

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

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IN THE MATTER OF: :
 :
Jos, A. and Maria R. Carcamo :
t/a El Sauce Restaurant and :
Carry Out :
1227 11th Street, NW : Show Cause
Retailer DR : Hearing
License No. 72654 :
Case No. 11-CMP-00461 :
ANC 2F :
Failed to File Quarterly :
Statements :
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MAY 2, 2012
The Alcoholic Beverage Control
Board met in the Alcoholic Beverage Control

Hearing Room, Reeves Building, 2000 14th
Street, N.W., Washington, D.C., Ruthanne
Miller, Chairperson, presiding.

PRESENT
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member

DONALD BROOKS, Member
JEANNETTE MOBLEY, Member
CALVIN NOPHLIN, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT
LOUISE PHILLIPS, OAG

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

2 10:00 a.m.

3 CHAIRPERSON MILLER: Okay. Next
4 case on the calendar is case No. 11-CMP-00461,
5 El Sauce Restaurant and Carry Out, 1227 11th
6 Street, N.W., License No. 72654 in ANC 2F.

7 And would the parties introduce
8 themselves for the record?

9 MS. PHILLIPS: Louise Phillips,
10 Assistant Attorney General for the District of
11 Columbia. Good morning, Board members.

12 CHAIRPERSON MILLER: Good morning.
13 So it doesn't appear that the Licensee is here
14 for this show cause hearing. Ms. Phillips, do
15 you have any information with respect to the
16 Licensee appearing or not?

17 MS. PHILLIPS: I do not. He was a
18 now show at the status. I have service form
19 which you should have in the record that he
20 was served the original notice on 2/8/12 and
21 it says he was personally served by a member
22 of the ABRA staff as is usual. The original

1 notice has not been amended, so the original
2 notice had this date and this time and
3 therefore given that there is an affidavit of
4 service in the file and that he was a no show
5 for the status hearing, I would recommend that
6 the Board go forward with brief testimony.

7 CHAIRPERSON MILLER: I would agree
8 that that is normally our course of action and
9 I'll just confer with the Board members for a
10 minute. The Licensee has not shown up for
11 this hearing. Again, it's 10:02. The
12 hearing's called for 10:00.

13 MEMBER NOPHLIN: It's a show cause
14 hearing.

15 CHAIRPERSON MILLER: A show cause
16 hearing, yes.

17 MEMBER NOPHLIN: Ex parte.

18 CHAIRPERSON MILLER: Yes, we were
19 about to proceed and I wanted to just make
20 sure other Board members were on board with
21 that. Okay.

22 MEMBER NOPHLIN: Of course.

1 CHAIRPERSON MILLER: Okay. Then
2 you may proceed, Ms. Phillips.

3 MS. PHILLIPS: The District of
4 Columbia would like to call the auditor to t
5 he stand, please.

6 CHAIRPERSON MILLER: Good morning.

7 INVESTIGATOR ADEJUNMOBI: Good
8 morning, ma'am.

9 CHAIRPERSON MILLER: Do you swear
10 to tell the truth, the whole truth, nothing
11 but the truth?

12 INVESTIGATOR ADEJUNMOBI: Yes.

13 CHAIRPERSON MILLER: Thank you.
14 Okay.

15 MS. PHILLIPS: Good morning. Will
16 you state your name and spell it for the
17 record, please?

18 INVESTIGATOR ADEJUNMOBI: Adeniyi
19 Adejunmobi, A-D-E-N-I-Y-I, A-D-E-J-U-N-M-O-B-I.

20 MS. PHILLIPS: And what position
21 do you serve ABRA?

22 INVESTIGATOR ADEJUNMOBI: I'm a

1 compliance analyst for ABRA.

2 MS. PHILLIPS: And briefly what
3 does that consist of?

4 INVESTIGATOR ADEJUNMOBI: I am
5 responsible for reviewing quarterly
6 certification, quarterly statement filed by
7 various establishments. I perform audits and
8 I check all the parameters.

9 MS. PHILLIPS: Okay. And how long
10 have you been with ABRA?

11 INVESTIGATOR ADEJUNMOBI:
12 Approximately three years and six months.

13 MS. PHILLIPS: And I recollect
14 that you've been an auditor in a previous
15 employment situation. Is that true?

16 INVESTIGATOR ADEJUNMOBI: Yes.

17 MS. PHILLIPS: How many years have
18 you been an auditor?

19 INVESTIGATOR ADEJUNMOBI:
20 Approximately 20 years.

21 MS. PHILLIPS: Twenty years?
22 We're here today to discuss a quarterly

1 statement, non-filing of a quarterly statement
2 for El Sauce Restaurant and Carry Out at 1227
3 11th Street, N.W. Can you tell me about
4 whether or not they filed their quarterly
5 statement, which I believe was before the
6 second quarter of 2011?

7 INVESTIGATOR ADEJUNMOBI: No, the
8 establishment did not file.

9 MS. PHILLIPS: Subsequently have
10 they late filed that quarterly statement?

11 INVESTIGATOR ADEJUNMOBI: No.

12 MS. PHILLIPS: The District rests.

13 CHAIRPERSON MILLER: Any Board
14 questions?

15 MEMBER ALBERTI: I may have missed
16 this, but, Mr. Adejunmobi --

17 INVESTIGATOR ADEJUNMOBI: Yes,
18 sir?

19 MEMBER ALBERTI: -- how do you
20 check the records and did you check the
21 records to make sure that this wasn't filed?

22 INVESTIGATOR ADEJUNMOBI: Yes, I

1 did.

2 MEMBER ALBERTI: Can you explain
3 that process for me? If you have already, let
4 me know. Have you?

5 INVESTIGATOR ADEJUNMOBI: Yes,
6 I've already checked the records.

7 CHAIRPERSON MILLER: Okay.

8 INVESTIGATOR ADEJUNMOBI: They
9 have not filed --

10 MEMBER ALBERTI: Okay.

11 INVESTIGATOR ADEJUNMOBI: -- that
12 particular --

13 MEMBER ALBERTI: What's that mean
14 to check the records? What's that process?

15 INVESTIGATOR ADEJUNMOBI: The
16 process is to look at the database where we
17 capture the data.

18 MEMBER ALBERTI: Yes.

19 INVESTIGATOR ADEJUNMOBI: When I
20 do the review of the quarterly statement, when
21 they file it.

22 MEMBER ALBERTI: Okay.

1 INVESTIGATOR ADEJUNMOBI: I
2 capture the data in a special database. And
3 upon inquiry from the attorney, Ms. Louise, I
4 looked over the database just to make sure
5 that I'm not missed that, the late file, or
6 they did file.

7 MEMBER ALBERTI: And you're
8 absolutely certain that that database is up to
9 date as of --

10 INVESTIGATOR ADEJUNMOBI: Yes,
11 sir.

12 MEMBER ALBERTI: -- this quarter?

13 INVESTIGATOR ADEJUNMOBI: Yes.

14 MEMBER ALBERTI: Thank you. No
15 further questions. Thank you.

16 CHAIRPERSON MILLER: And when did
17 you last check it?

18 INVESTIGATOR ADEJUNMOBI: This
19 morning.

20 CHAIRPERSON MILLER: This morning?
21 Okay. Thank you. Okay. Any other questions?

22 (No audible response.)

1 CHAIRPERSON MILLER: Any closing
2 arguments?

3 MS. PHILLIPS: The District just
4 recommends a fine of \$1,000. The
5 investigative history that I have in my file
6 which I just updated yesterday or the day
7 before and my recollection from having handled
8 previous cases is that this is a repeat
9 offender, multiple time quarterly statement
10 failure to filer. So this is not his first
11 offense. It's one of many.

12 CHAIRPERSON MILLER: So my
13 understanding is -- is \$1,000 the maximum in
14 the fine range?

15 MS. PHILLIPS: No.

16 CHAIRPERSON MILLER: No? Okay.

17 MS. PHILLIPS: One thousand
18 dollars is not. You sort of -- you know, I
19 look at --

20 CHAIRPERSON MILLER: How do you
21 get to 1,000 then?

22 MS. PHILLIPS: Well, you get to

1 1,000 because it's -- I believe it's a
2 secondary violation. And you just add up the
3 offenses within the period of time, and you
4 talk over with somebody from the agency, and
5 confer about what the appropriate range would
6 be, you agree, and then you present it to the
7 Board, and they can agree or not agree.

8 CHAIRPERSON MILLER: Okay. But I
9 wanted to know, yes, your rationale and then
10 we'll take it under advisement.

11 MS. PHILLIPS: Okay.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER MOBLEY: Madam Chair?

14 CHAIRPERSON MILLER: Yes?

15 MEMBER MOBLEY: We also have to be
16 cognizant of the fact of how we're going to
17 handle that this person didn't -- this
18 Licensee did not file a second and third
19 quarter. I mean, is there going to be some
20 stipulation with the OIC around this?

21 CHAIRPERSON MILLER: There's no
22 OIC.

1 MEMBER MOBLEY: Oh, I thought I
2 heard him say --

3 CHAIRPERSON MILLER: I'm sorry.
4 Let me say this, because, I'm sorry, you were
5 out of the room when we started.

6 MEMBER MOBLEY: Okay. I'm sorry.

7 CHAIRPERSON MILLER: And because
8 the Licensee didn't show up --

9 MEMBER MOBLEY: Right.

10 CHAIRPERSON MILLER: -- there
11 couldn't be any OIC --

12 MEMBER MOBLEY: Right.

13 CHAIRPERSON MILLER: -- so the
14 Government was --

15 MEMBER MOBLEY: I didn't mean to
16 say OIC. I meant to say fine.

17 CHAIRPERSON MILLER: Oh, okay. So
18 they proceeded with the case.

19 MEMBER MOBLEY: Right.

20 MS. PHILLIPS: If the District can
21 be heard, you know, that's not before the
22 Board. Subsequent quarters is not before the

1 Board to decide. You know, if I had those
2 cases or if I thought about it, maybe I would
3 have done that, but he has no notice that he
4 would be fined or whatever for subsequent --

5 CHAIRPERSON MILLER: Right.

6 MS. PHILLIPS: -- non-filings of
7 quarterly statements. And therefore, from the
8 District's perspective, it would be
9 inappropriate to look at subsequent quarters.
10 What's before the Board is one quarter, the
11 second quarter of 2011.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER ALBERTI: Madam Chair?

14 CHAIRPERSON MILLER: Yes?

15 MEMBER ALBERTI: May I speak?

16 CHAIRPERSON MILLER: Sure.

17 MEMBER ALBERTI: At this point I'd
18 like to think about it a bit more, but my
19 initial thought on a recommendation is to also
20 require some submission of this quarterly
21 report within five days of when the order is
22 approved.

1 MEMBER MOBLEY: I would agree with
2 that.

3 CHAIRPERSON MILLER: Can I just;
4 we have a little time here anyway, solicit an
5 opinion from the attorney and the auditor as
6 to what's a reasonable amount of time for
7 somebody to get together their quarterly
8 statements? I mean --

9 MS. PHILLIPS: Well, the auditor
10 would have to speak to getting the quarterly
11 statements together. My understanding, it's
12 the policy of the agency not to accept to
13 fines without first receiving the missing --

14 CHAIRPERSON MILLER: Right.

15 MS. PHILLIPS: -- quarterly
16 statement. And so, I no longer include those
17 in my recommendations for fine, because it's
18 my understanding that they will not -- the
19 fine will not be accepted until it is filed.
20 And what you do to make him file, I don't know
21 that. But I would suggest that the order part
22 of the opinion be translated into Spanish,

1 because having dealt with this gentleman
2 before, I --

3 CHAIRPERSON MILLER: Oh, okay.

4 MS. PHILLIPS: -- my recollection
5 is that his English is not incredibly
6 proficient and maybe that would help him to
7 comply, though I note that -- and this is
8 often the policy as I have noticed it, a
9 Spanish-speaking investigator did go to serve
10 this notice. So I mean, I don't know what to
11 tell you because I can't speak to what
12 happened when they served it.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: May I just make a
15 comment again?

16 CHAIRPERSON MILLER: Can we hear
17 the auditor?

18 MEMBER ALBERTI: Sure. Please.

19 CHAIRPERSON MILLER: Yes, okay.

20 INVESTIGATOR ADEJUNMOBI: Actually
21 this particular establishment has four
22 delinquencies starting from 2009, outstanding

1 quarterly statements from 2009 to 2011.

2 MEMBER NOPHLIN: Speak up a little
3 louder, I'm sorry.

4 CHAIRPERSON MILLER: Can you speak
5 louder, sir?

6 INVESTIGATOR ADEJUNMOBI: Pardon
7 me?

8 CHAIRPERSON MILLER: Can you speak
9 louder?

10 INVESTIGATOR ADEJUNMOBI: Oh, what
11 I'm saying is that this particular
12 establishment --

13 CHAIRPERSON MILLER: Yes.

14 INVESTIGATOR ADEJUNMOBI: -- has
15 four delinquencies, delinquent quarterly
16 statements, four, from 2009 through 2011.

17 MEMBER ALBERTI: Yes.

18 INVESTIGATOR ADEJUNMOBI: From
19 January 2009 through 2011, that we still
20 haven't received from this establishment.

21 MEMBER ALBERTI: Can I --

22 CHAIRPERSON MILLER: Sure. Sure.

1 Go ahead.

2 MEMBER ALBERTI: Again, I thank
3 you for that information, Mr. Adejunmobi. So
4 I want to consider this further before we make
5 our final order. But just as to our policy,
6 you're correct about the Board's policy or the
7 Agency's policy about accepting fines, but my
8 intent is to have this very clearly codified
9 in the order so that it carries the weight of
10 an order and it's not just our policy. So
11 that was my intent on -- so, you know, my
12 recommendation is to include in the order some
13 requirements on filing of past -- some past
14 reports.

15 MS. PHILLIPS: If I may be heard
16 on the auditor's comment about the 2009, my
17 recollection -- and we need to go back to the
18 hearing date, which is No. 13 on my inventory,
19 which is Case No. 12595. It's my
20 recommendation -- no, that's not it. I'm
21 sorry. This may not be the case, I apologize.

22 But at some point in time if a

1 person has not filed a quarterly statement for
2 years and years ago and has been allowed to
3 pay fines, those things have to be put to
4 rest, otherwise they will follow him
5 continually. And I don't know what the Board
6 needs to do about that or whether this is the
7 place, but I know at least one other
8 establishment, which is obviously the one I
9 was thinking of, when the auditor formed an
10 audit, it was to -- and the establishment was
11 closed, to make a determination of which
12 quarterly statements they had records to file.

13 And then from that time forward
14 they were to file quarterly statements.
15 Because you can't keep dunning somebody who's
16 been already dunned for something and they
17 have no papers to comply with any order. So,
18 you know, that was what we did in that case,
19 which I thought was this one and it wasn't.

20 CHAIRPERSON MILLER: Anything
21 else?

22 (No audible response.)

1 CHAIRPERSON MILLER: Okay. Thank
2 you very much.

3 INVESTIGATOR ADEJUNMOBI: Thank
4 you.

5 CHAIRPERSON MILLER: Thank you,
6 Ms. Phillips.

7 MS. PHILLIPS: Thank you.

8 CHAIRPERSON MILLER: This matter
9 is closed.

10 MS. PHILLIPS: I thought you had
11 to do the --

12 CHAIRPERSON MILLER: Did you need
13 to --

14 MS. PHILLIPS: -- long statements
15 before I get to leave. Thank you.

16 MEMBER ALBERTI: You got it.

17 CHAIRPERSON MILLER: I will do
18 the --

19 MEMBER ALBERTI: You got it.

20 CHAIRPERSON MILLER: Yes, yes,
21 wait. Yes.

22 MEMBER ALBERTI: We're getting

1 there, Ms. Phillips.

2 MS. PHILLIPS: That's all right.

3 I will see you next time.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER ALBERTI: Thank you.

6 CHAIRPERSON MILLER: You know the
7 drill. All right. Yes, this is it. Okay.

8 As Chairperson of the Alcoholic
9 Beverage Control Board for the District of
10 Columbia and in accordance with Section 405 of
11 the Open Meetings Amendment Act of 2010, I
12 move that the ABC Board hold a closed meeting
13 for the purpose of seeking legal advice from
14 our counsel on Case No. 11-CMP-00461, El Sauce
15 Restaurant and Carry Out, per Section
16 405(b)(4) of the Open Meetings Amendment Act
17 of 2010 and deliberating upon El Sauce
18 Restaurant and Carry Out, Case No. 11-CMP-
19 00461 for the reasons cited in Section
20 405(b)(13) of the Open Meetings Amendment Act
21 of 2010. Is there a second?

22 MEMBER NOPHLIN: Second.

1 CHAIRPERSON MILLER: I now will
2 take a roll call vote on the motion before us
3 not that it has been seconded.

4 Mr. Nophlin?

5 MEMBER NOPHLIN: I agree.

6 CHAIRPERSON MILLER: Mr. Brooks?

7 MEMBER BROOKS: I agree.

8 CHAIRPERSON MILLER: Mr. Alberti?

9 MEMBER ALBERTI: I agree.

10 CHAIRPERSON MILLER: Ms. Miller
11 agrees.

12 Mr. Silverstein?

13 MEMBER SILVERSTEIN: I agree.

14 CHAIRPERSON MILLER: Ms. Mobley?

15 MEMBER MOBLEY: I agree.

16 CHAIRPERSON MILLER: As it appears
17 that the motion has passed, I hereby give
18 notice that the ABC Board will recess this
19 proceeding to hold a closed meeting in the ABC
20 Board conference room pursuant to the Open
21 Meetings Amendment Act of 2010.

22 And our next case is not until

1 11:00 as well, so we'll be recessing. Thank
2 you.

3 (Whereupon, the hearing was
4 concluded at 10:15 a.m.)

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