

IN THE MATTER OF: :
 :
J & J Holdings, LLC, :
t/a Pho 88 Noodles and :
Grill :
608 H Street NW, : Show Cause
Retailer DR - ANC 2C : Hearing
License No. 101629 :
Case #18-CMP-00035 :
 :
(Purchased Alcohol from :
an Off-Premises Retailer,:
Failed to Obtain :
Importation Permit) :

Wednesday
July 25, 2018

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 Donovan W. Anderson, presiding.

PRESENT:
DONOVAN W. ANDERSON, Chairperson
NICK ALBERTI, Member
BOBBY CATO, JR., Member
DONALD ISAAC, SR., Member
MIKE SILVERSTEIN, Member
JAMES SHORT, Member

ALSO PRESENT:
AMY SCHMIDT, DC OAG
GUOZHEN SUN, Licensee

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

2 11:41 a.m.

3 CHAIRPERSON ANDERSON: All right. Our
4 next case is Case No. 18-CMP-00035, Pho 88
5 Noodles and Grill, License No. 101629.

6 Will the parties, please, approach and
7 identify themselves for the record, please?

8 MS. SCHMIDT: Good morning. Amy
9 Schmidt, Assistant Attorney General on behalf of
10 the District of Columbia.

11 CHAIRPERSON ANDERSON: All right. Can
12 the parties, please, identify themselves for the
13 record, please?

14 MS. SUN: My name last name S-U-N,
15 first name Guozhen.

16 CHAIRPERSON ANDERSON: Ms. Kim?

17 MS. SUN: G-U-O --

18 CHAIRPERSON ANDERSON: No, I'm sorry,
19 what is your last name? I'm sorry.

20 MS. SUN: S-U-N.

21 CHAIRPERSON ANDERSON: Ms. Sun?

22 MS. SUN: Yeah.

1 CHAIRPERSON ANDERSON: Good morning.

2 MS. SUN: Yeah, good morning.

3 CHAIRPERSON ANDERSON: It's still
4 morning, yeah.

5 MS. SCHMIDT: Amy Schmidt, Assistant
6 Attorney General on behalf of the District of
7 Columbia.

8 CHAIRPERSON ANDERSON: Good morning,
9 Ms. Schmidt.

10 All right. This is a Show Cause
11 Hearing. Are there any preliminary matters that
12 need to be discussed?

13 MS. SCHMIDT: Yes. Although the
14 District is prepared to go forward, Ms. Sun has
15 agreed to stipulate to the facts and she would
16 like to speak to the Board concerning the
17 penalty.

18 CHAIRPERSON ANDERSON: Well, before we
19 stipulate, so why don't we put in the record what
20 the facts are and what is being stipulated to.

21 MS. SCHMIDT: Okay. Charge -- oh, for
22 the record, Charge 1 is going to be dismissed.

1 CHAIRPERSON ANDERSON: Hold on, hold
2 on a minute, hold on. So what I need you to do
3 is to let me know what the charges are and what
4 is the facts of the different charges.

5 MS. SCHMIDT: Well, Charge 1 is going
6 to be dismissed, that is not in the OIC.

7 CHAIRPERSON ANDERSON: Okay. So
8 Charge 1 has been dismissed. And so what's the
9 charge that is being stipulated? What other
10 facts for Charge 2?

11 MS. SCHMIDT: That Ms. Sun, the
12 licensee, failed to obtain an Importation Permit
13 for alcohol purchases made outside of Washington,
14 D.C. for her establishment and this occurred on--
15 in violation of DC Official Code 25-119 and this
16 occurred on -- and this was -- on January 31,
17 2018, Investigator Nicole Langley went to her
18 establishment and she looked through the records
19 and saw that the purchase -- that the licensee
20 was purchasing alcohol from Wilkinson Wine Center
21 in Falls Church, Virginia and she did not have an
22 Importation Permit.

1 CHAIRPERSON ANDERSON: And so you are
2 -- so that is being stipulated to. Is that
3 correct?

4 MS. SCHMIDT: Yes, yes.

5 CHAIRPERSON ANDERSON: And so what is
6 it that the Government is asking the Board to do?

7 MS. SCHMIDT: We are --

8 CHAIRPERSON ANDERSON: On Charge 2.

9 MS. SCHMIDT: Yes. We are asking for
10 a \$1,500 fine and 30 -- and time to pay it.

11 CHAIRPERSON ANDERSON: So payable in
12 30 days, is that what the Government is asking
13 for?

14 MS. SCHMIDT: Yes, yes.

15 CHAIRPERSON ANDERSON: All right. So
16 Ms. Chun, is it Chun or Sun?

17 MS. SUN: They made a mistake.

18 CHAIRPERSON ANDERSON: So Sun?

19 MS. SUN: Yes, Sun.

20 CHAIRPERSON ANDERSON: Okay. Sun.

21 MS. SUN: The last time I was here, I
22 see last name wrong.

1 CHAIRPERSON ANDERSON: All right. So
2 yeah.

3 MS. SUN: They put it C-H-U-N, I
4 think.

5 CHAIRPERSON ANDERSON: They wrote C-H-
6 U-N, but it's S-U-N?

7 MS. SUN: Yeah, S-U-N.

8 CHAIRPERSON ANDERSON: Okay. All
9 right. So tell us your -- tell us what happened.

10 MS. SUN: Okay.

11 CHAIRPERSON ANDERSON: And what is it
12 that you want us to do?

13 MS. SUN: I see, yeah. That's the
14 reason I'm here today, because, you know, I try
15 to let you know, the Board know what happened to
16 my business.

17 Okay. So I start business in 2015 and
18 I have license, the alcohol license 2016. And at
19 that time, I don't have any of the connection
20 with the, you know, restaurant, you know, the
21 feel they kind of use to --

22 CHAIRPERSON ANDERSON: What type of

1 establishment do you own?

2 MS. SUN: Yeah, say again?

3 CHAIRPERSON ANDERSON: What type of
4 establishment do you own?

5 MS. SUN: Right now?

6 CHAIRPERSON ANDERSON: Yeah.

7 MS. SUN: It's a Vietnam restaurant.

8 CHAIRPERSON ANDERSON: It's a
9 restaurant.

10 MS. SUN: Yeah.

11 CHAIRPERSON ANDERSON: Okay.

12 MS. SUN: It's a restaurant.

13 CHAIRPERSON ANDERSON: Okay.

14 MS. SUN: So then I have my chef, she
15 had her business like more than 30 years and she
16 came to my restaurant. She sold her business.
17 She had a business in Dupont Circle before in
18 D.C. and then she had a lot of connection where
19 you can order, you know, the beer and the wine
20 and where you can order, you know, something that
21 -- information for me, because I don't know any
22 connection, don't know anything about that.

1 So that's, you know, the beer and the
2 wine. She referred to us. So she said she had
3 been using this, you know, the business for a
4 long, long time. And at that time, I even did
5 not -- I needed, you know, the import, you know,
6 the permit. I didn't know anything about that.

7 So I just oh, that's good and then,
8 you know, I using that, you know, business, so
9 that I could increase. So we call him and
10 sometime if we need it, we order and we pick up.
11 It's pretty far from here.

12 And for last two years, I didn't know
13 anything about that until January 31st. One
14 Inspector, she came to my restaurant. Every time
15 I show them, you know, my invoices and everything
16 and she said oh, you cannot order wine out of the
17 D.C. Oh, I was surprised. I said oh, okay, I
18 said but I didn't know that, you know, for last
19 two years already.

20 And every time people come in, they
21 never mentioned this one, so I did not -- I said
22 what kind of Import Permit? She said you need to

1 apply for it. Oh, I said, then I said anything I
2 can order in D.C. area, so it more convenient for
3 me so I do not violate any, you know, of their
4 rules. She said yeah, you can order from us.

5 She give me some website, but I didn't
6 use website. And after, we take this warning
7 very seriously, because I don't want to, you
8 know, do the violation or anything. So we just
9 call, you know, the beer company, we use each
10 one. One of them like Republic National, they
11 say they can provide the wine.

12 So in February after -- that happen in
13 the last week of January. When we order in
14 February, we just immediately reach, you know,
15 the provider. So that means I take everything
16 very serious and I didn't want to, you know -- I
17 do this one -- you know, purpose it's because,
18 you know, I want to more, you know, importing
19 permission.

20 So for us, it's much easier and more
21 convenient for us to order. If I knew before
22 that, so we don't need to go to -- drive to the,

1 you know, Virginia to pick it up and make
2 appointment. And right now, we order from the
3 Republic National. They deliver to us.

4 So and then after she left, the
5 Inspector left, I didn't know the -- and after
6 the two months, three months, something, I
7 received, you know, the penalty. They say oh, I
8 have been penalized like \$1,000. I was like, you
9 know, you should have give me the chance, right?
10 If I do this purposefully, so I'll be okay to pay
11 the penalty, you know, fine, because if -- but
12 this is really, really the first time.

13 And I don't want complain, you know,
14 the previous Inspector or whatever, because my
15 chef has been doing this business for this
16 company for a long, long time and nobody -- and
17 also this guy never asked him for the, you know,
18 import permission. So that's why I was like
19 everything on the table. I even didn't know
20 that.

21 So that's why I really want to have
22 opportunity for the Board to consider and that's

1 -- or something happened that's ruining my
2 purpose here now. It just -- I don't know that.

3 CHAIRPERSON ANDERSON: All right. So
4 how many Investigators, if any, have ever been to
5 your business since you have been there?

6 MS. SUN: I didn't record it, but they
7 come in very often.

8 CHAIRPERSON ANDERSON: Like how many?

9 MS. SUN: From the first two months or
10 three months, because of new business, they came
11 very, very often. Sometimes like every other
12 week, sometimes two weeks, one month. Now, they
13 come like every month, you know, it's long time.
14 But before it was very frequently.

15 CHAIRPERSON ANDERSON: So when they
16 come, what is it that they do or say to you?

17 MS. SUN: They -- some of them they
18 do, yeah. They check which trash company and the
19 license, they check my IDs and my invoices.

20 CHAIRPERSON ANDERSON: So have you
21 ever gotten --

22 MS. SUN: No.

1 CHAIRPERSON ANDERSON: -- prior to
2 this have you ever gotten --

3 MS. SUN: No.

4 CHAIRPERSON ANDERSON: -- a warning or
5 did --

6 MS. SUN: If they do that, I would be
7 happy to change it. Like this one, I can show
8 you my invoice here. I make changes right away.
9 My son keep calling everybody, you know, hey, who
10 can provide me the wine, you know. So we don't
11 need to drive all the way down to Virginia to
12 pick it up. And plus this is a violation.

13 CHAIRPERSON ANDERSON: Yes, but let me
14 ask a question though, but you never thought one
15 day like why am I going to drive all the way to
16 Virginia? Why didn't you just -- I know somebody
17 said you can buy from this person, but -- and you
18 are saying its inconvenient, but why didn't you
19 ever thought that well, maybe is there -- is
20 there some place else I could get this from?

21 MS. SUN: Yes, that's true, because my
22 chef, she live in Virginia. She live in

1 Virginia. She know this guy a long time and she
2 order wine with this guy for such long and she
3 had been with the business with this guy for a
4 long time, that she referred to us. Sometimes
5 she picked up. She know their house and their
6 warehouse, also the house office, so that's why
7 she can still buy and just pick it up.

8 CHAIRPERSON ANDERSON: Oh, so you're
9 saying so your chef recommended this person.

10 MS. SUN: Yeah.

11 CHAIRPERSON ANDERSON: And said okay,
12 they serve this -- they have good wine and then--

13 MS. SUN: Um-hum.

14 CHAIRPERSON ANDERSON: -- they can --

15 MS. SUN: Good wine. She know them,
16 because, you know, I in -- the restaurant field,
17 I have no idea, you know. I don't know anything
18 about it. And she give us recommendation. And
19 because she had a business, too, she had a
20 restaurant in Dupont Circle and also in
21 Tenleytown before. She order from this guy.

22 CHAIRPERSON ANDERSON: Now, so is it

1 Vietnamese wine or is it special wine or is it
2 just any type of wine?

3 MS. SUN: Any type of wine. We just
4 pick up like a couple, you know, like five or
5 six, very, very limited.

6 CHAIRPERSON ANDERSON: Okay.

7 MS. SUN: Because, you know, the
8 numbers, we don't -- people don't drink a lot of
9 wine, only maybe a beer or something. We don't
10 sell that much.

11 CHAIRPERSON ANDERSON: Okay.

12 MS. SUN: So that's why, you know. So
13 when I received this one, I said I should have
14 like -- you know, I want Board understanding I'm
15 coming here and not complaining about other
16 people, you know, because you don't -- you didn't
17 tell me. So that's why I did this.

18 But the previous thing in my business,
19 I wish she can come here, because she get the
20 cancer cells, so she had a treatment today, so
21 that's why she cannot come.

22 But she had been -- knew this man for

1 long time. And never -- she said nobody mention
2 this in January, what happened today? So that's
3 why I was surprised. So if I don't meet -- if I,
4 you know, want continue do this one and I don't
5 make changes, it's all my fault.

6 Once I got this one, I make changes
7 right away, immediate calling my son, call
8 everybody and now we change it long time.

9 CHAIRPERSON ANDERSON: So what is it
10 that you want us to do then?

11 MS. SUN: So I want see if you can
12 give me another chance, you know, to reduce the
13 fine or, you know, just give me some warning,
14 because it's really, really first time, you know.

15 CHAIRPERSON ANDERSON: Okay.

16 MS. SUN: Yeah, I didn't know either,
17 not because I don't know, that's my business. So
18 but everything, my chef teaching me, you know,
19 who the person you can contact me knows, so right
20 now after two years, I could experience
21 something, but this is really, really first time.

22 CHAIRPERSON ANDERSON: Have you ever--

1 do you know that we offer training for new
2 businesses and stuff? Have you ever come to any
3 training that is done here at ABRA?

4 MS. SUN: I have a training here and
5 how to give a quarterly report.

6 CHAIRPERSON ANDERSON: You said you
7 what?

8 MS. SUN: You know, I over here for
9 one time and I have a certificate here. So teach
10 us, they -- I don't think we mentioned this one,
11 because maybe the difference --

12 CHAIRPERSON ANDERSON: I'm asking what
13 training did you come down here for?

14 MS. SUN: For the quarterly, you know,
15 the -- how to make that quarterly report.

16 CHAIRPERSON ANDERSON: Okay.

17 MS. SUN: And also how you see the
18 customer, make sure, you know, the customer over
19 like 21 years-old, you know. And then how -- if
20 the people come in sometime, you know, they maybe
21 already drink a lot outside and they come to us,
22 you know, definite you should not allow them to

1 drink more. Stuff like, you know, that --

2 CHAIRPERSON ANDERSON: So you have
3 come down to ABRA for that training?

4 MS. SUN: Yeah, I come here, yeah. I
5 have a certificate here, too. Yeah, I can give
6 that.

7 CHAIRPERSON ANDERSON: So when was the
8 last time you -- when did you get that
9 certificate?

10 MS. SUN: That was I think in 2016, I
11 guess, because at same time I received the email
12 for the training --

13 CHAIRPERSON ANDERSON: Right.

14 MS. SUN: -- I call. I said do I need
15 to come to any? They say you don't need --
16 really don't need to, so that is why I'm not
17 coming, because if you have like something
18 updates all the time for the every time training,
19 so I can come, you know. It doesn't matter.

20 But just so like -- yeah, 2016.

21 CHAIRPERSON ANDERSON: So you came
22 down here for training in 2016?

1 MS. SUN: Yeah, July.

2 CHAIRPERSON ANDERSON: Okay. July

3 2016?

4 MS. SUN: Yeah.

5 CHAIRPERSON ANDERSON: Okay.

6 MS. SUN: But that meeting and not
7 really managing some -- like whatever the Code,
8 you know.

9 CHAIRPERSON ANDERSON: Okay.

10 MS. SUN: If I knew that, I will -- I
11 never ever will do it. Never.

12 CHAIRPERSON ANDERSON: All right. Any
13 questions by any other Board Members? Any final
14 comments?

15 MS. SCHMIDT: No, no final comments.

16 CHAIRPERSON ANDERSON: No? All right.

17 All right. As Chairperson of the
18 Alcoholic Beverage Control Board for the District
19 of Columbia and in accordance with Section 405 of
20 the Open Meetings Amendment Act of 2010, I move
21 that the ABC Board hold a closed meeting for the
22 purpose of seeking legal advice from our counsel

1 on Case No. -- this is Noodles, right? This is
2 Noodles?

3 MS. SCHMIDT: 18-CMP-00035.

4 CHAIRPERSON ANDERSON: Yes, I just
5 wanted to make sure.

6 This is Case No. 18-CMP-00035, Pho 88
7 Noodles and Grill, per Section 405(b)(4) of the
8 Open Meetings Amendment Act of 2010, and
9 deliberating upon Case No. 18-CMP-00035, Pho 88
10 Noodles and Grill, for the reasons cited in
11 Section 405(b)(13) of the Open Meetings Amendment
12 Act of 2010. Is there a second?

13 MEMBER SHORT: Second.

14 CHAIRPERSON ANDERSON: Mr. Short has
15 seconded the motion. I will now take a roll call
16 vote on the motion before us now that it has been
17 seconded.

18 Mr. Silverstein?

19 MEMBER SILVERSTEIN: I agree.

20 CHAIRPERSON ANDERSON: Mr. Short?

21 MEMBER SHORT: I agree.

22 CHAIRPERSON ANDERSON: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON ANDERSON: Mr. Cato?

3 MEMBER CATO: I agree.

4 CHAIRPERSON ANDERSON: Mr. Isaac?

5 MEMBER ISAAC: I agree.

6 CHAIRPERSON ANDERSON: Mr. Anderson?

7 I agree.

8 As it appears that the motion has
9 passed, I hereby give notice that the ABC Board
10 will hold a closed meeting in the ABC Board
11 conference room today pursuant to the Open
12 Meetings Amendment Act of 2010 and will issue an
13 order within 90 days.

14 Thank you very much for your
15 presentation. The Board will take this matter
16 under advisement and we will issue a decision of
17 what we are going to do.

18 Okay. Thank you for being here.

19 MS. SUN: Okay. So you are going to
20 send like a letter, right?

21 CHAIRPERSON ANDERSON: Yes. We will
22 issue a written decision. We will issue a

1 written decision of what our decision is.

2 MS. SUN: Okay. Thank you.

3 CHAIRPERSON ANDERSON: Thank you for
4 coming today.

5 MS. SUN: Thank you so much.

6 CHAIRPERSON ANDERSON: I thank you for
7 presentation and I also thank you, Ms. Schmidt.
8 All right.

9 MS. SCHMIDT: Thank you.

10 CHAIRPERSON ANDERSON: The Board then
11 -- we are in recess until our 1:30 hearing.
12 Thank you.

13 (Whereupon, the Show Cause Hearing was
14 concluded at 11:58 a.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Pho 88 Noodles and Grill

Before: DC ABRA

Date: 07-25-18

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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Court Reporter

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