

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Garay Corporation
t/a Corina's Restaurant
831 Kennedy Street, NW
Retailer CR - ANC-4D
License No. 79873
Case #14-AUD-00021

Show Cause
Hearing

(Failed to Meet Food Sales
Requirements)

September 10, 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
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

MAUREEN ZANIEL, OAG
BRIAN AMY, OAG
ADENIYI ADEJUNMOBI, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Government. 6
Closing Statement by Government. 23

WITNESS	DIRECT
Adeniyi Adejunmobi	8

EXHIBITS	IDENTIFIED	RECEIVED
A - Case Document	11	14

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

(12:37 p.m.)

CHAIRPERSON MILLER: I know we have had some people waiting here for a 10:00 hearing. So the Board is going to just take a five minute break and we will come back and pick up with Corina's Restaurant, I believe, if they are here.

Okay. I don't know. I don't see them.

MEMBER SILVERSTEIN: Ask if they are here.

CHAIRPERSON MILLER: Is Corina her? Corina's Restaurant? Well, if they are not here, we will pick up with Axum Restaurant.

MEMBER RODRIGUEZ: They are here?

CHAIRPERSON MILLER: Okay.

MEMBER SILVERSTEIN: Five minutes?

CHAIRPERSON MILLER: Five minutes.

MEMBER ALBERTI: The OAG officer?

MS. ZANIEL: Yes, we are ready to

1 proceed.

2 MEMBER ALBERTI: Okay. Thank you.
3 That's helpful.

4 CHAIRPERSON MILLER: Okay.

5 (Whereupon, the above-entitled
6 matter went off the record at 12:38 p.m. and
7 resumed at 12:45 p.m.)

8 CHAIRPERSON MILLER: Okay. The
9 next hearing I have on our calendar is a Show
10 Cause Hearing for Corina's Restaurant. Are
11 they here?

12 MS. ZANIEL: They are not here to
13 my knowledge.

14 CHAIRPERSON MILLER: Okay.

15 (Whereupon, the above-entitled
16 matter went off the record at 12:45 p.m. and
17 resumed at 12:49 p.m.)

18 CHAIRPERSON MILLER: All right. I
19 am just going to call the last case that's on
20 the --

21 MEMBER ALBERTI: Sir, you can have
22 a seat in the back if you would like. Thank

1 you.

2 CHAIRPERSON MILLER: The last case
3 that is on our calendar and that is all for
4 today's morning is Corina's Restaurant, Case
5 No. 14-AUD-00021, located at 831 Kennedy
6 Street, N.W., License No. 79873, in ANC-4D.

7 Would you introduce yourselves for
8 the record, please?

9 MR. AMY: Sure. Brian Amy, pro
10 bono attorney with the Office of the Attorney
11 General for the District of Columbia.

12 MS. ZANIEL: And Maureen Zaniel in
13 a supervisory capacity for Mr. Amy with the
14 District of Columbia.

15 CHAIRPERSON MILLER: Okay. Is
16 anyone here from Corina's Restaurant? It is--

17 INTERPRETER: I am the
18 respondent's Interpreter hired by the D.C.
19 Government.

20 CHAIRPERSON MILLER: Thank you. I
21 think this happened before with Corina's.

22 MEMBER ALBERTI: Yes.

1 CHAIRPERSON MILLER: Where the
2 Interpreter is here, but the licensee is not.
3 Has anybody heard from the licensee as to if
4 she is running late or --

5 MS. ZANIEL: We have had no
6 communication --

7 CHAIRPERSON MILLER: We are
8 running late.

9 MS. ZANIEL: -- with the licensee.

10 CHAIRPERSON MILLER: Okay. All
11 right. This case was called for 10:00. It is
12 now 12:51. Notice was served on May 16, 2014.
13 Okay. Are you prepared to proceed ex parte?

14 MR. AMY: Yes, Madam Chair.

15 CHAIRPERSON MILLER: Okay. Then
16 that's what I think we will do. Okay. Thank
17 you.

18 MR. AMY: Good morning, Members of
19 the Board. We are here today for the Show
20 Cause Hearing in the matter of Corina's
21 Restaurant. This Board issued a Show Cause
22 Hearing Notice in this matter outlining the

1 charge that the licensee failed to meet the
2 food sales requirements of \$2,000 per occupant
3 or 45 percent of gross sales from the period
4 of January 1, 2013 through December 31, 2013
5 in violation of D.C. Official Code 25-
6 113(b)(3)(B)(ii).

7 The Government will provide
8 evidence based on the testimony by our
9 witness, ABRA Compliance Analyst Adejunmobi
10 that will show that the establishment did not
11 meet these requirements for the calendar year
12 2013.

13 CHAIRPERSON MILLER: Okay. Do you
14 want to call your first witness?

15 MR. AMY: With that --

16 CHAIRPERSON MILLER: There will be
17 just one witness, is that correct?

18 MR. AMY: I'm sorry?

19 CHAIRPERSON MILLER: Just one
20 witness, is that right?

21 MR. AMY: Yes, ma'am.

22 CHAIRPERSON MILLER: Okay.

1 MR. AMY: And with that, we would
2 call our only witness, Compliance Analyst
3 Adejunmobi.

4 CHAIRPERSON MILLER: Good
5 afternoon.

6 INVESTIGATOR ADEJUNMOBI: Hello,
7 ma'am.
8 Whereupon,

9 ADENIYI ADEJUNMOBI
10 was called as a witness by Counsel for the
11 Government, and having been first duly sworn,
12 assumed the witness stand and was examined and
13 testified as follows:

14 INVESTIGATOR ADEJUNMOBI: Yes.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. Have a seat.

17 DIRECT EXAMINATION

18 MR. AMY: Good afternoon. Would
19 you please state and spell your name for the
20 record?

21 INVESTIGATOR ADEJUNMOBI:
22 Compliance Analyst Adeniyi Adejunmobi. A-D-E-

1 N-I-Y-I A-D-E-J-U-N-M-O-B-I.

2 MR. AMY: And what is your
3 occupation?

4 INVESTIGATOR ADEJUNMOBI: I work
5 for ABRA as a Compliance Analyst.

6 MR. AMY: And what are your duties
7 as a Compliance Analyst?

8 INVESTIGATOR ADEJUNMOBI: I'm
9 responsible for reviewing the quarterly
10 statement mandated to be filed by restaurants
11 that have -- by establishments that have CR
12 Licenses.

13 MR. AMY: And do you have any
14 certifications or specialization in this?

15 INVESTIGATOR ADEJUNMOBI: Yes.
16 I'm a professional auditor. I'm a certified
17 auditor. I'm a certified information system
18 auditor.

19 MR. AMY: And how long have you
20 been employed by ABRA?

21 INVESTIGATOR ADEJUNMOBI:
22 Approximately, five years. A few more days

1 and that will be my fifth anniversary.

2 MR. AMY: Great. And are you
3 familiar with Corina's Restaurant?

4 INVESTIGATOR ADEJUNMOBI: Yes.

5 MR. AMY: And how are you familiar
6 with the restaurant?

7 INVESTIGATOR ADEJUNMOBI: Well,
8 annually, there is a spreadsheet that I
9 prepare and this spreadsheet is a spreadsheet
10 that looks at the restaurants that are in
11 compliance with the food regulations,
12 specifically whether they are meeting the
13 standards, 45 percent of food sales or per
14 seat it's \$2,000.

15 So Corina was one of the
16 restaurants that was determined not to be
17 meeting either one of those two standards.

18 MR. AMY: With the Board's
19 permission, may I approach the witness?

20 CHAIRPERSON MILLER: Okay.

21 MR. AMY: I'm handing the witness
22 what has been marked as Government Exhibit A

1 for identification purposes.

2 (Whereupon, the above-referred to
3 document was marked as Government
4 Exhibit A for identification.)

5 MR. AMY: I also have copies for
6 the Board.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 MR. AMY: Would you please look at
10 that document and can you identify it?

11 INVESTIGATOR ADEJUNMOBI: Yes.

12 MR. AMY: What is that document?

13 INVESTIGATOR ADEJUNMOBI: It's a
14 case document prepared by me.

15 MR. AMY: And how do you know it
16 was prepared by you?

17 INVESTIGATOR ADEJUNMOBI: Well, it
18 was me and it was signed by me.

19 MR. AMY: Great. Now, why did you
20 prepare this document?

21 INVESTIGATOR ADEJUNMOBI: This
22 document was prepared because at the time I

1 was doing my annual review, Corina's
2 Restaurant did not meet the food regulation,
3 the food standards, that is the 45 percent
4 food sales or gross sales or \$2,000 per seat.
5 Not meet either one of those two standards.

6 MR. AMY: Did you review any
7 documents to determine that it did not meet
8 these standards?

9 INVESTIGATOR ADEJUNMOBI: Yes.

10 MR. AMY: What documents did you
11 review?

12 INVESTIGATOR ADEJUNMOBI: The four
13 self-certified quarterly statements that were
14 filed for calendar year 2013 by Corina's
15 Restaurant.

16 MR. AMY: Now, how did you come to
17 review these documents, these quarterly
18 statements?

19 INVESTIGATOR ADEJUNMOBI: Well,
20 it's part of my duties assigned to me.
21 Annually, specifically, February of each year,
22 I have to prepare a document, a spreadsheet

1 that looks at all the licenses that are
2 mandated to file quarterly statements.

3 And those are the restaurants,
4 hotels that have CR or DH or CH Licenses with
5 the Agency.

6 MR. AMY: And who prepared the
7 quarterly reports that you reviewed?

8 INVESTIGATOR ADEJUNMOBI: Oh, the
9 establishments.

10 MR. AMY: Now, what were your
11 findings after reviewing the quarterly
12 reports?

13 INVESTIGATOR ADEJUNMOBI: Well,
14 based on this particular report, I found out
15 that Corina's had 45 percent of food sales and
16 somewhere around \$740 per seat respectively,
17 which those two numbers --

18 MR. AMY: I'm sorry. Let me --
19 can you repeat the percentage of food?

20 INVESTIGATOR ADEJUNMOBI: That the
21 restaurant had?

22 MR. AMY: Yes.

1 INVESTIGATOR ADEJUNMOBI: 45
2 percent. I'm sorry, excuse me. 44 percent.

3 MR. AMY: Okay. Thank you. And
4 could you, please, continue with the other
5 findings.

6 INVESTIGATOR ADEJUNMOBI: The
7 other one is the per seat, \$740 per seat.

8 MR. AMY: Thank you. And at any
9 time did you visit the establishment in
10 regards to this?

11 INVESTIGATOR ADEJUNMOBI: No.

12 MR. AMY: At this time, the
13 Government would like to move Government
14 Exhibit A into evidence.

15 CHAIRPERSON MILLER: Okay. It's
16 admitted.

17 (Whereupon, the above-referred to
18 document was received into
19 evidence marked as Government
20 Exhibit A.)

21 MR. AMY: The Government has no
22 further questions for Compliance Analyst

1 Adejunmobi.

2 CHAIRPERSON MILLER: Okay. Are
3 there Board questions? I have a question.
4 Just a second.

5 How can we tell from the report
6 that they didn't meet the \$2,000 per occupant?

7 INVESTIGATOR ADEJUNMOBI: Based on
8 this --

9 CHAIRPERSON MILLER: Or is it
10 based on an either/or, it was the other or the
11 percentage they didn't meet?

12 INVESTIGATOR ADEJUNMOBI: Yes,
13 ma'am. Based on this document, Exhibit A --

14 CHAIRPERSON MILLER: Yes.

15 INVESTIGATOR ADEJUNMOBI: -- you
16 can see the computations down there.

17 CHAIRPERSON MILLER: Right.

18 INVESTIGATOR ADEJUNMOBI: On the
19 first page, which was captured. This data
20 were all picked from the quarterly statements
21 submitted by the establishment.

22 CHAIRPERSON MILLER: Right.

1 INVESTIGATOR ADEJUNMOBI: So these
2 are the figures presented to us by the
3 establishment. And based on this is what I
4 did the calculation on.

5 CHAIRPERSON MILLER: Okay. So you
6 listed the percentage of gross food sales as
7 opposed to the -- we don't know about the
8 \$2,000 per occupant, right?

9 INVESTIGATOR ADEJUNMOBI: The
10 \$2,000 per occupant, the way it is derived is
11 based on what is on the Certificate of
12 Occupancy.

13 CHAIRPERSON MILLER: Oh.

14 INVESTIGATOR ADEJUNMOBI: The
15 number of seats in the restaurant.

16 CHAIRPERSON MILLER: Yes.

17 INVESTIGATOR ADEJUNMOBI: As
18 indicated on the C of O.

19 CHAIRPERSON MILLER: Oh, okay.

20 INVESTIGATOR ADEJUNMOBI: So you
21 use that to divide into the total food sales
22 for the year.

1 CHAIRPERSON MILLER: Okay.

2 INVESTIGATOR ADEJUNMOBI: Which is
3 what you will see on the first right hand
4 side, the figures on the first -- under food
5 sales. It says the quarterly food sales, so
6 that is \$6,995.

7 CHAIRPERSON MILLER: Right.

8 INVESTIGATOR ADEJUNMOBI: Whatever
9 their seat says here, which is for 50, you
10 divide 50 into that number to come up with the
11 \$740. That number had to be --

12 CHAIRPERSON MILLER: Oh, I see it
13 on the next page. Okay. Got it. Thank you
14 very much.

15 INVESTIGATOR ADEJUNMOBI: You're
16 welcome, ma'am.

17 CHAIRPERSON MILLER: Okay. Any
18 other questions? Okay. Mr. Alberti?

19 MEMBER ALBERTI: Did you visit the
20 establishment with regards to the records that
21 support --

22 INVESTIGATOR ADEJUNMOBI: No, sir.

1 MEMBER ALBERTI: -- and examine
2 the records that support this quarterly
3 statement?

4 INVESTIGATOR ADEJUNMOBI: Okay. I
5 need to be clear.

6 MEMBER ALBERTI: Pardon?

7 INVESTIGATOR ADEJUNMOBI: Are you
8 asking whether I visit or I review?

9 MEMBER ALBERTI: Well, first of
10 all, did you visit the establishment to
11 inquire about the records that support these
12 quarterly reports?

13 INVESTIGATOR ADEJUNMOBI: No.

14 MEMBER ALBERTI: So from that, I
15 understand that you have not had an
16 opportunity to examine the records that would
17 support these quarterly reports?

18 INVESTIGATOR ADEJUNMOBI: I'm not
19 really clear on your question, sir.

20 MEMBER ALBERTI: Well, I mean, the
21 establishment has records that would support
22 these quarterly reports, presumably. Do you

1 understand that?

2 INVESTIGATOR ADEJUNMOBI: Okay.

3 Now, you are talking about supporting
4 documentation for the figures presented on the
5 quarterly statements?

6 MEMBER ALBERTI: Yes.

7 INVESTIGATOR ADEJUNMOBI: No, I
8 have not reviewed those.

9 MEMBER ALBERTI: Okay.

10 INVESTIGATOR ADEJUNMOBI: In this
11 particular case.

12 MEMBER ALBERTI: Have you had
13 discussion with the licensee about those
14 records or have you requested to review those
15 records?

16 INVESTIGATOR ADEJUNMOBI: No.

17 MR. AMY: Okay. So this -- so
18 your conclusion is based solely on the
19 representation of the licensee. Is that
20 correct?

21 INVESTIGATOR ADEJUNMOBI: Yes,
22 sir.

1 MEMBER ALBERTI: Okay. How were
2 the quarterly reports submitted,
3 electronically or by mail?

4 INVESTIGATOR ADEJUNMOBI: I can't
5 really tell you, but maybe either way. It's
6 just that we have this records on file and I
7 believe it's included as part of the exhibit.

8 MEMBER ALBERTI: It's included as
9 part of what?

10 INVESTIGATOR ADEJUNMOBI: The
11 exhibit or the back of the document. This was
12 submitted, it could be either or, considered
13 submitted by fax, but it wasn't submitted by
14 fax. And maybe one was submitted by hand or
15 by mail.

16 MEMBER ALBERTI: Okay. So this
17 wasn't submitted electronically. Is that
18 correct? I'm looking at the --

19 INVESTIGATOR ADEJUNMOBI:
20 Electronically, you mean was it filed on
21 ABRA's website or was it faxed -- I mean, was
22 it filed --

1 MEMBER ALBERTI: By filed
2 electronically, okay, I'll clarify
3 electronically. Was it filed on ABRA's
4 website through the electronic filing of --

5 INVESTIGATOR ADEJUNMOBI: No.

6 MEMBER ALBERTI: -- quarterly
7 reports that is --

8 INVESTIGATOR ADEJUNMOBI: They
9 were not.

10 MEMBER ALBERTI: -- that ABRA has
11 the capability of accepting?

12 INVESTIGATOR ADEJUNMOBI: No, they
13 were not, sir.

14 MEMBER ALBERTI: Okay. So these
15 were either faxed or delivered in some
16 fashion, correct?

17 INVESTIGATOR ADEJUNMOBI: Yes. As
18 a matter of fact, I would say I believe they
19 were hand-delivered or mailed, because you see
20 there is a stamp on there. The stamp
21 indicates that it either came through the mail
22 or it was hand-delivered.

1 MEMBER ALBERTI: Okay. And just
2 for the record, the name on the bottom of the
3 reports is what?

4 INVESTIGATOR ADEJUNMOBI: Sylvia
5 Garay, if I'm pronouncing it right.

6 MEMBER ALBERTI: Okay. And what--
7 okay. Very good. I have no further
8 questions. Thank you.

9 CHAIRPERSON MILLER: Others? I
10 have one more. Is this how you customarily
11 determine whether an establishment is in
12 violation of a food sales requirement?

13 INVESTIGATOR ADEJUNMOBI: Yes,
14 ma'am, for about -- those two standards, yes.

15 CHAIRPERSON MILLER: And by
16 looking at the quarterly statements?

17 INVESTIGATOR ADEJUNMOBI: Yes.

18 CHAIRPERSON MILLER: Okay. All
19 right. Not hearing any other questions,
20 unless you have any follow-up to the Board's
21 questions? Okay. Then thank you very much.

22 (Witness excused.)

1 CHAIRPERSON MILLER: Okay.

2 MR. AMY: That was the witness for
3 the Government.

4 CHAIRPERSON MILLER: Good.

5 MR. AMY: The Government has no
6 other witnesses or any other evidence. I can
7 make a brief closing argument.

8 CHAIRPERSON MILLER: If you like.

9 MEMBER SILVERSTEIN: A
10 recommendation?

11 MR. AMY: The Government
12 introduced evidence through Compliance Analyst
13 Adejunmobi and his case report that proves by
14 a preponderance of the evidence the licensee
15 failed to meet its food sales requirements of
16 either \$2,000 per seat or 45 percent of total
17 gross sales.

18 This was done after the Compliance
19 Analyst looked at the quarterly statements as
20 submitted by the establishment itself.

21 And, therefore, the Government has
22 -- feels that it has proven that the

1 establishment is in violation of the D.C. Code
2 25-113 as it was charged in the Show Cause
3 Notice delivered by this Board. Thank you.

4 CHAIRPERSON MILLER: Do you have a
5 recommendation with respect to a penalty in
6 this case?

7 MR. AMY: The Government believes
8 that the establishment's food sales total of
9 44 percent suggests a minimal lack of
10 compliance by the licensee and warrants that
11 an appropriate sanction, such as a fine, and
12 continued monitoring would be an appropriate
13 recommendation.

14 Based on the fact that the
15 establishment had three prior first tier
16 violations, the Government may recommend a
17 higher fine than simply that would be
18 warranted by a solely the minimal lack of
19 compliance.

20 Does the Board wish to hear an
21 exact number?

22 MEMBER ALBERTI: Yes.

1 CHAIRPERSON MILLER: I guess so.

2 Some Members do, yes. All right.

3 MEMBER RODRIGUEZ: Yes.

4 MR. AMY: In that case, the
5 Government would recommend a fine of \$4,000.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER SILVERSTEIN: Thank you.

8 CHAIRPERSON MILLER: Thank you
9 very much.

10 MR. AMY: Thank you.

11 MEMBER ALBERTI: Thank you.

12 CHAIRPERSON MILLER: Okay. So
13 that completes this case.

14 As Chairperson of the Alcoholic
15 Beverage Control Board for the District of
16 Columbia and in accordance with Section 405 of
17 the Open Meetings Amendment Act of 2010, I
18 move that the ABC Board hold a closed meeting
19 for the purpose of seeking legal advice from
20 our counsel on Case No. 14-AUD-00021, Corina's
21 Restaurant, per Section 405(b)(4) of the Open
22 Meetings Amendment Act of 2010, and

1 deliberating upon this case for the reasons
2 cited in Section 405(b)(13) of the Open
3 Meetings Amendment Act of 2010.

4 Is there a second?

5 MEMBER ALBERTI: Second.

6 CHAIRPERSON MILLER: Mr. Alberti
7 seconded the motion. I'll now take a roll
8 call vote on the motion before us now that it
9 has been seconded.

10 Mr. Brooks?

11 MEMBER BROOKS: I agree.

12 CHAIRPERSON MILLER: Mr. Alberti?

13 MEMBER ALBERTI: I agree.

14 CHAIRPERSON MILLER: Mr.

15 Rodriguez?

16 MEMBER RODRIGUEZ: I agree.

17 CHAIRPERSON MILLER: Ms. Miller
18 agrees.

19 Mr. Silverstein?

20 MEMBER SILVERSTEIN: I agree.

21 CHAIRPERSON MILLER: Mr. Short?

22 MEMBER SHORT: I agree.

1 CHAIRPERSON MILLER: Mr. Jones?

2 MEMBER JONES: I agree.

3 CHAIRPERSON MILLER: It appears
4 that the motion has passed by a 7-0-0 vote.

5 I hereby give notice that the ABC
6 Board will hold a closed meeting in the ABC
7 Board conference room pursuant to the Open
8 Meetings Amendment Act of 2010 and will issue
9 an order within 90 days.

10 Okay. So that completes this
11 morning's hearings. And we are adjourned and
12 we will return approximately 2:30 for our
13 Protest Hearing.

14 MS. ZANIEL: Thank you.

15 CHAIRPERSON MILLER: Thank you.

16 MR. AMY: Thank you.

17 (Whereupon, the Show Cause Hearing
18 in the above-entitled matter was concluded at
19 1:07 p.m.)
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21
22

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