

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF:
Communal Restaurant, LLC,
t/a Prost
(formerly-Communal
Restaurant)
919 5th Street NW : Fact Finding
Retailer CR - ANC 6E : Hearing
License #108392
Case # 23-251-00008
(Simple Assault, Failed
to Provide Video Footage,
Trade Name Change
Without Board Approval)
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Wednesday
April 5th, 2023

The Alcoholic Beverage Control Board
met via WebEx videoconference, Chairperson
Donovan W. Anderson presiding.

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
EDWARD S. GRANDIS, Member
JENI HANSEN, Member
JAMES SHORT, JR., Member
RAFI ALIYA CROCKETT, Member

ALSO PRESENT:

DAVINA CAIN, DC MPD

ERIC HEIDENBERGER, Applicant

MIKEA NELSON, DC ABRA Investigator

JOSE ORELLANA, DC ABRA Staff

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

2 11:17 a.m.

3 CHAIR ANDERSON: The next case on our
4 calendar is a fact finding hearing which is Case
5 Number 23-251-00008, Prost (formerly Communal
6 Restaurant), License Number 108392. Mr.
7 Orellana, I think that Mr. Heidenberger and
8 Officer Cain and I believe Ms. Nelson, are the
9 parties that should be elevated for this case.

10 MR. ORELLANA: Apologies, one second.
11 Eric Heidenberger, your access has been elevated.
12 Davia Cain, your access has been elevated. Mikea
13 Nelson, your access has been elevated. That is
14 all, Chairman.

15 CHAIR ANDERSON: All right, thank you.
16 Now, I'll ask everyone for this case, please turn
17 your cameras on.

18 OFFICER CAIN: I'm having problems
19 turning my camera on.

20 CHAIR ANDERSON: All right. Well,
21 I've seen you so I'm fine. If you're able to
22 solve it, fine, but I've seen you so that's fine.
23 All right. Let me have the parties introduce
24 themselves for the record. Let's start with Ms.
25 Nelson. You're on mute, Ms. Nelson.

1 INVESTIGATOR NELSON: Good morning,
2 everyone. I am ABRA Investigator Mikea Nelson,
3 that is spelled M-I-K-E-A last name N-E-L-S-O-N.

4 CHAIR ANDERSON: Officer Cain, can you
5 please identify yourself for the record by
6 spelling and stating your name, please?

7 OFFICER CAIN: Yes, good morning.
8 Officer Cain. First name is spelled D-A-V-I-A
9 last name C-A-I-N.

10 CHAIR ANDERSON: All right, good
11 morning, ma'am. And, Mr. Heidenberger, can you
12 please spell and state your name for the record?
13 You're on mute, sir.

14 MR. HEIDENBERGER: First name E-R-I-C,
15 last name H-E-I-D-E-N-B-E-R-G-E-R.

16 CHAIR ANDERSON: All right. Good
17 morning again, everyone. This is a fact finding
18 hearing and at a fact finding hearing the Board
19 is just gathering evidence. At a fact finding
20 hearing, the Board cannot order the party to take
21 any specific action. The Board is just gathering
22 evidence for the Board to make a determination.

23 At the end of this hearing, the two
24 options that the Board has are, the Board can
25 determine that based on what we find today is

1 that no further action is required or secondly,
2 the Board can refer this matter to the Office of
3 the Attorney General for them to determine if any
4 laws have been violated and if this matter can be
5 referred to a show cause hearing, but that's
6 separate, that's what will be made if the Board
7 decides to refer this matter over to them for
8 further investigation.

9 One of the reasons why we are having
10 this fact finding hearing, it's my understanding,
11 that it was also a 251 because the Chief of
12 Police, I believe, had requested a fact finding
13 hearing. Just a brief background, on January 22,
14 2023, a bartender was assaulted by a patron and
15 arrested by MPD. Witnesses indicated that the
16 suspect had PTSD, which may have been the cause
17 of the incident and may have had a psychotic
18 episode due to a negative interaction with his
19 medication and alcohol.

20 Any questions by anyone before we
21 start?

22 INVESTIGATOR NELSON: No.

23 CHAIR ANDERSON: Okay. Mr.
24 Heidenberger?

25 MR. HEIDENBERGER: No.

1 CHAIR ANDERSON: All right, so Ms.
2 Nelson, just identify yourself for the record one
3 more time and tell us how it is you are involved
4 in this case, ma'am.

5 INVESTIGATOR NELSON: Sure. Again, I
6 am ABRA Investigator Mikea Nelson and I received
7 this report from Supervisory Investigator Mark
8 Brashears, who received the MPD-PD 251 on Monday,
9 January 23, 2023.

10 CHAIR ANDERSON: And so tell us, did
11 you write a report in this case?

12 INVESTIGATOR NELSON: Yes, sir, I did.

13 CHAIR ANDERSON: And so can you just
14 summarize for us why is it that we're here today,
15 ma'am?

16 INVESTIGATOR NELSON: Yes, sir. I was
17 assigned to conduct the investigation of MPD-PD
18 251, 23-011425. Upon my investigation, I found
19 the establishment in violation of DC Official
20 Code 25-823, 25-836 and 23 DC Municipal
21 Regulations 600.1. These violations came about
22 as a result of conducting interviews by two of
23 the establishment ABC managers, two of the
24 establishment managing partners, a victim
25 identified as V2 in my report, another victim

1 identified as the establishment's bartender in my
2 report labeled as V1. I identified the suspect
3 as well, conducted a regulatory inspection,
4 interviewed MPD and reviewed the establishment's
5 surveillance footage.

6 CHAIR ANDERSON: So what happened?
7 Tell us, that's what I'm trying to find, just
8 what happened. Why are we here? What happened
9 at this establishment for you to go there?

10 INVESTIGATOR NELSON: Yes, sir. A
11 simple assault occurred, specifically a patron
12 pushed another patron in the chest. He attempted
13 to assault one of the establishment's bartenders
14 and following his arrest, the suspect damaged an
15 MPD police vehicle and injured himself as well.

16 CHAIR ANDERSON: And so, tell me what
17 is it that you were able to find? Who did you
18 contact and what were you able to find? Who did
19 you contact at the establishment and what were
20 you able to find?

21 INVESTIGATOR NELSON: Yes, sir.
22 Initially, I contacted Mr. Francis Williams, who
23 identifies himself as Mr. Frank Williams, who is
24 the establishment's general manager and he
25 advised me that he was not present for the

1 assault; however, he did put me in contact with
2 the ABC manager that was present for the assault
3 as well as the establishment's bartender that was
4 involved. He also provided me video footage
5 within 24 hours of the incident and contact
6 information for those members involved.

7 Additionally, I spoke with Victim 2,
8 identified as Victim 2 in the police PD 251, who
9 is identified as the establishment's girlfriend
10 and she advised me that she and the suspect had
11 been bar hopping, so they had been drinking prior
12 to entering the establishment. They were at the
13 establishment for approximately one hour and the
14 suspect appeared to be having a PTSD episode due
15 to the establishment being more crowded than
16 normal. I found that the establishment was
17 hosting a private event that night and it was
18 supposed to be guest list only. However, the
19 second victim, a male friend and the suspect were
20 allowed entry into the establishment that night.

21 Upon interviewing the suspect, Mr.
22 Shaun Yate (Phonetic.), he advised me that he had
23 started a new medication and he did not know the
24 effects of drinking alcohol while on this new
25 medication and it triggered a PTSD episode. He

1 described the PTSD episode as being present in
2 his body, but not physically in control of his
3 actions. He stated that he was in the
4 establishment for approximately one hour and had
5 approximately two beers while present.

6 When interviewing Mr. Tom Blackwood
7 (Phonetic.), identified as Victim 1, Mr.
8 Blackwood advised me that he was one of the two
9 bartenders that were on staff that night and he
10 noticed an altercation occur between the suspect
11 and Victim 2. When he identified that there was
12 an altercation going on, he attempted to approach
13 the suspect and to separate him from Victim 2.
14 When doing so, he was assaulted. The suspect
15 attempted to hit Mr. Blackwood in the face;
16 however, he missed and he was not injured.
17 Subsequently following him trying to assault, Mr.
18 Blackwood, a group of patrons attempted to escort
19 the suspect out of the establishment and outside.

20 While doing so, the establishment's
21 ABC manager attempted to call MPD, while watching
22 the suspect outside to ensure his safety. Ms.
23 Thalen (Phonetic.) advised me that the
24 establishment was hosting a private, 70s-themed
25 birthday party for two female patrons and there

1 were approximately two bartenders, two barbacks
2 and one cook present in the establishment at the
3 time. The establishment did not have any
4 security working and she was made aware of the
5 incident by one of the establishment's
6 bartenders, the other bartender.

7 Ms. Thalen contacted MPD and watched
8 the suspect while he entered 5th Street, NW,
9 where he was arrested by MPD officers. Ms.
10 Thalen advised me that the suspect appeared to be
11 belligerent and volatile; however, she was not
12 aware of the suspect being present in the
13 establishment for a long period of time.

14 CHAIR ANDERSON: Now --

15 INVESTIGATOR NELSON: I'm sorry, sir?

16 CHAIR ANDERSON: Did you view any
17 video of what occurred?

18 INVESTIGATOR NELSON: Yes, sir. Mr.
19 Frank Wilson provided me with two separate clips
20 of video footage of the incident.

21 CHAIR ANDERSON: And what were you
22 able to ascertain as a result of viewing the
23 video?

24 INVESTIGATOR NELSON: Yes, sir. I was
25 able to see the suspect finish one of his, what

1 looked like to be, 16-ounce beers and he took
2 half of Victim 2's beer and consumed that, so I
3 was able to witness the suspect consume
4 approximately 24 ounces of beer. He appeared to
5 be intoxicated due to him rocking back and forth
6 while sitting still at the bar.

7 Additionally, I was able to see the
8 suspect grab Victim 2's arm and push her into a
9 crowd of patrons. I was able to witness the
10 establishment's bartender attempt to apprehend
11 the suspect and separate him from Ms. Thalen, I
12 mean, I'm sorry, from Victim 2. I was able to
13 witness the group of patrons attempt to escort
14 the suspect out of the establishment while the
15 establishment's ABC manager followed behind and
16 contacted MPD.

17 I requested additional surveillance
18 footage from the establishment's general manager;
19 however, due to the establishment not being able
20 to maintain video footage beyond seven days, I
21 was unable to receive that footage and I was also
22 unable to establish how long the suspect and
23 Victim 2 had been inside of the establishment and
24 how much alcohol they were able to consume during
25 their visit.

1 CHAIR ANDERSON: Now, at the beginning
2 of your testimony you said that there were some
3 violations, so what violations, if any, did you
4 determine that the establishment committed?

5 INVESTIGATOR NELSON: Yes, sir. I
6 determined that the establishment was in
7 violation for not maintaining video footage of a
8 crime of violence for a minimum of 30 days as
9 well as providing requested video footage to an
10 ABRA investigator within 48 hours. Additionally,
11 I had found the establishment changed its trade
12 name from Communal Restaurant to Prost without
13 ABC Board approval.

14 CHAIR ANDERSON: All right, okay.
15 Anything else you want to add?

16 INVESTIGATOR NELSON: Yes, sir. I did
17 find that after making the establishment aware of
18 the violation of the trade name change, they did
19 submit an application for a trade name change on
20 Thursday, January 26 and was approved to change
21 their name.

22 CHAIR ANDERSON: Okay. Officer Cain?

23 OFFICER CAIN: Yes, sir. I'm here.

24 CHAIR ANDERSON: All right, is there
25 anything you can add to supplement to what

1 Investigator Nelson had?

2 OFFICER CAIN: No, I don't have
3 anything to add. Pretty much what she said was
4 everything right there, honestly.

5 CHAIR ANDERSON: All right, fine.
6 Thank you, ma'am. Any questions by any board
7 members of either Investigator Nelson or if they
8 want to question Officer Cain separately? Yes,
9 Mr. Short, go ahead.

10 MEMBER SHORT: Investigator Nelson,
11 how are you this morning?

12 INVESTIGATOR NELSON: I'm well, sir.
13 Thank you for asking.

14 MEMBER SHORT: Great. Thank you for
15 your report. In finding that the cameras were
16 not in regulation as required by our code, and I
17 see where you did write them a citation for that,
18 is that correct?

19 INVESTIGATOR NELSON: No, sir, I did
20 not.

21 MEMBER SHORT: Were they in violation
22 of the camera code?

23 INVESTIGATOR NELSON: Yes, sir, they
24 were.

25 MEMBER SHORT: Can I ask you why you

1 did not write a citation for that?

2 INVESTIGATOR NELSON: Yes, sir. I was
3 advised to write an investigative report
4 incorporating all of the violations that I found
5 from my investigation as a result of the 251.

6 MEMBER SHORT: So the night of the
7 incident, did you know that the cameras could not
8 record past seven days?

9 INVESTIGATOR NELSON: No, sir. I
10 received the MPD-PD 251 approximately two days
11 after the incident and I was not aware that the
12 footage could no record for longer than seven
13 days.

14 MEMBER SHORT: Since you have found
15 out the information about the fallacies or the
16 inconsistencies with the camera, have you said
17 anything to the owner or the licensee regarding
18 the camera, since you found out they are in
19 violation?

20 INVESTIGATOR NELSON: Yes, sir. I've
21 spoken with the managing partners of the
22 establishment, advising each of them that we
23 require that their cameras maintain footage for a
24 minimum of 30 days and they did work very
25 diligently to try to get me the footage, but were

1 unable to.

2 MEMBER SHORT: To this current time,
3 today or tomorrow, if an investigator were to go
4 there, anybody from our ABCA organization, would
5 the cameras now function properly?

6 INVESTIGATOR NELSON: I'm unsure of
7 that, sir, but I'm happy to go and check.

8 MEMBER SHORT: Thank you,
9 Investigator. That's all I have, Mr. Chair.

10 CHAIR ANDERSON: Do you have any
11 questions of the officer? Any other questions
12 for either the officer or the investigator by any
13 board members? Mr. Heidenberger, do you have any
14 questions for the investigator?

15 MR. HEIDENBERGER: No. I appreciate
16 Investigator Nelson working with us. I called
17 her during her investigation to apologize about
18 the camera footage not being available past seven
19 days. I think it was a miscommunication on our
20 end thinking that we had provided all the footage
21 after it was requested two days later and, to be
22 honest, to my knowledge usually our servers, we
23 used the same company to install our security
24 cameras, they usually last 30 days.

25 We provided numerous amounts of

1 footage to both MPD and ABRA over the years. It
2 definitely was not our intention to be malicious
3 or intentional in withholding that footage,
4 especially since some of our staff were the
5 victim of the incident and we are working to
6 resolve it so our security footage will last for
7 30 days for ABRA and MPD in the future.

8 CHAIR ANDERSON: Now, I'm glad because
9 I think as Ms. Nelson's testified that you have
10 now filed the appropriate trade name change with
11 our agency and that has been approved. Is that
12 correct?

13 MR. HEIDENBERGER: Correct. We had
14 applied back in November of 2022 and I have that
15 certificate with DC. I didn't know if we went
16 through Veritas Law Firm and I had thought we had
17 applied with ABRA as well for the trade name.
18 I'm not sure if that didn't go through and that's
19 why we revisited that once Investigator Nelson
20 came in and we were aware that our liquor license
21 was not updated, but it has since been approved
22 back in late January.

23 CHAIR ANDERSON: So, tell me what is
24 it that you're doing regarding your cameras to
25 ensure that it can record (Simultaneous

1 speaking.)

2 MR. HEIDENBERGER: Yeah, we installed
3 -- so this is like a full service restaurant. We
4 don't have a lot of bar activity or nightlife
5 activity. We're typically closed by midnight on
6 the weekends. We actually got the cameras
7 installed eight months ago because we had been
8 broken into several times at this location, so it
9 was more to prevent crime versus having incidents
10 where we needed to have footage for these type of
11 incidents, but we're working with our company
12 that does the installation of our security camera
13 system to get a new server that will hold footage
14 for a longer period of time, up to that 30 days.

15 CHAIR ANDERSON: I just want to advise
16 you that pursuant to 25-836(g)(1 through 4), that
17 because you have a camera system, you are
18 required to check it to make sure that it's
19 operating appropriately and that it can record
20 for at least 30 days. So, I just want to bring
21 that to your attention that since you have a
22 camera system, you have to ensure that although
23 you're not ordered to do it, but our regulations
24 say if you have it, then you have to ensure that
25 it has the capabilities and that you have to

1 ensure that it is working at all times.

2 MR. HEIDENBERGER: Thank you,
3 Chairman, yeah, I think given this investigation
4 we understand that now.

5 CHAIR ANDERSON: All right, any
6 questions of the licensee by any board members?
7 Any final comments you want to make, Mr.
8 Heidenberger, before I bring this hearing to a
9 close?

10 MR. HEIDENBERGER: Nope. Thank you.

11 CHAIR ANDERSON: Ms. Nelson, thank you
12 for being here. Officer Cain, thank you for
13 being here. Mr. Heidenberger, thank you for
14 being here. The Board will take this matter
15 under advisement. As I said before, I'm glad
16 that you have made the appropriate change to
17 change the name and you have also stated on the
18 record that you are working towards ensuring that
19 the camera is operational and that it can record
20 for 30 days. So, the Board will take this matter
21 under advisement.

22 As stated before, the decision will
23 be one or two, no further action or we will refer
24 this matter over to the Office of Attorney
25 General for further action. Thank you for your

1 appearance today and have a great day. Thank
2 you.

3 MR. HEIDENBERGER: Thank you.

4 INVESTIGATOR NELSON: Have a great
5 one.

6 CHAIR ANDERSON: All right, thank you.

7 (Whereupon, the above-entitled matter
8 went off the record at 11:38 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: Prost Restaurant

Before: DC ABRA

Date: 04-05-23

Place: teleconference

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