

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
AVC Solutions Corp. :
t/a Baja Fresh : Show Cause
1333 New Hampshire Ave., NW : Hearing
Retailer CR - ANC-2B :
License No. 83801 :
Case# 12-CMP-00443 :
: :
(Failed to File Quarterly :
Statements-1st Quarter 2012) :
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May 22, 2013
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.

2009, Chairperson Ruthanne Miller,
presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG
MONICA CLARK, ABRA Analyst

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

(11:07 a.m.)

CHAIRPERSON MILLER: Okay. We are ready to call our next case on the morning calendar, Case No. 12-CMP-00443, Baja Fresh located at 1333 New Hampshire Avenue, N.W., License No. 83801 in ANC-2B.

MS. GEPHARDT: Good morning, Board Members, Chrissy Gephardt on behalf of the Office of the Attorney General.

CHAIRPERSON MILLER: Good morning, Ms. Gephardt. I don't see that anyone has come to the table on behalf of the licensee. Do you have any knowledge of whether they are on their way or anything?

MS. GEPHARDT: I thought they were coming, but apparently they are not here. I would move that we continue with the hearing.

MEMBER ALBERTI: Two more minutes.

CHAIRPERSON MILLER: All right. It makes a big difference, yes, right. We will wait a few minutes then.

1 MS. GEPHARDT: Okay.

2 MEMBER ALBERTI: How long are we
3 waiting?

4 CHAIRPERSON MILLER: Well, why
5 don't we wait --

6 MEMBER SILVERSTEIN: Seven
7 minutes?

8 CHAIRPERSON MILLER: -- seven
9 minutes until 11:15.

10 MEMBER JONES: 11:15.

11 MEMBER ALBERTI: Okay. Can we go
12 back and forth?

13 MEMBER JONES: That's a request?

14 MEMBER ALBERTI: No, I'm not --

15 CHAIRPERSON MILLER: I'm going off
16 the record.

17 MEMBER ALBERTI: Okay.

18 (Whereupon, at 11:09 a.m. a recess
19 until 11:15 a.m.)

20 CHAIRPERSON MILLER: Okay. 11:15
21 and the licensee has not appeared in the
22 hearing room. And we have not heard word that

1 the licensee is on its way.

2 So, at this point then, the
3 Government is ready to proceed and why don't
4 you start and then the licensee can join in if
5 he or she appears.

6 MS. GEPHARDT: Okay?

7 CHAIRPERSON MILLER: Okay.

8 MS. GEPHARDT: All right. In this
9 case, one charge has been brought against this
10 licensee for failing to file with the Board
11 the required quarterly statement for the first
12 quarter of 2012 by April 30, 2012, which is a
13 violation of DC Code 25-113(b)(2)(A).

14 You will hear from Monica Clark
15 today, ABRA's Compliance Analyst, regarding
16 the licensee's first quarter statements for
17 2012. Ms. Clark will testify that as of April
18 30, 2012, the first quarter statement had not
19 been filed. She will explain the process by
20 which ABRA determines if a statement has been
21 timely filed and through that process, how she
22 was able to determine that the licensee's

1 filing was received almost two months late on
2 June 12, 2012.

3 So now, the Government would like
4 to call its witness, Ms. Monica Clark.

5 CHAIRPERSON MILLER: Good morning.

6 MS. CLARK: Good morning.

7 Whereupon,

8 MONICA CLARK

9 was called as a witness by Counsel for the
10 Government, and having been first duly sworn,
11 assumed the witness stand and was examined and
12 testified as follows:

13 CHAIRPERSON MILLER: Okay.

14 Thanks.

15 DIRECT EXAMINATION

16 MS. GEPHARDT: Good morning, Ms.
17 Clark.

18 MS. CLARK: Good morning.

19 MS. GEPHARDT: Can you, please,
20 state your name and spell it for the record?

21 MS. CLARK: My name is Monica
22 Clark. Last name is spelled C-L-A-R-K.

1 MS. GEPHARDT: Okay. And, Ms.
2 Clark, where do you work?

3 MS. CLARK: I work for the
4 Alcoholic Beverage Regulation Administration.

5 MS. GEPHARDT: And what is your
6 title?

7 MS. CLARK: Compliance Analyst.

8 MS. GEPHARDT: Okay. And what are
9 your responsibilities as a compliance analyst?

10 MS. CLARK: Well, I'm responsible
11 for receiving quarterly statements from
12 licensed establishments recording and
13 analyzing the data within those statements.
14 Then also, assisting in audit matters.

15 MS. GEPHARDT: Okay. Can you tell
16 the Board briefly how does ABRA keep and
17 maintain records related to quarterly
18 statement filings?

19 MS. CLARK: Well, we receive
20 quarterly statements from various different
21 methods. We receive them either on-line
22 through an on-line submission form. We can

1 receive them by mail, by fax or they can be
2 brought to ABRA.

3 MS. GEPHARDT: And -- oh, I'm
4 sorry.

5 MS. CLARK: No, that's fine.

6 MS. GEPHARDT: Okay. And how do
7 you know that a licensee has submitted a
8 quarterly statement on time?

9 MS. CLARK: Well, the quarterly
10 statements if they are received through the
11 on-line submission, then the date is
12 automatically printed, the date and time of
13 receipt is printed, along with a specific, you
14 know, ID, identification number.

15 If they are received by any other
16 means, they are date stamped when they are
17 received.

18 MS. GEPHARDT: And just for
19 clarification, when you say they are date
20 stamped, do you mean that for faxes, hand-
21 delivery and for mail?

22 MS. CLARK: I do.

1 MS. GEPHARDT: So the only way
2 that a date stamp is -- or excuse me, a record
3 ID is put is if it's an electronic filing?

4 MS. CLARK: That's correct.

5 MS. GEPHARDT: Okay. Are you
6 familiar with a licensee by the name of Baja
7 Fresh?

8 MS. CLARK: I am.

9 MS. GEPHARDT: All right. And I
10 want you to -- I want to draw your attention
11 to the quarterly statement filing period for
12 the first quarter of 2012. What date are
13 those filings due?

14 MS. CLARK: Those filings are due
15 by the 30th of April.

16 MS. GEPHARDT: And is there a
17 grace period for the filing?

18 MS. CLARK: We have no official
19 grace period.

20 MS. GEPHARDT: Okay. So do you
21 know if Baja Fresh filed their 2012 first
22 quarter statement by April 30, 2012?

1 MS. CLARK: Baja Fresh had not.
2 We had not received a quarterly statement for
3 that -- for the first quarter by April 30th.

4 MS. GEPHARDT: Okay. I would like
5 to show the witness what I have marked as
6 Government's Exhibit No. 1.

7 CHAIRPERSON MILLER: Okay.
8 (Whereupon, the document was
9 marked as Government Exhibit 1 for
10 identification.)

11 MS. GEPHARDT: This is a -- and I
12 have copies for the Board. This is a -- well,
13 I'll have the witness tell you what it is.
14 Thank you.

15 Ms. Clark, can you tell me what
16 this is?

17 MS. CLARK: This is a copy of an
18 electronic filing of a quarterly statement for
19 Baja Fresh for the first quarter of 2012.

20 MS. GEPHARDT: Okay. And what
21 date does it say that this quarterly statement
22 was filed?

1 MS. CLARK: It says that it was
2 filed on Tuesday, June 12th, at 5:01 p.m.

3 MS. GEPHARDT: And how do you know
4 which -- which number do you go by? Do you go
5 by the record at the top or is there another
6 way to tell that it was filed on time? How --
7 which -- what do you look at on that filing to
8 tell if it as filed on time?

9 MS. CLARK: Actually, we look at
10 both the date at the top where it says sent
11 shows the exact date that it was received in
12 the office. And also, at the bottom you see
13 the record ID number and that number is unique
14 to that particular filing.

15 MS. GEPHARDT: Okay. Is June 12,
16 2012 passed the date of April 30, 2012?

17 MS. CLARK: Yes, it is.

18 MS. GEPHARDT: And is it possible
19 that this licensee also submitted its
20 quarterly filing by mail or fax or by hand-
21 delivery?

22 MS. CLARK: They -- that's -- it's

1 possible.

2 MS. GEPHARDT: Okay. If so, how
3 would you know if you had received it and how
4 would you know if it was on time?

5 MS. CLARK: Well, if we had
6 received -- if I had received it, there would
7 have been a copy of it in the file. And if it
8 was on time, that that date stamp would have
9 been on it. Would have been placed on the
10 document.

11 MS. GEPHARDT: Was there anything
12 else in Baja Fresh's file to indicate that
13 they had filed their quarterly statement by
14 April 30, 2012?

15 MS. CLARK: No. The document
16 before me is the only one that I have
17 received.

18 MS. GEPHARDT: Okay. All right.
19 Thank you very much.

20 MS. CLARK: Okay.

21 MS. GEPHARDT: That's all I have.

22 CHAIRPERSON MILLER: Any Board

1 questions? No. Thank you for your testimony.

2 MS. CLARK: Thank you.

3 (Whereupon, witness excused.)

4 MS. GEPHARDT: The Government
5 rests.

6 CHAIRPERSON MILLER: Would you
7 like to move Exhibit 1 into the record?

8 MS. GEPHARDT: Excuse me. Yes,
9 the Government would request that Exhibit No.
10 1 be moved into the record.

11 CHAIRPERSON MILLER: Okay. Then
12 Exhibit 1 is admitted into the record.

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

16 CHAIRPERSON MILLER: Okay. Any
17 closing?

18 MS. GEPHARDT: Sure. The
19 Government has shown through the testimony of
20 Ms. Clark that this licensee's quarterly
21 report for the first quarter of 2012 was not
22 received before the deadline of April 30,

1 2012.

2 Ms. Clark testified that ABRA's
3 system reflects that Baja Fresh submitted
4 their first quarterly filing electronically on
5 June 12, 2012, which makes it late.

6 Based on the evidence, the
7 Government has proven by a preponderance of
8 the evidence that this licensee is in
9 violation of 25-113(b)(2)(A) and requests that
10 the Board fine the licensee, I apologize, give
11 me one second, \$750 for this violation.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. I'm going to close the record now and
14 ask the Government if you want to file
15 proposed findings of fact and conclusions of
16 law?

17 MS. GEPHARDT: No, thank you.

18 CHAIRPERSON MILLER: Okay. Then
19 that completes this case. The Board will
20 issue an order within 90 days. And I will
21 read the instructions for deliberating in
22 executive session and closed meeting. And you

1 can wait if you want to or you don't have to.

2 Okay. The Board is going to vote on it.

3 As Chairperson of the Alcoholic
4 Beverage Control Board for the District of
5 Columbia and in accordance with Section 405 of
6 the Open Meetings Amendment Act of 2010, I
7 move that the ABC Board hold a closed meeting
8 for the purpose of seeking legal advice from
9 our counsel on Case No. 12-CMP-00443, per
10 Section 405(b)(4) of the Open Meetings
11 Amendment Act of 2010, and deliberating upon
12 this case for the reasons cited in Section
13 405(b)(13) of the Open Meetings Amendment Act
14 of 2010.

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.

20 Mr. Brooks?

21 MEMBER BROOKS: I agree.

22 CHAIRPERSON MILLER: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON MILLER: Ms. Miller
3 agrees.

4 Mr. Silverstein?

5 MEMBER SILVERSTEIN: I agree.

6 CHAIRPERSON MILLER: And, Mr.
7 Jones?

8 MEMBER JONES: I agree.

9 CHAIRPERSON MILLER: As it appears
10 the motion has passed by a vote of 5-0-0, I
11 hereby give notice that the ABC Board will
12 hold a closed meeting in the ABC Board
13 conference room today hopefully pursuant to
14 the Open Meetings Amendment Act of 2010 and
15 issue an order within 90 days.

16 And that concludes this case. It
17 concludes our cases for this morning and the
18 Board will now recess. Thank you.

19 (Whereupon, the Show Cause Hearing
20 in the above-entitled matter was concluded at
21 11:25 a.m.)

22

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