

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

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IN THE MATTER OF: :
:
Sunshine Bar & Lounge, LLC :
t/a Sunshine Bar & Lounge : Show
7331 Georgia Avenue, NW : Cause
Retailer CR - ANC-4B : Hearing
License No. 85239 :
Case #13-AUD-00044 :

(Failed to Qualify as a :
Restaurant, Failed to :
Maintain Books and Records) :

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January 8, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C.

20009, Chairperson Ruthanne Miller, presiding.

PRESENT:
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member

DONALD BROOKS, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT:
WALTER ADAMS, OAG
ADENIYI ADEJUNMOBI, ABRA Investigator

1 P-R-O-C-E-E-D-I-N-G-S

2 (10:54 a.m.)

3 CHAIRPERSON MILLER: The next case
4 on our calendar is a Show Cause Hearing, Case
5 No. 13-AUD-00044, Sunshine Bar & Lounge
6 located at 7331 Georgia Avenue, N.W., License
7 No. 85239, in ANC-4B.

8 Would the parties identify
9 themselves for the record?

10 MR. ADAMS: Walter Adams. I
11 represent the District of Columbia.

12 CHAIRPERSON MILLER: Is there
13 anybody here for Sunshine Bar & Lounge? Not
14 seeing anyone come forward, Mr. Adams, are you
15 going to be presenting your case ex parte?

16 MR. ADAMS: Yes, I am.

17 CHAIRPERSON MILLER: Okay. This
18 case was called for 10:00. It is now 10:55
19 a.m. and notice was issued, according to my
20 records, on September 6, 2013 and served on
21 respondent, September 17, 2013. And the
22 respondent did not appear at the Status

1 Hearing.

2 MR. ADAMS: That's right.

3 CHAIRPERSON MILLER: Okay. So we
4 are ready to hear your case then.

5 MR. ADAMS: Sure, no problem. The
6 District will proceed in an ex parte manner.
7 I'll waive an opening statement. I will state
8 that this establishment has not -- there has
9 been a couple of pending matters that this
10 establishment has not shown up for policy
11 hearings and recently that has been for Case
12 12-CMP-00054 where there was, I believe, a
13 Show Cause Hearing that was for November 13th.
14 There was a Show Cause Hearing for 12-CMP-
15 00194, that establishment also did not show up
16 for on November 13.

17 And also there was another case
18 for 12-251-00243 and so -- essentially for
19 those cases, we have had Show Causes have been
20 scheduled for, I guess, late 2013, you now,
21 since November 2013 have they showed up for
22 those cases. I just wanted to put that on the

1 record.

2 CHAIRPERSON MILLER: Okay.

3 MR. ADAMS: We are ready to
4 proceed ex parte.

5 CHAIRPERSON MILLER: Okay.

6 MR. ADAMS: Madam Chair.

7 CHAIRPERSON MILLER: So are you
8 going to call your first witness?

9 MR. ADAMS: Sure. The District's
10 first and, I believe, only witness is going to
11 be Mr. Adeniyi Adejunmobi.

12 CHAIRPERSON MILLER: Good morning.

13 INVESTIGATOR ADEJUNMOBI: Good
14 morning, ma'am.

15 Whereupon,

16 INVESTIGATOR ADENIYI ADEJUNMOBI
17 was called as a witness by Counsel for the
18 Government, and having been first duly sworn,
19 assumed the witness stand and was examined and
20 testified as follows:

21 CHAIRPERSON MILLER: Thank you.

22 DIRECT EXAMINATION

1 MR. ADAMS: All right. Mr.
2 Adejunmobi, would you please state your name
3 and spell it for the record?

4 INVESTIGATOR ADEJUNMOBI: Adeniyi
5 Adejunmobi. A-D-E-J -- excuse me. A-D-E-N-I-
6 Y-I A-D-E-J-U-N-M-O-B-I.

7 MR. ADAMS: And, Mr. Adejunmobi,
8 you work for the District's Alcoholic Beverage
9 Regulation Administration, otherwise known as
10 ABRA, correct?

11 INVESTIGATOR ADEJUNMOBI: Yes.

12 MR. ADAMS: And you -- and your
13 position is as -- is it Chief Auditor or
14 Auditor?

15 INVESTIGATOR ADEJUNMOBI: No, I'm
16 a Compliance Analyst.

17 MR. ADAMS: Compliance Analyst for
18 the Agency?

19 INVESTIGATOR ADEJUNMOBI: Yes.

20 MR. ADAMS: As far as your role as
21 being a compliance analyst, do you conduct
22 audits of the establishments?

1 INVESTIGATOR ADEJUNMOBI: Yes.

2 MR. ADAMS: And what kind of
3 audits do you do?

4 INVESTIGATOR ADEJUNMOBI: Well, I
5 conduct regulatory audits to see whether the
6 establishments licensed by ABRA are in
7 compliance with their food requirements.

8 MR. ADAMS: Okay. And when you
9 say food requirements, what food requirements
10 do you mean?

11 INVESTIGATOR ADEJUNMOBI: I mean
12 in terms of the standard set by the Code that
13 they should have at least 45 percent of their
14 food sales should be -- of their gross
15 receipts should be food and/or in other words
16 they can have \$2,000 per seat, based on the
17 number of seats in the restaurant.

18 MR. ADAMS: All right. And when
19 you conduct audits, what type of information
20 are you looking for to show that an
21 establishment is in compliance with the
22 regulations?

1 INVESTIGATOR ADEJUNMOBI: Well,
2 what I'm looking for is mandated by law, that
3 whatever is reported on their quarterly
4 statement, submitted to ABRA must be supported
5 by guest checks, which are evidence that
6 supports that actually food were being sold in
7 there.

8 MR. ADAMS: All right. And so in
9 2013 -- well, first of all, are you familiar
10 with an establishment named Sunshine Bar &
11 Lounge?

12 INVESTIGATOR ADEJUNMOBI: I am.

13 MR. ADAMS: And in 2013 did you
14 conduct an audit of that establishment?

15 INVESTIGATOR ADEJUNMOBI: Yes, I
16 did.

17 MR. ADAMS: And as a result of
18 your audit, did you complete a report as part
19 of this audit?

20 INVESTIGATOR ADEJUNMOBI: Yes.

21 MR. ADAMS: And I would like to
22 provide to the witness what is marked as

1 District's Exhibit 1, which is, I believe, a
2 case report.

3 (Whereupon, the document was
4 marked as Government Exhibit 1 for
5 identification.)

6 CHAIRPERSON MILLER: Are you
7 moving the case report into evidence? Is that
8 what you said?

9 MR. ADAMS: Yes.

10 CHAIRPERSON MILLER: Okay. That
11 case report is admitted as Government Exhibit
12 No. 1.

13 (Whereupon, the document marked as
14 Government Exhibit 1 was received
15 in evidence.)

16 MR. ADAMS: All right. And also,
17 Mr. Adejunmobi, so I believe that you started
18 an audit around February 25, 2013. So what
19 did you do to start that audit?

20 INVESTIGATOR ADEJUNMOBI: We sent
21 an engagement letter out to the establishment.

22 MR. ADAMS: Okay. And was it

1 received by the establishment?

2 INVESTIGATOR ADEJUNMOBI: Yes.

3 MR. ADAMS: Okay. And so what
4 exactly -- as far as the engagement letter,
5 what were you looking for? What information
6 were you looking for from this establishment?

7 INVESTIGATOR ADEJUNMOBI: Well,
8 the engagement letter is just to notify the
9 establishment, based on law, that within 30
10 days we will be coming out there to examine
11 the books and records that supports the
12 quarterly statement filed for year 2012 for
13 the establishment.

14 MR. ADAMS: Okay. So you -- so
15 this audit was for the period of -- for
16 January 1, 2012 to December 31, 2012?

17 INVESTIGATOR ADEJUNMOBI: Yes.

18 MR. ADAMS: Is that correct?

19 INVESTIGATOR ADEJUNMOBI: Yes.

20 MR. ADAMS: All right. And so you
21 found that the establishment had four
22 quarterly statements for the calendar year

1 2012?

2 INVESTIGATOR ADEJUNMOBI: Yes,
3 they did.

4 MR. ADAMS: All right. And you
5 reviewed that as part of your audit?

6 INVESTIGATOR ADEJUNMOBI: Yes.

7 MR. ADAMS: All right. And so
8 what happened afterwards?

9 INVESTIGATOR ADEJUNMOBI: Well, on
10 the appointed day, we went there. The date
11 that was on there was shifted because the
12 licensee said she wasn't ready to do the audit
13 on that day. But when we finally went there,
14 we met her and we requested for the books and
15 two other procedures which we normally do.

16 We requested the books and records
17 that supported the 2012 quarterly statement
18 with the Agency, with ABRA.

19 MR. ADAMS: And so I believe --
20 was that date on May 13, 2013 that you
21 actually spoke with her?

22 INVESTIGATOR ADEJUNMOBI: Yes.

1 MR. ADAMS: Okay. And so when you
2 went there on May 13th what did you find?

3 INVESTIGATOR ADEJUNMOBI: Well, we
4 met the -- she wasn't there. We waited for
5 about 15 to 30 minutes. I give her a call.
6 And finally she showed up and opened up. And
7 we entered. Like I said, we inform her the
8 purpose of the audit, which is part of our
9 normal process. We requested the books and
10 records for the statements filed for the
11 calendar year 2012 filed with the Agency.

12 MR. ADAMS: What did she provide
13 to you?

14 INVESTIGATOR ADEJUNMOBI: She
15 provided a box with assorted guest checks with
16 very minimal -- very little assorted guest
17 checks there was.

18 MR. ADAMS: And why do you say it
19 was very little?

20 INVESTIGATOR ADEJUNMOBI: Well,
21 from my experience in doing this audit,
22 especially when you are doing it for a whole

1 year with somebody submitting four quarterly
2 statements, I was expecting it to be more
3 voluminous than what it was.

4 MR. ADAMS: Okay. And how much
5 information was there within it?

6 INVESTIGATOR ADEJUNMOBI: Well,
7 the information wasn't sorted, wasn't
8 specified and the lady when I asked her where
9 the rest of the information for that, she said
10 she does not have it.

11 MR. ADAMS: All right. Okay.
12 Sorry, go ahead. Finish your sentence.

13 INVESTIGATOR ADEJUNMOBI:
14 Actually, what she said was she had been sick.
15 She has been indisposed for some time and the
16 people that were in charge of the restaurant,
17 they disposed of the other documents.

18 MR. ADAMS: One moment. Madam
19 Chair, just for a preliminary question.

20 CHAIRPERSON MILLER: Yes.

21 MR. ADAMS: We already admitted
22 Exhibit 1 into evidence?

1 CHAIRPERSON MILLER: Yes.

2 MR. ADAMS: I just want to produce
3 the copies to the Board of Exhibit 1.

4 CHAIRPERSON MILLER: Okay.

5 MR. ADAMS: And the information
6 that she did provide to you, what kind of
7 information did she provide to you and did it
8 have the specific information that would be
9 normally compliant for an audit?

10 INVESTIGATOR ADEJUNMOBI: Well,
11 the documents she presented had the necessary
12 attributes. But what has happened, she was
13 unable to provide us the universe that is
14 needed to do the audit. What I mean by that
15 is we are looking for things that cover from
16 January 1, 2012 through December 31, 2012.

17 MR. ADAMS: Um-hum.

18 INVESTIGATOR ADEJUNMOBI: She was
19 unable to provide that.

20 MR. ADAMS: Now, within your
21 investigative report it states that some of
22 the guest checks that you did examine, you

1 were talking about the guest checks and sales
2 receipts, and you stated that some of them
3 were lacking dates and the price of food sold.
4 Is that correct?

5 INVESTIGATOR ADEJUNMOBI: Yes.

6 MR. ADAMS: And how -- and that it
7 didn't show the prices of the alcoholic
8 beverages sold. Is that correct?

9 INVESTIGATOR ADEJUNMOBI: Food.
10 Food.

11 MR. ADAMS: For food? Okay. And
12 so how did that impact your audit?

13 INVESTIGATOR ADEJUNMOBI: Well, it
14 impacted the audit in the sense that the -- I
15 mean, the way I would say it is that since
16 it's not complete for all of 2012, I really
17 can't use partial information to make a
18 determination we need to make --

19 MR. ADAMS: All right.

20 INVESTIGATOR ADEJUNMOBI: -- about
21 them operating as a restaurant, based on the
22 requirements of the law.

1 MR. ADAMS: And now you didn't go
2 by yourself. Is that --

3 INVESTIGATOR ADEJUNMOBI: No.

4 MR. ADAMS: Who else did you go
5 with?

6 INVESTIGATOR ADEJUNMOBI:
7 Investigator Dantzler accompanied myself.

8 MR. ADAMS: All right.

9 INVESTIGATOR ADEJUNMOBI: Another
10 compliance analyst.

11 MR. ADAMS: And so as part of
12 this, was there any request to look for
13 information, to your knowledge, for a three
14 year period?

15 INVESTIGATOR ADEJUNMOBI: Yes.
16 The -- well, yeah, there was.

17 MR. ADAMS: Okay.

18 INVESTIGATOR ADEJUNMOBI: Um-hum.

19 MR. ADAMS: And what was found in
20 terms of whether or not they had sufficient
21 books and records for a three year period?

22 INVESTIGATOR ADEJUNMOBI: Okay. I

1 can only go by the outline provided to me,
2 that is a regulatory inspection.

3 MR. ADAMS: Okay.

4 INVESTIGATOR ADEJUNMOBI: Provided
5 to me by Investigator Dantzler, based on that
6 three year records.

7 MR. ADAMS: And what did she say?

8 INVESTIGATOR ADEJUNMOBI: That
9 they didn't have complete three years records.

10 MR. ADAMS: They did what?

11 INVESTIGATOR ADEJUNMOBI: They did
12 not.

13 MR. ADAMS: Did not? Okay. All
14 right. And now in -- within the investigative
15 report, there is a photograph. I think it is
16 stated as Exhibit 3 of your report? Do you
17 see that in front of you?

18 INVESTIGATOR ADEJUNMOBI: No, I
19 don't have it.

20 MR. ADAMS: Oh, okay.

21 INVESTIGATOR ADEJUNMOBI: Yes, I'm
22 looking at it.

1 MR. ADAMS: Okay. So were you
2 there when this photograph was taken?

3 INVESTIGATOR ADEJUNMOBI: Yes,
4 sir, I was there.

5 MR. ADAMS: And who took this
6 photograph?

7 INVESTIGATOR ADEJUNMOBI: Ms.
8 Dantzler.

9 MR. ADAMS: All right. And but it
10 still represents the photograph of the
11 documentation?

12 INVESTIGATOR ADEJUNMOBI: Yes.

13 MR. ADAMS: All right. Now, it
14 looks like there is a -- what is in that
15 photograph? Are those like guest books or
16 what did you consider that to be?

17 INVESTIGATOR ADEJUNMOBI: Those
18 are guest checks.

19 MR. ADAMS: Guest checks?

20 INVESTIGATOR ADEJUNMOBI: Yes.

21 MR. ADAMS: Okay. So it was all
22 handwritten?

1 INVESTIGATOR ADEJUNMOBI: Yes.

2 MR. ADAMS: Okay. On those

3 tablets?

4 INVESTIGATOR ADEJUNMOBI: Yes.

5 MR. ADAMS: Okay. And that's --

6 and when you said it was an unorganized box,

7 I see there is a -- on the top of the

8 photograph there is a Corona Light box.

9 INVESTIGATOR ADEJUNMOBI: Yes.

10 MR. ADAMS: Is that what you are

11 referring to?

12 INVESTIGATOR ADEJUNMOBI: Yes.

13 MR. ADAMS: All right. And so

14 what you are saying is that -- so the

15 documents that were there, is that what the

16 owner was stating was information for an

17 entire year?

18 INVESTIGATOR ADEJUNMOBI: That's

19 what she said.

20 MR. ADAMS: All right.

21 INVESTIGATOR ADEJUNMOBI: I left

22 before it was inspected.

1 MR. ADAMS: Okay. All right. I
2 have no further questions for Mr. Adejunmobi.

3 CHAIRPERSON MILLER: Thank you.
4 Do Board Members have any questions? No?
5 Yes?

6 MEMBER ALBERTI: Well, Mr.
7 Adejunmobi?

8 CHAIRPERSON MILLER: Mr. Alberti?

9 MEMBER ALBERTI: One of the
10 charges is failure to establish the
11 qualifications as a restaurant.

12 INVESTIGATOR ADEJUNMOBI: What's
13 that?

14 MEMBER ALBERTI: One of the
15 charges here is failure to establish the
16 qualifications as a restaurant.

17 INVESTIGATOR ADEJUNMOBI: Yes.

18 MEMBER ALBERTI: Can you tell me
19 what the quarterly reports indicated for the
20 calendar year 2012? Did they indicate -- did
21 the quarterly reports that were submitted by
22 the licensee, did they indicate that --

1 whether or not -- did they indicate that the
2 establishment did not qualify as a restaurant?

3 INVESTIGATOR ADEJUNMOBI: Yes.

4 Well, that question is -- based on the
5 quarterly statements, she wasn't chosen for
6 that audit based on that. It was a random
7 audit.

8 MEMBER ALBERTI: I understand, but
9 to qualify as a restaurant, you have to meet
10 certain criteria.

11 INVESTIGATOR ADEJUNMOBI: Yes, you
12 have to be -- well, yes, she was satisfied.
13 But what -- I believe the -- I'm sorry,
14 correct me, sir. I believe you was asking
15 that what makes her to be a restaurant.

16 MEMBER ALBERTI: No.

17 INVESTIGATOR ADEJUNMOBI: Based on
18 the percentages. And I think what you are
19 referring to is the figures on her quarterly
20 statement, the one that she submitted to us
21 that we were verifying, showed that she
22 qualify as a restaurant. I can't recollect

1 right now.

2 MEMBER ALBERTI: So you don't

3 know?

4 INVESTIGATOR ADEJUNMOBI: Well --

5 MEMBER ALBERTI: You can't

6 recollect right now is what you are saying.

7 INVESTIGATOR ADEJUNMOBI: I can't

8 recall it right now, but the evidence -- we

9 have it. We have the quarterly statements

10 though.

11 MEMBER ALBERTI: We have those in

12 our records.

13 INVESTIGATOR ADEJUNMOBI: Yes.

14 MEMBER ALBERTI: And we can refer

15 to those.

16 INVESTIGATOR ADEJUNMOBI: Okay.

17 MEMBER ALBERTI: All right. Fine.

18 Thank you.

19 CHAIRPERSON MILLER: Anything

20 else? Any other Board questions? Okay.

21 Thank you very much.

22 (Whereupon, witness was excused.)

1 MR. ADAMS: I was waiting for the
2 Board's direction.

3 CHAIRPERSON MILLER: Oh, okay.
4 Well, the direction is do you rest your case
5 or do you have anything more?

6 MR. ADAMS: The District does rest
7 its case.

8 CHAIRPERSON MILLER: You rest your
9 case. Okay.

10 MR. ADAMS: Yes.

11 CHAIRPERSON MILLER: I assume that
12 means closing argument as well?

13 MR. ADAMS: Yes.

14 CHAIRPERSON MILLER: All right.
15 Then the record is closed. And I'll ask if
16 you want to file proposed findings of fact and
17 conclusions of law or waive your right to do
18 so?

19 MR. ADAMS: Sure. Well, actually,
20 I can just do a very quick summation, if you
21 allow? In terms of the -- based upon the
22 testimony.

1 CHAIRPERSON MILLER: Oh, okay,
2 yeah. Yes.

3 MR. ADAMS: Very quickly.

4 CHAIRPERSON MILLER: Go ahead.

5 MR. ADAMS: I think what -- from--
6 I'm sorry. From Mr. Adejunmobi's testimony,
7 it proves both of the charges. Well,
8 obviously, it's very clearly that the
9 establishment did not have sufficient records
10 for a three year period. It's clear that the
11 establishment itself did not have, even as
12 early as March 2013, full records for the
13 calendar year of 2012.

14 And furthermore, that they did not
15 have, as you can see from the investigative
16 report, sufficient records for 2011 or 2013
17 either, that there were basically no --
18 essentially no alcohol invoices that were
19 within the record.

20 And again, the Board can look at
21 the investigative reports to look at the
22 findings that were done by the staff that

1 shows that there is a lack of records.

2 And furthermore, from even the --
3 from what was described from testimony, that
4 there is an incomplete set of the guest checks
5 that, essentially, it was stated that while
6 the owner was out, away, that certain things
7 were disposed of.

8 But going to whether or not the
9 establishment qualified as a restaurant, the
10 establishment does not qualify for a
11 restaurant, not meet the standards because,
12 essentially, they weren't able to prove at the
13 time of the audit that they indeed met the
14 threshold of having 45 percent of food sales
15 to alcohol sales.

16 It is stated that there was an
17 incomplete set of documents, that what was
18 within the documents missed critical
19 information, including the date of sale, the
20 amount that was food sales versus alcohol
21 sale. So there is no way for the
22 establishment to prove that it was -- that it

1 did meet the food sales requirement for 2012.

2 Both of these charges are primary
3 tier offenses and we believe that the District
4 has proven both of those offenses in this
5 case. This establishment already has several
6 primary tier offenses that are already
7 pending, so I'll be honest with you, Madam
8 Chairman, I forgot the number of offenses. I
9 believe it is either the sixth or seventh
10 offense for -- primary tier offense for the
11 establishment.

12 Based upon the District's
13 arguments in prior cases, we again submit that
14 the establishment's license should be revoked.

15 CHAIRPERSON MILLER: Okay. Do you
16 want to waive your right to file proposed
17 findings of fact and conclusions of law?

18 MR. ADAMS: Absolutely. Yes, we
19 would.

20 CHAIRPERSON MILLER: Okay. And so
21 the record is closed. Okay. And the Board
22 will issue an order within 90 days. And we

1 will take a vote on deliberating in closed
2 session.

3 As Chairperson of the Alcoholic
4 Beverage Control Board for the District of
5 Columbia and in accordance with DC Official
6 Code Section 2-574(b) of the Open Meetings
7 Act, I move that the ABC Board hold a closed
8 meeting today for the purpose of seeking legal
9 advice from our counsel on Case No. 13-AUD-
10 00044, Sunshine Bar & Lounge, pursuant to
11 Section 2-574(b)(4) of the Open Meetings Act
12 and deliberating upon this case for the
13 reasons cited in Section 2-574(b)(13) of the
14 Open Meetings Act.

15 Is there a second?

16 MEMBER BROOKS: Second.

17 CHAIRPERSON MILLER: Mr. Brooks
18 has seconded the motion. I'll now take a roll
19 call vote on the motion now that it has been
20 seconded.

21 Mr. Brooks?

22 MEMBER BROOKS: I agree.

1 CHAIRPERSON MILLER: Mr. Alberti?

2 MEMBER ALBERTI: I agree.

3 CHAIRPERSON MILLER: I agree.

4 Mr. Silverstein?

5 MEMBER SILVERSTEIN: I agree.

6 CHAIRPERSON MILLER: So it appears
7 that the motion has passed by a vote of 4-0-0
8 and the ABC Board will hold a closed meeting
9 to deliberate this case and issue an order
10 within 90 days.

11 Thank you.

12 MR. ADAMS: May I be dismissed?

13 (Whereupon, the Show Cause Hearing
14 in the above-entitled matter was concluded at
15 11:15 a.m.)

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