

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

| | | |
|-----------------------------|---|-------------------------|
| In the Matter of: |) | |
| |) | |
| TBM Holdings, LLC |) | |
| t/a TruOrleans |) | |
| |) | Case No. 11-CMP-00372 |
| Holder of a |) | License No. ABRA-086210 |
| Retailer's Class CR License |) | Order No. 2013-439 |
| |) | |
| at premises |) | |
| 400 H Street, N.E. |) | |
| Washington, D.C. 20002 |) | |

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

ALSO PRESENT: Chrissy 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 TBM Holdings, LLC, t/a TruOrleans, (Respondent), violated District of Columbia (D.C.) Official Code § 25-823(6) 2001, on April 14, 2013. The Respondent must pay a \$2,000.00 fine and have its license suspended for two (2) days. These suspension days are activated from Case No. 12-CMP-00056. In addition, the Respondent must pay a \$500.00 fine from the Offer in Compromise (OIC) dated March 13, 2013. Further, the Respondent must pay the outstanding fines imposed by the Board within thirty (30) days or its license shall be immediately suspended until all fines are paid.

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on June 19, 2013. The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at 400 H Street, N.E., Washington, D.C., on June 21, 2013.

The Notice charged the Respondent with the following violation:

Charge I: The Respondent failed to obey an Order of the Board, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(6) (2001).

The Respondent failed to pay a \$500.00 fine included in an Offer in Compromise in Case No. 11-CMP-00372, accepted by the Board on March 13, 2013.

The Board held a Show Cause Status Hearing on August 14, 2013. There was no settlement of the matter and it proceeded to a Show Cause Hearing on September 18, 2013.

The Respondent failed to appear at the Show Cause Hearing held on September 18, 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 June 19, 2013. *See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 11-CMP-00372. The Respondent holds a Retailer's Class CR license and is located at 400 H Street, N.E., Washington, D.C. *See* ABRA Licensing File No. ABRA-086210.
2. The Show Cause Hearing was held on September 18, 2013. The Notice charges the Respondent with the single violation enumerated above. *See* ABRA Show Cause File No. 11-CMP-00372.
3. The Government presented its case through the testimony of one witness, ABRA Public Information Officer, William Hager. *Transcript (Tr.)*, 9/18/13 at 5-6. The Board accepted an OIC on March 13, 2013, that required the Respondent to pay a fine in the amount of \$500.00 within thirty (30) days. *Tr.*, 9/18/13 at 6-7. Mr. Hager testified that the Respondent did not pay the \$500.00 fine. *Tr.*, 9/18/13 at 6-7. After the payment due date, ABRA staff sent a delinquency letter to the Respondent, but no response or payment was received by ABRA. *Tr.*, 9/18/13 at 10-11.
4. The Government submitted into evidence a copy of the OIC, dated March 13, 2013 and an official notice of the District of Columbia Tax Lien. *Tr.*, 9/18/13 at 11-14. *See* Government's Exhibit 1-2.
5. The Respondent failed to appear at the Show Cause Hearing held on September 18, 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 obey an Order of the Board by not complying with an Offer in Compromise, dated March 13, 2013, and pay a fine in the amount of \$500.00 by April 13, 2013. The Board makes this finding based on the testimony of Mr. Hager and the evidence in the record that shows that the fine was not paid.
9. The Board takes administrative notice that this is the Respondent’s first primary tier violation. Thus, this violation warrants a fine under D.C. Official Code § 25-830. The Board also finds that previously stayed suspension days, imposed in Case No. 12-CMP-00056, are triggered by the case at hand, and will now be served by the Respondent as set forth more fully below.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 23rd day of October, 2013, finds that the Respondent, TBM Holdings, LLC, t/a TruOrleans, located at 400 H Street, N.E., Washington, D.C., holder of a Retailer’s Class CR license, violated D.C. Official Code § 25-823(6).

The Board hereby **ORDERS** that:

- 1) The Respondent must pay a fine in the amount of \$2,000.00.
- 2) The Respondent also must pay the fine from the Offer in Compromise, dated March 13, 2013, in the amount of \$500.00.
- 3) In total, the Respondent must pay a fine in the amount of \$2,500.00 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.
- 4) In addition, the Respondent must serve two (2) days of suspension. These suspension days are activated from Case No. 12-CMP-00056.

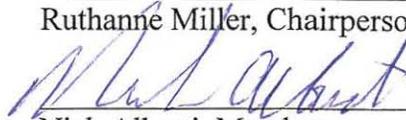
- 5) Additionally, the Respondent must pay the outstanding fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all fines are paid.
- 6) Further, the Respondent's suspension shall begin on November 22, 2013, and end at midnight on November 23, 2013.

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

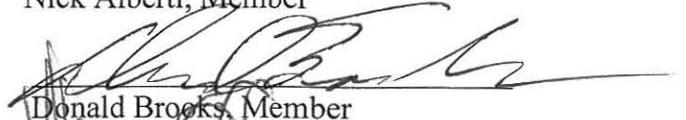
District of Columbia
Alcoholic Beverage Control Board



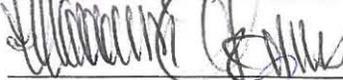
Ruthanne Miller, Chairperson



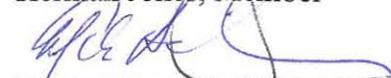
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, 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).