

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF:

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S&W D.C., LLC

:

t/a Smith and Wollensky

: Show Cause

1112 19th Street NW

: Hearing

Retailer CR

:

License No. 60001

:

Fail to File Quarterly Stmts :

Case No. 12-CMP-00449

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January 15, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HECTOR RODRIGUEZ, Member

JAMES SHORT, Member

MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

Amy Schmidt, OAG

Earl Jones, Investigator, ABRA

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

(2:51 p.m.)

CHAIRPERSON MILLER: Okay, I'm going to call Case Number 13-AUD-00027, Smith & Wollensky, located at 1112 19th Street NW, license number 60001, in ANC 2B.

Can you identify yourself for the record please?

MS. SCHMIDT: Amy Schmidt, assistant attorney general on behalf of the District of Columbia standing in for Ms. Chrissie Gephardt.

CHAIRPERSON MILLER: And is anybody here for Smith & Wollensky? I'm not hearing from anyone. Ms. Schmidt, have you been in touch with anyone from Smith & Wollensky?

MS. SCHMIDT: I spoke to Ms. Gephardt just a few minutes ago and she said that yesterday she spoke to them and they were supposed to come in at 9:30 because they thought there could be a possible OIC in this

1 matter, and they said they'd be here at 9:30.  
2 But they're not here. They were not here at  
3 9:30 and they're not here now. So the  
4 government wishes to proceed on this matter.

5 CHAIRPERSON MILLER: Okay, and you  
6 haven't heard from them at all?

7 MS. SCHMIDT: Ms. Gephardt, she  
8 was their attorney but she has not heard from  
9 them since yesterday.

10 CHAIRPERSON MILLER: Okay. And I  
11 don't have any knowledge that the agency has  
12 either. And it's 2:51 and this hearing was  
13 called for 2:30 and no one is here. And they  
14 weren't here at 9:30 either or throughout the  
15 morning, because we were both here.

16 All right, so you are ready to  
17 proceed ex parte, correct?

18 MS. SCHMIDT: Yes, I am.

19 CHAIRPERSON MILLER: Okay.

20 MS. SCHMIDT: This case is a case  
21 of failing to file the Board's required  
22 quarterly statement for the fourth quarter of

1           2012 which was due on January 30th, 2013 which  
2           is a violation of D.C. Code 25-113(b)(2)(A).

3                       And you will hear from Monica  
4           Clark, ABRA's compliance analyst regarding the  
5           licensee's fourth quarter statement for 2012.  
6           Ms. Clark will testify that as of January  
7           30th, 2013, the fourth quarter statement had  
8           not been filed.

9                       She was following the process by  
10          which ABRA determines that the statement has  
11          been timely filed and through that process was  
12          able to determine the licensees filing was  
13          received on February 20th, 2013, and thus  
14          after the deadline.

15                      The government calls Ms. Monica  
16          Clark.

17                      CHAIRPERSON MILLER:   Okay.

18                      Do you swear to tell the truth,  
19          the whole truth and nothing but the truth?

20                      MS. CLARK:   I do.

21                      CHAIRPERSON MILLER:   Okay, thank  
22          you.

1 MS. SCHMIDT: Good afternoon, Ms.  
2 Clark.

3 MS. CLARK: Good afternoon.

4 MS. SCHMIDT: Could you please  
5 state your name and spell it for the record?

6 MS. CLARK: My name is Monica  
7 Clark. M-O-N-I-C-A, C-L-A-R-K.

8 MS. SCHMIDT: And where do you  
9 work?

10 MS. CLARK: I work with the  
11 Alcoholic Beverage Regulation Administration.

12 MS. SCHMIDT: And what's your  
13 title?

14 MS. CLARK: Compliance analyst.

15 MS. SCHMIDT: And how long have  
16 you been a compliance analyst with ABRA?

17 MS. CLARK: I guess it would be  
18 two years as of July 2012.

19 MS. SCHMIDT: And what are  
20 responsibilities as a compliance analyst?

21 MS. CLARK: I receive, report,  
22 analyze quarterly statements received from

1           Class C licensees and assist in audit matters.

2                   MS. SCHMIDT: And are you familiar  
3 with the licensee Smith & Wollensky?

4                   MS. CLARK: Yes, I am.

5                   MS. SCHMIDT: And I want to draw  
6 your attention to the quarterly statement  
7 filing period for the fourth quarter of 2012.  
8 What dates would those filings be due?

9                   MS. CLARK: The fourth quarter of  
10 2012 would have been due by the 30th of  
11 January of 2013.

12                  MS. SCHMIDT: And do you know if  
13 Smith & Wollensky filed their 2012 fourth  
14 quarter statement by January 30th, 2013?

15                  MS. CLARK: The quarterly  
16 statement had not been received by that date.

17                  MS. SCHMIDT: I'm handing you what  
18 is marked as Government's Exhibit Number 1.  
19 Can you identify that for the Board, please?

20                  MS. CLARK: This is a copy of the  
21 quarterly statement that was filed by Smith &  
22 Wollensky on Wednesday, February 20th, 2013.

1 MS. SCHMIDT: And can you explain  
2 -- how these are filed initially?

3 MS. CLARK: Quarterly statements,  
4 this particular one was filed on, they can be  
5 filed, you can fax them. You can email them.  
6 You can bring them in or mail them. But this  
7 particular one was done electronically.

8 MS. SCHMIDT: And how does the  
9 electronic system work?

10 MS. CLARK: The electronic system  
11 allows you to go the ABRA website. You can  
12 click on under Services where it says  
13 Quarterly Statements. You are able to submit  
14 your sales and expenditures and submit the  
15 information. At that point it sends a copy to  
16 an ABRA email box and it also sends a copy to  
17 the licensee.

18 MS. SCHMIDT: And so how did Smith  
19 & Wollensky use the electronic system in this  
20 instance?

21 MS. CLARK: They did file theirs  
22 electronically using the system I just

1 described, but however they did not do so  
2 until after the deadline.

3 MS. SCHMIDT: And to your  
4 knowledge was there anything faxed or walked  
5 in?

6 MS. CLARK: I have checked all the  
7 records within the ABRA office and nothing was  
8 received prior to, or on the 30th of January  
9 2013.

10 MS. SCHMIDT: Thank you Ms. Clark.  
11 No further questions at this time.

12 CHAIRPERSON MILLER: Any Board  
13 questions? Thank you.

14 MS. SCHMIDT: Evidence? Closing,  
15 I guess.

16 CHAIRPERSON MILLER: Did you have  
17 any evidence, documents you want to put in the  
18 record?

19 MS. SCHMIDT: Oh, I'm sorry, yes.  
20 The government would like to admit Exhibit  
21 Number 1.

22 CHAIRPERSON MILLER: Is it



1           accurate to say that Government's Exhibit  
2           Number 1 is the online records?

3                       MS. SCHMIDT: Yes, it is.

4                       CHAIRPERSON MILLER: Okay.

5                       MS. SCHMIDT: The online record of  
6           nonfiling.

7                       CHAIRPERSON MILLER: For the  
8           quarterly statement filing?

9                       MS. SCHMIDT: Yes.

10                      CHAIRPERSON MILLER: Then this  
11           exhibit is admitted as Government Exhibit  
12           Number 1. Okay.

13                      MS. SCHMIDT: The government has  
14           shown today that Smith & Wollensky, while  
15           they're under the obligation to file by  
16           January 30th, 2013, they did not file their  
17           quarterlies until February 20th, 2013, thus  
18           were in violation of the statute of D.C. Code  
19           113(b)(2)(A), 2001. And thus we are  
20           requesting that they be fined \$2,000.

21                      CHAIRPERSON MILLER: Okay. Then  
22           the record is closed now in this case, and do

1       you wish to file any proposed findings of  
2       fact?

3                   MS. SCHMIDT:  No, thank you.

4                   CHAIRPERSON MILLER:  Okay,  
5       provisions of law, no.  All right.  Then I  
6       will take a vote on deliberating on this case  
7       in closed session.

8                   As chairperson of the Alcoholic  
9       Beverage Control Board for the District of  
10      Columbia, and in accordance with D.C. Official  
11      Code Section 2-574(b) of the Open Meetings  
12      Act, I move that the ABC Board hold a closed  
13      meeting for the purpose of seeking legal  
14      advice from our counsel on Case Number 13-AUD-  
15      00027, pursuant to Section 2-574(b) for the  
16      Open Meetings Act and deliberating upon this  
17      case for the reasons cited in Section 2-  
18      574(b)(13) of the Open Meetings Act.

19                   Is there a second?

20                   MEMBER BROOKS:  Second.

21                   CHAIRPERSON MILLER:  Mr. Brooks  
22      has seconded the motion.  I'll now take a roll

1 call vote on the motion, now that it's been  
2 seconded. Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Mr.

7 Rodriguez?

8 MEMBER RODRIGUEZ: I agree.

9 CHAIRPERSON MILLER: Ms. Miller  
10 agrees. Mr. Silverstein?

11 MEMBER SILVERSTEIN: I agree.

12 CHAIRPERSON MILLER: Mr. Short?

13 MEMBER SHORT: I agree.

14 CHAIRPERSON MILLER: All right, it  
15 appears that the motion has passed by a vote  
16 of 6-0-0. I hereby give notice that the ABC  
17 Board will hold a closed meeting on this case  
18 pursuant to 2-574(b) of the Open Meetings Act.  
19 And we will issue a decision within 90 days in  
20 writing. Thank you.

21 That concludes this case.

22 MS. SCHMIDT: I think that, I

1 believe, concludes my matters, if I can be  
2 excused?

3 CHAIRPERSON MILLER: No. Yes, go  
4 ahead. Have a good day. Okay.

5 MEMBER SILVERSTEIN: Take the rest  
6 of the day off.

7 CHAIRPERSON MILLER: Right.

8 MS. SCHMIDT: Thank you.

9 CHAIRPERSON MILLER: Okay, so that  
10 does conclude our hearings for today, and the  
11 Board will recess and return shortly to do its  
12 agenda.

13 (Whereupon, the foregoing matter  
14 went off the record at 3:00 p.m.)  
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<p><b>A</b></p> <p><b>\$2,000</b> 9:20</p> <p><b>ABC</b> 10:12 11:16</p> <p><b>able</b> 4:12 7:13</p> <p><b>ABRA</b> 1:23 4:10 5:16 7:11,16 8:7</p> <p><b>ABRA's</b> 4:4</p> <p><b>accurate</b> 9:1</p> <p><b>Act</b> 10:12,16,18 11:18</p> <p><b>Administration</b> 5:11</p> <p><b>admit</b> 8:20</p> <p><b>admitted</b> 9:11</p> <p><b>advice</b> 10:14</p> <p><b>afternoon</b> 5:1,3</p> <p><b>agency</b> 3:11</p> <p><b>agenda</b> 12:12</p> <p><b>ago</b> 2:19</p> <p><b>agree</b> 11:3,5,8,11 11:13</p> <p><b>agrees</b> 11:10</p> <p><b>ahead</b> 12:4</p> <p><b>Alberti</b> 1:17 11:4,5</p> <p><b>Alcoholic</b> 1:2,13,13 5:11 10:8</p> <p><b>allows</b> 7:11</p> <p><b>Amy</b> 1:22 2:9</p> <p><b>analyst</b> 4:4 5:14,16 5:20</p> <p><b>analyze</b> 5:22</p> <p><b>ANC</b> 2:6</p> <p><b>anybody</b> 2:14</p> <p><b>appears</b> 11:15</p> <p><b>assist</b> 6:1</p> <p><b>assistant</b> 2:10</p> <p><b>attention</b> 6:6</p> <p><b>attorney</b> 2:10 3:8</p> <p><b>audit</b> 6:1</p>	<p>11:17 12:11</p> <p><b>Board's</b> 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