

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF:

Kookoovaya, Inc.	
t/a We, the Pizza	Show Cause
305 Pennsylvania Ave., SE	Hearing
Retailer CR - ANC-6B	(Status)
License No. 82062	
Case #14-CC-00141	

(Sale to Minor Violation,
 Failed to Take Steps Necessary
 to Ascertain Legal Drinking
 Age, No ABC Manager on Duty)

March 11, 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:

LOUISE PHILLIPS, OAG

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

9:53 a.m.

CHAIRPERSON MILLER: Okay. Good morning, everyone. I would like to welcome you to the regularly scheduled meeting of the District of Columbia's Alcoholic Beverage Control Board. Today is March 11, 2015.

My name is Ruthanne Miller. I'm the Chairperson. Joining me today to my far right is Mr. Donald Brooks. To his left is Mr. Nick Alberti and next to Mr. Alberti is Mr. Hector Rodriguez. To my immediate left is Mr. Mike Silverstein and next to Mr. Silverstein is Mr. James Short. We have six Members in attendance this morning for the conduct of business and three constitute a quorum.

Copies of today's hearing calendar and agenda are available at the receptionist desk. Please be aware that these proceedings are being recorded by a court reporter. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

1 If you have any electronic devices,
2 pagers, cell phones or such, please, make certain
3 they are turned off to avoid any interruption of
4 the proceedings.

5 When I call your case, please, come
6 forward and take a seat at the table. You will
7 note that there is a piece of paper on each table
8 for you to sign-in. This is to ensure the
9 correct spelling of your name for the record.

10 The Open Meetings Act requires that
11 the public hearing on each case be open to the
12 public. The Board may, consistent with Section
13 405(b) of the Open Meetings Act, enter a closed
14 meeting during or after the public hearing on a
15 case to consult with an attorney to obtain legal
16 advice, discuss settlement agreements or
17 deliberate upon a decision in an adjudication
18 proceeding.

19 Okay. That concludes my introductory
20 remarks and we will start with the first case on
21 this morning's calendar which is Case No. 14-CC-
22 00141, We, the Pizza located at 305 Pennsylvania

1 Avenue, S.E., License No. 82062, in ANC-6B.

2 And when you are ready if the parties
3 could have a seat at the table. Good morning.

4 MS. PHILLIPS: Good morning.

5 CHAIRPERSON MILLER: If you will
6 introduce yourselves?

7 MS. PHILLIPS: Louise Phillips,
8 Assistant Attorney General for the District of
9 Columbia.

10 MS. WILKEY: Karina Wilkey, controller
11 of We, the Pizza.

12 CHAIRPERSON MILLER: Okay. So this is
13 a (Status) Show Cause Hearing and I need to ask
14 you if you received notice of this hearing?

15 MS. WILKEY: Yes, ma'am, I did.

16 CHAIRPERSON MILLER: All right. And
17 did you read it and understand it?

18 MS. WILKEY: Yes, ma'am.

19 CHAIRPERSON MILLER: Okay. So there
20 is no notice issues for this proceeding.

21 Okay. And are there any preliminary
22 matters?

1 MS. PHILLIPS: There are several. One
2 is that there is a letter to be presented from
3 the owner which authorizes Ms. Wilkey to
4 negotiate the OIC that we are presenting to the
5 Board. She has the original to hand forward if
6 somebody --

7 MEMBER ALBERTI: Martha will get it.
8 Ms. Walker will get it.

9 MS. PHILLIPS: Okay.

10 MS. WILKEY: Okay. Thank you.

11 MS. PHILLIPS: Otherwise we have an
12 Offer in Compromise to present to the Board.
13 This is a three charge notice. The total amount
14 of the fine is \$4,000 plus five suspension days
15 stayed for one year. The breaks down as follows:

16 \$3,000 fine with five suspension days
17 stayed for one year for Charge 1.

18 Charge 2 will be dropped.

19 Charge 3 consists of a \$1,000 fine.

20 CHAIRPERSON MILLER: Okay. I'm sorry,
21 what's your name again?

22 MS. WILKEY: Karina Wilkey.

1 CHAIRPERSON MILLER: Karina Wilkey.

2 Okay.

3 MS. WILKEY: Yes, ma'am.

4 CHAIRPERSON MILLER: So I have in
5 front of me a copy of a letter dated March 6,
6 2015 authorizing you to appear on behalf of We,
7 the Pizza, so that's fine.

8 And I want to ask you if you agree to
9 this Offer in Compromise which I'm going to try
10 to restate and Ms. Phillips can correct me if I'm
11 wrong.

12 The total would be for a \$4,000 fine
13 payable within?

14 MS. PHILLIPS: The owner asked me to
15 have it within 90 days or his license would be
16 suspended, if the Board would consider extending
17 the time for him.

18 CHAIRPERSON MILLER: Okay. So the
19 Offer in Compromise is the total sum is a \$4,000
20 fine payable within 90 days and if it's not paid
21 within 90 days, the license would be suspended
22 until it is paid. And then the five days would

1 be stayed for one year pending no further
2 violations. And breaking it down it is \$3,000
3 plus the five days stayed for Charge 1. Charge 2
4 is dismissed. And Charge 3 is \$1,000.

5 MS. WILKEY: Yes, ma'am.

6 CHAIRPERSON MILLER: Okay. So you are
7 agreeable to that?

8 MS. WILKEY: Yes, ma'am.

9 CHAIRPERSON MILLER: And do you
10 understand that you waive your right to a hearing
11 by accepting this Offer in Compromise?

12 MS. WILKEY: Yes, I do.

13 CHAIRPERSON MILLER: And that you also
14 waive your right to appeal it?

15 MS. WILKEY: Yes, ma'am.

16 CHAIRPERSON MILLER: Okay.

17 MEMBER ALBERTI: Ruthanne?

18 CHAIRPERSON MILLER: Yes?

19 MEMBER ALBERTI: I can either make
20 comments here or we can talk, but I have got a
21 problem with the failure to ascertain. I think
22 that should be a warning.

1 CHAIRPERSON MILLER: Which one?

2 MEMBER ALBERTI: Failure to ascertain.

3 I think we should give a warning for that. The
4 first time violation should have a warning. We
5 can talk about it in the back.

6 CHAIRPERSON MILLER: Oh.

7 MEMBER ALBERTI: I missed that earlier
8 on. We can take a break and talk.

9 CHAIRPERSON MILLER: I think we can
10 ask them on the record.

11 MEMBER ALBERTI: Pardon?

12 CHAIRPERSON MILLER: We can ask them
13 on the record.

14 MEMBER ALBERTI: Just to -- okay.

15 CHAIRPERSON MILLER: Ms. Phillips?

16 MS. PHILLIPS: Yes?

17 CHAIRPERSON MILLER: Charge 1 --

18 MEMBER ALBERTI: It's Charge 2
19 actually.

20 CHAIRPERSON MILLER: Charge 2?

21 MEMBER ALBERTI: Yes, failure to --
22 it's Charge 2.

1 CHAIRPERSON MILLER: Okay. You want
2 to --

3 MEMBER ALBERTI: -- you are not
4 bringing that forward. Is that the one?

5 MS. PHILLIPS: Yes.

6 CHAIRPERSON MILLER: Yes.

7 MEMBER ALBERTI: All right.

8 CHAIRPERSON MILLER: Is Charge 1 -- I
9 have a question about Charge 1 when I look at it
10 if I'm not looking at the wrong write-up. Is
11 this a first sale to minor?

12 MS. PHILLIPS: I do not know the
13 answer to that. I'm looking. I'm just looking
14 at it and I thought that it was not.

15 MEMBER ALBERTI: Ms. Miller, our
16 investigative history shows that the licensee was
17 given a warning less than two years ago.

18 MS. PHILLIPS: Okay.

19 CHAIRPERSON MILLER: So this is the
20 second.

21 MS. PHILLIPS: Right. It's number two
22 on my investigative history.

1 MEMBER ALBERTI: Right. Less than two
2 years from the date of this infraction the
3 licensee was given a warning for failure to
4 minor.

5 CHAIRPERSON MILLER: Okay. Is that
6 the July 24th date?

7 MEMBER ALBERTI: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: So this constitutes
10 the first time.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER ALBERTI: My concern is with
13 Charge 2, that this would be a first time
14 violation and I suggest that the Board given a
15 warning for Charge 2.

16 MS. PHILLIPS: Yes.

17 CHAIRPERSON MILLER: But --

18 MEMBER ALBERTI: It's a mandatory
19 warning --

20 MS. PHILLIPS: I thought the mandatory
21 warning --

22 MEMBER ALBERTI: -- first time

1 violation.

2 MS. PHILLIPS: Right.

3 MEMBER ALBERTI: Go ahead, Ms.

4 Phillips.

5 MS. PHILLIPS: I didn't mean to
6 interrupt. I'm not hearing you as well as I
7 usually do.

8 MEMBER ALBERTI: Oh, I'm sorry, that's
9 because my mike is not on. My recommendation to
10 the Board, I mean, I would choose to -- I would--
11 my recommendation to the Board is that we give a
12 warning for Charge 2, because it is a first time
13 violation for failure to ascertain and the
14 Board --

15 CHAIRPERSON MILLER: Okay. I can see
16 how that might be warranted, except that this is
17 an Offer in Compromise, so the parties can
18 negotiate.

19 MEMBER ALBERTI: Well, we have it as
20 Charge 2 is being -- the motion there is to
21 dismiss it, so I think we are open to -- we can
22 go back and talk if you would like. I mean, I

1 have a problem that -- I have a problem that we
2 have a pattern here of sale to minor as one by
3 the 2012 episode and now we have a failure to
4 ascertain the legal drinking age. And it seems
5 to me with -- we are not really recognizing the
6 seriousness of fail to minors if we are just
7 going to dismiss this without a warning.

8 MEMBER SHORT: Madam Chair, I have to
9 concur with that.

10 CHAIRPERSON MILLER: Okay. Maybe we
11 should -- first of all, let me just reiterate
12 this. This is an Offer in Compromise, so when we
13 have these Offers in Compromise, certain things,
14 you know, the parties may agree where the Board
15 may not. But the first one is for \$3,000 fine
16 plus -- which is statutory --

17 MEMBER ALBERTI: She said because if
18 we -- I'm sorry. I think your position is that
19 if we accept this Offer in Compromise, that
20 precludes us from giving a warning for Charge 2.
21 Is that your position? Maybe I'm
22 misunderstanding your position. Is that your

1 position?

2 CHAIRPERSON MILLER: It adjudicates
3 the -- yes. This case would be -- that would
4 be --

5 MEMBER ALBERTI: Then I'm troubled by
6 accepted this Offer in Compromise if we are not
7 giving a warning for something that appears to be
8 a pattern of violations.

9 CHAIRPERSON MILLER: Okay. Other
10 comments?

11 MEMBER SHORT: Ms. Phillips, does she
12 have any comment about that, Charge 2?

13 MS. PHILLIPS: Well, this is an Offer
14 in Compromise and I have dealt extensively with
15 Mr. Mendelsohn on this matter and I forwarded
16 what I had agreed on with Mr. Mendelsohn to Ms.
17 Wilkey because she didn't have a whole copy of
18 what we had agreed upon in an email. And so once
19 you negotiate --

20 CHAIRPERSON MILLER: Right.

21 MS. PHILLIPS: -- and Offer in
22 Compromise, that's it.

1 CHAIRPERSON MILLER: Right.

2 MS. PHILLIPS: And she may have the
3 authority to change that, but I dealt with Mr.
4 Mendelsohn and she is just standing in for what
5 Mr. Wilkey -- Mr. Mendelsohn and I agreed to.

6 MEMBER ALBERTI: Do you want to take
7 a moment?

8 MS. PHILLIPS: No, I don't.

9 MEMBER ALBERTI: All right. Fine.

10 CHAIRPERSON MILLER: Okay. Others?
11 Okay. I'm going to move that we accept this
12 Offer in Compromise. I mean, my position is that
13 there is always a little compromise in these
14 Offer in Compromise and this one is not to issue
15 the warning as part of Charge 2.

16 However, Charge 2 is often -- it's
17 just part of and arising out of the same facts as
18 Charge 1 and Charge 1 is consistent with our
19 statute. And I don't find a \$4,000 penalty in
20 this case to be unsubstantial.

21 So I'm going to move that we accept
22 this Offer in Compromise. I'm going to repeat

1 what I understand it to be. That the total of
2 \$4,000 in penalties to be paid within 90 days.
3 And if it's not paid within 90 days, the license
4 will be suspended. And five days will be stayed
5 pending no further violation within one year.

6 It breaks down to Charge 1, a penalty
7 of \$3,000 and five days stayed pending no further
8 violations within a year. And Charge 2
9 dismissed. And Charge 3 is \$1,000.

10 Do I have a second?

11 MEMBER RODRIGUEZ: Second.

12 CHAIRPERSON MILLER: Okay. I guess
13 Mr. Rodriguez has seconded. Any further
14 comments?

15 Not hearing any, all those in favor
16 say aye.

17 MEMBER RODRIGUEZ: Aye.

18 CHAIRPERSON MILLER: Aye.

19 MEMBER SILVERSTEIN: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed?

22 MEMBER ALBERTI: Opposed.

1 MEMBER SHORT: Opposed.

2 CHAIRPERSON MILLER: All those
3 abstaining?

4 MEMBER BROOKS: Abstain.

5 CHAIRPERSON MILLER: Okay. Then the
6 motion passes 3-2-1 with Mr. Short and Mr.
7 Alberti dissenting and Mr. Brooks abstaining.
8 Okay. So we will be signing off on that
9 momentarily.

10 MS. WILKEY: Okay.

11 MS. PHILLIPS: Thank you, Board
12 Members.

13 CHAIRPERSON MILLER: No, we won't?

14 MS. PHILLIPS: Thank you, Board
15 Members. See you in a bit.

16 CHAIRPERSON MILLER: Oh, I'm sorry, we
17 are going to be issuing an order on this.

18 MS. PHILLIPS: Oh.

19 CHAIRPERSON MILLER: Okay.

20 MS. PHILLIPS: All right. So then she
21 -- we're not going to sign the form today. Is
22 that what you are telling me?

1 CHAIRPERSON MILLER: That's what our
2 General Counsel is saying.

3 MS. PHILLIPS: Okay.

4 CHAIRPERSON MILLER: It has been
5 approved, but we will be issuing a written order.

6 MS. PHILLIPS: All right.

7 CHAIRPERSON MILLER: Okay. Thank you.

8 MS. PHILLIPS: Thank you.

9 CHAIRPERSON MILLER: Okay.

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

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