THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Queen of Sheba, Inc.	)	
t/a Queen of Sheba	)	
	)	Case No. 10-CMP-00783
Holder of a Retailer's Class CR License	)	License No. ABRA-073644
at premises	)	Order No. 2011-378
1503 9th Street, N.W.	)	
Washington, D.C. 20001	)	
	)	

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Maureen W. Zaniel, 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

On May 25, 2011, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated May 25, 2011, on Queen of Sheba, Inc., t/a Queen of Sheba (Respondent), at premises 1503 9th Street, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I: The Licensee failed to file with the Board a required quarterly statement, 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 Licensee failed to timely file the quarterly statement for the third quarter of 2010, which was due by October 30, 2011.

The Board held a Show Cause Status Hearing on July 6, 2011. There was no settlement of the matter and it proceeded to a Show Cause Hearing on August 3, 2011.

The Respondent failed to appear on August 3, 2011, and the Board proceeded to a Show Cause Hearing, pursuant to D.C. Official Code § 25-447(e), which allows for an ex parte proceeding.

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

FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated May 25, 2011. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00783. The Respondent holds a Retailer's Class CR license and is located at 1503 9th Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-073644.

2. The Show Cause Hearing was held on August 3, 2011. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 10-CMP-00783.

3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Adeniyi Adejunmobi. *Transcript (Tr.)*, 8/3/11 at 5.

4. Mr. Adejunmobi testified that he is a Compliance Analyst for ABRA and, in the course of his duties, he regularly reviews the quarterly statements filed by those ABC-licensed establishments that are statutorily required to file quarterly statements. *Tr.*, 8/3/11 at 6-7. Mr. Adejunmobi stated that after the quarterly statements' deadline, he prepares a list called the "no-filers list" and delivers it to the Supervisory Investigators within ABRA's Enforcement Division to issue citations. *Tr.*, 8/17/11 at 6-7.

5. Mr. Adejunmobi testified that the Respondent failure to timely file a quarterly statement for the period of July 1, 2010 to September 30, 2010. *Tr.*, 8/3/11 at 7. He stated that he prepared a list of the establishments that failed to file the third quarter of 2010, and the Respondent was on that list. *Tr.*, 8/3/11 at 7-8.

6. Mr. Adejunmobi further testified that a citation was issued to the Respondent for failure to file a quarterly report for the second quarter of 2010, for the first and fourth quarters of 2009, and for the second quarter of 2008. *Tr.*, 8/3/11 at 11-12; *see* Government Exhibit Nos. 2, 3, 4, 5.

7. The Respondent failed to appear at the Show Cause Hearing held on August 3, 2011, and did not present any testimony or evidence, nor did the Respondent refute the evidence submitted by the Government. *Tr.*, 8/3/11 at 7-19.

CONCLUSIONS OF LAW

8. 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 DCMR § 800, *et. seq.*

9. 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).

10. With regard to Charge I, the Board must determine whether the Respondent failed to file quarterly statements on the dates and in the manner prescribed by the Board, in violation of D.C. Official Code § 25-113(b)(2)(A).

11. The Board credits the testimony of ABRA Compliance Analyst, Adeniyi Adejunmobi, who testified that the Respondent did not file the statutorily required quarterly statements for the third quarter of 2010. It also appears, from the record and the Board's own administrative files, though not charged in the Notice, that the Respondent did not timely file four additional quarterly reports; namely, second quarter of 2010, first and fourth quarter of 2009, and second quarter of 2008. Additionally, the Respondent failed to appear at the Show Cause Hearing and did not contact the Office of the Attorney General or ABRA to request a continuance.

12. 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 May 4, 2011, to warrant the imposition of a fine and the suspension of the Respondent's Class CR Retailer's License further set forth below.

13. The Board takes administrative notice that this violation is the fifth secondary tier violation within three years and, thus, warrants a higher fine under D.C. Official Code § 25-830.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 14th day of September 2011, finds that the Respondent, Queen of Sheba, Inc., t/a Queen of Sheba, located at 1503 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) and 23 DCMR § 2107.1.

The Board hereby **ORDERS** that:

1) The Respondent shall pay a fine in the amount of $4,000.00 by no later than thirty (30) 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 also be suspended for five (5) days with five (5) days stayed for one (1) year.

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

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Interim Chairperson

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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 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).