

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

In the Matter of:)
)
Saigon Bistro, LLC)
t/a Saigon Bistro)
)
Holder of a)
Retailer's Class CR License)
)
at premises)
2153 P Street, N.W.)
Washington, D.C. 20037)
)

Case Nos. 13-AUD-00055
13-AUD-00064
License No. ABRA-081175
Order No. 2014-309

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, 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 Saigon Bistro, LLC, t/a Saigon Bistro, (Respondent), violated District of Columbia (D.C.) Official Code § 25-113(b)(2)(A), on March 1 and August 1, 2013. As a result, the Respondent must pay a \$1,000.00 fine.

This case arises from two Notices of Status Hearing and Show Cause Hearing (collectively the "Notices"), which the Alcoholic Beverage Control Board executed on January 14, 2014¹ and February 5, 2014. The Alcoholic Beverage Regulation Administration (ABRA) served the Notices on the Respondent, located at premises 2153 P

¹ In Case No. 13-AUD-00055, the ABC Chair mistakenly dated the Notice of Status Hearing and Show Cause Hearing "January 14, 2015" instead of "January 14, 2014."

Street, N.W., Washington, D.C., on January 17, 2014 and February 11, 2014. The Notices charged the Respondent with two violations, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

Specifically, the Notice in Case No. 13-AUD-00055, charged the Respondent with the following violation:

Charge I: The Respondent failed to file a quarterly report for the first quarter of 2013, the period of January 1, 2013, through March 30, 2013, 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).

ABRA Show Cause File No. 13-AUD-00055, Notice of Status Hearing and Show Cause Hearing, 2 (January 14, 2014).

In addition, the Notice in Case No. 13-AUD-00064, charged the Respondent with the following violations:

Charge I: The Respondent failed to file a quarterly report for the second quarter of 2013, the period of April 1, 2013, through March 30, 2013², 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).

ABRA Show Cause File No. 13-AUD-00064, Notice of Status Hearing and Show Cause Hearing, 2 (February 5, 2014).

On September 11, 2013, the Board requested that the Enforcement Division to obtain outstanding Quarterly Statements from the Respondent, but Enforcement Division was unable to do so.

The Respondent failed to appear at the Show Cause Status Hearings held on March 12, 2014, for Case No. 13-AUD-00055, and March 19, 2014, for 13-AUD-00064.

The Respondent also failed to appear at the Show Cause Hearing held on July 16, 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

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

² In Case No. 13-AUD-00064, Charge I, the Government erroneously stated "March 30" instead of "June 30." On July 16, 2014, at the Show Cause Hearing, the Government amended the Notice to reflect June 30, 2014.

1. The Respondent holds a Retailer's Class CR License, License No. ABRA-081175. See ABRA Licensing File No. ABRA-081175. The establishment's premises are located at 2153 P Street, N.W., Washington, D.C. See ABRA Licensing File ABRA-081175.
2. The Show Cause Hearing was held on July 16, 2014. The Notices charge the Respondent with two violations enumerated above. See ABRA Show Cause File Nos. 13-AUD-00055 and 13-AUD-00064.
3. The Board issued Notices of Status Hearing and Show Cause Hearing, dated January 14, 2014 and February 5, 2014. See ABRA Show Cause File Nos. 13-AUD-00055 and 13-AUD-00064.
4. On July 16, 2014, at the Show Cause Hearing, the Government moved to amend the Notice of Status Hearing and Show Cause Hearing (Motion), dated February 5, 2014. *Transcript (Tr.)*, 7/16/14 at 10. The Government moved to amend Charge I in Case No. 13-AUD-00064 to reflect "June 30" instead of "March 20." *Tr.*, 7/16/14 at 10. The Board granted the Government's Motion. *Tr.*, 7/16/14 at 15-16.
5. The Respondent failed to appear at the Show Cause Hearing. 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.
6. The Government presented its cases through the testimony of one witness, ABRA Compliance Analyst, Monica Clark. *Tr.*, 7/16/14 at 6-7.

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I. ABRA Compliance Analyst Monica Clark

7. Upon review of the ABRA records, Mrs. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of January 1 through March 31, 2013, which was due on April 30, 2013. 7/16/14 at 7-8. The Quarterly Statement was filed by the Respondent on February 21, 2014. *Tr.*, 7/16/14 at 8.

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I. ABRA Compliance Analyst Monica Clark

8. In addition, Mrs. Clark determined that the Respondent failed to timely file its Quarterly Statement for the period of April 1 through June 30, 2013, which was due on July 30, 2013. 7/16/14 at 8-9. The Quarterly Statement was filed by the Respondent on January 27, 2014. *Tr.*, 7/16/14 at 10.

CONCLUSIONS OF LAW

9. The Board determines that the Respondent committed the violation described in Charge I of each of the two Notices.

10. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to D.C. Official Code § 25-823(1), D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2013). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830.

11. In Case No. 13-AUD-00055, the Board finds that the Respondent failed to timely file its Quarterly Statement for the period of January 1 through March 31, 2013. 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 February 21, 2014, after the due date of April 30, 2013.

12. Similarly, with regard to Case No. 13-AUD-00064, the Board also finds that the Respondent failed to timely file its Quarterly Statement for the period of April 1 through June 30, 2013. The Board makes this finding again based on the credible testimony of Mrs. Clark and the evidence in the record that shows that the Quarterly Statement was filed by the Respondent on January 27, 2014, after the due date of July 31, 2013.

13. The Respondent's Investigative History shows that these are the Respondent's first secondary tier violations within two years. *Licensing File No. ABRA-081175*, Investigative History. Thus, the Board may fine the Respondent between \$250.00 and \$500.00 for each of the two Charges. *Licensing File No. ABRA-081175*, Investigative History; DCMR § 23-802.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 13th day of August, 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) In Case Number 13-AUD-00055, the Respondent

a. shall pay a \$500.00 fine for the violation described in Charge I.

(2) In Case Number 13-AUD-00064, the Respondent

a. shall pay a \$500.00 fine for the violation described in Charge I.

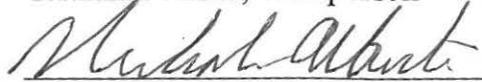
(3) In total, the Respondent must pay a fine in the amount of \$1,000.00 by no later than thirty (30) days from the date of this Order or its license shall be suspended until all outstanding fines are paid.

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

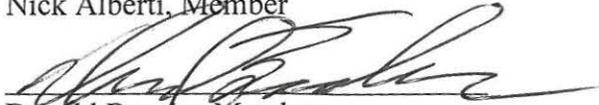
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



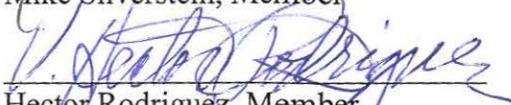
Nick Alberti, Member



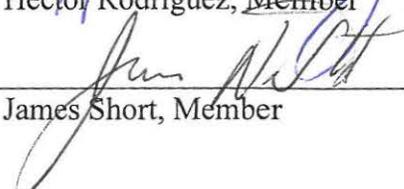
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, 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).