

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 Big City Foods III, LLC. :
7 t/a Carolina Kitchen Bar & :
8 Grill :
9 2300 Washington Place N.E. : Case #15-CMP-00684
10 License #91059 : Show Cause Hearing
11 Retailer CR : (Status)
12 ANC 5C :
13 No ABC Manager on Duty :

14 - - - - - X

15 Wednesday, February 17, 2016

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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22

1 CHAIRPERSON:

2 DONOVAN ANDERSON, Presiding

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4 BOARD MEMBERS:

5 NICK ALBERTI

6 RUTHANNE MILLER

7 JAMES SHORT

8 MIKE SILVERSTEIN

9 DANETTE WALKER

10

11 ALSO PRESENT:

12

13 LOUISE PHILLIPS,

14 On Behalf of the District of Columbia

15 CATHY NELSON,

16 On Behalf the licensee

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

2 CHAIRPERSON ANDERSON: The next case on
3 our show cause hearing status calendar is Case
4 No. 15-CMP-00684, Carolina Kitchen Bar and Grill.
5 License No. 91059. Will the parties please
6 approach?

7 MS. PHILLIPS: Good morning, Board
8 Members. Louise Phillips, Assistant Attorney
9 general for the District of Columbia. Good
10 morning.

11 CHAIRPERSON ANDERSON: Can you please
12 identify yourself for the record please, ma'am.

13 MS. NELSON: I'm sorry?

14 CHAIRPERSON ANDERSON: Can you please
15 identify yourself for the record?

16 MS. NELSON: Cathy Nelson.

17 CHAIRPERSON ANDERSON: Ms. Who?

18 MS. NELSON: Cathy Nelson.

19 CHAIRPERSON ANDERSON: Ms. Nelson. And
20 who are you?

21 MS. NELSON: The general manager of the
22 restaurant.

1 CHAIRPERSON ANDERSON: And have -- does
2 the Board have something in writing that states
3 that you're empowered to bind the agency, the --
4 I'm sorry.

5 MS. NELSON: They should because I'm the
6 one who pretty much processed the licenses and
7 everything. Everything should be in my name.

8 CHAIRPERSON ANDERSON: All right. Are
9 there -- I'm sorry.

10 MR. ALBERTI: But you're not the
11 licensee. Your name is not on the license,
12 right?

13 MS. NELSON: I'm not sure. It should be.
14 I think it is. I came down and I processed
15 everything.

16 MR. ALBERTI: Okay. Are you an officer?
17 Are you a member of the LLC.?

18 MS. NELSON: Well, I am -- I'm the vice
19 president of the company, but I'm the acting
20 general manager right now.

21 MR. ALBERTI: So, Ms. Phillips, can you
22 help us out here or do you know; have any

1 information?

2 MS. PHILLIPS: All I have is the
3 president listed here so --

4 MR. ALBERTI: That's all we have.

5 MS. PHILLIPS: We'd have to go to the
6 file.

7 MR. ALBERTI: All right. So why don't
8 you proceed and we'll check the file.

9 MS. NELSON: Okay.

10 [Discussion off the record.]

11 CHAIRPERSON ANDERSON: All right. Are
12 there any preliminary matters in this case?

13 MS. PHILLIPS: No, Mr. Chair, there are
14 not.

15 CHAIRPERSON ANDERSON: This case is set
16 for a show cause hearing on March 30th at 10:00
17 a.m.

18 MS. PHILLIPS: Just for the record, Mr.
19 Chair, I noticed that it was Cathy Nelson who
20 accepted service of the notice. So just --

21 CHAIRPERSON ANDERSON: There appear to be
22 some confusion.

1 MS. NELSON: Okay. I'm Cathy Nelson.

2 CHAIRPERSON ANDERSON: Right.

3 MS. NELSON: Right.

4 CHAIRPERSON ANDERSON: No, I'm saying --
5 all right.

6 MR. ALBERTI: Okay. So, Ms. Nelson, we
7 have in our records that Otis Lennon is 100
8 percent owner of the company.

9 MS. NELSON: Yes, he is.

10 MR. ALBERTI: So if you're going to
11 appear on Mr. Lennon's behalf we need a letter
12 authorizing you to represent him for the company.

13 MS. NELSON: Oh, I wasn't aware of that.

14 MR. ALBERTI: Well, you are now. So
15 before your next appearance please have a letter
16 of authorization from Mr. Lennon.

17 MS. NELSON: Okay. Okay.

18 MR. ALBERTI: Okay?

19 MS. NELSON: So I have to come back
20 again?

21 CHAIRPERSON ANDERSON: All right. All
22 right. All right. Normally what happens at this

1 status is that you would have had a conversation
2 with the government and the government would make
3 an offer to say how to settle the case and you
4 guys would either settle it or not settle it.

5 MS. NELSON: Okay.

6 CHAIRPERSON ANDERSON: Because it doesn't
7 appear to me that the case has been settled, that
8 you had a discussion with the government, so this
9 was just to find out where you were in your
10 discussion. And since there is no settlement we
11 have a hearing. And in the impending period you
12 are free to have a conversation with the
13 government, and you are free to -- they might
14 offer you terms for settlement. You can settle
15 it. Or you might disagree with it and come back
16 here -- come here on March 30th at 10:00 for a
17 hearing and the Board will decide whether or not
18 -- because the charge is failure to have no ABC
19 manager on duty, which is a first secondary tier
20 violation and we would -- you would present
21 whatever evidence, if any, that you have, to say
22 that there was or was not an ABC manager on duty

1 and we would make a determination based on the
2 representation that was made here.

3 But if you're not disputing the charge
4 then you can contact -- whose case is this, Ms.
5 Phillips?

6 MS. PHILLIPS: Ms. Daniels.

7 CHAIRPERSON ANDERSON: Ms. Daniels.
8 She'll give you the -- Ms. Phillips will give you
9 the name of the attorney from the government who
10 is representing this case. I'm sorry, who is
11 representing the Government. You two can decide
12 to negotiate the terms and you guys would just
13 tell us that when you come back on the 30th that
14 we have agreed to settle it and this is the term.

15 And so when I asked, are there any
16 preliminary matters, then it would state that we
17 have met, we have agreed, these are the terms we
18 have agreed, so there is no need to have a
19 hearing.

20 MS. NELSON: Okay. Well, we would -- may
21 I speak?

22 CHAIRPERSON ANDERSON: I'm just general.

1 I'm not --

2 MS. NELSON: Oh. Oh.

3 CHAIRPERSON ANDERSON: You can, just
4 general. Yeah, go ahead, please.

5 MS. NELSON: Oh, okay. Oh, well we would
6 like to just pay the fine because we actually had
7 paid the fine but I don't understand, I guess it
8 got lost in the mail. I mean, I have the check
9 number, everything, and they never received
10 payment. So I just want to pay the fine.

11 CHAIRPERSON ANDERSON: All right.

12 [Discussion off the record.]

13 CHAIRPERSON ANDERSON: All right. Well,
14 one of the things that can be done is that if you
15 -- if you have paid the fine then if you have
16 proof that you have paid the fine maybe you can
17 have that conversation with the Government.

18 I could -- we could probably recall this
19 game -- this case, later on this morning if the
20 Government agrees that there is no case. And
21 what we'll ask you to do is by close of business
22 today, if you and the Government are in -- yes,

1 Ms. Phillips?

2 MS. PHILLIPS: I hate to interrupt but I
3 have two -- I don't have any problem with the
4 later part, but I think she needs -- you told her
5 she needed a power of attorney.

6 CHAIRPERSON ANDERSON: I am --

7 MS. PHILLIPS: And therefore she cannot
8 negotiate unless she can get that here while I'm
9 still here. And I'll be here all morning because
10 I have a show cause hearing that I will be --

11 CHAIRPERSON ANDERSON: Well, I was going
12 to ask her to do it by close of business today.
13 But when do you think that you're able to get --
14 you could e-mail -- the owner could e-mail
15 something in to us this morning to say that --

16 MS. NELSON: Sure.

17 CHAIRPERSON ANDERSON: So if you can do
18 that then why don't you -- where is Ms. --

19 MR. ALBERTI: So may I just speak to Ms.
20 Phillips for a second?

21 Ms. Phillips, I think we've done this
22 before. If you can come to an agreement on an

1 OIC with this that's accepted with Ms. Nelson,
2 then we could potentially accept it and ask that
3 she submit a signed -- or a PDF copy, a signed
4 PDF copy of an authorization letter from Mr.
5 Lennon by the end of the day. And that would be
6 -- that could be the term of the OIC.

7 MS. PHILLIPS: That's fine with me, Mr.
8 Alberti and Board Members, as long as it's clear
9 on the record what the Board wishes to do under
10 these circumstances.

11 MR. ALBERTI: Right. Right.

12 MS. PHILLIPS: But the one thing I cannot
13 do unless somebody checks and let me know is if
14 they received the payment. If I ever received
15 the payment because I --

16 MR. ALBERTI: No, no, I don't think
17 that's the issue.

18 MS. PHILLIPS: -- don't remember hearing
19 anything about a canceled check.

20 MS. NELSON: They didn't get the payment.

21 MR. ALBERTI: Yeah, the issue isn't
22 whether we received the payment. The issue is

1 that she would like to negotiate an OIC with you
2 today.

3 MS. PHILLIPS: Fine. I heard something
4 about payment.

5 MR. ALBERTI: Right. Right. That was, I
6 think, misstated, but --

7 MS. PHILLIPS: All right.

8 MR. ALBERTI: Okay?

9 MS. PHILLIPS: All right.

10 MR. ALBERTI: All right. Thank you.

11 CHAIRPERSON ANDERSON: All right. So why
12 don't you -- we can -- hold on one --

13 MS. PHILLIPS: The next show cause status
14 is not mine so I can speak to her.

15 CHAIRPERSON ANDERSON: Okay. Fine.

16 MS. PHILLIPS: Right this second.

17 CHAIRPERSON ANDERSON: And then I will
18 call -- I'll recall this case when you guys are
19 ready.

20 MS. PHILLIPS: Thank you.

21 MS. NELSON: Okay.

22 [Case passed to handle other matters.]

1 CHAIRPERSON ANDERSON: All right. So
2 we're recalling Case No. 15-CMP-00684, Carolina
3 Kitchen and Bar, License No. 91059.

4 And that's why I didn't because she
5 wasn't in the room.

6 MS. PHILLIPS: Oh, well, I'm facing
7 forward. All I see is four handsome faces.

8 MR. ALBERTI: Let's wait.

9 [Pause.]

10 CHAIRPERSON ANDERSON: Again, can you
11 please identify yourself again for the record,
12 please?

13 MS. NELSON: Cathy Nelson.

14 CHAIRPERSON ANDERSON: Yes, Ms. Phillips,
15 are there any preliminary matters?

16 MS. PHILLIPS: Yes, there are, Mr. Chair.
17 The parties have an offer and compromise that
18 they wish to present to the Board. It is a fine
19 consisting of \$350 to be paid today. And if you
20 get the check that's fine. If not, the license
21 will be suspended if you don't pay today.

22 CHAIRPERSON ANDERSON: All right. One

1 thing I am going to add in additional to the
2 offer and compromise is that by close of business
3 today the license -- I'm sorry, Ms. Nelson, you
4 will provide a letter from the licensee stating
5 that you are authorized to provide this
6 information to negotiate this matter today. Is
7 that --

8 MS. NELSON: Yes.

9 CHAIRPERSON ANDERSON: Is that agreement?
10 So I'm amending the OIC to add that as a part of
11 it. Is that agreeable to you?

12 MS. NELSON: Yes, sir.

13 CHAIRPERSON ANDERSON: All right. So
14 then the offer of compromise then is that a fine
15 of \$350 to be paid today. If it's not paid today
16 the license -- the license will be suspended and
17 that Ms. Nolan?

18 MS. NELSON: Nelson.

19 CHAIRPERSON ANDERSON: Ms. Nelson, I am
20 sorry. Ms. Nelson will provide us by close of
21 business, will provide ABRA's general counsel by
22 close of business today, an authorization letter

1 from the licensee.

2 Is this agreeable to you, Ms. Nelson?

3 MS. NELSON: Can the letter be e-mailed
4 today or does it have to be --

5 CHAIRPERSON ANDERSON: It can.

6 MS. NELSON: It can be e-mailed? Okay.

7 CHAIRPERSON ANDERSON: Tell me, what is
8 it you can do today?

9 MS. NELSON: Can e-mail the letter and
10 pay the fine today. E-mail the letter indicating
11 that I can represent or the case today, and pay
12 today.

13 CHAIRPERSON ANDERSON: All right. When
14 can you provide us a signed letter?

15 MS. NELSON: They're at the office right
16 now contacting the owner. He's going to e-mail
17 it over.

18 MR. ALBERTI: So what we're suggesting is
19 a signed PDF copy. Not just an e-mail because
20 there's no signature on that.

21 CHAIRPERSON ANDERSON: Well, you can do
22 both. I'm just saying -- you're saying they can

1 do -- that the e-mail is easy. If you can do
2 that today.

3 MS. NELSON: Right. We're going to
4 create the letter and then have the --

5 MR. ALBERTI: You can attach the signed
6 PDF --

7 MS. NELSON: Correct.

8 MR. ALBERTI: -- to the e-mail is what
9 I'm saying.

10 MS. NELSON: Yes.

11 MR. ALBERTI: All right. But an e-mail
12 without an attachment is not going to cut it.

13 MS. NELSON: Okay.

14 MR. ALBERTI: All right?

15 CHAIRPERSON ANDERSON: All right. So you
16 can do that today?

17 MS. NELSON: Yes.

18 CHAIRPERSON ANDERSON: You're sure?

19 MS. NELSON: Positive.

20 CHAIRPERSON ANDERSON: All right. Okay.
21 I want to make sure that I'm not giving you terms
22 that you're not able to abide by.

1 MS. NELSON: Right. I don't want to lose
2 my license so --

3 CHAIRPERSON ANDERSON: All right.

4 MS. NELSON: I definitely will get it
5 done today.

6 CHAIRPERSON ANDERSON: Okay. That's why
7 I'm going through this exercise.

8 MS. NELSON: Yes.

9 CHAIRPERSON ANDERSON: Because I don't
10 want something to happen and then you're saying
11 that I wasn't sure. So, all right.

12 MS. NELSON: No, understood. I have the
13 check here. I'm good to go. I'm just waiting
14 for the letter.

15 CHAIRPERSON ANDERSON: Okay. That's
16 fine.

17 MS. PHILLIPS: Mr. Anderson, what e-mail
18 should she use? MarthaJenkins@dc.gov?

19 CHAIRPERSON ANDERSON: That would be
20 Martha.Jenkins@dc.gov would --

21 MS. NELSON: Martha.Jenkins.

22 CHAIRPERSON ANDERSON: Jenkins.

1 MS. NELSON: Let me make sure I have that
2 correct.

3 CHAIRPERSON ANDERSON: M-A-R-T-H-A, dot,
4 J-E-N-K-I-N-S at DC.gov, and Ms. Jenkins will
5 give you -- she's the general counsel for the
6 Agency. She'll also give you her card.

7 MS. NELSON: Is that you?

8 CHAIRPERSON ANDERSON: She'll give you --
9 no.

10 MR. ALBERTI: Martha will give you --

11 MS. NELSON: Okay.

12 CHAIRPERSON ANDERSON: Yeah.

13 MR. ALBERTI: She'll give you the
14 information.

15 CHAIRPERSON ANDERSON: She'll give you
16 your --

17 MS. NELSON: Okay.

18 CHAIRPERSON ANDERSON: All right. Then I
19 move, then, that the offer and compromise of \$350
20 payable today with also a PDF confirmation
21 certification from the licensee that Ms. Nelson
22 is authorized to enter into this agreement today

1 be approved. Is there a second?

2 MR. SILVERSTEIN: Second.

3 CHAIRPERSON ANDERSON: Mr. Silverstein
4 has seconded the motion.

5 [Vote taken.]

6 CHAIRPERSON ANDERSON: The matter passes
7 four, zero, zero. And Ms. Walker will bring you
8 the order for you to sign.

9 MS. NELSON: Perfect.

10 CHAIRPERSON ANDERSON: Okay? Thank you.
11 You can step back and wait until Ms. Walker --
12 once the paperwork works its way back to you back
13 there. Okay? Thanks.

14 [Whereupon, the above-entitled matter
15 concluded.]

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