

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Garay Corporation
t/a Corina's Restaurant
831 Kennedy Street, NW
Retailer CR
License No. 79873
Case No. 13-CMP-00476
ANC 4D
Failed to File Quarterly
Statements (1st Quarter 2013)
Failed to Maintain Books and
Records

Show Cause
Hearing

JUNE 25, 2014

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
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT

AMY SCHMIDT, OAG

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10:13 a.m.

CHAIRPERSON MILLER: Okay. That brings us to our show cause hearings. The first show cause hearing on the calendar is Case No. 13-CMP-00476, Corina's Restaurant, located at 831 Kennedy Street, N.W., License No. 79873 in ANC 4D.

Come on forward. Have a seat.
Good morning.

MR. VARONA: Good morning. My name is Eddy Varona. I'm here on behalf of the Garay Corporation. I'm am manager at Corina's Restaurant and that is Corina Garay.

MEMBER SILVERSTEIN: Good morning.

CHAIRPERSON MILLER: Good morning.
And, Ms. Schmidt, you want to identify yourself?

MS. SCHMIDT: Amy Schmidt, Assistant Attorney General on behalf of the District of Columbia.

CHAIRPERSON MILLER: Okay. Are

1 there any preliminary matters in this case?

2 MS. SCHMIDT: No, none from the
3 District.

4 CHAIRPERSON MILLER: Okay. Have
5 you been here before for a hearing?

6 MR. VARONA: Once before, yes.

7 CHAIRPERSON MILLER: For a show
8 cause hearing? Okay. So you're familiar with
9 the procedure somewhat? You want me to review
10 a little bit?

11 MR. VARONA: A review would be
12 good.

13 CHAIRPERSON MILLER: Okay. All
14 right. The Government has brought charges and
15 they have the burden of proof to prove that
16 you committed those charges, or violations.
17 And the order of procedure is that the
18 Government goes first in presenting the case.
19 And she has the right to make an opening
20 statement about what she's going to show in
21 the case and then she will put on some
22 evidence to support that either by a witness

1 and/or by documents. Okay? And you will have
2 a chance to cross-examine the witness based on
3 the testimony that's presented, and the Board
4 can ask questions.

5 MR. VARONA: All right.

6 CHAIRPERSON MILLER: You will also
7 have an opportunity to do an opening
8 statement, if you want; it's not required,
9 either right after the Government does or
10 right before you present your case. It's not
11 evidence. It's just an overview to the Board
12 as to what you're going to show by your
13 evidence. Then you have a chance to put on a
14 witness or documents in your defense. And
15 then the Government can cross-examine your
16 witnesses, and the Board. And then the
17 Government has an opportunity to rebut at the
18 end if they want to your evidence. Then
19 there's closing statements at the end, which
20 is not evidence, but it's argument as to what
21 you showed.

22 MR. VARONA: Okay.

1 CHAIRPERSON MILLER: That
2 basically does it. You will be put under oath
3 when you're giving testimony. The
4 Government's -- the attorneys aren't under
5 oath, but all witnesses are under oath.

6 MR. VARONA: All right.

7 CHAIRPERSON MILLER: Okay? Any
8 questions?

9 MR. VARONA: I don't have the
10 evidence here with me. It's actually in my
11 car.

12 CHAIRPERSON MILLER: It's in your
13 car?

14 MR. VARONA: Yes. Would I have to
15 bring that?

16 CHAIRPERSON MILLER: What is it?

17 MR. VARONA: It's the actual file
18 that we use to keep all our receipts. It's
19 the actual file that we use for all the
20 receipts.

21 CHAIRPERSON MILLER: Okay. So if
22 you would like to present evidence, that

1 evidence --

2 MR. VARONA: Yes.

3 CHAIRPERSON MILLER: -- then you
4 do need to get it, because it won't do us any
5 good in the car. So how long would that take
6 you to do?

7 MR. VARONA: Maybe like five
8 minutes.

9 CHAIRPERSON MILLER: Okay.

10 MR. VARONA: All right.

11 CHAIRPERSON MILLER: All right.

12 So we'll recess then for five minutes.

13 (Whereupon, the above-entitled
14 matter went off the record at 10:17 a.m. and
15 resumed at 10:19 a.m.)

16 MS. SCHMIDT: Okay. He doesn't
17 need to go to the car anymore.

18 CHAIRPERSON MILLER: Okay.

19 MS. SCHMIDT: Okay. We now have a
20 preliminary matter.

21 CHAIRPERSON MILLER: Okay.

22 MS. SCHMIDT: We now have a

1 preliminary matter.

2 CHAIRPERSON MILLER: Okay.

3 MS. SCHMIDT: Okay. The
4 Government wishes to present an Offer in
5 Compromise, which is an OIC consisting of a
6 \$4,000 fine. There would be a \$1,000 fine for
7 charge 1, since it is a fourth secondary tier
8 violation, and a \$3,000 fine for charge 2 with
9 60 days to pay. So \$1,000 for charge 1, 3,000
10 for charge 2, 60 days to pay.

11 CHAIRPERSON MILLER: Okay. I have
12 two questions. First of all, one of the
13 charges involves failure to file a quarterly
14 statement.

15 MS. SCHMIDT: Yes.

16 CHAIRPERSON MILLER: Has that
17 quarterly statement been filed?

18 MS. SCHMIDT: It was filed in
19 September.

20 CHAIRPERSON MILLER: It was filed?
21 Okay. Do we have a language issue here?

22 MR. VARONA: She's aware of what's

1 going on.

2 CHAIRPERSON MILLER: Okay. You're
3 translating for her?

4 MR. VARONA: Yes.

5 CHAIRPERSON MILLER: Okay. All
6 right. Okay. I'm going to repeat the Offer
7 in Compromise and ask you if you agree to it.
8 It is to pay a fine of \$4,000. One thousand
9 would be for the first charge and three
10 thousand would be for the second charge, and
11 you would pay within 60 days.

12 MR. VARONA: That is fine.

13 CHAIRPERSON MILLER: Okay. What?

14 MR. VARONA: That's okay. She
15 understands.

16 CHAIRPERSON MILLER: So you
17 understand? You agree to that Offer in
18 Compromise?

19 MS. GARAY: Yes.

20 CHAIRPERSON MILLER: Yes? And do
21 you understand you waive your right to a
22 hearing then by entering into an Offer in

1 Compromise?

2 MS. GARAY:

3 (No audible response)

4 CHAIRPERSON MILLER: Yes? Does
5 she? Did you explain that? This is instead
6 of a hearing. Yes?

7 MS. GARAY: Yes.

8 CHAIRPERSON MILLER: Okay. Do
9 Board Members have questions?

10 MEMBER ALBERTI: Well, go ahead,
11 Mr. Rodriguez.

12 MEMBER RODRIGUEZ: No, go ahead.

13 MEMBER ALBERTI: No, please. Go
14 ahead.

15 CHAIRPERSON MILLER: Mr.
16 Rodriguez?

17 MR. RODRIGUEZ: Yes, Madam Chair
18 and Members of the Board, I just wanted to
19 make sure that everyone -- that first of all
20 the owner understands the Offer in Compromise,
21 and if more time is needed for the gentleman
22 to explain it so that she does understand it.

1 And secondly, this is a small business that is
2 trying to make it in the tough environment and
3 I would just caution that we consider a -- you
4 know, that Offer in Compromise again and
5 consider that this is a small business here
6 that is trying to make it in a tough
7 situation.

8 CHAIRPERSON MILLER: Mr. Alberti?

9 MEMBER ALBERTI: I have a question
10 for Ms. Schmidt. Ms. Schmidt, you negotiated
11 this Offer in Compromise with the owner?

12 MS. SCHMIDT: Yes.

13 MEMBER ALBERTI: Are you confident
14 that the owner understands the Offer in
15 Compromise and the terms?

16 MS. SCHMIDT: I'm only -- to be --
17 I'm relying -- well, I've dealt with --

18 MEMBER ALBERTI: I want to know
19 are you confident? As general counsel
20 handling this case, are you confident? And if
21 not, then say so, because it's your reputation
22 here that I'm putting on the line.

1 MS. SCHMIDT: All I can say is
2 I've dealt with her before and I know that
3 this is not the first time that she's had a
4 translator do this for her. I don't know her
5 mind, but I'm secure enough with my past
6 dealings with her that she understands what's
7 going on.

8 MR. VARONA: Yes.

9 MEMBER ALBERTI: So I'll take that
10 as you're confident. Thank you.

11 CHAIRPERSON MILLER: Yes, Mr.
12 Brooks?

13 MEMBER BROOKS: Yes, Ms. Schmidt,
14 are you confident that the Licensee recognizes
15 the need to file and keep books and records?

16 MS. SCHMIDT: That I don't know.
17 I haven't spoken to her enough. I don't know.
18 I'm hoping that she'll learn from this
19 experience, but I can't say that this will not
20 happen again. I don't know her --

21 MEMBER BROOKS: Well, I'm not
22 saying it would happen again. I'm just saying

1 does she understand the need to do that?

2 MS. SCHMIDT: I have not spoken to
3 her personally, so I can't answer that
4 question.

5 MEMBER BROOKS: Okay. All right.
6 Thank you, Madam Chair.

7 CHAIRPERSON MILLER: Sir, what's
8 your name again?

9 MR. VARONA: Eddy.

10 CHAIRPERSON MILLER: Eddy?

11 MR. VARONA: Yes.

12 CHAIRPERSON MILLER: Okay. What
13 is the language you're translating from,
14 Spanish?

15 MR. VARONA: Spanish, yes.

16 CHAIRPERSON MILLER: And what is
17 your background in Spanish?

18 MR. VARONA: Well, it's my second
19 language, but I'm pretty fluent in it.

20 CHAIRPERSON MILLER: Okay. So
21 you're confident that she understands what --

22 MR. VARONA: Well, I mean, is

1 there way that I can negotiate with her?

2 CHAIRPERSON MILLER: But you
3 already did a negotiation and we have an Offer
4 in Compromise before us. But the question is
5 does -- well, I just want to make sure you're
6 not a translator that's been hired by the
7 Government. So I just want to make sure what
8 your credentials are, that she is
9 understanding you.

10 MR. VARONA: Yes, she is
11 understanding me.

12 CHAIRPERSON MILLER: Okay. All
13 right. So is there a pause or -- are you
14 amendable to this Offer in Compromise or not?

15 MS. SCHMIDT: It's not his
16 decision.

17 CHAIRPERSON MILLER: Is she?

18 MS. SCHMIDT: It's her decision.

19 CHAIRPERSON MILLER: I mean, I
20 heard a yes before, but there seems to be a
21 pause.

22 MR. VARONA: I don't have anything

1 else to say.

2 CHAIRPERSON MILLER: Okay. Let me
3 confirm then. There's being offered an Offer
4 in Compromise that you would pay \$4,000 totals
5 within 60 days. For charge 1 it would be
6 \$1,000. For charge 2 it would be \$3,000. So
7 do you accept that Offer in Compromise for the
8 Board to consider?

9 MR. VARONA: Yes, as long as we
10 have the 90 days, we'll be able to pay it.

11 CHAIRPERSON MILLER: That's not
12 what was offered, so is there is a new Offer
13 in Compromise?

14 MS. SCHMIDT: I'm willing to amend
15 the offer to be payable in 90 days.

16 CHAIRPERSON MILLER: Okay. So the
17 Offer in Compromise that's being presented is
18 \$4,000 to be paid within 90 days. Are you
19 agreeable to that, Ms. Corina?

20 MS. GARAY: Yes.

21 CHAIRPERSON MILLER: Yes? Okay.
22 And you realize you waive your right to a

1 hearing if you enter this agreement? You
2 understand that?

3 MS. GARAY: Yes.

4 CHAIRPERSON MILLER: Okay. We've
5 been over this. Okay. So I believe that Ms.
6 Corina understands this Offer in Compromise.
7 Do others have any other questions?

8 MEMBER ALBERTI: I will say
9 that --

10 CHAIRPERSON MILLER: Yes?

11 MEMBER ALBERTI: -- I'll wait
12 until you make the motion and then I'll speak
13 to your motion.

14 I would just comment at this point
15 that based on the self-reporting of food sales
16 for this restaurant, they are not in
17 compliance with the restaurant requirements.

18 CHAIRPERSON MILLER: Yes.

19 MEMBER ALBERTI: They are below
20 the 40 percent requirement.

21 MS. SCHMIDT: And there's a
22 separate case to that. There is a separate

1 case in the system.

2 MEMBER ALBERTI: I understand
3 that. I understand that. I'm just noting
4 that for the record right now.

5 MS. SCHMIDT: All right.

6 MEMBER ALBERTI: I'm just noting
7 that for my fellow Board Members.

8 CHAIRPERSON MILLER: Okay. All
9 right. So it's noted that there is another
10 case in the pipeline that deals with the
11 issues that Mr. Alberti has pointed out that's
12 a serious issues about not complying with the
13 food requirements.

14 Okay. But what's before us is now
15 an Offer in Compromise with respect to failure
16 to file quarterly statements and failure to
17 maintain books and records.

18 Okay. At this point then -- well,
19 any other questions?

20 MR. RODRIGUEZ: Yes.

21 CHAIRPERSON MILLER: Yes, Mr.
22 Rodriguez.

1 MR. RODRIGUEZ: Madam Chair, I am
2 uncomfortable with the \$3,000 Offer in
3 Compromise. I think it's a little high for a
4 small business that's trying to make it in a
5 tough environment, and I just want to note
6 that for the record. I think the \$3,000 is a
7 little high. I'm sure there's problems in
8 trying to get the records together and
9 everything like that. And I know that there's
10 a penalty involved, but I think the penalty is
11 a little high. And that's just me for the
12 record.

13 CHAIRPERSON MILLER: Okay. Any
14 other questions or comments?

15 (No audible response)

16 CHAIRPERSON MILLER: All right.
17 Okay. I'm going to move then to accept this
18 Offer in Compromise.

19 MEMBER SILVERSTEIN: Second.

20 CHAIRPERSON MILLER: Mr.
21 Silverstein has seconded the motion. All
22 those in favor, say aye?

1 MEMBER ALBERTI: Oh, wait, wait.

2 Comment?

3 CHAIRPERSON MILLER: Oh, sorry.

4 Yes, please?

5 MEMBER ALBERTI: We have \$1,000
6 for a charge for failure to file quarterly
7 statements. That's their fifth secondary.
8 Statutory range is \$2,000 to \$4,000. This is
9 below the statutory guidelines. So we have a
10 proposed fine of \$2,000 for failure to
11 maintain books and records. This is their
12 third primary. Statutory range of \$4,000 to
13 \$6,000. This is below the statutory range.
14 This is not someone who just made one mistake.
15 They've made -- I'll call them mistakes.
16 They've made repeated mistakes and have not
17 learned from their mistakes. I have no
18 confidence that if we give them such an
19 incredible -- such a lenient fine on this one
20 that they're going to learn. I think there
21 needs to be a penalty for not following the
22 rules. And the Offer in Compromise is well

1 below the statutory range. So I will not be
2 accepting this.

3 CHAIRPERSON MILLER: Mr.
4 Silverstein?

5 MEMBER SILVERSTEIN: I will be
6 accepting this, but I would ask you to
7 translate what I'm saying to Mrs. Garay.

8 MR. VARONA: All right.

9 MEMBER SILVERSTEIN: There are
10 reasons why we require all establishments to
11 keep records. All establishments large and
12 small must be treated equally. One important
13 part of this is to ensure that taxes are paid,
14 impuestos. Another is to ensure that a
15 restaurant operates as a restaurant and not
16 just selling beer. I ask you, Ms. Garay, to
17 please keep records, have them on your
18 premises and comply so that you can go on with
19 your business. Buenas suerte and good luck.

20 No further comments.

21 CHAIRPERSON MILLER: Okay.

22 Others?

1 (No audible response)

2 CHAIRPERSON MILLER: I just want
3 to comment that I don't think \$4,000 is small
4 change to a small business. So I think that
5 I'm going to be supporting this. I think it's
6 a reasonable penalty, but I want -- do you
7 want to translate?

8 MR. VARONA: Okay.

9 CHAIRPERSON MILLER: And I want
10 her to know that the way our penalty schedule
11 is set each penalty fine is going to be higher
12 than the one before. So if you keep violating
13 the regulations, you're going to have higher
14 fines by statute and possibly revocation of
15 the license.

16 Okay. One more thing before we
17 vote. And so, I would urge you to speak to
18 someone at ABRA if you have questions about
19 how to comply with the regulations.

20 MR. VARONA: I'll tell her.

21 CHAIRPERSON MILLER: Okay. You'll
22 tell her that? Okay.

1 Anybody else? Yes, Mr. Short?

2 MEMBER SHORT: Just for the record
3 I'd really just like to say the people of
4 Washington, D.C. depend on these taxes to keep
5 our streets up and the public safety. People
6 pay. And so if we get to the point where we
7 let people not pay their taxes for whatever
8 reason, small or large businesses, we're going
9 to be going down a slippery slope of this city
10 going back into receivership. The taxes must
11 be paid and records must be kept. I'm just
12 looking at this very closely. And I'd like to
13 say everyone who comes before this Board
14 should be treated equally. Everyone.

15 That's all I have to say, Madam
16 Chair.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Anybody else?

19 (No audible response)

20 CHAIRPERSON MILLER: Okay. Then
21 there is a motion to approve an Offer in
22 Compromise of \$4,000 to be paid within 90

1 days; \$1,000 for the first charge and \$3,000
2 for the second charge. Is there a second?
3 Oh, there was a second. Mr. Silverstein
4 already seconded it. Correct?

5 MEMBER SILVERSTEIN: Yes.

6 CHAIRPERSON MILLER: All those in
7 favor then, say aye?

8 (Chorus of ayes)

9 CHAIRPERSON MILLER: All those
10 opposed?

11 (Chorus of opposed)

12 CHAIRPERSON MILLER: I believe the
13 vote is 3 to 3, so the motion fails for lack
14 of a majority. So we go to hearing.

15 MR. VARONA: All right.

16 CHAIRPERSON MILLER: Okay. So I
17 think we're back to --

18 MS. SCHMIDT: Okay. All right.

19 CHAIRPERSON MILLER: Does --

20 MS. SCHMIDT: All right.

21 Government's ready.

22 CHAIRPERSON MILLER: Does he need

1 his document? Do you need documents to enter
2 into evidence or what? Yes?

3 MR. VARONA: Yes.

4 CHAIRPERSON MILLER: So are you
5 nearby? Is it five minutes, or what is it?

6 MR. VARONA: Yes, ma'am.

7 CHAIRPERSON MILLER: Okay. Go
8 ahead. We'll recess for five minutes.

9 (Whereupon, the above-entitled
10 matter went off the record at 10:37 a.m. and
11 resumed at 11:02 a.m.)

12 CHAIRPERSON MILLER: Okay. We are
13 back on the record with Case No. 13-CMP-00476.
14 And I understand that the Licensee has gone to
15 get records and brought them back. However,
16 in the interim the Board had time to consider
17 the proceedings in this case and it's the
18 consensus of the Board that we have some
19 concerns about the translating that's going on
20 and we think that we would prefer that there
21 be an official translator, which is provided
22 at no charge to the Licensee.

1 So we would like to postpone the
2 hearing on this case, which is more
3 complicated even than an Offer in Compromise
4 consideration, to July 9th at 2:30 p.m. So at
5 that time there will be an official translator
6 to make sure that -- who is skilled in
7 translating while the proceedings are going
8 on. And at that time you should bring all
9 your evidence, and you will have an
10 opportunity to present it then. Okay?

11 MR. VARONA: Thank you.

12 CHAIRPERSON MILLER: Thank you.

13 Ms. Schmidt?

14 MS. SCHMIDT: No problems.

15 CHAIRPERSON MILLER: No problems?

16 Okay. Thank you very much.

17 MR. VARONA: Thank you.

18 (Whereupon, the above-entitled
19 matter went off the record at 11:04 a.m.)
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