

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

IN THE MATTER OF:

Chateau, Inc.	
t/a Chateau	Show Cause
3439 Benning Road, NE	Hearing
Retailer CR - ANC-7D	(Status)
License No. 10574	
Case #15-AUD-00075	

(Failed to Meet Food Sales  
Requirements)

September 30, 2015

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

ALSO PRESENT:

FERNANDO RIVERO, OAG

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

9:48 a.m.

CHAIRPERSON MILLER: Okay. We are going to skip over the first Show Cause (Status) Hearing, Chateau.

(Whereupon, the above-entitled matter went off the record at 9:48 a.m. and resumed at 9:56 a.m.)

CHAIRPERSON MILLER: Okay. So we skipped over Chateau and I believe that they are here now. All right. I'm going to call that case.

That is Case No. 15-AUD-00075. Chateau is located at 3439 Benning Road, N.E., License No. 10574, in ANC-7D.

MR. RIVERO: Good morning, Board Members. Fernando Rivero for the District of Columbia.

CHAIRPERSON MILLER: Good morning.

MR. MACK: Good morning, Board. Kevin Mack on behalf of Chateau, Inc.

MR. COLEMAN: Good morning. Ronald

1 Coleman on behalf of my father, Seresa J.

2 Coleman, owner of Chateau.

3 CHAIRPERSON MILLER: Okay. Good  
4 morning. All right. Are there any preliminary  
5 matters in this case?

6 MR. RIVERO: Yes. The parties have an  
7 Offer in Compromise to present to the Board, at  
8 this time.

9 CHAIRPERSON MILLER: Okay.

10 MR. RIVERO: And that Offer in  
11 Compromise consists of a fine of \$2,000 payable  
12 in 30 days.

13 CHAIRPERSON MILLER: Okay.

14 MR. RIVERO: The filing of an  
15 application to change the license class within 14  
16 days and the licensee will continue to offer food  
17 items.

18 Let me go ahead and explain a little  
19 bit about this OIC, so that the Board Members are  
20 clear about the terms. This is a case where the  
21 restaurant failed to meet its restaurant food  
22 sales requirements. The Board is aware that

1 there are two tests under the law that a licensee  
2 may pass. The licensee failed both of them.

3 One of the tests requires a 45 percent  
4 threshold with respect to gross receipts for the  
5 year. The licensee's test score, if you will,  
6 was 41 percent, so the licensee failed the  
7 requirement by 4 percentage points.

8 The Regulation 23 DCMR 2101, I believe  
9 it is, Chapter 21, talks about the requirements  
10 in a little more detail, the requirements that  
11 restaurants have to have in order to pass the two  
12 tests.

13 The regulations characterize  
14 compliance as either minimal compliance or  
15 substantial compliance. This would be a case of  
16 substantial compliance. There have been cases in  
17 the past, I've done them years ago, where there  
18 have been minimal compliance and you are talking  
19 about restaurants that really just are bars. All  
20 right. And that's not the situation with respect  
21 to this licensee, given the percentage points at  
22 issue.

1           The regulation offers a number of  
2 options with respect to penalties. And the  
3 regulation gives the Board the ability to pick  
4 one or more of those options. The word is or  
5 that is used in the regulation.

6           In this case, the \$2,000 penalty is  
7 appropriate because it is a second primary tier  
8 violation within the licensee's current  
9 investigative history. And so the range starts  
10 at \$2,000.

11           The licensee is also being required to  
12 change the license class. This is one of the  
13 "penalties" available under the regulation. My  
14 understanding is that the application has already  
15 been filed, but in order to fashion the term, I  
16 just gave them 14 days to do that. My  
17 understanding is the application was filed  
18 recently.

19           And finally, the requirement to  
20 continue to offer food items is not found in the  
21 regulation at all. This is something that I  
22 included whenever I do these types of cases

1 because certainly I don't believe the intent of  
2 the law was just to give an establishment a free  
3 pass and to completely convert into a full bar  
4 and offer no food items.

5 So I ask them to continue to run  
6 business the same way that they have run  
7 business. They just would not be subject to the  
8 food sales requirement going forward. This was  
9 the OIC or settlement that was employed in the  
10 Chi-Cha Lounge case a number of years ago and it  
11 worked fine. The establishment continued to sell  
12 its food. And my understanding is that this  
13 establishment will not change its menu or its  
14 food offerings either.

15 So that's a general discussion of the  
16 terms of the OIC. If there are any questions,  
17 I'm happy to answer them.

18 CHAIRPERSON MILLER: Well, I would  
19 like to ask either you or the applicant what type  
20 of food items they carry?

21 MR. RIVERO: Well, that is a proper  
22 question for the applicant.

1 CHAIRPERSON MILLER: Okay.

2 MR. RIVERO: And I will certainly  
3 defer to the applicant on that.

4 MR. COLEMAN: The Chateau will offer  
5 a variety of food items on different days. What  
6 they do is there is a similar to a buffet-style  
7 of offering. There is not a menu that is  
8 available to the guests. It's sort of determined  
9 beforehand. When guests show up, they are able  
10 to partake in the buffet-style offering at their  
11 desire, their preference.

12 CHAIRPERSON MILLER: So and you agree  
13 to continue the same type of operation?

14 MR. COLEMAN: Yes, ma'am.

15 CHAIRPERSON MILLER: Okay. Let me ask  
16 also just for clarification on this Offer in  
17 Compromise. I wasn't sure whether I heard any  
18 provision about, you know, payment within 30  
19 days.

20 MR. RIVERO: Yes. The payment has to  
21 be made, the \$2,000 fine has to be paid within 30  
22 days or the license will be suspended until the

1 payment is received.

2 CHAIRPERSON MILLER: Okay. And what  
3 if the class change isn't made?

4 MR. COLEMAN: Yes, ma'am. Oh.

5 CHAIRPERSON MILLER: I'm sorry.

6 MR. RIVERO: Pardon?

7 CHAIRPERSON MILLER: Is that a  
8 possibility? Another requirement is that the  
9 class change be made?

10 MR. RIVERO: The requirement is that  
11 an application be filed.

12 CHAIRPERSON MILLER: Filed.

13 MR. RIVERO: It is --

14 CHAIRPERSON MILLER: Okay.

15 MR. RIVERO: -- not the Government's  
16 purview to force that the application be --

17 CHAIRPERSON MILLER: The Board to --

18 MR. RIVERO: -- accepted by the Board.

19 CHAIRPERSON MILLER: Okay.

20 MR. RIVERO: That is the Board's  
21 purview.

22 MR. MACK: To chime in. However, we

1 have filed the application.

2 CHAIRPERSON MILLER: Have filed it.

3 MR. MACK: Yes, ma'am. We are going  
4 to receive our placards.

5 CHAIRPERSON MILLER: Yes.

6 MR. MACK: By October 2nd.

7 CHAIRPERSON MILLER: Okay.

8 MR. MACK: Pending no disagreement or  
9 protest from the ANC, we are going to be able to  
10 transition to our new license class as of  
11 November 17th.

12 CHAIRPERSON MILLER: Okay. And it's  
13 from a CR to a CT?

14 MR. MACK: Yes, ma'am.

15 CHAIRPERSON MILLER: Okay. All right.  
16 So I'm going to ask you then if you agree to the  
17 terms of the Offer in Compromise and just repeat  
18 it for the record, so that we are certain of what  
19 is being agreed to.

20 And that is a fine of \$2,000 to be  
21 paid within 30 days. If not paid within 30 days,  
22 the license will be suspended. The applicant

1 will file an application to change class from CR  
2 to CT. And that the applicant or respondent will  
3 continue to offer food items.

4 MR. MACK: We do, yes, ma'am.

5 CHAIRPERSON MILLER: Okay.

6 MR. MACK: We do consent all -- to  
7 those terms.

8 CHAIRPERSON MILLER: All right. And  
9 do you understand that by entering into an Offer  
10 in Compromise, you waive your right to a hearing?

11 MR. MACK: We do.

12 CHAIRPERSON MILLER: And you --

13 MR. MACK: We understand.

14 CHAIRPERSON MILLER: -- waive your  
15 right to appeal this?

16 MR. MACK: We do. We understand.

17 CHAIRPERSON MILLER: Okay. Okay. Any  
18 questions by Board Members?

19 All right. Then I move that we approve  
20 this Offer in Compromise of a fine of \$2,000 to  
21 be paid within 30 days. If not paid within 30  
22 days, the license will be suspended until payment

1 is made. Also that the respondent will file an  
2 application to change class from CR to CT within  
3 14 days. And that the respondent will continue to  
4 offer food items. Do I have a second?

5 MEMBER SILVERSTEIN: Second.

6 CHAIRPERSON MILLER: Mr. Silverstein  
7 seconded the motion.

8 All those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those opposed?  
11 All those abstaining? The motion passes then 6-  
12 0-0.

13 Okay. We will have a piece of paper  
14 for you momentarily.

15 MR. MACK: Yes, ma'am. Thank you.

16 CHAIRPERSON MILLER: Okay. Thank you.

17 MR. COLEMAN: Thank you.

18 MR. MACK: Thank you for the Board's  
19 time.

20 MEMBER ALBERTI: Thank you.

21 CHAIRPERSON MILLER: Great.

22 (Whereupon, the above-entitled matter

1 went off the record at 10:04 a.m. and resumed at  
2 10:06 a.m.)

3 MEMBER SHORT: Madam Chair, if I might?

4 CHAIRPERSON MILLER: Yes?

5 MEMBER SHORT: I should have spoke up  
6 earlier.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER SHORT: The Chateau case, I had  
9 recused myself from that --

10 CHAIRPERSON MILLER: Okay.

11 MEMBER SHORT: -- case earlier. So --

12 CHAIRPERSON MILLER: Did you vote?

13 MEMBER SHORT: I did not.

14 CHAIRPERSON MILLER: So the record  
15 should reflect that Mr. Short did not vote on the  
16 Chateau Offer in Compromise. Thank you, Mr.  
17 Short.

18 MEMBER SHORT: Thank you.

19 CHAIRPERSON MILLER: Okay.

20 (Whereupon, the Show Cause (Status)  
21 Hearing in the above-entitled matter was  
22 concluded at 10:06 a.m.)

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