

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

In the Matter of:	)	
Skenco, Inc.	)	Case No.: 16-AUD-00086
t/a Zorba's Café	)	License No.: 7428
Holder of a	)	Order No.: 2018-336
Retailer's Class DR License	)	
at premises	)	
1612 20th Street, N.W.	)	
Washington, D.C. 20009	)	

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
James Short, Member  
Bobby Cato, Member

**ALSO PRESENT:** Skenco, Inc., t/a Zorba's Café, Respondent  
  
Walter Adams, Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds that Skenco, Inc., t/a Zorba's Café, (hereinafter "Respondent" or "Zorba's Café") violated § 25-113(j)(3)(C) by not maintaining all of the required guest checks and register receipts for the year 2015.

***Procedural Background***

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on August 18, 2017. *ABRA Show Cause File No. 16-AUD-00086*,

Notice of Status Hearing and Show Cause Hearing, 2 (Aug. 18, 2017). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1612 20th Street, N.W., Washington, D.C., on September 27, 2017. *ABRA Show Cause File No. 17-AUD-00086*, Service Form. 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.

Specifically, the Notice charges the Respondent with the following violation:

**Charge I: [In 2015 and 2016,] [y]ou failed to keep and maintain adequate records for a period of three years pursuant to D.C. Code § 25-113(j)(3)(C) and 23 DCMR §§ 1204.1 and 1208.3 . . . .**

*Notice of Status Hearing and Show Cause Hearing, 2.*

Both the Government and Respondent appeared at the Show Cause Status Hearing on September 21, 2017. After two continuances were granted on January 24, 2018, and February 28, 2018, the parties proceeded to a Show Cause Hearing and argued their respective cases on April 25, 2018.

### 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. Zorba's Café holds a Retailer's Class DR License at 1612 20th Street, N.W., Washington, D.C. *ABRA License No. 7428*.
2. ABRA Auditor Neal Adjunmobi is a certified auditor and conducts audits of licensed establishments for ABRA. *Transcript (Tr.)*, April 25, 2018 at 12. In 2016, Auditor Adjunmobi conducted an audit of Zorba's Café's books and records to determine whether the Respondent had complied with the law in 2015. *Id.* at 18-19
3. As part of the audit, the auditor examined the quarterly reports submitted by the Respondent in 2015. *Id.* at 25-27. The auditor also had a letter, dated September 7, 2016, served on the Respondent identifying the time, date, and location of the audit and the scope of the audit, including the relevant period under review and the type of information that was requested. *Government Exhibit No. 2*. In this case, the scope of the audit was the period between January 1, 2015, and December 31, 2015. *Id.* The audit was scheduled to occur on October 31, 2016, at 10:00 a.m., at the Respondent's premises. *Id.*
4. After the audit notice was sent to the Respondent, someone claiming to be the owner's son contacted the auditor. *Tr.*, 4/25/18 at 37. According to this person, the establishment's computer did not have the required information. *Tr.*, 4/25/18 at 38.

5. The auditor appeared at the establishment on October 31, 2016, at 10:00 a.m., with ABRA Investigator Mark Brashears. *Tr.*, 4/25/18 at 37-38. The owner, Despina Skenderis, and her accountant were present during the audit. *Id.* at 39, 116. Ms. Skenderis presented the auditor with a box of invoices. *Id.* at 41, 59. The auditor then requested sales documents. *Id.* at 43. In response, the owner indicated that the computer with the required information did not have the data and it could not be retrieved. *Id.* at 43-45, 77. Consequently, the establishment could not present the auditor with guest records or receipts from 2015; therefore, the auditor could not determine the Respondent's food and beverage sales and complete the audit. *Id.* at 44-45, 59, 61.

6. The owner, Ms. Skenderis, testified at the Show Cause Hearing, and confirmed that her son called the auditor. *Id.* at 80. She indicated that the establishment switched to a new point of sale system in the past. *Id.* at 81, 93-94. During 2015, the Respondent was using both systems at the same time to make sales; therefore, part of the required data was on the old system. *Id.* at 82. Ms. Skenderis admitted that at the time of the audit the old system that the Respondent maintained would not print the required information; therefore, on the day of the audit she only had the total figures, and not the daily records. *Id.* at 107, 117. On the date of the hearing, Ms. Skenderis attempted to bring in the required documents, but they did not represent the establishment's complete records because they still lacked the information from the old system. *Id.* at 97-98, 129.

7. The auditor noted that a "Z report," a report that provides total daily sales, is not sufficient to conduct an audit. *Id.* at 122. Specifically, this type of report lacks the required source documents and does not show itemized purchases, which guest checks and receipts show. *Id.* Therefore, without an establishment's guest checks and receipts, ABRA cannot verify whether the presented totals are accurate. *Id.*

## CONCLUSIONS OF LAW

8. 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. Official Code § 25-823(a)(1). D.C. Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2018).

### I. Standard of Proof

9. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2018). 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. Zorba's Café Failed to Maintain Required Books and Records in 2015.

10. Under D.C. Official Code § 25-113(j)(3)(C), "The failure of a licensee under a license class . . . D/R . . . , to keep and maintain records" is a violation. D.C. Code § 25-113(j)(3)(C). Under § 25-113(j)(3)(A),

Each licensee under a license, class . . . D/R . . . shall keep and maintain on the premises for a period of 3 years adequate books and records showing all sales, purchase invoices, and dispositions, including the following:

- (i) Sales information that includes the date, the price of food sold, the price of alcoholic beverages sold, and the amount of total sales;
- (ii) Purchase information that includes the date and quantity of the purchase, the name, address, and phone number of the wholesaler and or vendor with the original invoice; and
- (iii) Register receipts or guest checks, which may be kept daily or weekly that include the food sold, the alcoholic beverages sold, and the amount of total sales.

D.C. Code § 25-113(j)(3)(A). Sections 1204.1 and 1208.3 requires that the records, whether in electronic or in physical form, be maintained "on the licensed premises for a period of three . . . years after the latest transaction recorded in those books and records, 23 DCMR §§ 1204.1, 1208.3 (West Supp. 2018).

11. In this case, the Respondent could not produce all of the "register receipts or guest checks" required by part (iii) for the year 2015. *Supra*, at ¶¶ 3, 5-6. As such, the Board sustains Charge I.

## III. Penalty

12. A violation of § 25-113(j)(3)(A) is deemed a primary tier violation. 23 DCMR § 800 (West Supp. 2013). This offense represents the Respondent's first primary tier offense, which may result in a fine of between \$1,000 and \$2,000. 23 DCMR § 801.1(a) (West Supp. 2018). The Board imposes the minimum fine in light of the Respondent's violation history.

## ORDER

Therefore, the Board, on this 16th day of May 2018, finds that Skenco, Inc., t/a Zorba's Café, guilty of violating § 25-113(j)(3)(A). The Board imposes the following penalty on Zorba's Café:

- (1) For the violation described in Charge I, Zorba's Café shall pay a fine of \$1,000.

**IT IS FURTHER ORDERED** that the Respondent must pay all fines imposed by the Board within thirty (30) 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 violations found by the Board in this Order shall be deemed a primary tier violation.

**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

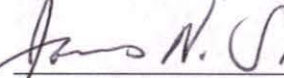


Donovan Anderson, Chairperson




Nick Alberti, Member

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James Short, Member



Bobby Cato, 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).