

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF: :
 :
DC Winery, LLC, :
t/a District Winery/Ana :
Restaurant & Bar :
385 Water Street, SE :
Retailer CT - ANC 6D : Show Cause
License #98684 : Hearing
Case #20-CMP-00021 :
 :
(Stored Alcoholic :
Beverages off Premises :
Without Board Approval) :

Wednesday
June 16, 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
JENI HANSEN, Member
JAMES SHORT, JR., Member
ALSO PRESENT:
WALTER ADAMS, DC OAG
SIMONE ANDREWS, DC ABRA Staff
ANDREW KLINE, Licensee's Counsel

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

2 (3:29 p.m.)

3 CHAIRPERSON ANDERSON: All right, the
4 next case for the calendar is Case No. 20-CMP-
5 00021, District Winery/Ana Restaurant and Bar,
6 License No. 98684.

7 Ms. Andrews, can you please elevate
8 the rights of the Licensee? I believe this case
9 is -- Mr. Adams is the council for the
10 Government, so I need you to please elevate the
11 rights of council --

12 MS. ANDREWS: Sure.

13 CHAIRPERSON ANDERSON: -- and whatever
14 witnesses that they might have.

15 MS. ANDREWS: Mr. Kline, your rights
16 have been elevated. That's all, Mr. Chair.

17 CHAIRPERSON ANDERSON: All right.
18 Good afternoon, everyone. All right, this is a
19 show-cause hearing for this matter. Would the
20 parties please introduce themselves for the
21 record? Let's start with Mr. Adams please.

22 MR. ADAMS: Good afternoon, Mr.
23 Chairman. Again, I'm Water Adams representing
24 the District of Columbia.

25 CHAIRPERSON ANDERSON: Good afternoon,

1 Mr. Adams. Mr. Kline, please identify yourself.

2 MR. KLINE: Good afternoon, Mr.
3 Chairman and members of the Board. Andrew Kline
4 on behalf of the Licensee.

5 CHAIRPERSON ANDERSON: All right.
6 Thank you, Mr. Kline. Is the Licensee here?
7 Will the Licensee be joining us or you're just
8 representing the Licensee, sir?

9 MR. KLINE: If Mr. Leventhal or Mr.
10 Connor are here, I'm not sure whether they're
11 joining us. I think they are not.

12 CHAIRPERSON ANDERSON: If they're on,
13 could you please identify yourself in the chat?
14 And then Ms. Andrews will elevate your rights.
15 So please if you're on, please identify yourself
16 in the chat and Ms. Andrews will elevate your
17 rights. So if there is someone else on the line
18 who wishes and needs to participate in the
19 District Winery, Ana Restaurant and Bar matter,
20 please identify yourself in the chat and your
21 rights will be elevated.

22 All right, this is a show-cause
23 hearing -- this is a show-cause hearing. Are
24 there any preliminary matters?

25 MR. ADAMS: There is a preliminary

1 matter, Mr. Chairman. I think Mr. Kline should
2 probably present it. I'll refer to Mr. Kline to
3 discuss the preliminary matter.

4 CHAIRPERSON ANDERSON: And what is the
5 preliminary matter, Mr. Kline?

6 MR. KLINE: Yes. Thank you, Mr.
7 Chairman. Mr. Chairman, the Respondent -- the
8 Licensee will stipulate to the facts in the
9 report. Does not concede liability. There are
10 serious questions concerning the
11 constitutionality of the provision under which
12 the Government seeks to impose liability in this
13 case. We would reserve our right to file
14 proposed citings of fact and conclusions of law.
15 Although with the Board's permission, Mr. Adams
16 and I thought it might be more efficient and
17 better elucidate the issues if we handled this as
18 a traditional briefing situation where rather
19 than simultaneously filing proposed findings of
20 facts and conclusions of law, the Applicant would
21 file its legal argument concerning the
22 constitutionality. The Government would respond.
23 And we would reply.

24 In terms of findings of fact, there's
25 no dispute about facts at this point, so what

1 we're really talking about are conclusions of
2 law, which we think as lawyers might more
3 properly be advanced in a brief style filing
4 rather than proposed findings. I don't think
5 it's much different, but just in terms of doing
6 it, we thought that might be the best way to
7 handle it.

8 CHAIRPERSON ANDERSON: And so what
9 would be the schedule once -- What would be the
10 schedule to provide this brief?

11 MR. KLINE: Mr. Adams and I did not
12 discuss that, but I would propose 30 days and
13 then an appropriate response period, 30 days for
14 --

15 (Simultaneous speaking.)

16 MR. ADAMS: To be honest, Mr. Chairman
17 and Mr. Kline, I wouldn't even be opposed to 45
18 days and 45 days, but I'll leave it to the
19 Board's discretion in terms of --

20 (Simultaneous speaking.)

21 MR. KLINE: I'm fine with that given
22 that we're in the middle of summer. I would be
23 perfectly amenable to that.

24 CHAIRPERSON ANDERSON: All right, well
25 I think what -- Hold on. I don't have a problem

1 with that schedule, but what I would like to
2 occur since I guess we're not going to hear any
3 testimony today -- So I would like Mr. Adams to
4 do is to put on the record what this case is
5 about.

6 MR. ADAMS: Sure.

7 CHAIRPERSON ANDERSON: And then Mr.
8 Kline, then you could put -- Once Mr. Adams has
9 informed -- clarified the record what the facts
10 are, why we're here today, and then you can state
11 your position as far as the factual allegations.

12 MR. KLINE: Sure.

13 MR. ADAMS: All right. Thank you, Mr.
14 Chairman. This case is regarding DC Code 25-
15 754B, which is the fact that a --

16 (Simultaneous speaking.)

17 CHAIRPERSON ANDERSON: Mr. Adams, what
18 statute did you say?

19 MR. ADAMS: 25-754, Subjection B. And
20 that specific provision covers whether
21 establishments can store alcoholic beverages in
22 premises outside of the District of Columbia.
23 And so what's not really disputed is -- Well,
24 what is not disputed, District Winery, Ana
25 Restaurant is located in the Navy Yard at 385

1 Water Street SE. And they have, you know, a
2 pretty large facility. And they make wine there
3 at that facility.

4 However, in 2019, Investigator Puente
5 learned that this establishment was storing in
6 its alcohol and its wine bottles outside of the
7 District. And upon further investigation --
8 Essentially we'll be -- well as part of the
9 investigation, Investigator Puente and
10 Supervisory Investigator Peru (phonetic) learned
11 that specifically District Winery stores its --
12 they bottle their wine and then they ship them
13 out to a warehouse out in Sterling, Virginia in
14 which they store all their wine there. And
15 whenever they do need wine, the wine is actually
16 imported from this warehouse in Virginia.

17 I believe the actual name of this
18 facility is -- and I apologize -- is
19 International -- I apologize. I can't really
20 find it right now -- International Sellers --
21 International Sellers, which is out in -- which
22 is located out in the state of Virginia. So you
23 know, upon going there, they were able to
24 ascertain that this place that's near the Dallas
25 Airport had multiple rows of wine bottles that

1 were for District Winery at this location,
2 including really thousands of bottles -- over
3 \$168,000 of bottles of wine and 14,000 cases of
4 wine were in this facility.

5 So based upon those facts which are
6 pretty clear, as well as evidence that there are
7 documents from District International Sellers
8 that shows that when the District Winery was
9 actually imported into the -- sorry -- was
10 actually exported into the facility, as well as
11 the permits documents and other records that are
12 within the investigative report that shows when
13 District Winery actually receives the orders,
14 their own wine bottles back from this facility,
15 there is more sufficient evidence to prove that
16 this establishment that stores these alcoholic
17 beverages outside the District.

18 CHAIRPERSON ANDERSON: That's it?

19 MR. ADAMS: That is all, Your Honor --
20 I mean, Mr. Chairman.

21 CHAIRPERSON ANDERSON: Anything you
22 need to add -- factually you need to add, Mr.
23 Kline? No, we can't hear you, sir?

24 MR. KLINE: I think the facts are very
25 straightforward as laid out by Mr. Adams.

1 CHAIRPERSON ANDERSON: All right. So
2 the parties have -- Mr. Adams investigated the
3 factual basis of this claim. The Licensee does
4 not contest the facts. And so both parties agree
5 that -- any other representation that you need to
6 make before I close the record?

7 MR. ADAMS: Yes, Mr. Chairman. One
8 thing I'll state is that based upon the facts, we
9 believe that there's a prima -- that the Board
10 has a prima facie basis to find that there's
11 substantial evidence of a violation of DC Code
12 25-754, Subsection B.

13 CHAIRPERSON ANDERSON: Mr. Kline, any
14 final comments you want to make before I close
15 the record?

16 MR. KLINE: No, just to -- So we don't
17 bury the lead or pleadings, we'll argue that this
18 kind of provision violates the Commerce Clause of
19 the United States Constitution under Tennessee
20 Wine and Spirits Retailers Association versus
21 Russell, 139 Supreme Court 2449, decided in 2019.
22 It impacts Interstate Commerce and the provision
23 fails to advance a legitimate local purpose and
24 therefore violates the Commerce Clause. But we
25 will flush that out in detail in the papers.

1 CHAIRPERSON ANDERSON: I was going to
2 ask you, Mr. Kline, to -- if you could tell me
3 the factual basis of that case. But however, I
4 know that once I receive the respective briefs, I
5 will be educated. And I like the fact that you
6 said it was a Supreme Court case because I was
7 going to say if this was a Tennessee local case,
8 then it's constructive. It's not binding on the
9 rest of the country. But since you talked about
10 the Supreme, we hope in these days that their
11 decisions are binding on the rest of the country.
12 Because as you know, as attorneys, we argue base
13 on precedential value based on how the Court
14 rules. So we use that to pinpoint how we believe
15 the Court will rule in a similar factual case.
16 So I'm hoping that, that remains the same.

17 (Simultaneous speaking.)

18 MR. ADAMS: -- Their word is the last
19 word.

20 CHAIRPERSON ANDERSON: Well as
21 attorneys, we hope that the Supreme Court, once
22 they speak, that is the last word on the subject.
23 All right, I have nothing else to say regarding
24 that matter.

25 All right, the record will remain open

1 for -- I believe then the record will remain open
2 for 90 days; for 45 days for the Applicant to
3 provide their brief and the Government will have
4 45 days to respond to that. So it will be 90
5 days then that the record will remain open until
6 we have received both briefs. Yes, Mr. Kline?

7 MR. KLINE: We would ask for a slight
8 amendment to that in that we begin 15 days for a
9 reply if we deem that, that will further educate
10 the Board and advance the legal argument.

11 CHAIRPERSON ANDERSON: All right. So
12 you're saying that 45 days for the Licensee to
13 provide their brief -- their closing argument
14 brief. The Government will have 45 days to
15 respond. And that if the Applicant so desires,
16 they will be having -- they'll have 15 days to
17 write a responsive brief. And is that the -- Is
18 that the extent of it? Because we need to end it
19 at some point because if we keep on going back
20 forth, then we'll -- So basically the Licensee
21 will have the last say in the sense that 15 days
22 after the Government has responded, then their
23 responsive brief will be due. Is that correct?

24 MR. KLINE: Yes, thank you.

25 MR. ADAMS: The District consents to

1 that proposal.

2 CHAIRPERSON ANDERSON: All right.
3 Thank you, Mr. Adams. Okay, as Chairperson of
4 the Alcoholic Beverage Control Board for the
5 District of Columbia in accordance with DC
6 Official Code Section 2574B of the Open Meetings
7 Act, I move that ABC Board hold a closed meeting
8 for the purpose of seeking legal advice from our
9 council on Case No. 20-CMP-0021, District
10 Wintery, trade name Ana Restaurant and Bar.
11 Pursuant DC to Official Code Section 2574B of
12 the Open Meetings and Act and deliberating upon
13 Case No. 20-CMP-00021 District Winery, trade name
14 Ana Restaurant and Bar for the reasons cited in
15 DC Official Code Section 2574B13 of the Open
16 Meetings Act. Is there a second?

17 MEMBER SHORT: Mr. Short, I second.

18 CHAIRPERSON ANDERSON: Mr. Short has
19 seconded the motion. I will now take a roll call
20 vote for the motion now that's it's been properly
21 seconded. Mr. Short?

22 MEMBER SHORT: Mr. Short, I agree.

23 CHAIRPERSON ANDERSON: Mr. Cato?

24 MEMBER CATO: Bobby Cato, I agree.

25 CHAIRPERSON ANDERSON: Ms. Crockett?

1 MEMBER CROCKETT: Rafi Crockett, I
2 agree.

3 CHAIRPERSON ANDERSON: Ms. Hansen?

4 MEMBER HANSEN: Jeni Hansen, I agree.

5 CHAIRPERSON ANDERSON: And Mr.
6 Anderson, I agree. As it appears that the motion
7 has passed, 5-0-0, I hereby give notice that the
8 ABC Board will recess these proceedings to hold a
9 closed meeting in the ABC Board Conference Room
10 pursuant to Section 2575B of the Open Meetings
11 Act.

12 I thank you for the presentation
13 today. And the Board looks forward to reading
14 the briefs and responsive briefs regarding this
15 unique issue. Thank you very much and have a
16 good day.

17 MR. ADAMS: The District does not look
18 forward to writing this (audio interference).

19 CHAIRPERSON ANDERSON: Mr. Adams, you
20 know, as we know, this is a novel area. It's a
21 novel area and I know as attorneys -- attorney
22 enjoy novel (audio interference) areas.

23 MR. ADAMS: Okay, I take it back. I
24 take it back, Mr. Chairman.

25 CHAIRPERSON ANDERSON: It could be --

1 It could be a case, Mr. Adams, that maybe we have
2 to go back to the Supreme's and your name will be
3 there that it's going (audio interference).

4 Unfortunately we're too low on the totem pole to
5 argue the case, but at least we'll know that our
6 names are involved somewhat when it's argued up
7 the chain if it blows there.

8 MR. ADAMS: Okay, that helps.

9 (Simultaneous speaking.)

10 CHAIRPERSON ANDERSON: From that
11 perspective, I hear you.

12 (Simultaneous speaking.)

13 MR. ADAMS: Take care.

14 CHAIRPERSON ANDERSON: Bye-bye.

15 (Whereupon, the above-entitled matter
16 went off the record at 3:46 pm.)

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In the matter of: District Winery

Before: DCABRA

Date: 06-16-21

Place: teleconference

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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