

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

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IN THE MATTER OF: :
: :
Armand's Chicago Pizzeria, Inc.:
t/a Armand's Chicago Pizzeria : Show Cause
4231 Wisconsin Avenue, NW : Hearing
Retailer CR - ANC-3F :
License No. 826 :
Case #11-CMP-00323 :
: :
(Failed to File Quarterly :
Statement, No ABC Manager :
on Duty) :
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February 8, 2012

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, 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
- HERMAN JONES, Member
- CALVIN NOPHLIN, Member
- MIKE SILVERSTEIN, Member
- JEANNETTE MOBLEY, Member

ALSO PRESENT:

MICHAEL STERN, OAG

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

2 (12:01 p.m.)

3 CHAIRPERSON MILLER: The next case
4 is a Show Cause Hearing, Case No. 11-CMP-
5 00323. This is Armand's Chicago Pizzeria on
6 4231 Wisconsin Avenue, N.W., License No. 826
7 in ANC-3F.

8 Would the parties, please, come
9 forward who are on this case? Good afternoon.

10 MR. EVERETT: Hi.

11 CHAIRPERSON MILLER: Hi. Would
12 you introduce yourself, please?

13 MR. EVERETT: Yes. My name is Cal
14 Everett.

15 CHAIRPERSON MILLER: Okay. And
16 you are?

17 MR. EVERETT: I'm going to move
18 this back a little bit, because it's feeding
19 back. It gets every rustle of paper on the
20 desk. I think the last time I was here, you
21 all asked me to fax over this and I didn't, so
22 I'll give it to you now.

1 MEMBER SILVERSTEIN: I'm sorry,
2 what was that?

3 CHAIRPERSON MILLER: Okay.

4 MR. EVERETT: A representation
5 letter.

6 CHAIRPERSON MILLER: Mr. Everett
7 has just passed to the Board a Letter of
8 Authorization that is dated February 2012. It
9 says "To whom it may concern, please be
10 advised that Mr. Cal Everett is authorized to
11 represent Armand's Chicago Pizzeria, Inc. in
12 all matters before the Board pertaining to the
13 ABC Licensing Regulations, procedures and
14 compliance.

15 Mr. Everett has been with Armand's
16 for 22 years, has served in multiple
17 capacities and is a part owner of all of our
18 companies." And it's signed by Steve Newmyer,
19 Vice President of Armand's.

20 Thank you. Okay. Did you
21 introduce yourself?

22 MR. STERN: Michael Stern

1 representing the District of Columbia.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. So do we have any preliminary matters?

4 MR. STERN: None that I'm aware
5 of.

6 CHAIRPERSON MILLER: No?

7 MR. EVERETT: I'm sorry, what was
8 the question or the statement?

9 CHAIRPERSON MILLER: Do we have
10 any preliminary matters or are we going
11 forward with this hearing?

12 MR. EVERETT: Well, this might be
13 preliminary, although I'm not sure.

14 CHAIRPERSON MILLER: All right.

15 MR. EVERETT: I'll just give it a
16 go and you tell me if it is or isn't.

17 I'm basically not really here to
18 contest the charges. This case would be
19 slightly less confusing in one -- two -- back
20 only slightly. There is -- we had two things
21 currently going on with ABRA and they got
22 confused back in our recordkeeping due to

1 transitions and stuff.

2 The main thing I'm here for today
3 is an ABC Manager's Certification and a
4 failure to file quarterly reports. So I'm not
5 really going to challenge both of those. I
6 just wanted to say that we have fixed the ABC
7 Manager thing, it was a timing issue, and we
8 did correct that. Here is verification from my
9 general manager who did get his license and,
10 in a sense, picked it up.

11 The quarterly filings and things
12 that happened there was -- it was kind of a
13 confused issue between two concurrent, I
14 guess, actions by the ABC that I -- it's on
15 me. I mean, I confused them, because they
16 kept getting postponed from July to finally
17 November.

18 And as I kept getting used to
19 seeing these, which are usually the
20 continuances or letting you know that
21 something is going on, by the time I got the
22 last one for November, I just assumed that the

1 issue had been moved to January, which was the
2 case that I sat her for in January. And then
3 I decided well --

4 CHAIRPERSON MILLER: Okay. Let me
5 say --

6 MR. EVERETT: Yes.

7 CHAIRPERSON MILLER: -- I'm not
8 sure where you are going with this.

9 MR. EVERETT: Me either.

10 CHAIRPERSON MILLER: Okay. All
11 right. So it sounds like this is your
12 defense, even though you're not challenging.

13 MR. EVERETT: No. I'm -- no, I'm
14 kind of admitting with explanation.

15 CHAIRPERSON MILLER: Admitting
16 with explanation. So --

17 MR. EVERETT: It's just messed up.

18 CHAIRPERSON MILLER: -- then I
19 think we need to go into the normal procedure
20 with it being --

21 MR. EVERETT: Okay.

22 CHAIRPERSON MILLER: Okay.

1 MR. STERN: Well, what I would
2 actually propose is that maybe we can have a
3 stipulated trial and then he can argue
4 whatever he wants about the penalties and that
5 and then --

6 CHAIRPERSON MILLER: Okay.

7 MR. STERN: -- that's from the
8 Government.

9 CHAIRPERSON MILLER: That's fine.
10 So let's --

11 MR. STERN: It would be --

12 CHAIRPERSON MILLER: What you are
13 stipulating to?

14 MR. STERN: Yes. We will enter a
15 stipulation that if this case had gone to
16 trial on Friday, June 10, 2011, ABRA
17 Investigator Jabriel Shakoor visited Armand's
18 Chicago Pizzeria to advise the staff --
19 establishment about a quarterly statement
20 violation, that the investigator asked to
21 speak to the owner or ABC manager, that Eba
22 Mbenga identified himself as the person in

1 charge. Mr. Mbenga did not possess a valid
2 ABC Manager's License. And that during the
3 visit, Investigator Shakoor observed patrons
4 drinking alcohol.

5 Further, that a review of ABRA
6 records would have established that the
7 quarterly statement for the period of January
8 1, 2011 through March 31, 2011 was not timely
9 filed by the establishment.

10 CHAIRPERSON MILLER: Okay. You
11 stipulate to that. Do you stipulate to that?

12 MR. EVERETT: Yes.

13 CHAIRPERSON MILLER: Okay. So is
14 that it, Mr. Stern? And now we are doing --

15 MR. STERN: Yes.

16 CHAIRPERSON MILLER: Okay. Now,
17 you can --

18 MR. EVERETT: Get back to my
19 rambling.

20 CHAIRPERSON MILLER: Yes. You
21 admitted to the -- okay. Go ahead. Okay. Go
22 ahead.

1 MR. STERN: Oh. Does the Board
2 just want to hear from Government first, since
3 it's our burden?

4 CHAIRPERSON MILLER: We just heard
5 from you though.

6 MR. STERN: No, no, no. As to
7 what the penalty should be?

8 CHAIRPERSON MILLER: Okay.

9 MR. STERN: And that he can make
10 any explanation on what the penalty he thinks
11 it should be.

12 MEMBER ALBERTI: Madam Chair?
13 Madam Chair, I thought the procedure should be
14 that since the licensee has stipulated to the
15 facts, that the next step would be for,
16 basically, closing arguments, where Mr. Stern
17 would provide his closing with an explanation
18 for the penalty and a recommendation.

19 And then the licensee would
20 provide their -- whatever information they
21 want that is pertinent to the penalty. Is
22 that correct, Mr. Stern?

1 MR. STERN: I would proceed that
2 way as well.

3 CHAIRPERSON MILLER: That's fine.
4 That's fine. So that means that, basically --
5 I'm not going to go twice at this point. You
6 have agreed to the facts as they are. So Mr.
7 Stern is going to announce what the penalty
8 is. Is that correct?

9 MR. STERN: Yes.

10 CHAIRPERSON MILLER: Okay. And
11 then you can go and explain --

12 MR. EVERETT: Okay.

13 CHAIRPERSON MILLER: -- your
14 mitigating factors --

15 MR. EVERETT: Okay.

16 CHAIRPERSON MILLER: -- or
17 anything like that. Okay?

18 MR. EVERETT: Okay.

19 CHAIRPERSON MILLER: Okay. Go
20 ahead.

21 MR. STERN: The Government submits
22 that the facts as stipulated would prove two

1 secondary violations. This is the
2 establishment's fourth and fifth secondary
3 violation within the last four years.

4 We would ask, since these did not
5 occur on the same date, that the first
6 violation be charged a fine of \$1,000 and that
7 the second violation be charged a fine of
8 \$2,000, both of which are within the statutory
9 amounts required for a fourth or fifth
10 secondary violation, bringing the total to
11 \$3,000.

12 CHAIRPERSON MILLER: Okay. So
13 now, it's your turn.

14 MR. EVERETT: That's a lot of
15 money.

16 CHAIRPERSON MILLER: Okay. Go
17 ahead.

18 MR. EVERETT: Here is kind of the
19 deal. We have been in business 37.5 years,
20 God willing we will see the end of 38 and
21 still be in tact. We had a transitional
22 change of who is doing what back in 2009/2010

1 where I kind of took over the office, so I
2 take responsibility for things that might not
3 have been filed timely.

4 We have filed all of our quarterly
5 reports. They may not have been timely at
6 first. A lot of it was due to the system that
7 was in place. There was all kinds of changes.
8 I used to have to walk to the bank, get
9 notarized and mail it. Then I could fax it.
10 Then I could go on-line, but it didn't, quite
11 work on-line and you couldn't email it. And
12 if you did, you weren't sure anybody got it,
13 but I played ball.

14 A lot of the issues that Mr. Stern
15 brings up were closed with no payment
16 required, because it was determined that it --
17 I had done it. It had been done and the mess-
18 up was in here.

19 So I would just like to stipulate,
20 I like that word, that I did put everything in
21 and some of them -- we're not like, I didn't
22 avoid anything, not a huge bar or tavern. Our

1 alcohol sales are less than 4 percent of our
2 total sales.

3 We are up in Northwest and I've
4 got two separate issues here. Our transition
5 in the back office where Steve Newmyer, my
6 brother-in-law and partner, used to do all
7 that transitioned to me and it took me a long
8 time to catch the learning curve, because I
9 was doing eight other things at the same time.

10 90 percent of the time we have an
11 owner/operator on the premises, so ABC
12 certification. We always do it for our
13 general managers and our assistant managers.
14 This particular manager, Mr. Mbenga, Eba, has
15 been with us forever.

16 He every year goes away to Africa,
17 back to Senegal where he is from, to his
18 family. He only gets a chance to do it one
19 time a year. And he was gone during the
20 expiration date of his ABC license. And so
21 when he got back, Mr. Shakoore had come to see
22 us. I had just left the building and we spoke

1 on the phone.

2 And Eba admitted, yes, I -- it
3 expired. I thought it was still good. He
4 pulled it out of his wallet, it wasn't. He
5 immediately went and took the class, got
6 certified, got re-uped within a month, within
7 less than 30 days.

8 During the concurrence of all
9 that, again, the paperwork started snowballing
10 with what I was addressing. And I merged the
11 two events, the first quarterly report filings
12 I merged with the second notification about
13 the ABC. I didn't really turn to page 3 to
14 see what I was facing.

15 I just thought this was yet
16 another postponement, because the first case
17 about the quarterly started in July. It got
18 postponed to August, it got postponed to
19 September, it got postponed to October. Then
20 finally a hearing was set for November. I
21 think it was November the 9th.

22 And I didn't show up for that,

1 because I was confused and then I got another
2 thing delivered by Mr. Shakoor to one of my
3 managers, which I just assumed was another
4 postponement to January. So that's why I
5 missed that hearing or else you would have all
6 been getting to hear all this back in
7 November, rather than now.

8 So I admit to being a little
9 sloppy with the paperwork, but I did get it
10 all in and I'm not behind right now. And
11 bless your hearts for fixing your system,
12 because your on-line system now is awesome and
13 you can just get it right in there.

14 I've got my two printed out copies
15 to prove it, so that's good.

16 CHAIRPERSON MILLER: That's good.

17 MR. EVERETT: I also like the fact
18 that you send investigators around to the
19 place now to kind of soft pedal some of the
20 things that are going on, where it used to
21 just be boom, here is your fine.

22 So there although -- Mr.

1 Silverstein happened to mention the needing of
2 names, mine has no bearing. So I can't use
3 that. But if I was able to have one, it would
4 be please, don't charge me a lot of money
5 right now, that's what Calvin means. But I
6 think Calvin -- that's what it really means.
7 It means a bald one. Clearly, that's not
8 happening for me.

9 CHAIRPERSON MILLER: Okay.

10 MR. EVERETT: I'm done.

11 CHAIRPERSON MILLER: Thank you.

12 MR. EVERETT: Thank you.

13 CHAIRPERSON MILLER: Okay. Okay.

14 All right. Okay. We are going to take a
15 minute, a few minutes, to go back there and
16 contemplate on what we have heard from the two
17 of you. So I'm going to read the closed
18 meeting instructions. And then --

19 MR. STERN: Madam Chair, before
20 you do that --

21 CHAIRPERSON MILLER: Oh, is there
22 something more you want to say to that?

1 MR. STERN: Yes. Perhaps the
2 respondent should waive his right to findings
3 of fact and conclusions of law. This is a
4 trial, though a stipulated trial.

5 CHAIRPERSON MILLER: Okay. Would
6 you like to do that?

7 MR. EVERETT: Sure.

8 CHAIRPERSON MILLER: Do you
9 understand what he is talking about?

10 MR. EVERETT: I think so, yes.

11 CHAIRPERSON MILLER: I mean, we
12 could, you know, put this off a few months.

13 MEMBER JONES: Madam Chair? Would
14 you mind stating that, so he can respond in
15 the affirmative to make sure we have it on the
16 record?

17 CHAIRPERSON MILLER: Okay.

18 MEMBER JONES: Thank you.

19 CHAIRPERSON MILLER: We have a
20 request for that. And this is a Show Cause
21 Hearing, so you have certain rights under the
22 hearing. And one is, which thank you, Mr.

1 Stern, said, to file proposed findings of fact
2 and conclusions of law for your case, so the
3 Board could consider and then a decision must
4 be one on it. Is that it?

5 So do you understand what I'm
6 saying?

7 MR. EVERETT: Yes, I do. And I
8 think under the circumstances, with what we
9 are dealing with and I mean, we both have the
10 same report and it's not a lengthy thing, I'm
11 willing to waive that.

12 CHAIRPERSON MILLER: Okay.

13 MR. EVERETT: We are both -- we
14 have it in hand.

15 CHAIRPERSON MILLER: That's fine.
16 Thank you. That's the common practice here.
17 Okay. So now, I'll get to the instructions.

18 As Chairperson of the Alcoholic
19 Beverage Control Board for the District of
20 Columbia and in accordance with ^U 405 of the
21 Open Meetings Amendment Act of 2010, I move
22 that the ABC Board hold a closed meeting for

1 the purpose of seeking legal advice from our
2 counsel and/or deliberating on Case No. 11-
3 CMP-00323, Armand's Chicago Pizzeria, per
4 Section 405(b) of the Open Meetings Amendment
5 Act of 2010.

6 Is there a second?

7 MEMBER NOPHLIN: Second.

8 MEMBER MOBLEY: Second.

9 CHAIRPERSON MILLER: Okay. And
10 now, Mr. Nophlin, how say you?

11 MEMBER NOPHLIN: I agree.

12 CHAIRPERSON MILLER: Mr. Brooks?

13 MEMBER BROOKS: I agree.

14 CHAIRPERSON MILLER: Mr. Alberti?

15 MEMBER ALBERTI: I agree.

16 CHAIRPERSON MILLER: Ms. Miller
17 agrees. Mr. Silverstein?

18 MEMBER SILVERSTEIN: I agree.

19 CHAIRPERSON MILLER: Ms. Mobley?

20 MEMBER MOBLEY: I agree.

21 CHAIRPERSON MILLER: Mr. Jones?

22 MEMBER JONES: I agree.

1 CHAIRPERSON MILLER: The motion
2 passes 7-0. We will take a short recess and
3 be back.

4 MEMBER ALBERTI: Now, this is one
5 we will have to do a Board Order.

6 CHAIRPERSON MILLER: Sorry, I've
7 only been here a few weeks. Okay. Okay. I
8 have just been corrected.

9 So we will be issuing an opinion
10 on this within 90 days.

11 MR. EVERETT: Oh, okay.

12 CHAIRPERSON MILLER: Okay. So
13 thank you very much. Do you have any other
14 questions?

15 MR. EVERETT: Are we done?

16 CHAIRPERSON MILLER: You're done.

17 MR. EVERETT: Oh, good. Well,
18 thank you.

19 CHAIRPERSON MILLER: Thank you.

20 MEMBER ALBERTI: Thank you, Mr.
21 Everett.

22 CHAIRPERSON MILLER: However, we

1 are taking a recess.

2 MEMBER ALBERTI: Thank you for the
3 bit of humor.

4 MR. EVERETT: It's kind of dry.
5 Thank you, Members of the Board.

6 (Whereupon, the Show Cause Hearing
7 in the above-entitled matter was concluded at
8 12:17 p.m.)

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