

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
 2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
 3 ALCOHOLIC BEVERAGE CONTROL BOARD

4 - - - - -X
 5 IN THE MATTER OF :
 6 S&W, D.C., LLC, : Show Cause Hearing
 7 t/a Smith & Wollensky :
 8 1112 19th Street NW : Case #15-CMP-02781
 9 License #ABRA-60001 :
 10 Retailer Class CR :
 11 ANC-2B :
 12 No ABC Manager on Duty :
 13 - - - - -X

14

Wednesday, December 2, 2015

16

17 Whereupon, the above-referenced matter
 18 came on for hearing at the Alcoholic Beverage
 19 Control Board, Reeves Center, 2000 14th Street,
 20 N.W., Suite 400S, Washington, D.C. 20009.

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1 CHAIRPERSON:

2 DONOVAN ANDERSON, Presiding

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4 BOARD MEMBERS:

5 RUTHANNE MILLER

6 NICK ALBERTI

7 MICHAEL SILVERSTEIN

8 JAMES SHORT

9

10

11 ALSO PRESENT - Case #15-CMP-00278

12

13 STEPHEN WHELAN, Esq.

14 On behalf of Smith & Wollensky

15 NENAD MIRKOVIC

16 on behalf of Smith & Wollensky

17 CHRISSY GEPHARDT,

18 on behalf of Office of Attorney General

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1 PROCEEDINGS

2 [11:39 a.m.]

3 CHAIRMAN ANDERSON: I'm trying to run
4 through this agenda, but it appears that it is
5 not -- the way the hearings are scheduled, that
6 it's an impossibility.

7 So, I know that folks are sitting here
8 waiting for an 11:00 hearing, and I'm about to do
9 a 10:00. So, I apologize for that, but anyway --
10 so, the next case on the agenda, and hopefully,
11 this will be short -- it's the show cause
12 hearing.

13 It's Case number No. 15-CMP-00278, Smith
14 & Wollensky.

15 Will the parties please approach?

16 (Pause)

17 CHAIRMAN ANDERSON: And can you please
18 state and spell your name for the record, once
19 you identify who you are, please?

20 MR. WHELAN: Good morning. Stephen
21 Whelan, (Inaudible) Law Firm on behalf of Smith &
22 Wollensky.

1 CHAIRMAN ANDERSON: Can you spell your
2 name for --

3 MR. WHELAN: Sure. Stephen, S-T-E-P-H-E-
4 N W-H-E-L-A-N.

5 MR. MIRKOVIC: Good morning. Nenad
6 Mirkovic. N-E-N-A-D M-I-R-K-O-V-I-C as a
7 supervisor, general manager of Smith & Wollensky.

8 (Discussion off the record)

9 (Pause)

10 MS. GEPHARDT: I'm sorry. Chrissy
11 Gephardt on behalf of the Office of the Attorney
12 General.

13 CHAIRMAN ANDERSON: All right.

14 Are there any preliminary matters?

15 MS. GEPHARDT: There is a preliminary
16 matter.

17 First of all, the government would move
18 to amend the notice in this case. The notice
19 incorrectly states the date as the event
20 occurring on March the 30th of 2015.

21 The incident actually occurred on April
22 30th, 2015. The government submits this was a

1 clerical error, and so the government would move
2 that the board accept that this amendment be
3 changed to the notice.

4 CHAIRMAN ANDERSON: That's appropriate.

5 MR. WHELAN: If I could just -- my
6 client's recollection is that this occurred on
7 March 30th. It's possible that it occurred on
8 April 30th, but our recollection coming into
9 today was that it was on March 30th.

10 We don't have any evidence to support
11 that at this time, because we're not aware of the
12 situation with the typo. That being said, we're
13 hopeful that that will not be particularly
14 relevant, because I think there's another
15 preliminary matter that will be brought to your
16 attention in an offer in compromise.

17 But that's our position.

18 CHAIRMAN ANDERSON: Just so the record is
19 clear, both parties are in agreement that on
20 either March or April, that the incident did
21 occur. Do we have agreement that -- basically
22 why you're here today, that there was -- when the

1 ABC investigated, came to the premises and there
2 was no ABC -- I'm sorry -- when the ABRA
3 investigator came to the premises, that there was
4 no ABC manager on duty.

5 Is that correct, or is that in agreement?

6 MR. WHELAN: Yes.

7 What I would say is that there was an ABC
8 manager on duty with an expired license. So,
9 there was someone on the premises who had been
10 trained, who was TIP certified, who had an ABC
11 manager's license that had recently lapsed.

12 But yes, the -- that's all contained in
13 the investigative report. We don't have any
14 issue with that.

15 CHAIRMAN ANDERSON: Well, I know it's a
16 technicality, but if your law license expired,
17 then you're not a lawyer. (Laughter)

18 MR. WHELAN: I understand.

19 CHAIRMAN ANDERSON: So (Laughter) -- so
20 that's --

21 MR. WHELAN: I absolutely understand.

22 CHAIRMAN ANDERSON: All right. Okay.

1 All right, so --

2 MS. GEPHARDT: So, given that the
3 government would like to offer in what is the
4 offer in compromise that we have agreed to, and
5 that is, in this case, it would be a \$2,000 fine
6 to be paid within 30 days.

7 If the fine is not paid within 30 days,
8 the license would be suspended immediately until
9 the fine is paid.

10 CHAIRMAN ANDERSON: That's the extent of
11 it?

12 MS. GEPHARDT: That's the extent of it.

13 CHAIRMAN ANDERSON: Oh, all right.

14 So, it's my understanding that a \$2,000
15 fine that will be paid within 30 days. And if
16 it's not paid within 30 days, then the license
17 will be suspended.

18 Is that your understanding of the
19 agreement?

20 MR. WHELAN: Yes, it is.

21 CHAIRMAN ANDERSON: Okay.

22 Do you also understand that by accepting

1 an offer in compromise that the establishment
2 waives the right to a hearing?

3 MR. WHELAN: Yes, we do.

4 CHAIRMAN ANDERSON: Also, where -- that
5 you also waive your right to an appeal?

6 MR. WHELAN: Yes.

7 CHAIRMAN ANDERSON: Okay.

8 Are there any board members who have any
9 questions regarding this matter?

10 (No response heard)

11 CHAIRMAN ANDERSON: Hearing none, I make
12 a motion that we accept this offer in --

13 (Simultaneous discussion)

14 CHAIRMAN ANDERSON: -- Mr. Short has
15 seconded the motion.

16 Those in favor, say aye.

17 GROUP: Aye.

18 CHAIRMAN ANDERSON: Matter perhaps is --

19 MR. ALBERTI: No.

20 CHAIRMAN ANDERSON: I'm sorry. Those --
21 I'm sorry. I'm sorry. I'm sorry. (Laughter)

22 All right. Let's start over one time.

1 Those that are in favor, say aye.

2 (CHORUS OF AYES)

3 CHAIRMAN ANDERSON: Any opposition?

4 MR. ALBERTI: Opposed.

5 CHAIRMAN ANDERSON: So, the matter
6 passes, four to one to zero.

7 MR. WHELAN: Thank you.

8 CHAIRMAN ANDERSON: Thank you.

9 MALE SPEAKER: Thank you.

10 CHAIRMAN ANDERSON: I'm sorry. Ms.

11 Walker will provide you an offer -- a (Inaudible)
12 for sign, and you can wait for it down there.

13 And thank you very much for your time,
14 and I apologize for my tardiness, but next time,
15 I'll try to make sure to keep -- and try to
16 schedule you (Laughter).

17 (Simultaneous discussion)

18 MS. BODE: Yeah, (Inaudible) hasn't been
19 around for a while.

20 (Discussion off the record)

21 [Whereupon, at 11:44 a.m. the
22 above-entitled matter concluded.]