

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

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IN THE MATTER OF: :
:
Joel Mireles Castillo :
t/a Dulcinea Bar & Grill : Show Cause
2618 Georgia Ave., NW : Hearing
Retailer CR - ANC-1B : (Status)
License No. 88870 :
Case #13-CC-00029 :
:
(Sale to Minor, Failed to :
Take Steps Necessary to :
Ascertain Legal Drinking Age) :

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January 8, 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

DONALD BROOKS, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT:
AMY SCHMIDT, OAG

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

2 (9:38 a.m.)

3 CHAIRPERSON MILLER: The next case
4 on the calendar is Case No. 13-CC-00029,
5 Dulcinea Bar & Grill located at 2618 Georgia
6 Avenue, N.W., License No. 88870, in ANC-1B.
7 And this is a Show Cause (Status) Hearing.

8 So have a seat. And I'm just
9 going to give you time to sign-in, because we
10 want to make sure we have your names correct
11 for the record.

12 So I just want to ask you first to
13 introduce yourselves for the record.

14 MR. CASTILLO: My name is Joel
15 Castillo. I'm the owner of Dulcinea Bar &
16 Grill.

17 CHAIRPERSON MILLER: Okay. And
18 with you is?

19 MR. BATISTA: My name is Jose
20 Batista. I'm one of the employees.

21 CHAIRPERSON MILLER: Okay. You
22 are an employee of the establishment. Okay.

1 Ms. Schmidt?

2 MS. SCHMIDT: Good morning. Amy
3 Schmidt, Assistant Attorney General on behalf
4 of the District of Columbia.

5 CHAIRPERSON MILLER: All right.
6 Great. Mr. Castillo, I just want to ask you
7 if you received notice of this hearing?

8 MR. CASTILLO: Yes, I did.

9 CHAIRPERSON MILLER: Okay. And
10 make sure that you read it and understood it?

11 MR. CASTILLO: Yes, it's clear. I
12 still have a couple, you know, like questions,
13 but I think everything is mostly clear.

14 CHAIRPERSON MILLER: Okay. Did
15 you understand that you had a hearing today on
16 this case?

17 MR. CASTILLO: Yes.

18 CHAIRPERSON MILLER: Okay. So
19 that notice becomes part of the record.

20 MR. CASTILLO: Yes.

21 CHAIRPERSON MILLER: Okay. Unless
22 you have some objection to the notice?

1 MR. CASTILLO: No.

2 CHAIRPERSON MILLER: Okay.

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

7 CHAIRPERSON MILLER: Okay. Are
8 there any preliminary issues that you want to
9 bring to our attention?

10 MS. SCHMIDT: Yes, yes, there is.
11 We have an offer in compromise which we would
12 like to present to the Board. That offer in
13 compromise consists of a written warning for
14 Charge 1 and for Charge 2 a \$2,000 fine and
15 five suspension days to be stayed for a period
16 of one year. And also that the licensee shall
17 submit proof that all employees have completed
18 an alcohol training program within three
19 months.

20 CHAIRPERSON MILLER: Could you
21 repeat for me, I'm sorry, the Charge 2?

22 MS. SCHMIDT: It's a \$2,000 fine

1 and five days suspension and stayed for one
2 year.

3 CHAIRPERSON MILLER: \$2,000 fine,
4 five days suspension, stayed for one year.
5 Plus proof what?

6 MS. SCHMIDT: And then proof that
7 all employees that serve alcoholic beverages
8 complete an alcohol training program within
9 three months and submit proof of that training
10 to ABRA.

11 CHAIRPERSON MILLER: Okay. Before
12 I ask any questions about this, because I do
13 have questions about it, but, Mr. Castillo, I
14 want to see is that your -- do you agree to
15 the offer in compromise? And I'm going to try
16 to repeat it.

17 That the first offense is a
18 warning and the second would be a \$2,000 fine
19 with a five day suspension, but the five days
20 would be stayed for one year pending no
21 further violations, and that all employees who
22 serve alcohol would undergo alcohol training

1 within three months and submit within the
2 three months the proof of training?

3 MR. CASTILLO: Yes, I agree.

4 CHAIRPERSON MILLER: Okay. Ms.
5 Schmidt, I want to ask you are each of the
6 charges related to one offense or two offenses
7 or incidents? Is it the same incident or is
8 it two different incidents?

9 MS. SCHMIDT: It's the same
10 incident.

11 CHAIRPERSON MILLER: Okay. Could
12 you then address for me, Council has indicated
13 that there be a warning for a first time sale
14 to minor offense, how you reconcile issuing a
15 warning and then proposing a penalty in the
16 amount of \$2,000? Plus five days suspended.

17 MS. SCHMIDT: I don't -- I have --
18 I don't know. I have no -- I really don't
19 know. This is just what -- hold on. Even
20 though it's the same incident, it is two
21 different code sections and so the warning
22 goes towards only the first code section.

1 However, the Council has not changed -- has
2 not forbid -- has not given any sort of
3 indication as to the second code section. It
4 has been charged under that, therefore, that
5 the Government is allowed to collect a fine
6 for the second charge. That is the legal
7 interpretation that we are going under.

8 CHAIRPERSON MILLER: Okay. I was
9 just going to say based on the facts that I'm
10 hearing and this is just my opinion --

11 MS. SCHMIDT: Um-hum.

12 CHAIRPERSON MILLER: -- that by
13 charging on the second offense, it undermines
14 the intent of the Council on the first
15 provision that there be a warning for the
16 first time.

17 MS. SCHMIDT: If the Council had
18 wanted to put a warning for the second
19 offense, they could have done it at the same
20 time they did it for the first time.

21 CHAIRPERSON MILLER: I'm sorry
22 what?

1 MS. SCHMIDT: If the Council had
2 wished there to be warnings in that other
3 provision, our argument is that they could
4 have done so at the same time.

5 CHAIRPERSON MILLER: Okay. Okay.

6 MEMBER ALBERTI: May I make a
7 comment?

8 CHAIRPERSON MILLER: Yes, Mr.
9 Alberti?

10 MEMBER ALBERTI: Just for the
11 record, I absolutely agree with Ms. Schmidt in
12 her statement that the Council didn't speak to
13 783 and it is a separate charge. So I guess
14 I differ from the Chair's point of view.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER SILVERSTEIN: Madam Chair?

17 CHAIRPERSON MILLER: Yes?

18 MEMBER SILVERSTEIN: I respect the
19 opinion of the Chair, but I would associate
20 myself with the comments of my colleague and
21 Board Member, Mr. Alberti.

22 CHAIRPERSON MILLER: Okay. All

1 right. So are there any other questions
2 before we consider this then?

3 My only other question to you,
4 sir, is I think that you have said that you do
5 agree to the offer in compromise?

6 MR. CASTILLO: Yes, I do.

7 CHAIRPERSON MILLER: And do you
8 still agree to that offer in compromise?

9 MR. CASTILLO: Yes.

10 CHAIRPERSON MILLER: Okay. And do
11 you understand that you waive your right to a
12 hearing by accepting an offer in compromise?

13 MR. CASTILLO: Um-hum.

14 CHAIRPERSON MILLER: Okay. All
15 right. So --

16 COURT REPORTER: For the record,
17 can you properly say yes or no?

18 MR. CASTILLO: Yes, okay.

19 COURT REPORTER: We cannot
20 transcribe um-hum.

21 MR. CASTILLO: All right. All
22 right.

1 CHAIRPERSON MILLER: Okay. Then
2 we have before us an offer in compromise to
3 dismiss Charge 1 and to have a penalty of
4 \$2,000 for Charge 2 with five days suspension
5 of the license, that suspension stayed for one
6 year pending no further violations. And all
7 employees of the establishment that serve
8 alcohol will undergo Alcohol Awareness
9 Training within three months and submit proof
10 of that training within three months.

11 Ms. Schmidt, I think that I also
12 need to ask you when the payment would be
13 made.

14 MS. SCHMIDT: Oh, he can make
15 payment today.

16 MR. CASTILLO: Um-hum. I make
17 today.

18 CHAIRPERSON MILLER: Okay. Then
19 and payment today. Okay. Would someone like
20 to move that motion, since I'll be opposing
21 that? Would someone like to move the motion?

22 MEMBER ALBERTI: What was the

1 motion?

2 CHAIRPERSON MILLER: The motion is
3 to accept that offer in compromise of \$2,000
4 paid today, license suspended for five days,
5 stayed for a year pending no further
6 violations and all employees serving alcohol
7 will undergo Alcohol Awareness Training within
8 three months and proof of that training will
9 be submitted to ABRA, the ABC Board within
10 three months.

11 MEMBER SILVERSTEIN: Madam Chair,
12 I so move.

13 CHAIRPERSON MILLER: Okay. Is
14 there a second?

15 MEMBER BROOKS: Second.

16 MS. SCHMIDT: And a warning for
17 Charge 1.

18 CHAIRPERSON MILLER: And dismissal
19 of Charge 1.

20 MS. SCHMIDT: No, a warning.

21 MEMBER ALBERTI: A warning.

22 CHAIRPERSON MILLER: A warning for

1 Charge 1. Excuse me. Okay. A warning for
2 Charge 1 and the penalty as described a couple
3 of times now for Charge 2. All right. Is
4 there a second?

5 MEMBER BROOKS: Second.

6 CHAIRPERSON MILLER: The motion
7 has been seconded.

8 All those in favor say aye.

9 MEMBER BROOKS: Aye.

10 MEMBER SILVERSTEIN: Aye.

11 MEMBER ALBERTI: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed? Opposed. All those abstaining?
14 Then the motion passes 3-1-0 to accept the
15 offer in compromise.

16 Okay. That concludes this case.
17 We are just going to do that order.

18 (Whereupon, the Show Cause
19 (Status) Hearing in the above-entitled matter
20 was concluded at 9:49 a.m.)
21
22

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