

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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SHOW CAUSE HEARING

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IN THE MATTER OF: :

Case #14-AUD-00055 and :
#14-AUD-00064 :
Saigon Bistro, LLC :
t/a Saigon Bistro :
2153 P Street NW :
License #81175 :
Retailer CR ANC 2B :
Failed to File Quarterly :
Statements :

July 16, 2014

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

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HECTOR RODRIGUEZ, Member

JAMES SHORT, Member

MIKE SILVERSTEIN, Member

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

11:00 a.m.

CHAIR MILLER: Next case on our calendar is show cause hearing, Case No. 13-AUD-00055 Saigon Bistro, located at 2153 P Street, Northwest, License No. 81175 in ANC 2B.

MR. STERN: Michael Stern representing the District of Columbia.

CHAIR MILLER: Okay, is anybody here from Saigon Bistro?

MR. STERN: If I may, again, at the discretion of the Board, one of these cases -- they both involve the same Respondent in these two cases. One was set for 10:00 a.m., one is set for 11:00 a.m.

CHAIR MILLER: Right.

MR. STERN: Which is now. Would the Board like to hear both of them at the same time?

CHAIR MILLER: Whatever works best for you.

1 MR. STERN: That would be fine.

2 CHAIR MILLER: Okay, that's fine
3 with me.

4 MR. STERN: They have the same
5 witness.

6 CHAIR MILLER: That's most
7 efficient. So, no one is here from Saigon
8 Bistro, and I want to note that notice was
9 served on January 17, 2014, I believe,
10 according to my records.

11 Okay, so, the other case, if we're
12 going to have them both together, also
13 involves Saigon Bistro. It's Case No. 13-AUD-
14 00064.

15 Okay, whenever you're ready then,
16 Mr. Stern.

17 MR. STERN: Okay, Board, just by
18 way of a quick opening statement.

19 The Government indicates 13-AUD-
20 00055 will show that for the period of January
21 1, 2013 through March 30, 2013, the
22 establishment trading as Saigon Bistro will --

1 did not file a quarterly report, as required
2 by D.C. Code 2513(b)(2)(a) on a timely basis.

3 For the period in Case No. 13-AUD-
4 00064, the Government's evidence will show
5 that for the period of April 1, 2013 through
6 March 30, 2013, the establishment known as
7 Saigon Bistro did not file a quarterly report
8 on a timely basis, in violation of
9 2513(b)(2)(a).

10 CHAIR MILLER: Okay.

11 MR. STERN: We will call our first
12 witness.

13 Whereupon,

14 MONICA CLARK

15 was called for examination, having been first
16 duly sworn, was examined and testified as
17 follows:

18 CHAIR MILLER: Okay, thank you.

19 DIRECT EXAMINATION

20 MR. STERN: Good morning. Can you
21 give us your full name and spell your last
22 name for the Court Reporter, please?

1 MS. CLARK: Good morning. My name
2 is Monica Clark, M-O-N-I-C-A, C-L-A-R-K.

3 MR. STERN: Okay, and Ms. Clark,
4 are you employed?

5 MS. CLARK: Yes, I am.

6 MR. STERN: How are you employed?

7 MS. CLARK: I am a compliance
8 analyst with the Alcoholic Beverage Regulation
9 Administration.

10 MR. STERN: As part of your job,
11 do you have access to the Alcoholic Beverage
12 Regulation Administration records, regarding
13 quarterly reports?

14 MS. CLARK: Yes, I do.

15 MR. STERN: Okay, and did you have
16 occasion to research the quarterly report
17 submitted by Saigon Bistro?

18 MS. CLARK: Yes.

19 MR. STERN: Did you have occasion
20 to research specifically, the period of
21 January 1, 2013 through March 30, 2013?

22 MS. CLARK: Yes, I did.

1 MR. STERN: And what did your
2 research reveal?

3 MS. CLARK: My research revealed
4 that the quarterly statements were not filed
5 in a timely manner for that time frame.

6 MR. STERN: And by when would the
7 quarterly statement normally be due?

8 MS. CLARK: The quarterly
9 statement for that -- for the January through
10 March of 2013 would have been due by the 30th
11 of April of 2013.

12 MR. STERN: Okay, and do you know
13 if they did file a quarterly report at some
14 point?

15 MS. CLARK: The quarterly report
16 was later filed in February -- on February
17 21st of 2014.

18 MR. STERN: Did you also research
19 the period of March -- of April 1, 2013
20 through March 30, 2013?

21 MS. CLARK: I did.

22 MR. STERN: And what did your

1 research reveal regarding that period?

2 MS. CLARK: Again for that period,
3 the quarterly statement for that time frame
4 was not -- it was not submitted in a timely
5 manner.

6 MR. STERN: And when would that
7 quarterly statement have been due?

8 MS. CLARK: The quarterly
9 statement for that time frame would have been
10 due that -- would have been due by the 30th of
11 July of 2013.

12 MR. STERN: I'm sorry, that's
13 April 1, 2013 through?

14 MS. CLARK: Through June.

15 MR. STERN: June 30, 2013?

16 MS. CLARK: Right, so, the
17 quarterly statement would have been due by the
18 end of July of that same year.

19 MR. STERN: And when was that --
20 was that quarterly statement ever filed?

21 MS. CLARK: It was later filed.

22 MR. STERN: And when was that

1 filed?

2 MS. CLARK: It was filed on
3 January 27, 2014.

4 MR. STERN: I'm going to also as
5 the Board to amend the charge in 13-AUD-00064
6 to reflect the correct through date of June
7 30, 2013.

8 I should note that the
9 establishment had notice of the charge,
10 because in the statement explaining the
11 charges, the correct date is used. It is only
12 a typo in the charge itself, that says March
13 30th instead of June 30th.

14 CHAIR MILLER: But what happened
15 on June 30th?

16 MR. STERN: June 30th would have
17 been the end date when the quarter ended.

18 CHAIR MILLER: Okay, and that was
19 in the charging document?

20 MR. STERN: And it is in the
21 charging document, but in the actual charge
22 itself, it says March 30th. It says April to

1 March, which would be impossible.

2 CHAIR MILLER: Where is it? I'm
3 sorry, where is the charge itself?

4 MR. STERN: In 00064.

5 CHAIR MILLER: Yes.

6 MR. STERN: There is only one
7 charge. We're in charge --

8 MEMBER ALBERTI: Do you have the
9 document? Do you have the charging document?

10 CHAIR MILLER: No, but I thought
11 he made a distinction. I know the charging
12 document.

13 MR. STERN: Yes.

14 CHAIR MILLER: But you said the
15 charging document has the right date.

16 MR. STERN: The explanation of
17 charges has the right date.

18 CHAIR MILLER: Okay.

19 MR. STERN: The explanation of
20 charges, which is just below the charge itself

21 --

22 CHAIR MILLER: Okay.

1 MR. STERN: -- says April 1, 2013
2 through --

3 CHAIR MILLER: I see, the same
4 document?

5 MR. STERN: -- through June 30,
6 2013.

7 CHAIR MILLER: The same document,
8 got it. Okay, I just want to note on the
9 record, because I didn't note this for the
10 second case, which was 00064, that my records
11 reflect that notice of this hearing was
12 provided on -- the Licensee, on February 5,
13 2014, okay?

14 MR. STERN: Thank you.

15 CHAIR MILLER: Okay.

16 MR. STERN: That's all the
17 questions I have of the witness.

18 CHAIR MILLER: And I'm sorry, Mr.
19 Stern, I don't have the charging document in
20 front of me, but did you ask to amend?

21 MR. STERN: Yes.

22 CHAIR MILLER: Okay.

1 MR. STERN: The charging document,
2 in Charge No. 1 it says, "You failed to file
3 quarterly report for the second quarter of
4 2013," which is all correct.

5 CHAIR MILLER: Right.

6 MR. STERN: For the period of
7 April 1, 2013 --

8 CHAIR MILLER: Thank you.

9 MR. STERN: -- through March 30,
10 2013.

11 CHAIR MILLER: Okay.

12 MR. STERN: That should read
13 through June 30, 2013.

14 CHAIR MILLER: Okay.

15 MR. STERN: In the explanation of
16 charges below that, it uses the correct dates,
17 so Respondent would have been on notice of the
18 correct dates, not to mention that it says
19 second quarter.

20 CHAIR MILLER: I see, okay. Okay,
21 I now have it in front of me, Mr. Stern.

22 MR. STERN: What? I'm sorry?

1 CHAIR MILLER: I have it in front
2 of me now, the charging document.

3 MR. STERN: Yes.

4 CHAIR MILLER: So, I see Charge
5 No. 1, where it says, "Through March 30th."

6 MR. STERN: Okay.

7 CHAIR MILLER: And where does it
8 say --

9 MR. STERN: Right below that in
10 the explanation of the charges. Part of
11 Charge No. 1, the second paragraph of it, in
12 the non-highlighted portion.

13 CHAIR MILLER: Right, I'm seeing
14 March. I'm looking at the right one.

15 MR. STERN: See where it starts at
16 the top --

17 CHAIR MILLER: Wait a minute. I'm
18 looking at 00055.

19 MEMBER ALBERTI: You're looking at
20 the wrong case.

21 CHAIR MILLER: Yes, okay, it's 64.

22 MR. STERN: They were going

1 through March 30th.

2 MEMBER ALBERTI: This is very
3 complicated.

4 CHAIR MILLER: Got it, got it.

5 MEMBER ALBERTI: Please share it
6 with us.

7 CHAIR MILLER: Got it.

8 MR. STERN: That's okay.

9 CHAIR MILLER: I just want to make
10 sure that that's what this is.

11 MR. STERN: And I wanted the
12 record to be accurate, as well.

13 CHAIR MILLER: Right, and this was
14 something that the -- would be apparent to the
15 Licensee.

16 MR. STERN: Yes.

17 CHAIR MILLER: Yes, okay. All
18 right, fine. Does the Board -- is the
19 consensus of the Board then to allow Mr. Stern
20 to amend the charge?

21 MEMBER SHORT: I make a motion
22 that we accept that change in the charge.

1 CHAIR MILLER: Okay, good. All
2 those in favor?

3 MEMBER ALBERTI: Second.

4 CHAIR MILLER: Mr. Alberti
5 seconded the motion. All those in favor, say
6 'aye'.

7 ALL: Aye.

8 CHAIR MILLER: All those opposed?
9 Okay, abstaining? Okay, motion passes 6-0-0.
10 Thank you. All right, amended.

11 MR. STERN: Thank you.

12 CHAIR MILLER: Okay.

13 MR. STERN: I have no further
14 questions.

15 CHAIR MILLER: Okay, thank you.
16 Any Board questions?

17 Okay, thank you. You do?

18 MEMBER ALBERTI: I have a
19 question.

20 CHAIR MILLER: You do? Go ahead,
21 Mr. Alberti.

22 MEMBER ALBERTI: Good morning.

1 Either the two reports, the first quarter of
2 2013, the second quarter of 2013, were either
3 of those reports eventually filed?

4 MS. CLARK: Yes, they were filed
5 this year, in 2014, in January and February.

6 MEMBER ALBERTI: Okay, thank you.

7 CHAIR MILLER: I have a question
8 then. I'm not sure if I missed this.

9 Were there any notices sent to the
10 Licensee, that they had failed to file?

11 MS. CLARK: Well, they would --
12 they received notification from an
13 investigator, that they had failed to file
14 their quarterly statements, and of course, the
15 notification of these hearings.

16 CHAIR MILLER: They received
17 notification from an investigator when they're
18 delinquent?

19 MS. CLARK: When a person is
20 delinquent with their quarterly statements and
21 it's been -- and they have been delinquent
22 several times, an investigator will still go

1 out to perform a regulatory inspection, and at
2 that point, they will notify them that they do
3 have a charge pending of a delinquent
4 quarterly statement.

5 So, they would have been put on
6 notice at that point.

7 CHAIR MILLER: Okay, so, you're
8 not aware of any specific written notices?

9 MS. CLARK: No.

10 CHAIR MILLER: All right.

11 MS. CLARK: I wouldn't have been
12 made aware of that.

13 CHAIR MILLER: Okay, anything
14 else?

15 MEMBER ALBERTI: But they were
16 notified in a visit, is that correct?

17 MS. CLARK: Well, yes, when they
18 go out to do the regulatory inspection, they
19 would have been -- they would have been
20 verbally notified that there was a charge
21 pending.

22 MEMBER ALBERTI: And how long

1 after that does that generally happen?

2 MS. CLARK: That's generally 30 to
3 45 days after the delinquency.

4 MEMBER ALBERTI: And did that
5 happen in both of these cases?

6 MS. CLARK: Yes, it would have.

7 MEMBER ALBERTI: Thank you.

8 CHAIR MILLER: Okay, anything
9 else? Yes, Mr. Short?

10 MEMBER SHORT: Good morning, Ms.
11 Clark.

12 MS. CLARK: Good morning.

13 MEMBER SHORT: I'm looking at the
14 investigative history. It looks like this
15 particular Licensee has several, I'm counting
16 one, two, three, four, five including this
17 case that we're currently in, so, there is a
18 pattern of not paying or doing their books on
19 time.

20 MS. CLARK: Correct.

21 MEMBER SHORT: I just want that on
22 the record. Thank you very much.

1 MS. CLARK: Yes.

2 CHAIR MILLER: Okay, anything
3 else? Thank you very much.

4 MS. CLARK: Thank you.

5 CHAIR MILLER: Okay, closing?

6 MR. STERN: Yes, in closing, the
7 Government would contend that we have shown
8 that the establishment known as Saigon Bistro
9 failed to file their quarterly reports on a
10 timely base, first and second quarters of
11 2013, as charged in 13-AUD-00055 and 13-AUD-
12 00064.

13 As the Board Members pointed out,
14 this isn't the first time that the
15 establishment has failed to file their
16 quarterly reports on a timely basis.

17 I have in my record, two prior --
18 this would be the third and fourth within the
19 last three and four years, well, it would be
20 three years, that the establishment failed to
21 file on time.

22 For 2013-AUD-00055, I would ask

1 the Board to impose a penalty of \$750 for the
2 third offense. For 000 -- excuse me, 2013-
3 AUD-00064, I would ask the Board to impose a
4 fine of \$1,000 for the fourth offense. That
5 is a total of \$1,700 for two charges -- the
6 two cases together.

7 In addition, I would ask the Board
8 to suspend the Respondent's license, and I'll
9 explain why I feel that is important.

10 The Respondent did not appear for
11 the first hearing and the Respondent did not
12 appear for the second hearing. There is
13 currently other charges that are pending, that
14 we are working on.

15 The Respondent has closed -- has
16 allegedly closed the establishment in this
17 name and opened up a new establishment without
18 requesting permission for a change of name,
19 using the same license.

20 There was an investigator out
21 there just today, to confirm that.

22 Considering the establishment's

1 wanton disregard for the rules, we would ask
2 that the establishment have their license
3 suspended for five days or until they pay the
4 fine that the Board establishes. In other
5 words, five days if they pay on time, and if
6 they don't pay the fine on time, the
7 suspension should continue until the fine is
8 paid.

9 The Board -- in my mind, the Board
10 has to do something to get the attention of
11 this Licensee, who decides for over a year,
12 not to file a quarterly report that's due, and
13 then doesn't even bother to show up on either
14 the status or the show cause date.

15 Then as I say, there's evidence
16 we've found today, that they've changed the
17 name of the establishment and again,
18 completely violating the rules of the Board,
19 it is impossible to know what other rules this
20 -- you know, because we're not there every
21 day, what other rules this establishment just
22 refuses to acknowledge and refuses to follow,

1 so, this is the only way we can get their
2 attention and actually make them follow the
3 rules.

4 So, that's what we would
5 recommend.

6 CHAIR MILLER: Okay, thank you
7 very much. Mr. Short?

8 MEMBER SHORT: Thank you very much
9 for your testimony, and in light of the
10 evidence that you have produced, and also in
11 light of the fact that the Licensee has no --
12 not even the respect to come before this Board
13 and tell us why they've changed their name, I
14 concur with the recommendations of the
15 Government on this particular case.

16 CHAIR MILLER: Okay.

17 MEMBER SHORT: Thank you.

18 CHAIR MILLER: Okay, anything
19 else? Okay, thank you so much, Mr. Stern.

20 MR. STERN: Thank you.

21 CHAIR MILLER: Have a good day and

22 --

1 MR. STERN: To the Board, as well.

2 CHAIR MILLER: Thank you. That
3 concludes the morning cases, and the Board
4 will now recess and return later --

5 MEMBER ALBERTI: Madam Chair?

6 CHAIR MILLER: -- for the
7 afternoon hearing. What?

8 MEMBER ALBERTI: Before we leave,
9 could you please close this case and put it --
10 read the notice of closed hearing for this
11 case?

12 CHAIR MILLER: Okay, will do. As
13 Chairperson of the Alcoholic Beverage Control
14 Board for the District of Columbia, in
15 accordance with Section 405 with Open Meetings
16 Amendment Act of 2010, I move that the ABC
17 Board hold a closed meeting for the purpose of
18 seeking legal advice from our Counsel on Case
19 No. 13-AUD-00055 and 13-AUD-00064, Saigon
20 Bistro, per Section 405(b)(4) of the Open
21 Meetings Amendment Act of 2010 and
22 deliberating upon these cases, for the reasons

1 cited in Section 405(b)(13) of the Open
2 Meetings Amendment Act of 2010, is there a
3 second?

4 MEMBER ALBERTI: Second.

5 CHAIR MILLER: Mr. Alberti
6 seconded the motion. I'll now take a vote for
7 the motion before us, now that it's been
8 seconded. Mr. Brooks?

9 MEMBER BROOKS: I agree.

10 CHAIR MILLER: Mr. Alberti?

11 MEMBER ALBERTI: I agree.

12 CHAIR MILLER: Mr. Rodriguez?

13 MEMBER RODRIGUEZ: I agree.

14 CHAIR MILLER: Ms. Miller agrees.

15 Mr. Silverstein?

16 MEMBER SILVERSTEIN: I agree.

17 CHAIR MILLER: Mr. Short?

18 MEMBER SHORT: I agree.

19 CHAIR MILLER: It appears that the
20 motion has passed by a 6-0-0 vote. I hereby
21 give notice that the ABC Board will hold a
22 closed meeting in ABC Board conference room,

1 pursuant to Open Meetings Amendment Act of
2 2010 and issue a decision on these cases
3 within 60 days.

4 Okay, so, our afternoon hearing is
5 at 1:30 p.m. So, most likely, we will return
6 at 1:30 p.m., unless we're ready with our
7 agenda before then.

8 Okay, thank you. All right.

9 (Whereupon, the above-entitled
10 matter went off the record at 11:15 p.m.)

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