

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

 IN THE MATTER OF: :
 :
 ADBHS, LLC., :
 t/a Electric Cool-Aid :
 512 Rhode Island Ave NW :
 Retailer CT - ANC 6E :
 License #112294 :
 :
 (Application for an :
 Entertainment Endorsement:
 and Application for a :
 Change of Hours) :

Wednesday
 May 12, 2021

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

PRESENT:

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

ALSO PRESENT:

- SIMONE ANDREWS, DC ABRA Staff
- EARL JONES, DC ABRA Investigator
- RACHELLE NIGRO, ANC 6E
- BENJAMIN SCHWARTZ, Applicant

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

2 10:59 a.m.

3 CHAIRPERSON ANDERSON: All right.

4 Thank you very much. I am going to change the
5 order on our calendar. So the next case I'm
6 going to call, I'm just switching the first in
7 the two cases, but the next case I'm going to
8 call is a fact -- we're having a series of fact
9 finding hearings.

10 So the first fact finding that I'm
11 going call is Electric Cool-Aid. That's the
12 first case that I'm going to call, Electric Cool-
13 Aid, License Number 112294.

14 Ms. Andrews, can you please elevate
15 the rights of the parties for Electric Cool-Aid?

16 MS. ANDREWS: Sure, stand by.

17 CHAIRPERSON ANDERSON: Thank you.

18 MS. ANDREWS: Mr. Schwartz, your
19 rights have been elevated. Ms. Nigro, your
20 rights have been elevated, Nigro. Mr. Jones,
21 your rights have been elevated. That's all, Mr.
22 Chair.

23 CHAIRPERSON ANDERSON: All right.

24 Thank you very much. Good morning, everyone.
25 I'd like everyone to just introduce themselves

1 for the record. I'll start with the Licensee.
2 Can you please introduce yourself for the record
3 and spell your name also too, please.

4 MR. SCHWARTZ: Good morning, ladies
5 and gentlemen. My name is Benjamin Schwartz, S-
6 C-H-W-A-R-T-Z. I am the owner and general
7 manager of Electric Cool-Aid.

8 CHAIRPERSON ANDERSON: Good morning.
9 Then Ms., I'm sorry, I didn't get your name,
10 ma'am?

11 MS. NIGRO: My name is Rachelle Nigro,
12 I-G-R-O. I am the chair of Advisory
13 Neighborhood Commission 6E.

14 CHAIRPERSON ANDERSON: Good morning,
15 Ms. Nigro.

16 MS. NIGRO: Hi.

17 CHAIRPERSON ANDERSON: And Mr. Jones?

18 MR. JONES: Good morning to the Board.
19 I'm Investigator Earl Jones, E-A-R-L, last name,
20 J-O-N-E-S.

21 CHAIRPERSON ANDERSON: All right.
22 Good morning, Mr. Jones.

23 This is a fact finding hearing that
24 we're having. And one of the reasons why we're
25 having a fact finding hearing, a request was made

1 to the Board on behalf of Electric Cool-Aid
2 regarding a change in hours and also for
3 entertainment endorsement.

4 And one of the reasons why the Board
5 requested this fact finding hearing, I believe it
6 was in 2000 -- it was two years ago, at least, in
7 2019, that Electric Cool-Aid had applied for a
8 license. It's a new venue. They replied for,
9 requested a license. They asked for some
10 specific hours. They had also asked for an
11 entertainment endorsement.

12 The license was being protested. And
13 one of the reasons why the -- at least what was
14 being told to the Board, the granting of the
15 license had been protested by the ANC because
16 this was an outdoor venue, and so the ANC
17 protested the hours that were being requested and
18 also the granting of an entertainment
19 endorsement.

20 The Board, in trying to come up to a,
21 come to a solution that would be a middle ground
22 to try to address some of the community concerns,
23 we did grant the license. However, the Board did
24 limit the hours of operation. And secondly, the
25 Board denied the request for the entertainment

1 endorsement.

2 Subsequently, so that was in 2019, the
3 establishment is now open. And now a request is,
4 we now have another request from the Licensee
5 requesting the initial full hours that they had
6 asked for before and that they had asked for.
7 And now they are also asking for an entertainment
8 endorsement.

9 It's my understanding that the Board,
10 I'm sorry, that the ANC stated that, and sent it
11 in a letter to the Board, they had stated that
12 they did not have a problem with, say, extended
13 hours. However, as far as entertainment was
14 concerned, that they would ask the Board to grant
15 an entertainment endorsement limiting the
16 entertainment to trivia.

17 So that's my understanding of where we
18 are. And so what I'm going to do today is that
19 I'm going to ask you, Mr. Schwartz, to just again
20 tell the Board what it is that you are
21 requesting. Well, you know, I will -- yes, what
22 I'm going to do, just tell us what it is you're
23 requesting.

24 MR. SCHWARTZ: Sure.

25 CHAIRPERSON ANDERSON: And then once

1 you tell us what you're requesting, then I'm
2 going to call Mr. Jones to have him testify about
3 what it is that he found as a result of the
4 request. And then I'll get some input from the
5 ANC.

6 I just want to let everyone know this
7 is a fact finding hearing. No one is under oath.
8 So you are not required to answer any questions,
9 because you're not under oath. This is just a
10 fact finding hearing. The Board is trying to
11 gather information to see whether or not we
12 should grant or deny this request.

13 And I say one of the reasons why we'd
14 only issue this license, this license is not even
15 two years old when the Board had issued a Board
16 order. So what in this changed in the short
17 period of time for the Board to radically change
18 its decision?

19 So we can start off with you, Mr.
20 Schwartz, and let us know, just again, tell us
21 about your business model. I remember when this
22 case was presented, it's an open-air venue. I
23 think a lot of us, at least I can only speak for
24 myself, I was somewhat confused about your
25 business, the type of business that you're

1 operating.

2 And since this is a business that's
3 completely out, it takes place outdoors, so you
4 can just, once again, tell us what your business
5 structure is. How long have you been in
6 operation? And I know that the period, or part
7 of it, you've been operating through COVID, which
8 is a different set of facts to your situation,
9 But just bring us up to date, please.

10 MR. SCHWARTZ: Sure, absolutely. I
11 want to thank the Board for having me here today
12 to answer some questions for you.

13 So we are applying extend our hours.
14 Our current hours are from 11:00 a.m. to 10:30
15 from Monday through Thursday. We're looking to
16 extend that to midnight as the closing and ending
17 operating hours Monday through Thursday. On
18 Friday and Saturday, our current hours are until
19 midnight. We are trying to extend that until
20 2:00 a.m.

21 We are also seeking an entertainment
22 endorsement to do trivia nights, to have a DJ
23 there, an MC, you know, to MC if we'd like to
24 host private events, and things of that nature.

25 How our business works is we are on

1 the corner of 6th and Rhode Island NW. We are an
2 all outdoor venue that sells frozen drinks, and
3 other things in cans, and snacks. We have food
4 trucks that we work with. We currently have a
5 roster of about 10 to 12 food vendors that will
6 vary depending on the day. And we run their menu
7 through our POS.

8 So how the operations work is, it is
9 all outdoor, people come in. I'm sure some of
10 you have seen how lots of things have worked in
11 COVID. People will sit down, and there will be a
12 QR Code. And we have a number of staff on the
13 floor, but people order through the QR code, both
14 for the food truck and for the bar. And we will
15 run the food and drink directly to them.

16 While this was not part of our initial
17 plan and model pre-COVID, we've decided it is a
18 pretty efficient way to run this type of
19 establishment. So we will actually be continuing
20 operations largely the same as we are right now.

21 CHAIRPERSON ANDERSON: Yes. So you're
22 only selling food because of COVID, is that
23 correct? Because I'm just, so you're - Yes, do
24 you serve food? I'm just asking.

25 MR. SCHWARTZ: We do not serve food.

1 We work with food vendors. And that will
2 continue. It's just better for everyone to have
3 the food vendors there. So we will continue to
4 have food vendors without the COVID restrictions.

5 It will be kind of nice for these food
6 vendors to be able to leave before, you know,
7 closing hours. Because as of right now, the food
8 vendor, the food truck is there for the entirety
9 of our open hours. So the only thing that would
10 change with that is that they may leave a little
11 earlier.

12 CHAIRPERSON ANDERSON: So when did the
13 business open?

14 MR. SCHWARTZ: It opening the
15 beginning of July of 2020. And I believe when,
16 you had mentioned when we first applied for this
17 there was some hesitancy from, well, while
18 there's support from the community at large,
19 there was some hesitancy from some neighbors
20 abutting to our alley.

21 I think we've demonstrated over the
22 course of the year what kind of neighbors we are.
23 I myself live about half a block away from the
24 establishment itself. So I'm part of the
25 neighborhood.

1 And I believe, I mean, there were a
2 number of concerns considering the - there are
3 some establishments in this single-member
4 district that have not exactly been ideal
5 neighbors. And I think there was some hesitancy
6 to believe that we were going to follow down that
7 same path.

8 And we have shown to everyone in the
9 community that is not the case. And we have
10 gotten, specifically with this request to amend
11 the hours, the people, the neighbors,
12 specifically actually the ones that testified in
13 the hearing, we had the ANC reach out to them.
14 They are 100 percent in support of extending the
15 hours and adding the entertainment endorsement.

16 CHAIRPERSON ANDERSON: I realize that
17 what - I know that, because of COVID, we have
18 had some truncated hours. So what have been your
19 hours of operation since June of 2000, of

20 MR. SCHWARTZ: I mean, it hasn't
21 really truncated our hours at all except for when
22 the limit was 10:00 p.m. Then we obviously
23 closed at 10:00 p.m. But we have been operating
24 to the full length of our - COVID has not
25 affected our hours at all.

1 CHAIRPERSON ANDERSON: So what were
2 your hours? What are your current hours of
3 operation?

4 MR. SCHWARTZ: From Monday through
5 Thursday from 4:00 p.m. to 10:30, Friday from
6 3:00 p.m. to midnight, Saturday from noon until
7 midnight, Sunday from noon until around 10
8 o'clock.

9 CHAIRPERSON ANDERSON: So currently
10 Friday is the only night that you are open until
11 midnight. Is that correct?

12 MR. SCHWARTZ: Saturday as well,
13 Saturday we are open until --

14 CHAIRPERSON ANDERSON: Oh, I'm sorry.
15 Friday and Saturday you're open until midnight,
16 okay.

17 MR. SCHWARTZ: Correct.

18 CHAIRPERSON ANDERSON: All right, I'm
19 going to change the order again. I apologize.
20 Ms. Nigro, on behalf of the ANC, you tell us
21 where you are, ma'am?

22 MS. NIGRO: So are in support of the
23 changes. We had a meeting. There was a vote of
24 five for the changes and one for not. And there
25 were no abstentions. So as a Commission, we are

1 supportive of the changes in the entertainment,
2 and the trivia night.

3 CHAIRPERSON ANDERSON: There is some
4 misunderstanding between, well, you're saying
5 that as far as entertainment is concerned, you
6 are asking for, you support trivia night.

7 MS. NIGRO: Yes.

8 CHAIRPERSON ANDERSON: Mr. Schwartz is
9 saying that they're asking for a DJ. So that's
10 not, it appears that you're saying that I support
11 entertainment, but it has to be, it's only
12 limited to trivia. And, at least from what I'm
13 hearing from Mr. Schwartz, he's asking for a
14 larger, he's asked for more entertainment. He's
15 just not asking for trivia. He's asking for
16 more.

17 MS. NIGRO: So the only thing that,
18 you know, I have my little letter, that we
19 supported was to allow the Applicant to have live
20 trivia night events.

21 CHAIRPERSON ANDERSON: Right. So you
22 don't support, so you're not supporting --

23 MS. NIGRO: I wouldn't, you know, I
24 don't want to, speaking for the Commission, I
25 wouldn't say we wouldn't. But that's not what we

1 motioned for.

2 CHAIRPERSON ANDERSON: And I guess I'm
3 trying to get some clarification from the ANC.
4 Because remember, when the license was issued --

5 MS. NIGRO: Yes.

6 CHAIRPERSON ANDERSON: -- the ANC was
7 against us providing entertainment endorsement.
8 So the Board did not. So here it is that we're
9 now being asked for entertainment endorsement.
10 And I'm not sure -- I'm just trying to get
11 clarification whether or not the ANC agrees with
12 entertainment. Or is the ANC saying that, yes,
13 we can have entertainment, however, it's only
14 limited to trivia?

15 MS. NIGRO: So you tell me, Mr. Chair,
16 when you issue these rulings, do you just make it
17 that specific, that an Applicant can only do one
18 thing, like, they can only have trivia night? Is
19 that correct? Is that what you're telling him?

20 CHAIRPERSON ANDERSON: No. We issue
21 and entertainment endorsement. And so once that
22 entertainment endorsement is issued, he can have
23 a DJ, he can have a band, he can do whatever it
24 is that is with an entertainment endorsement.

25 The Board normally does not issue -

1 now, if there's a settlement agreement, the
2 parties can jointly agree what type of
3 entertainment that they require. But the Board
4 would not necessarily issue an entertainment
5 endorsement to say it is only limited to trivia.

6 Because that's too - so the parties
7 would have to tell the Board, the parties would
8 have to say to the Board that, okay, this is what
9 we agreed to. And the Board will then either
10 give yes or no. But the Board would not issue an
11 entertainment endorsement to say that it's only
12 limited to trivia unless that is what both
13 parties jointly asked for.

14 MS. NIGRO: So Mr. -

15 CHAIRPERSON ANDERSON: Sorry?

16 MR. SCHWARTZ: Ms. Nigro, I think I
17 have a compromise for us. I think that the big
18 concern with the ANC and everyone was live music.
19 I am very much okay with the stipulation that we
20 do not have live music at the venue if you want.

21 MS. NIGRO: So when your DJ, you'd
22 just -

23 MR. SCHWARTZ: Not a DJ, but an MC.
24 Well, I say DJ, because DJ falls into, you know,
25 a pretty broad category. If there's an event,

1 and there is someone with a laptop that is
2 controlling music, that is considered a DJ for
3 ABC purposes.

4 MS. NIGRO: So, Mr. Chair, I do not
5 have the settlement agreement with me. So I
6 don't know -

7 CHAIRPERSON ANDERSON: I'm sorry,
8 there is no settlement agreement. There's a
9 Board order. And the Board order says -- well,
10 there was no settlement from the ANC. So there
11 was a Board order. The Board order says no
12 entertainment, period.

13 MS. NIGRO: Okay.

14 CHAIRPERSON ANDERSON: Well, so this
15 is a change that has been requested. So in order
16 for them to have the trivia or whatever type of
17 entertainment, somebody to play a piano, someone
18 to sing, then they would have to have an
19 entertainment endorsement.

20 MS. NIGRO: But let me just, for
21 clarification, we could then, we could do a
22 settlement agreement with Electric Cool-Aid being
23 very specific about the type of entertainment?

24 CHAIRPERSON ANDERSON: That is
25 something -

1 MS. NIGRO: Because you're saying,
2 okay, because you're saying if you do this today,
3 this ruling today with this hearing, not that I
4 don't believe you, Mr. Schwartz, but technically
5 they could have then a band, or a DJ, or
6 whatever?

7 CHAIRPERSON ANDERSON: I'll let you
8 know. We're going to take this matter under
9 advisement. So I'm not going to issue a decision
10 today. We're just gathering information.

11 But in the interim, if the parties
12 decide that the request was made, if the parties
13 decide that, okay, they want a settlement, they
14 want to sign a settlement agreement as far as
15 entertainment is concerned, and in a settlement
16 agreement that they state what is their
17 understanding of entertainment, they can submit
18 that to the Board.

19 The Board will review it, and the
20 Board will say yes we can grant it, or no we
21 can't grant it because of some legal issues, and
22 we will advise you on that.

23 But the Board, without having a joint
24 agreement, the Board is not going to say we're
25 going to issue an entertainment endorsement

1 limited to trivia. The Board's not going to do
2 that. That's too specific.

3 MS. NIGRO: Okay.

4 CHAIRPERSON ANDERSON: But you can, at
5 the end of this hearing, both parties can reach
6 out to April Randall. If you don't have her
7 information, I -

8 MS. NIGRO: I have April's
9 information.

10 CHAIRPERSON ANDERSON: Okay, fine. So
11 you can reach out to Ms. Randall. And she can
12 talk to both parties about, if you want to go
13 into a settlement agreement, what that would
14 entail and what it is that other ANC's have done
15 or what is - because my part of it is that, from
16 a legal perspective, whether or not we can say to
17 someone you can only have go-go, or you can only
18 have classical music. The Board is not in a
19 position to set community standards by telling
20 the community you can only have a specific type
21 of entertainment.

22 The parties can come to the Board and
23 say this is what we want to do. Because
24 therefore it's something that they have
25 negotiated. So that's between the parties. But

1 that's a general - and I'm not saying the Board
2 is not going to grant the entertainment
3 endorsement. I'm not saying the Board is going
4 to deny it. I'm just saying that this is just
5 part of what we will discuss.

6 But the only thing I'll say, the Board
7 will not issue an entertainment endorsement
8 limited to trivia. That's the only thing I'm,
9 that's the only definitive statement you will
10 hear from the Board today regarding this.

11 MS. NIGRO: Okay, Mr. Chair. And I
12 thank you for that clarification, because that
13 provided me some education today. And I think,
14 on behalf of the Commission, I would feel
15 comfortable continuing a discussion with Mr.
16 Schwartz so that we have clarification about the
17 type of entertainment, just for the comfort level
18 of the community and for the Commission.

19 CHAIRPERSON ANDERSON: Yes, I
20 understand. I'm sorry, so you're saying as far
21 as the ANC is concerned, the extended hours,
22 Sunday through Thursday to 12:00 a.m. and Friday
23 and Saturday to 2:00 a.m., that the ANC does not
24 object to that. Is that correct?

25 MS. NIGRO: No, we're okay with the

1 hours. What did you say, not object or object?

2 CHAIRPERSON ANDERSON: You have
3 answered. I said that the ANC does not have any
4 objection to that. That's what I said.

5 MS. NIGRO: Okay. No objection.

6 CHAIRPERSON ANDERSON: All right,
7 thank you.

8 Mr. Jones, good morning. I saw that
9 you did some visits to this establishment, sir.
10 Good morning. Can you just tell us when is it
11 you're able to visit the establishment and what
12 it is that you were able, just what it is that
13 you're able to observe, sir?

14 MR. JONES: Good morning, again, to
15 the Board and to the panel. I was able to visit
16 the, I visited the establishment on a number of
17 occasions, however they were closed during the
18 hours that I had gone. But I finally was able to
19 meet with Ms. Angela DelBrocco, who is one of the
20 managing members, on May 7th at approximately
21 9:20 p.m. That was on a Friday.

22 I spoke with her and advised her that
23 I wanted to conduct a regulatory inspection as
24 well as, you know, letting her know of my reason
25 for the visit, which was to discuss the issues of

1 the Board and things that would come up
2 concerning this hearing.

3 At that point, she had started to let
4 me know that she was fully aware of certain
5 restrictions on the license right now. She knew
6 that they could not have, Electric Cool-Aid was
7 not able to have entertainment at this point in
8 time. She knew that the hours were restrictive
9 and that they had been adhering to all of ABRA's
10 regulations as well as the Mayor's Orders.

11 She stated that there are food trucks
12 that are, I guess food truck vendors that are
13 partners with Electric Cool-Aid. They provide
14 and prepare all the food. All of the bills go
15 through the POS system. Patrons are seated at
16 picnic tables under a large tent. What I counted
17 was probably up to 18, 19 picnic tables,
18 something to that degree.

19 But patrons were all spread out over
20 the venue. They were probably more than six feet
21 apart. There was no indoor eating, dining area.
22 The only indoor area appeared to be an area where
23 there were staff members who were taking orders,
24 drink orders, and there were staff that were
25 going to pick up the orders from that area. So

1 there was no enclosed area for dining.

2 Patrons were wearing masks upon
3 getting in, entering. And once they got to their
4 table and received service, and food, they then
5 took off their masks.

6 There was music that was being played,
7 however it was at a very low level. She and I
8 could clearly have conversation throughout any
9 part of the venue without being disturbed by the
10 music. And she showed me the iPad that the music
11 is being played through, so there was no DJ.

12 She advised that they do close at
13 10:30 during the week when it had been up until
14 10 o'clock, until the times had changed, and 12
15 o'clock during the weekends.

16 Other than that, I had conducted a
17 regulatory inspection. All their government
18 licenses were up to date and current. And I had
19 no violations at that point in time.

20 CHAIRPERSON ANDERSON: All right,
21 thank you, Mr. Jones.

22 Do any Board members have any
23 questions of any party, any questions any Board
24 members have of any party?

25 (No audible response.)

1 CHAIRPERSON ANDERSON: Mr. Schwartz,
2 let me just, just let me ask a question. Since
3 this is an establishment that doesn't have an
4 indoors, where's the bathroom? Do you have a
5 bathroom?

6 MR. SCHWARTZ: We do have a bathroom.

7 CHAIRPERSON ANDERSON: I'm told it's
8 not an indoor facility.

9 MR. SCHWARTZ: There is a bathroom.
10 We do not, while we do have buckets on the table
11 for trash, they are for trash only. So how that
12 setup works, we have a bar structure, a
13 semi-enclosed bar structure. In back of the
14 semi-enclosed bar structure is a small 25-foot
15 footprint of the building with the addition in it
16 and an office underneath.

17 CHAIRPERSON ANDERSON: All right.
18 Now, you know, when I was told, I'm like, okay,
19 is there a bathroom? That's just for my
20 edification. It has nothing to, it has no
21 bearing on whatever decision that the Board will
22 or won't issue. I was just curious.

23 MR. SCHWARTZ: Sure.

24 CHAIRPERSON ANDERSON: So how has
25 business been during COVID?

1 MR. SCHWARTZ: Business is not as
2 great as we wanted but close to sustainable. Its
3 part of the reason why we're asking for extending
4 the hours, is that on the week nights is kind of
5 -- it could be the difference between us being
6 able to, you know, pay off all our debt in a
7 timely manner or kind of string it out a little
8 longer.

9 So, I mean, on a Saturday, we will be
10 pretty busy all day. But most days of the week
11 it is, while it's very nice out, we'll have a few
12 people there. It's going well, but not
13 gangbusters.

14 CHAIRPERSON ANDERSON: So who are
15 normally, I mean, who are your patrons? Is it
16 the neighborhood people, or people driving -

17 MR. SCHWARTZ: It is mostly
18 neighborhood people. We've found that almost
19 everyone is walking to the establishment. There
20 are a few people that will come via, you know,
21 via Uber. But it's largely people in the
22 neighborhood.

23 There is a, I mean, we are in a
24 commercial corridor adjacent to a number of
25 residential corridors. So we have, you know,

1 people coming from Logan Circle over, from
2 Bloomingdale over, and from Ledroit down, if you
3 come to it. And I'd say that's the majority of
4 our clientele.

5 CHAIRPERSON ANDERSON: Okay, thank
6 you. One last question for the ANC. You said
7 that the vote was, I think, five to one.

8 MS. NIGRO: Correct.

9 CHAIRPERSON ANDERSON: What we the
10 opinion of the ANC Commissioner that this
11 establishment is located? Was that person's vote
12 - I know the representative. I'm just curious
13 if there was one person. Was it the single
14 member district ANC that covers this
15 establishment, or was it just a different
16 Commissioner who was in the ANC?

17 MS. NIGRO: It was a different
18 Commissioner. Commissioner Lopez is the single
19 member district commissioner for this
20 establishment, and he is in support.

21 CHAIRPERSON ANDERSON: All right,
22 thanks. Do you have any other representation you
23 wish to make today?

24 MR. SCHWARTZ: No.

25 CHAIRPERSON ANDERSON: No? Any other

1 representation you need to make, Mr. Jones?

2 MR. JONES: No, sir.

3 CHAIRPERSON ANDERSON: And Mr.
4 Schwartz, you have the final word. Any
5 representation, any further representation you
6 want to make before we conclude this case?

7 MR. SCHWARTZ: No. Just again, I want
8 to thank the Board for having this today, letting
9 me answer as many questions as I could.

10 I think we are extremely appreciative
11 of the support that we've gotten from the
12 community at large so far. And we would like to
13 continue that in the offer, extend our hours to
14 give our neighborhood and our community a place
15 to go as the night goes on and as restrictions
16 lift.

17 I believe during our ABC Committee
18 hearing with the ANC, and with our single member
19 district Commissioner, we did not, just to go off
20 of what Commissioner Nigro had said, we did not
21 clarify exactly what, that there would be any
22 restrictions to the entertainment endorsement.

23 The ABC Committee did vote to support
24 the entertainment endorsement as is. While we
25 did have a conversation off the record with Ms.

1 Nigro, I guess it's on the record, about what our
2 intentions are to use that entertainment
3 endorsement, it was always our understanding
4 that all entertainment endorsements were all or
5 nothing. And, yes, I believe that concludes any
6 information I have.

7 CHAIRPERSON ANDERSON: All right.
8 Thank you, Mr. Schwartz.

9 The Board will take this matter under
10 advisement, but I'll let the party know that the
11 parties can, you can reach out to, both sides can
12 reach out to Ms. Randall if you want to. If you
13 want to agree to a settlement agreement, you can
14 discuss settlement agreement with the hours and
15 entertainment.

16 And you can provide that to the Board.
17 And the Board will review it and make a
18 determination. Or the Board will make a
19 determination outside of that on the proposal
20 that's made. But I'm just saying you are welcome
21 at any point to a settlement agreement. That's
22 something that you welcome at any point to.

23 So I'm not telling folks that they
24 need to do this. The Board will make a decision.
25 If you don't want the Board to make a decision,

1 then you can forestall the Board from making a
2 decision by saying, oh, by the way, I've already
3 made the decision. We have a settlement
4 agreement. This is what we agreed to. And the
5 Board will always defer to what the neighborhood
6 recommends, requires.

7 MR. SCHWARTZ: Absolutely. Just to be
8 clear to Ms. Nigro, and the Board, it is my
9 understanding that the ANC letter of support is
10 for an entertainment endorsement and the hours.
11 Is that not correct?

12 CHAIRPERSON ANDERSON: No. The ANC,
13 that's why I asked the question. Because I read
14 it. This says that entertainment endorsement for
15 trivia. That's why, it was very specific.

16 (Simultaneous speaking.)

17 CHAIRPERSON ANDERSON: That's why I
18 had asked the question. So it wasn't --

19 MR. SCHWARTZ: Interesting. Okay.

20 MS. NIGRO: So may I say something,
21 Mr. Chair? And, you know, on behalf of the
22 Commission -- because we want to work with you,
23 Mr. Schwartz. You know that.

24 MR. SCHWARTZ: Yes.

25 MS. NIGRO: So, yes, totally. So I

1 think with just further clarification and with
2 Commissioner Lopez, and we're all on the same
3 page, and all that, I don't foresee a problem at
4 all.

5 CHAIRPERSON ANDERSON: All right.

6 MS. NIGRO: And maybe if there is not
7 settlement agreement, you know, we're all into
8 our settlement agreement, so maybe that needs to
9 happen.

10 CHAIRPERSON ANDERSON: But I said the
11 Board will take this matter under advisement.
12 And the Board always supports Licensees and the
13 neighborhood speaking, that they come to an
14 agreement that works for them, and for us not to
15 make a decision, okay. I like the easy way out,
16 okay. I like the easy way out. I don't like to
17 make the decisions.

18 You guys make the hard decisions, and
19 we will say, okay, fine. So if it doesn't work
20 out, you don't come back and say that ABC Board
21 sits downtown. They don't live in my
22 neighborhood. They tell me what I need to do,
23 and I don't like it, okay. That's why. So I try
24 to take the easy way out. You tell us what is it
25 you want.

1 MR. SCHWARTZ: Understood. I thought
2 we were there. Could you just kind of enlighten
3 me on the timeline for when the Board would make
4 a decision --

5 CHAIRPERSON ANDERSON: Yes.

6 MR. SCHWARTZ: -- absent a settlement
7 agreement?

8 CHAIRPERSON ANDERSON: The Board
9 doesn't have a timeline. We'll make a decision.
10 If the parties reach out to the Board through Ms.
11 Randall and say, oh, by the way, we're discussing
12 a settlement agreement, can you give us 30 days
13 to bring you a settlement agreement, or something
14 like that, I mean, we will take our instruction
15 from you.

16 So if you reach out to the Board, and
17 you tell the Board that we're discussing
18 settlement, can you hold on to a decision for
19 whatever period of time, and we'll provide you a
20 settlement or - hold on, hold on. Yes. So it's
21 up to you.

22 So if you tell us that we're going to
23 meet and we're going to discuss, and can you hold
24 on a minute, please, then we'll do that. If not,
25 we'll make our decision. But we're not going to

1 make a decision tomorrow. I'll let you know
2 that.

3 (Laughter.)

4 CHAIRPERSON ANDERSON: So there's no
5 decision issued tomorrow.

6 MR. SCHWARTZ: Okay.

7 CHAIRPERSON ANDERSON: But you do have
8 some time, okay?

9 MR. SCHWARTZ: Understood.

10 MS. NIGRO: Mr. Chair?

11 CHAIRPERSON ANDERSON: Yes, ma'am?

12 MS. NIGRO: We'll be able to get
13 together very quickly with Mr. Schwartz and
14 Commissioner Lopez to work this out. I know this
15 won't be a long process on our side.

16 CHAIRPERSON ANDERSON: All right. And
17 that's one of the reasons why we had this. We
18 scheduled this matter for a fact finding hearing.
19 This is one of the reasons why we scheduled, and
20 we invited the ANC, so everyone knows what's
21 going on so we can have input. So therefore,
22 whatever decision we make, the decision has been
23 made with the input of the community, okay.

24 MR. SCHWARTZ: Understood. I do have
25 one final question.

1 CHAIRPERSON ANDERSON: Yes.

2 MR. SCHWARTZ: The change of hours
3 application and the entertainment endorsement
4 application were separate, separate items on the
5 agenda. Will they be viewed separately, or will
6 they be viewed together?

7 CHAIRPERSON ANDERSON: The Board will
8 make a decision separately on each, so they're
9 not tied together. So you're asking for a change
10 of hours, and you're asking for an entertainment
11 endorsement. And so whatever decision that the
12 Board makes, the Board will make a decision
13 whether or not we approve.

14 Well, this is the process. We will
15 say to the licensing that they can process the
16 change of hours or they can process or not
17 process the entertainment endorsement. And so
18 that's how it is.

19 MR. SCHWARTZ: Okay.

20 CHAIRPERSON ANDERSON: But as I've
21 stated before, and one thing all parties can do,
22 you can always go to the, as in this particular
23 case, when you requested, we got a letter from
24 the ANC. And the ANC said that, and I believe
25 that if there was no caveat on what the ANC

1 stated, it would be smoother. I'm not saying
2 that we would have changed the decision because -
3 - I'll say to it you, my concern is that we only
4 issued this license two years ago.

5 MR. SCHWARTZ: Yes.

6 CHAIRPERSON ANDERSON: And because it
7 was two years ago, and I know that the ANC was
8 very adamant about not having the entertainment
9 endorsement, and also not having the extended
10 hours, so the Board came up with a compromise by
11 shortening the hours. We did not grant the
12 entertainment endorsement because, as you said,
13 this is an open open air venue and it's attached
14 to a residence. So that --

15 MR. SCHWARTZ: Pardon me. It is not
16 attached to a residence.

17 CHAIRPERSON ANDERSON: I'm sorry?

18 MR. SCHWARTZ: It is not attached to
19 any residence.

20 CHAIRPERSON ANDERSON: Well, all
21 right. Well, it's an open air venue, and there
22 are residences close to the venue. And every
23 venue that's an open air, it's difficult to,
24 generally, it's difficult to control noise
25 because it's an open air.

1 Now, if it's a closed venue, then it's
2 different, because you can always close the
3 doors, close the windows, and then the neighbors
4 will not hear it in their homes. But with it
5 being an open air venue, it is difficult for you
6 to control noise. Because noise can travel.

7 And we might say that this is
8 conversational level. But someone else who is in
9 their residence and who has especially, whose
10 hearing is better than ours, will say I can hear
11 this. I can't go to sleep at night, because I'm
12 hearing music or whatever it is that's going on.

13 So that's one of the reasons why it's
14 just more challenging when you're asking for an
15 entertainment endorsement for a venue that's
16 outdoors. So that is why that's a little bit
17 more difficult.

18 But if the parties come to the Board
19 and say that's what it is, we have agreed, then
20 I've always, it has always been, and since I've
21 been Chair of this Board, it has always been my
22 posture that we support settlement agreements.
23 Because at least settlement agreements, because
24 at least the neighbors can get together, the
25 neighbors and the Licensee can get together to

1 say this is what we can live with.

2 MR. SCHWARTZ: Understood.

3 CHAIRPERSON ANDERSON: All right. So
4 thank you very much for your appearance today.
5 And I said before, the Board will take this
6 matter under advisement. And if the parties so
7 desire, they are welcome to reach out to Ms.
8 Randall and let the Board know what it is that
9 they want to do.

10 But we'll make a decision, but it's
11 not going to be tomorrow, okay, just to let you
12 know. All right. So thank you very much and
13 have a great day.

14 MS. NIGRO: Thank you.

15 MR. SCHWARTZ: Thank you.

16 CHAIRPERSON ANDERSON: All right.

17 (Whereupon, the above-entitled matter
18 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: Electric Cool-Aid

Before: DCABRA

Date: 05-12-21

Place: teleconference

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Court Reporter

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