

ALSO PRESENT:

MONICA CLARK, ABRA Licensing Specialist

CHRISTOPHER SOUSA, OAG

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

2 (2:39 p.m.)

3 CHAIRPERSON ANDERSON: This case is
4 Case Number 18-AUD-00088, Sushi Capitol. License
5 No. 92785.

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

8 MR. SOUSA: Christopher Sousa for the
9 District of Columbia.

10 CHAIRPERSON ANDERSON: Good afternoon,
11 Mr. Sousa. I see that the licensee is not here.
12 This hearing was scheduled for 2:30. It's now
13 2:41, and the licensee is not here. At least the
14 Agency has not gotten any information that the
15 licensee would not be here today.

16 Do you have a representation, if any,
17 you can make, Mr. Sousa?

18 MR. SOUSA: About the licensee's --

19 CHAIRPERSON ANDERSON: Yes.

20 MR. SOUSA: Over the last couple of
21 months, I've been trying to contact the licensee
22 regarding this case and I've spoken to a manager

1 there, the manager who received the service of
2 the cause of action, but I haven't been able to
3 speak to the licensee or anyone who's in charge
4 of this, and they didn't show up for the status
5 conference either.

6 CHAIRPERSON ANDERSON: All right. So,
7 the government -- does the government wishes to
8 proceed ex parte?

9 MR. SOUSA: Yes.

10 CHAIRPERSON ANDERSON: All right.
11 Pursuant to D.C. Official Code Section 25-447,
12 the Board has the authority to proceed ex parte
13 where the licensee waives a hearing or fails to
14 appear unless is the hearing is extended for good
15 cause and sufficient cause.

16 The Board's record reflects that the
17 licensee was properly served on February 5, 2019.
18 Seeing no licensee here today and having no good
19 and sufficient cause to extend this hearing, the
20 Board will proceed with the show cause hearing.

21 Does the government wish to make an
22 opening statement?

1 MR. SOUSA: Yes, really quickly just
2 for the record.

3 OPENING STATEMENT BY CHRISTOPHER SOUSA, ESQ.

4 ON BEHALF OF THE GOVERNMENT

5 MR. SOUSA: This is a case about
6 failure to file quarterly statements, which are
7 required by D.C. Official Code 25-113. The
8 licensed establishment, Sushi Capitol, over on
9 Southeast Pennsylvania Avenue, failed to do so
10 for the second quarter of calendar year 2018.

11 And I'll call the ABRA compliance
12 manager to testify on the subject.

13 CHAIRPERSON ANDERSON: All right.
14 Does the government have a witness it wishes to
15 call?

16 MR. SOUSA: Yes, Monica Clark, please.

17 CHAIRPERSON ANDERSON: Ms. Clark, can
18 you raise your right hand, please?

19 WHEREUPON,

20 MONICA CLARK

21 was called as a witness by the government and,
22 having been first duly sworn, assumed the witness

1 stand, was examined and testified as follows:

2 CHAIRPERSON ANDERSON: Your witness.

3 MR. SOUSA: Yes.

4 DIRECT EXAMINATION

5 BY MR. SOUSA:

6 Q Ms. Clark, who do you work for?

7 A I work for the Alcoholic Beverage
8 Regulation Administration.

9 Q What is your job there?

10 A My job is a compliance analyst is to
11 receive, review, and record quarterly statements
12 from ABRA licensees, along with auditing
13 functions and other duties as assigned.

14 Q All right. Well, let's limit our
15 attention to the quarterly statements. What is a
16 quarterly statement?

17 A A quarterly statement is a one-page
18 report that's due by hotels and restaurants that
19 gives an overview of the sales and expenditures
20 of that establishment for the three-month period.

21 Q For three-month periods for a quarter
22 of a calendar year?

1 A Yes.

2 Q Okay. And how can that quarterly
3 statement be submitted to ABRA?

4 A It can be submitted -- the licensee
5 can have it brought down, they can fax it, they
6 can email it as an attachment, or they can file
7 it online.

8 Q Okay. Are you familiar with the
9 establishment, Sushi Capitol?

10 A I am.

11 Q Okay. And have you recently checked
12 ABRA's records to determine whether or not
13 they've submitted quarterly statements?

14 A Yes. I've actually checked within the
15 last 24 hours.

16 Q Okay. And focusing our attention to
17 April through June of 2018, did you look to see
18 if they have submitted a quarterly statement for
19 that time period?

20 A Yes, I have.

21 Q And where did you look?

22 A I looked into the receiving email that

1 all of the quarterlies go to when they're
2 received at ABRA.

3 Q Okay. And did you find a quarterly
4 statement?

5 A No.

6 Q Okay. Thank you. No more questions.
7 Thank you. I appreciate it.

8 CHAIRPERSON ANDERSON: Any questions
9 by any Board members?

10 (No audible response.)

11 CHAIRPERSON ANDERSON: Ms. Clark, have
12 you had any contact with this licensee regarding
13 its failure to file the quarterly statements?

14 THE WITNESS: No, I haven't been able
15 to reach the licensee in quite some time.

16 CHAIRPERSON ANDERSON: Is this
17 licensee still in business?

18 THE WITNESS: According to ABRA's
19 records, the license is still active.

20 CHAIRPERSON ANDERSON: Any questions,
21 Mr. Sousa, based on the questions I asked?

22 BY MR. SOUSA:

1 Q The licensee has failed to file
2 quarterly statements since then, correct?

3 A That's correct.

4 MR. SOUSA: Okay. Yes, no further
5 questions.

6 CHAIRPERSON ANDERSON: All right.
7 Thank you, Ms. Clark. You can step down.

8 THE WITNESS: Okay. Thank you.

9 (Whereupon, the witness was excused.)

10 CHAIRPERSON ANDERSON: Does the
11 government have another witness?

12 MR. SOUSA: No further witnesses.

13 CHAIRPERSON ANDERSON: Does the
14 government work for us?

15 MR. SOUSA: Yes.

16 CHAIRPERSON ANDERSON: The record is
17 now closed. I'm sorry. Does the government wish
18 to make a closing statement?

19 CLOSING STATEMENT BY MR. SOUSA, ESQ.

20 ON BEHALF OF THE GOVERNMENT

21 MR. SOUSA: Just for the purpose of
22 the record, the government has proven that there

1 was a failure to a file quarterly statement for
2 the second quarter of calendar year 2018, which
3 is a violation of the D.C. Code. It's their
4 eighth secondary tier violation, so I think
5 what's assessed -- we're just going to ask the
6 Board to assess a \$2,000 fine. Thank you.

7 MEMBER ALBERTI: What was it?

8 CHAIRPERSON ANDERSON: Two thousand.

9 MR. SOUSA: Two thousand dollars.

10 MEMBER ALBERTI: May I ask, Mr. Sousa,
11 what is the fine range according to the statute
12 of this?

13 MR. SOUSA: It's my understanding, and
14 I may actually be incorrect, but it's my
15 understanding that the maximum fine for this
16 aggravated secondary tier violation is \$2,000.

17 MEMBER ALBERTI: Where's that in the
18 statute?

19 MR. SOUSA: I don't -- I didn't bring
20 the statute book with me.

21 MEMBER ALBERTI: I ask because I can't
22 find it.

1 MR. SOUSA: Okay. I can follow up
2 with the Court.

3 MEMBER ALBERTI: I'd appreciate that,
4 because I hate to put you on the spot, and I know
5 why you might think that, but I'm pretty certain
6 that that's not what's in the statute.

7 MR. SOUSA: Okay. All right. I'll
8 follow up with the Board.

9 MEMBER ALBERTI: All right.

10 CHAIRPERSON ANDERSON: I believe that
11 for successive failure, the Board, although, they
12 can fine more they normally do \$2,000, I don't
13 know whether or not it's appropriate in all
14 cases, but I think that that's what -- I think
15 that's what I was told that was the Board's --

16 MEMBER ALBERTI: I can read from 23-
17 804, Citations for Secondary --

18 PARTICIPANT: If you can turn your
19 microphone on?

20 MEMBER ALBERTI: Citations for
21 Secondary Tier Violations, 23-804, Item D is,
22 "For the fourth secondary tier violation within

1 four years, the fine shall be \$1,000. Every
2 subsequent secondary tier violation within five
3 years of the first shall be fined according the
4 schedule for primary tier violation set forth in
5 803."

6 And 803 for the -- so this would be --
7 I don't know. This would be like the third
8 primary. Do the counting.

9 MR. SOUSA: Yes. If the Board is open
10 to assessing a more severe fine, --

11 MEMBER ALBERTI: I'm just saying.

12 MR. SOUSA: -- it's open to that.

13 MEMBER ALBERTI: I'm just pointing
14 this out.

15 MR. SOUSA: It's always been the
16 Board's policy to be around \$2,000, so that's why
17 I recommended such a fine.

18 MEMBER ALBERTI: Yes, but I'm just
19 surprised that you would recommend something
20 that's not -- that's outside the statute, as
21 specified in the statute.

22 MR. SOUSA: Okay.

1 MEMBER ALBERTI: I understand how OICs
2 often go outside the statute, because they're
3 OICs, but I don't understand how these cases --
4 it's why -- I just wonder how the Board can
5 deviate from the statute.

6 MR. SOUSA: Okay.

7 MEMBER ALBERTI: And how you would
8 recommend that, why you would recommend that we
9 deviate from the statute, but again, we don't
10 need the answer to that.

11 MR. SOUSA: Okay.

12 MEMBER ALBERTI: Thank you.

13 MR. SOUSA: Thank you.

14 CHAIRPERSON ANDERSON: The record is
15 now closed.

16 Do you wish to file a proposed
17 findings of fact and conclusion of law or waive
18 your right to do so?

19 MR. SOUSA: I waive my right to do so.

20 CHAIRPERSON ANDERSON: All right. The
21 Board will issue a decision within 90 days. As
22 Chairperson of the Alcoholic Beverage Control

1 Board for the District of Columbia and accordance
2 with D.C. Official Code Section 2574(b) of the
3 Open Meetings Act, I move that ABC Board hold a
4 closed meeting for the purpose of seeking legal
5 advice from our counsel on Case Number 18-AUD-
6 00088, Sushi Capitol. Pursuant to D.C. Official
7 Code Section 2574(b)(4) of the Open Meetings Act
8 and deliberating upon Case Number 18-AUD-00088,
9 Sushi Capitol, for the reasons cited in D.C.
10 Official Code Section 2574(b)(13) of the Open
11 Meetings Act.

12 Is there a second?

13 MR. SILVERSTEIN: Second.

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

18 Ms. Wahabzadah?

19 MS. WAHABZADAH: I agree.

20 CHAIRPERSON ANDERSON: Mr.
21 Silverstein?

22 MR. SILVERSTEIN: I agree.

1 CHAIRPERSON ANDERSON: Mr. Short?

2 MR. SHORT: I agree.

3 CHAIRPERSON ANDERSON: Mr. Alberti?

4 MR. ALBERTI: I agree.

5 CHAIRPERSON ANDERSON: Mr. Cato?

6 MR. CATO: I agree.

7 CHAIRPERSON ANDERSON: Mr. Anderson?

8 I agree.

9 As it appears that the motion has
10 passed, I hereby give notice that the ABC Board
11 will recess this proceeding to hold a closed
12 meeting in ABC Board Conference Room pursuant to
13 Section 2572(b) of the Open Meetings Act.

14 Thank you very much.

15 (Whereupon, the above-entitled matter
16 went off the record at 2:49 p.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: Sushi Capitol

Before: DCABRA

Date: 03-20-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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