

Respondent, located at premises 1909 9th Street, N.W., Washington, D.C. 20001, on December 4, 2013. See ABRA Show Cause File No. 12-CMP-00678 (NCBO), Service Form.

The Notice charges the Respondent with failure to follow a Board Order, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC license. Specifically, the Notice, charges the Respondent with the following violation:

Charge I: The Respondent failed to follow a Board Order by not paying a fine, in violation of D.C. Official Code § 25-823(6) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

The Respondent was personally served with a copy of the Notice on December 4, 2013. The Respondent failed to appear at the Show Cause Status Hearing held on January 29, 2014.

The Respondent also failed to appear at the Show Cause Hearing held on March 26, 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:

1. The Respondent holds a Retailer's Class CR License, License Number ABRA-089019. See Licensing File No. ABRA-089019. The establishment's premises are located at 1909 9th Street, N.W., Washington, D.C. 20001. See Licensing File No. ABRA-089019.
2. On July 31, 2013, the Board issued Board Order No. 2013-348, which found that the Respondent violated Title 23 of the District of Columbia Municipal Regulations (DCMR) § 705.9 (2012) on November 16, 2012. See ABRA Show Cause File No. 12-CMP-00678 (NCBO), Board Order No. 2013-348. In response, the Board imposed a \$2,000.00 fine to be paid no later than thirty (30) days from the date of the Board Order No. 2013-348, dated July 31, 2013. See ABRA Show Cause File No. 12-CMP-00678 (NCBO), Board Order No. 2013-348.
3. The Government presented its case through the testimony of one witness, ABRA Public Information Officer, William Hager. *Transcript (Tr.)*, 3/26/14 at 4-5. The Board issued Board Order No. 2013-348, on July, 2013, that required the Respondent to pay a fine in the amount of \$2,000.00 within thirty (30) days. *Tr.*, 3/26/14 at 3-4. Mr. Hager testified that the Respondent did not pay the \$2,000.00 fine by August 31, 2013, the deadline to pay the fine. *Tr.*, 3/26/14 at 5-6. After the payment due date had passed, ABRA

staff sent a delinquency letter to the Respondent on September 17, 2013, but no response or payment was received by ABRA. *Tr.*, 3/26/14 at 7-8.

CONCLUSIONS OF LAW

4. 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.

5. The Board determines that the Respondent violated a Board Order by failing to remit payment on a fine levied by the Board by the required deadline of August 31, 2013, in violation of D.C. Official Code § 25-823(1). The provision states, in part, “The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if...The licensee fails to follow its voluntary agreement, security plan, or Board order.” D.C. Official Code § 25-823.

6. 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. By failing to remit timely payment of this fine, the Respondent violates the conditions of the Board Order No. 2013-348, which the Board issued on July 31, 2013.

7. Based on the Respondent’s violation, the Board has the authority to “fine, as set forth in the schedule of civil penalties established under § 25-830” and may “suspend, or revoke the license.” D.C. Official Code § 25-823. A violation of a Board order is fined as a primary tier violation. D.C. Official Code § 25-830(f).

8. The Respondent’s Investigative History shows that this is the Respondent’s second primary tier violation in the past two years. *Licensing File No. ABRA-089019*, Investigative History. Thus, the present violation shall be fined as a second primary tier violation and the Board may fine the Respondent between \$2,000.00 and \$4,000.00. *Licensing File No. ABRA-089019*, Investigative History; DCMR § 23-801.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 4th day of June, 2014, finds Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, is guilty of Charge I. Accordingly, it is **ORDERED** that:

- (1) For the violation described in Charge I, the Respondent shall pay a fine of \$3,000.00 within thirty (30) days from the date of this Order, or its license shall be suspended until all outstanding fines are paid.

- (2) In addition, the Respondent shall also pay the fine imposed by Board Order No. 2013-348, dated July 31, 2013, in the amount of \$2,000.00 within three (3) days from the date of this Order, or its license shall be suspended immediately and indefinitely until this fine is paid.

IT IS FURTHER ORDERED based on the present violation, the Respondent's Investigative History shall show that it committed an unlisted violation on the date of this order.

The ABRA shall deliver copies of this order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board




Nick Alberti, Member




Herman Jones, Member



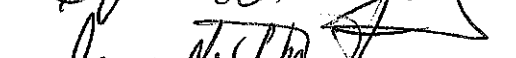
Donald Brooks, Member



Mike Silverstein, Member

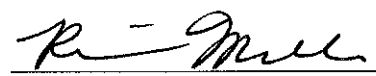


Hector Rodriguez, Member



James Short, Member

I concur with the majority's decision as to its finding of the Respondent's liability, but I disagree with the penalty selected by the majority of the Board. The law provides for a range of \$2,000 to \$4,000 for this violation. Accordingly, the \$3,000 amount selected by the majority of the Board is within the Board's legal authority. However, given the nature of the offense in this case, i.e., a failure to pay a fine, there is no risk to the public arising from this violation. Accordingly, it is my view that this violation warrants the lower \$2,000 penalty.



Ruthanne Miller, Chairperson

Pursuant to 23 DCMR §1702.1, whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon a party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period.

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).