

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

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| In the Matter of: |) | |
| |) | |
| Saigon Bistro, LLC |) | |
| t/a Saigon Bistro |) | |
| |) | Case No. 11-CMP-00385 |
| Holder of a |) | License No. ABRA-081175 |
| Retailer's Class CR License |) | Order No. 2014-082 |
| |) | |
| at premises |) | |
| 2153 P Street, N.W. |) | |
| Washington, D.C. 20037 |) | |

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Christine Gephardt, 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 Saigon Bistro, LLC, t/a Saigon Bistro, (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on August 1, 2011. The Respondent must pay a \$750.00 fine.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on October 30, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 2153 P Street, N.W., Washington, D.C., on November 15, 2013.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to file a quarterly report for the second quarter of 2011, the period of April 1, 2011 through June 30, 2011, in violation of D.C. Official Code § 25-113(b)(2)(A), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

On September 16, 2011, Citation #7133 was issued to the Respondent in the amount of \$500.00 for violating of D.C. Official Code § 25-113(b)(2)(A).

On September 20, 2011, the Respondent did not pay the citation but instead requested a hearing.

The Board held a Show Cause Status Hearing on January 8, 2014, and Son Ly, Respondent's Manager, appeared on behalf of the Respondent. However, Mr. Ly did not have written authorization to represent the Respondent at the hearing. The Board then scheduled the Show Cause Hearing for February 5, 2014.

The Respondent failed to appear at the Show Cause Hearing held on February 5, 2014. 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 October 30, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-CMP-00385. The Respondent holds a Retailer's Class CR license and is located at 2153 P Street, N.W., Washington, D.C. *See* ABRA Licensing File No. ABRA-081175.
2. The Show Cause Hearing was held on February 5, 2014. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 11-CMP-00385.
3. The Government presented its case through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Transcript (Tr.)*, 2/5/14 at 3-4.
4. Upon her review of the ABRA records, Mrs. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of April through June, 2011, which was due on July 30, 2011. *Tr.*, 2/5/14 at 5-6. Mrs. Clark stated that the Quarterly Statement was filed by the Respondent on September 7, 2011. *Tr.*, 2/5/14 at 6; *see* Government's Exhibit 1.
5. The Respondent failed to appear at the Show Cause Hearing held on February 5, 2014. 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. Official Code § 25-830 and 23 DCMR. § 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 timely file its Quarterly Statement for the period of April through June, 2011. The Board makes this finding based on the testimony of Mrs. Clark and the evidence in the record that shows that the Quarterly Statement was filed by the Respondent on September 7, 2011, after the due date of July 30, 2011.

9. The Board takes administrative notice that this is the Respondent’s second secondary tier violation, both for failing to timely file Quarterly Statements. Thus, this violation warrants a graduated fine under D.C. Official Code § 25-830.

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 October 30, 2013, warrants the imposition of a fine set forth below.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 5th day of March, 2014, finds that the Respondent, Saigon Bistro, LLC, t/a Saigon Bistro, located at 2153 P 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 \$750.00 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.

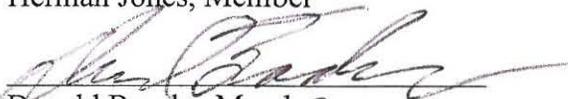
Copies of this Order shall be sent to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board

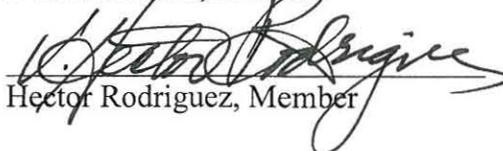


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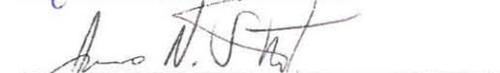
We concur with the majority's decision as to its finding of the Respondent's liability, but we dissent as to the penalty selected by the majority of the Board.



Ruthanne Miller, Chairperson



Mike Silverstein, 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).