

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 & Wollensky :
1112 19th Street, NW : Show Cause
Retailer CR : Hearing
License No. 60001 : (Status)
Case No. 12-AUD-00016 :
ANC 2B :
Failed to File Quarterly :
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JUNE 13, 2012

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
- CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

MICHAEL STERN, OAG

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10:16 a.m.

CHAIRPERSON MILLER: Next case on our calendar is another show cause status hearing, Case No. 12-AUD-00016, Smith & Wollensky, 1112 19th Street, N.W., License No. 60001 in ANC 2B.

Good morning.

MR. STERN: Good morning. Michael Stern --

MR. LOVETT: morning. David Lovett representing the Smith & Wollensky. I'm the general manager there.

MR. STERN: I'm Michael Stern representing the District of Columbia.

CHAIRPERSON MILLER: Okay. Sorry, I missed your name. I think you were talking at the same time.

MR. LOVETT: I apologize. David Lovett.

CHAIRPERSON MILLER: David Lovett?

MR. LOVETT: Yes.

1 CHAIRPERSON MILLER: Okay. What's
2 your relationship to the --

3 MR. LOVETT: General manager.

4 CHAIRPERSON MILLER: General
5 manager? Do you have an interest in the
6 company, an ownership interest or anything
7 like that?

8 MR. LOVETT: No, they're based out
9 of Boston, the company is.

10 CHAIRPERSON MILLER: Do you have
11 authorization to represent the company?

12 MR. LOVETT: Yes.

13 CHAIRPERSON MILLER: Written?

14 MR. LOVETT: Yes.

15 CHAIRPERSON MILLER: Okay. You
16 submitted it?

17 MR. LOVETT: We talked to Ms.
18 Gephardt yesterday. She submitted an offer to
19 us. We accepted the offer, a fine.

20 MEMBER ALBERTI: Do you have
21 written representation? Do you have written
22 authorization that allows you to represent the

1 company?

2 MR. LOVETT: There was an email
3 traded back and forth with Ms. Gephardt in the
4 last three days to say that I would be here
5 representing the restaurant from the
6 accountant.

7 CHAIRPERSON MILLER: Is it email
8 from somebody in the company who has
9 authority?

10 MR. LOVETT: Yes.

11 CHAIRPERSON MILLER: Who is that?

12 MR. LOVETT: It's the accountant.

13 CHAIRPERSON MILLER: The
14 accountant?

15 MR. LOVETT: Seth Drasner.

16 CHAIRPERSON MILLER: See, our
17 issue is we don't have any documentation that
18 you're authorized to accept the Offer in
19 Compromise that you're going to present by
20 someone who has authority to accept it such as
21 the owner.

22 MR. LOVETT: There had been

1 communication with Chrissy Gephardt, I believe
2 it was, in the last couple of days. There was
3 an offer made of a fine. We accepted the
4 offer. I was -- we had said -- she had told
5 her that I would be here on behalf of Smith &
6 Wollensky's. That email was sent I believe on
7 Monday.

8 CHAIRPERSON MILLER: Do you have a
9 copy of that email?

10 MR. STERN: Yes.

11 CHAIRPERSON MILLER: Good.

12 MR. STERN: And there's no
13 question that that is accurate, and in that it
14 was also sent by an accountant for the
15 company. I think that perhaps the Respondent
16 is in need to get something signed by a
17 company authorized representative; president,
18 vice-president, somebody with executive
19 authority, because it is a stock holding
20 company. It's not -- there isn't an owner of
21 the company. But someone with company-wide
22 authority. And then we can go forward with

1 the Offer in Compromise that has been agreed
2 to.

3 MR. LOVETT: If it pleases the
4 Court, I can have that document typed up by
5 our corporate office and sent to Ms. Gephardt.

6 MEMBER ALBERTI: Sent here.

7 MR. LOVETT: Or sent to you, sir?

8 CHAIRPERSON MILLER: Today?

9 MEMBER ALBERTI: Can you have it
10 to us today, by close of business today?

11 MR. LOVETT: If there's a fax
12 number, yes, I can have it to you this
13 afternoon, sir.

14 MEMBER ALBERTI: Okay.

15 MR. LOVETT: Or email.

16 MEMBER ALBERTI: We will have
17 someone speak to you later.

18 MR. LOVETT: Perfect, sir.

19 MEMBER ALBERTI: So we have a
20 commitment to have that by the end of the day?

21 MR. LOVETT: Yes.

22 MEMBER ALBERTI: And any Offer in

1 Compromise will be contingent upon us having
2 that authorization.

3 MR. LOVETT: Absolutely, sir.

4 MEMBER ALBERTI: Okay. Thank you.

5 CHAIRPERSON MILLER: Okay. So let
6 me just back up a little bit and ask you the
7 preliminary questions also. Did you receive
8 notice of this hearing?

9 MR. LOVETT: Yes.

10 CHAIRPERSON MILLER: Did you read
11 it?

12 MR. LOVETT: Yes.

13 CHAIRPERSON MILLER: Understand
14 it?

15 MR. LOVETT: Yes.

16 CHAIRPERSON MILLER: And waive
17 your reading of it into the record?

18 MR. LOVETT: Yes, miss.

19 CHAIRPERSON MILLER: Okay. Mr.
20 Stern, so there is a preliminary matter?

21 MR. STERN: Yes, there is. The
22 parties have agreed to resolve both this case

1 and Case No. 12-AUD-00016.

2 CHAIRPERSON MILLER: That's what
3 this is.

4 MR. STERN: Oh, excuse me. And
5 Case No. 11-CMP-00463, which is presently
6 scheduled for show cause on the 20th, I
7 believe, of June. Both matters will be
8 resolved by payment of a fine of \$1,750; 750
9 for the earlier in time; 1,000 for the later
10 in time of the two violations. They both
11 involve quarterly statements.

12 CHAIRPERSON MILLER: Okay. So we
13 don't have the second one before us.

14 MR. STERN: Oh, and the payment
15 will be within 60 days.

16 CHAIRPERSON MILLER: Okay. So let
17 me ask you: Is that your understanding of the
18 Offer in Compromise, 1,750 to be paid within
19 60 days?

20 MR. LOVETT: Yes, miss.

21 CHAIRPERSON MILLER: Okay. And
22 that has been shared with those above who have

1 authority to approve --

2 MR. LOVETT: Yes.

3 CHAIRPERSON MILLER: -- the Offer
4 in Compromise? Okay. So I think I just want
5 to go back to that one question about getting
6 the authorization. And it's my understanding
7 that you have stated that you could confirm
8 that authorization in writing to the Board by
9 close of business today?

10 MR. LOVETT: Once I leave right
11 now and I would put it together and fax it to
12 you.

13 CHAIRPERSON MILLER: Okay.

14 MR. LOVETT: Or would you prefer
15 me to email it to Ms. Davis?

16 CHAIRPERSON MILLER: Email it to
17 Ms. Davis? That sounds good.

18 MR. LOVETT: That's fine?

19 CHAIRPERSON MILLER: Yes, that
20 sounds good.

21 MR. LOVETT: Okay.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER ALBERTI: Yes. Thank you,
2 Mr. Lovett.

3 CHAIRPERSON MILLER: So then I'm
4 going to ask my Board members. I think that
5 what we would be doing would be if we accept
6 this Offer in Compromise, we would accept it,
7 but not issue a written order accepting it
8 until we got the authorization.

9 MEMBER ALBERTI: Yes.

10 CHAIRPERSON MILLER: Okay. So we
11 could rule on it today, but there would be no
12 written order until we'd received it. And if
13 we receive it today, then today.

14 MR. LOVETT: Is there a need for
15 me to come back to confirm anything, miss?

16 CHAIRPERSON MILLER: No. What we
17 need is a written authorization by someone in
18 authority that you were authorized to commit
19 to this Offer in Compromise.

20 MR. LOVETT: Okay.

21 CHAIRPERSON MILLER: To Ms. Davis
22 today would be perfect.

1 MR. LOVETT: I'll have it once I
2 leave the building.

3 CHAIRPERSON MILLER: Okay.
4 Because the Board meets once a week on
5 Wednesdays, so we could approve today in
6 writing. You know, we're here to do that
7 if --

8 MR. LOVETT: You'll have it
9 probably in the next half hour.

10 CHAIRPERSON MILLER: Okay. All
11 right. Then any other questions? Mr.
12 Nophlin?

13 MEMBER NOPHLIN: Please, would you
14 restate what the offer was again?

15 MR. STERN: The offer --

16 MEMBER NOPHLIN: You said you
17 combined both cases.

18 MR. STERN: Yes, we combined both
19 cases. The Respondent will pay a fine of
20 \$1,750 within 60 days. A thousand of that
21 goes to the older -- the newer --

22 MEMBER NOPHLIN: The new one?

1 MR. STERN: -- of the cases.

2 Seven hundred and fifty to the older of the
3 cases.

4 MEMBER NOPHLIN: Okay. So a total
5 of 750?

6 MR. STERN: Total of 1,750.

7 MEMBER NOPHLIN: Yes. All right.

8 MR. STERN: Yes.

9 MEMBER ALBERTI: So, Mr. --

10 MR. STERN: Did I --

11 MEMBER ALBERTI: No, I just want
12 to make sure. So the \$1,000 is for the case
13 ending in 00016 and the 750 is for the case
14 that ends in 00463?

15 MR. STERN: That's correct.

16 MEMBER ALBERTI: Right. Just for
17 the record. Thank you.

18 MEMBER NOPHLIN: Thank you.

19 Thank you, Madam Chair.

20 CHAIRPERSON MILLER: Okay. Any
21 other questions?

22 (No audible response.)

1 CHAIRPERSON MILLER: Okay. Then I
2 would move that we accept this Offer in
3 Compromise for \$1,750 payable with 60 days and
4 contingent upon the Board receiving written
5 authorization by someone in authority to
6 approve this OIC for the Licensee. Do I have
7 a second?

8 MEMBER NOPHLIN: Second.

9 CHAIRPERSON MILLER: Okay. Any
10 comments?

11 (No audible response.)

12 CHAIRPERSON MILLER: All those in
13 favor, say aye?

14 (Chorus of ayes.)

15 CHAIRPERSON MILLER: All those
16 opposed?

17 (No audible response.)

18 CHAIRPERSON MILLER: All those
19 abstaining?

20 (No audible response.)

21 CHAIRPERSON MILLER: Then the
22 motion passes 5-0-0 to approve. Thank you.

1 MEMBER ALBERTI: Thank you.

2 MR. LOVETT: Appreciate it.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER ALBERTI: Can we go off the
5 record?

6 CHAIRPERSON MILLER: Yes, I would
7 say that that completes our show cause status
8 hearings for this morning and we have a couple
9 of hearings scheduled at 10:30, and it's now
10 10:25, so we can go off the record at this
11 point and recess for five minutes.

12 (Whereupon, the hearing was
13 concluded at 10:25 a.m.)

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