

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
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MEETING

IN THE MATTER OF:

Fetlework Wolde t/a  
Ethiopian Restaurant & Market Show Cause  
4630 14th Street, NW Hearing  
Retailer CR - ANC-4C (Status)  
License No. 91373  
Case #13-CMP-00471

(Failed to Maintain Books &  
Records)

May 1, 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  
MIKE SILVERSTEIN, Member  
HECTOR RODRIGUEZ, Member

ALSO PRESENT:

FERNANDO RIVERO, OAG

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

(10:59 a.m.)

CHAIRPERSON MILLER: The next case is Case No. 13-CMP-00471, Ethiopian Restaurant & Market located at 4630 14th Street, N.W., License No. 91373, in ANC-4C. Okay. Good morning.

MS. WOLDE: Good morning.

CHAIRPERSON MILLER: Could you identify yourself for the record, please?

MS. WOLDE: Fetlework Wolde, owner of Ethiopian Restaurant & Market.

MR. RIVERO: Fernando Rivero for the District of Columbia.

CHAIRPERSON MILLER: Okay. And did you receive notice of this hearing?

MS. WOLDE: Yes.

CHAIRPERSON MILLER: Did you read it and understand it?

MS. WOLDE: Yes.

CHAIRPERSON MILLER: Okay. Then that notice will be part of the record.

1 (Whereupon, the document was  
2 marked for identification as  
3 Exhibit 1 and was received in  
4 evidence.)

5 CHAIRPERSON MILLER: Are there any  
6 preliminary issues?

7 MR. RIVERO: Actually, the parties  
8 have an offer in compromise to present to the  
9 Board at this time.

10 CHAIRPERSON MILLER: Okay.

11 MR. RIVERO: The terms are a fine  
12 of \$1,500 payable in 60 days.

13 CHAIRPERSON MILLER: Okay. Are  
14 you agreeable to this offer in compromise of  
15 a fine of \$1,500 payable within 60 days?

16 MS. WOLDE: Yes.

17 CHAIRPERSON MILLER: Okay. And do  
18 you understand you waive your right to a  
19 hearing if you enter into an offer in  
20 compromise?

21 MS. WOLDE: Yes.

22 CHAIRPERSON MILLER: Okay. Are

1 there any questions by Board Members?

2 MEMBER ALBERTI: No.

3 CHAIRPERSON MILLER: Okay. Then  
4 I'm going to move that we approve this offer  
5 in compromise of \$1,500 to be paid within 60  
6 days. Do I have a second?

7 MEMBER SILVERSTEIN: Second.

8 CHAIRPERSON MILLER: Mr.  
9 Silverstein has seconded the motion.

10 All those in favor say aye.

11 MEMBER RODRIGUEZ: Aye.

12 CHAIRPERSON MILLER: Aye.

13 MEMBER SILVERSTEIN: Aye.

14 CHAIRPERSON MILLER: All those  
15 opposed?

16 MEMBER ALBERTI: Opposed.

17 CHAIRPERSON MILLER: Opposed?

18 MEMBER ALBERTI: Yes.

19 CHAIRPERSON MILLER: Okay. All  
20 those abstaining? Then the motion passes 3-1-  
21 0 with Mr. Alberti opposed. Okay. Thanks.

22 MEMBER ALBERTI: May I speak to my

1 opposition on this one, just for the record?

2 CHAIRPERSON MILLER: Sure.

3 MEMBER ALBERTI: My opposition is  
4 based on the fact that the OIC does not  
5 include a provision for what would happen in  
6 a year from now if this licensee does not come  
7 into compliance with books and records.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: Our records show  
10 that this licensee is, I think, very close to  
11 the margin on, if I'm correct, I may be wrong,  
12 but I think they are very close to the margin  
13 on, their meeting the restaurant requirements.  
14 And so I'm a little concerned.

15 I'm okay with the level of the  
16 monetary penalty, but I would have liked to  
17 have seen that sort of provision in the offer  
18 in compromise.

19 MEMBER SILVERSTEIN: Madam Chair?

20 CHAIRPERSON MILLER: Yes?

21 MEMBER SILVERSTEIN: Though I  
22 voted differently from my colleague, I share

1 that concern. The concern is that people not  
2 game the system or not consider this a cost of  
3 doing business, but that they be brought into  
4 compliance. And I would hope that in future  
5 OICs, that we have built-in this protection  
6 for the community.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER ALBERTI: Did Mr. Rivero  
9 want to say something?

10 MR. RIVERO: Actually, yes.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER ALBERTI: That's what I  
13 thought. Sure.

14 MR. RIVERO: So if the Board is  
15 expressing this kind of concern, one of the  
16 things the Board might want to consider is  
17 amending the law in order to be able to pursue  
18 this particular instance.

19 Under Title 25, you cannot be  
20 prosecuted for failing an audit. The failure  
21 of keeping books and records is distinctly  
22 different from the failure of failing to

1 follow the food requirement test. It's  
2 separate and distinct.

3 The evidence could have been  
4 otherwise in the case where an audit may have  
5 been attempted and if there was evidence to  
6 show that in all likelihood a licensee would  
7 have failed to -- the audit and the numbers  
8 would have been likely such that, for  
9 instance, the food sales or the alcohol sales  
10 reported were not true, then perhaps a case  
11 could be made on that ground.

12 So often either we go ahead and  
13 amend the law to target this particular area  
14 or the Agency investigates in such a way that  
15 a very strong body of evidence is presented to  
16 the Office of the Attorney General for  
17 prosecution.

18 CHAIRPERSON MILLER: Um-hum.

19 MR. RIVERO: And then we can -- we  
20 would actually be in a very different posture.  
21 And I myself would be in a different posture  
22 today and I might find myself not agreeing to

1 an OIC, but maybe going forward.

2 And so a lot of what happens here  
3 with respect to the Government is a function  
4 of the strength of the evidence with which we  
5 are presented by the Agency.

6 CHAIRPERSON MILLER: Um-hum.

7 MR. RIVERO: Of course now those  
8 details really form part of the presentation  
9 for the offer in compromise, which is not  
10 appropriate, at that stage.

11 CHAIRPERSON MILLER: Um-hum.

12 MEMBER ALBERTI: May I?

13 CHAIRPERSON MILLER: Yes.

14 MEMBER ALBERTI: I understand  
15 exactly what you are saying, Mr. Rivero. You  
16 are absolutely right in everything you said.  
17 But it may be the law that puts us in a  
18 quandary here, because if someone is not  
19 keeping books and records, then it's hard to--  
20 very difficult to produce evidence to show  
21 that they may not be meeting the restaurant  
22 requirements.

1                   And my fear is that, and I think  
2                   Mr. Silverstein alluded to this is that, if  
3                   someone is not -- one would -- if you're not--  
4                   if you feel that you are not meeting the  
5                   restaurant requirements one way you might  
6                   avoid showing that is just not keep your books  
7                   and records.

8                   MR. RIVERO:   Correct.  But the way  
9                   that the law stands now, the burden is on the  
10                  Government to prove that --

11                  MEMBER ALBERTI:  Absolutely.

12                  MR. RIVERO:  -- someone is trying  
13                  to game the system.  I don't want to get too  
14                  much into the details of --

15                  CHAIRPERSON MILLER:  Um-hum.

16                  MR. RIVERO:  -- a particular case.  
17                  The Board has --

18                  MEMBER ALBERTI:  It has nothing to  
19                  do with this case really.

20                  MR. RIVERO:  The Board has this  
21                  particular report before it on file.

22                  MEMBER ALBERTI:  Right.

1 MR. RIVERO: And there are details  
2 in this case that I think are relevant to that  
3 particular concern with respect to presenting  
4 a really strong case on that ground.

5 And it would be possible with a  
6 thorough -- or possibly with a thorough and  
7 vigorous audit to be able to point to someone  
8 attempting to game the system by lying on  
9 those quarterly statements.

10 MEMBER ALBERTI: You are  
11 absolutely right. And I think what you are  
12 saying is that there is some responsibility of  
13 this Agency to do that kind of work and I  
14 recognize that fully. Thank you.

15 MR. RIVERO: Thank you.

16 CHAIRPERSON MILLER: Okay.

17 (Whereupon, the Show Cause  
18 (Status) Hearing in the above-entitled matter  
19 was concluded at 11:06 a.m.)

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<b>A</b>	<b>burden</b> 9:9 <b>business</b> 6:3	<b>document</b> 3:1 <b>doing</b> 6:3	<b>happen</b> 5:5 <b>happens</b> 8:2 <b>hard</b> 8:19 <b>hearing</b> 1:6,13 2:16 3:19 10:18 <b>HECTOR</b> 1:18 <b>hope</b> 6:4	6:8,12 8:12,14 9:11,18,22 10:10 <b>Members</b> 4:1 <b>met</b> 1:12 <b>MIKE</b> 1:17 <b>Miller</b> 1:14,16 2:3 2:9,15,18,21 3:5 3:10,13,17,22 4:3 4:8,12,14,17,19 5:2,8,20 6:7,11 7:18 8:6,11,13 9:15 10:16 <b>monetary</b> 5:16 <b>morning</b> 2:7,8 <b>motion</b> 4:9,20 <b>move</b> 4:4	
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