
at premises)	
1503 9 th Street, NW)	
Washington, D.C. 20001)	
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BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member
Herman Jones, Member

ALSO PRESENT: Maureen Zaniel, Assistant Attorney General, on behalf of the
District of Columbia

Embzam Misgina, on behalf of the Respondent

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

PROCEDURAL BACKGROUND

On December 18, 2012, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated December 12, 2012, on Queen of Sheba, Inc. t/a Queen of Sheba (Respondent), at premises 1503 9th Street, NW, Washington, D.C. 20001, charging the Respondent with the following violation:

Charge I: The Respondent failed to file a Quarterly Statement for the period of January through March, 2012 in violation of D.C. Official Code § 25-113(b)(2)(A). This violation was noted by ABRA on May 1, 2012.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and all documents comprising the Board's official file, makes the following findings:

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated December 12, 2012. (*See Alcoholic Beverage Regulation Administration Show Cause File Number 12-AUD-00033*). The Respondent holds a Retailer's Class CR License and is located at 1503 9th Street, NW, Washington, D.C. 20001.
2. The Show Cause Hearing in this matter was held April 10, 2013. The Respondent was charged with one violation: failure to file a Quarterly Statement for the period of January through March, 2012 in violation of D.C. Official Code § 25-113(b)(2)(A).
3. The Government presented its case through the testimony of ABRA Compliance Analyst Monica Clark. *Transcript, 4/10/13* at 11. Ms. Clark stated that Respondent did not file its quarterly statement until June 14, 2012. *Tr.* at 13. She further testified that each quarterly statement is required to be filed within 30 days after the end of the quarter, in this case, April 30, 2012. *Id.*
4. The next witness was Embzam Misgina, the Respondent's owner, who testified that his accountant had told him that the quarterly report had been timely filed. *Transcript* at 17. He also stated that his accountant usually filed the report electronically, that he had a copy of the filing, could not recall the date of filing and that he was not sure whether he had an electronic receipt for the filing. *Tr.* 18-19.

CONCLUSIONS OF LAW

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)(2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Official Code § 25-830 and 23 DCMR § 800 *et seq.*

The Board finds, as to Charge I that there is sufficient credible evidence to establish that the Respondent failed to timely file its quarterly statement for the first quarter of 2012 in violation of D.C. Official Code § 25-113(b)(2)(A). Respondent did not provide any evidence to show that the quarterly statement was timely filed. The record in this matter also shows that this is not the first time that Respondent has failed to file its quarterly

statement on time, despite the fact that Respondent, as all other Class CR establishments, has thirty days after the end of the quarter to file its report and such filing can easily be accomplished electronically.

ABRA relies on timely receipt of these reports in order to determine whether a licensed Class CR establishment is in compliance with the statutory requirements for a restaurant, e.g., the establishment is operating primarily as a food service establishment by showing that at least 45% of its gross receipts is from the sale of food and that it is meeting the minimum food sales requirements for a restaurant. D.C. Official Code § 25-101(43). Without this information, ABRA has no way of knowing whether a restaurant is actually operating in accordance with its license. Therefore, it is incumbent on Respondent to ensure its timely filing of the quarterly food sales report.

Under the Board's Regulations, the failure to timely file the quarterly report is considered a secondary tier violation. 23 DCMR § 800. The ABRA statute and Board regulations establish the schedule of fines that the Board may impose on a licensee for secondary tier violations. District of Columbia Official Code § 25-830, 23 DCMR § 802.1. The fine schedule is progressive and is determined by the number of previous cases in which the licensee has been found to have violated ABRA law over a certain period of time. *Id.* With regard to Respondent, the Board notes that this is the sixth second tier violation by Respondent within a five year period, causing Respondent to be subject to a fine of between \$4,000 and \$6000. 23 DCMR § 802.1 (D). Moreover, the Board notes that, pursuant to the Board's decision in Case No. 10-CMP-00783, Respondent received a five day suspension which was stayed for a period of one year from the date of the order, provided that Respondent did not commit any further violations of ABRA law and regulations. Board Order No. 2011-378, dated September 14, 2011. Respondent's failure to timely file its quarterly report by April 30, 2012 is a clear violation of ABRA law and regulations within that time frame which means that the Board also has authority to impose the five day suspension from Board Order No. 2011-378 on Respondent.

The Government did not ask for a specific penalty in this case. The Board finds, however, that the repeated failure of Respondent to timely file its report has subjected Respondent to a minimum fine of \$4,000, The Board declines to impose on Respondent the stayed suspension days provided for in Board Order No. 2011-378, but warns Respondent that repeated violation of ABRA law will only subject Respondent to more severe penalties.

ORDER

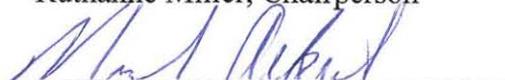
Based on the foregoing findings of fact and conclusions of law, the Board, on this 14th day of August, 2013, finds that the Queen of Sheba, Inc. t/a Queen of Sheba, holder of a Retailer's Class CR License, violated D.C. Official Code § 113(b)(2)(A). The Board hereby **ORDERS** that:

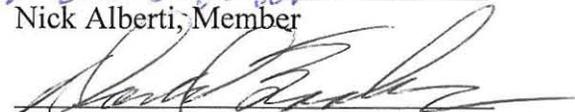
1. Respondent, no later than 30 days from the date of this order, submit to ABRA the amount of \$4,000 for the violation of D.C. Official Code § 113(b)(2)(A).

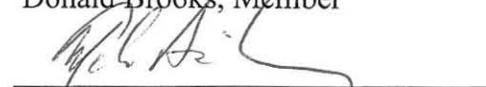
The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Government and to the Respondent.

District of Columbia
Alcoholic Beverage Control Board

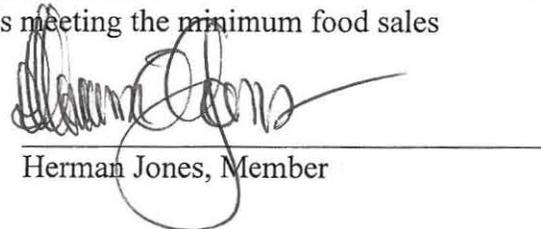

Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Mike Silverstein, Member

I concur with the Board's decision as to Respondent's liability. However, I believe that, in this instance, the penalty is insufficient for the violation of D.C. Official Code § 113(b)(2)(A). My decision is based on the fact that this violation is the Respondent's sixth secondary violation within the preceding five years, all of which are violations of the same requirement for restaurants that enable the Board to determine if an establishment is operating primarily as a restaurant and that it is meeting the minimum food sales requirements for a restaurant.


Herman Jones, Member

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, under 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 under 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).