

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

In the Matter of:)	
)	
Melben, Inc.)	Case No.: 20-AUD-00016
t/a Flavio)	License No.: ABRA-8004
)	Order No.: 2021-339
Holder of a)	
Retailer's Class CR License)	
)	
at premises)	
1069 31st Street, N.W.)	
Washington, D.C. 20007)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: Jessica Krupke, 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**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that Melben, Inc., t/a Flavio, (hereinafter "Respondent" or "Flavio") violated D.C. Official Code § 25-113(b)(2)(a) by failing to file a required quarterly report. The Respondent shall pay a fine of \$3,000 for the offense.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which charges the Respondent with the following violation:

Charge I: The Respondent failed to file a required quarterly report for the quarter ending December 31, 2019, in violation of D.C. Code § 25-113(b)(2)(a).

Notice of Status Hearing and Show Cause Hearing, at 2-3. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license. The Show Cause Status Hearing in this matter was held on January 6, 2021. The parties proceeded to a Show Cause Hearing and argued their respective cases on May 19, 2021.

At the hearing on May 19, 2021, the Respondent failed to appear despite being served with notice of the hearing on April 22, 2021. *Transcript (Tr.)*, Apr. 22, 2021 at 6. The Government proceeded with the prosecution ex parte pursuant to D.C. Official Code § 25-447.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Flavio holds a Retailer's Class CR License at 1069 31st Street, N.W., Washington, D.C. *ABRA License No. 60806*. In 2021, restaurants and hotels had to file a quarterly report for the fourth quarter ending on December 31, 2019, by January 30, 2020. *Tr.*, 3/19/21 at 13-14. Nevertheless, ABRA's Compliance Analyst Monica Clark did not receive the quarterly report until March 2, 2020, which is after the January 30, 2020 filing deadline. *Id.* at 13.

CONCLUSIONS OF LAW

2. 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 (D.C.) Official Code pursuant to D.C. Code § 25-823(a)(1).

I. Standard of Proof

3. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2021). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

II. The Respondent Failed to File the Quarterly Report for the Fourth Quarter in a Timely Manner.

4. Under § 25-113(b)(2)(a),

The licensee shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages.

D.C. Code § 25-113(b)(2)(a). Under § 1207.1, each restaurant licensee's quarterly report is due within 30 days "after the end of each quarter . . ." 23 DCMR § 1207.1 (West Supp. 2021). Nevertheless, the quarterly report for the fourth quarter of 2019, was not received until March 2, 2020, which was after the deadline. *Supra*, at ¶ 1. Therefore, the Board sustains Charge I.

III. Penalty

5. Based on the violation identified above, the Respondent shall pay a fine of \$3,000 for Charge I, which constitutes a fifth secondary tier violation based on Flavio's history of prior violations. 23 DCMR § 800 (West Supp. 2021).

ORDER

Therefore, the Board, on this 23rd day of June 2021, finds Melben, Inc., t/a Flavio, guilty of violating § 25-113a(b)(2)(a). The Board imposes the following penalty on Flavio:

(1) For the violation described in Charge I, Flavio shall pay a \$3,000 fine.

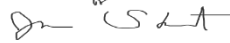
IT IS FURTHER ORDERED that the Respondent must pay all fines imposed by the Board within one-hundred and twenty (120) days from the date of this Order, or its license shall be immediately suspended until all amounts owed are paid.

IT IS FURTHER ORDERED, in accordance with 23 DCMR § 800.1, the violation found by the Board in this Order shall be deemed a secondary tier offense.


IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

District of Columbia
Alcoholic Beverage Control Board

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James Short, Member

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Rafi Crockett, Member

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Edward S. Grandis, Member

I dissent from the position taken by the majority of the Board.

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Donovan Anderson
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Donovan Anderson, Chairperson

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Jeni Hansen, Member
Key: 82172091e0509447491b566c2a41880

Jeni Hansen, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 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, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §

1719.1 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).