

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

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IN THE MATTER OF:           :
                             :
Elements DC, LLC           :
t/a Elements DC           :
1355 U Street NW         : Protest Hearing
License #11877           : (Status)
Retailer CT - ANC 1B     :
Case #21-PRO-00067      :
                             :
(Application for New     :
License)                 :
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Wednesday
 October 6, 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
 ELWYN FERRIS, Protestant, Shaw Dupont Citizens
 Alliance
 AUSTIN HAAG, Applicant
 SABEL HARRIS, ANC 1B
 ELY HURWITZ, Applicant Counsel
 BRIAN RACILLA, Protestant

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

2 10:36 a.m.

3 CHAIRPERSON ANDERSON: The next case
4 on our calendar is case number 21-PRO-00067,
5 Elements D.C., license number 11877. Ms.
6 Andrews, can you please elevate the parties in
7 this case please?

8 MS. ANDREWS: Sure. Mr. Chair, this
9 is for Elements D.C.?

10 CHAIRPERSON ANDERSON: Yes, the first
11 case is Elements D.C., yes.

12 MS. ANDREWS: Okay, stand by.

13 CHAIRPERSON ANDERSON: Thank you.

14 MS. ANDREWS: (Pause.) Commissioner
15 Harris, your rights have been elevated. (Pause.)
16 Mr. Racilla, your rights have been elevated.
17 (Pause.) Mr. Chair, we have a few call ins. I
18 just need to verify the phone numbers.

19 CHAIRPERSON ANDERSON: Oh sure.

20 MS. ANDREWS: Stand by. (Pause.)
21 That's all I have, Mr. Chair.

22 CHAIRPERSON ANDERSON: Good morning.
23 Let's start with the parties identifying
24 themselves for the record. Mr. Racilla, can you
25 please spell and state your name for the record

1 please and your affiliation with this case?

2 MR. RACILLA: Sure. My name is Brian
3 Racilla last name R-A-C-I-L-L-A and I'm the
4 representative for the group of five plus. Five
5 or more, for both the Elements and Alchemist
6 cases.

7 CHAIRPERSON ANDERSON: Okay and Ms.
8 Harris?

9 MS. HARRIS: Hi, this is Commissioner
10 Sabel Harris, that's S-A-B as in boy-E-L H-A-R-R-
11 I-S and I'm here for ANC 1B.

12 CHAIRPERSON ANDERSON: Okay, all
13 right. Ms. Andrews, who is the licensee in this
14 case? Do you know the name of the licensee that
15 you have been operating--I don't have the
16 information in front of me. So, who is the
17 person that the group of five and ANC have been
18 negotiating with?

19 MS. ANDREWS: We have been talking
20 with Mr. Ely Hurwitz, who is the attorney
21 representing Elements and the Alchemist and the
22 owner is Austin Haag.

23 CHAIRPERSON ANDERSON: Now, if there
24 a representative representing Elements, can you
25 please identify yourself in the chat.

1 MS. ANDREWS: Oh, Mr. Chair, I do see
2 an Austin Haag has notified me that he belongs to
3 this case. I am going to go ahead and elevate
4 his rights.

5 CHAIRPERSON ANDERSON: Thank you. If
6 there's anyone else, if you're here for the
7 Elements, can you please identify yourself in the
8 chat? (Pause.)

9 MR. HAAG: Hello, can you hear me?

10 CHAIRPERSON ANDERSON: Yes, I can hear
11 you and can you please--

12 MR. HAAG: Sir, my attorney, Ely, is
13 trying to get on. He's having some technical
14 difficulties.

15 CHAIRPERSON ANDERSON: All right.
16 (Simultaneous speaking.)

17 MR. HAAG: I have him here on speaker,
18 sir, if that's okay.

19 CHAIRPERSON ANDERSON: No, that is
20 fine, sir. So can you spell and state your name
21 for the record please?

22 MR. HAAG: Yes, my name is Austin Haag
23 A-U-S-T-I-N and then Haag H-A-A-G.

24 CHAIRPERSON ANDERSON: And who are
25 you, sir?

1 MR. HAAG: I am the owner of Elements
2 as well as Alchemist.

3 CHAIRPERSON ANDERSON: Okay, this
4 hearing is on Elements, so we're just talking
5 about Elements at the moment.

6 MR. HAAG: Yes, sir.

7 CHAIRPERSON ANDERSON: And, sir,
8 you're saying that your attorney is having some
9 technical difficulties?

10 MR. HAAG: Yes, sir. Can you hear
11 him?

12 CHAIRPERSON ANDERSON: I can hear you.
13 I'm just saying I'm waiting for your attorney--

14 MS. ANDREWS: I'm sorry, Mr. Chair.
15 There is another person that acknowledged
16 themselves, Mr. Elwyn Ferris (Simultaneous
17 speaking.)

18 CHAIRPERSON ANDERSON: Who is your
19 attorney, Mr. Haag?

20 MR. HAAG: Ely Hurwitz.

21 CHAIRPERSON ANDERSON: If he is unable
22 to participate by video, there's a call in. Are
23 you able to place his telephone number in the
24 chat and so therefore if--

25 MR. HAAG: Yes, sir. I'll do that

1 right now.

2 CHAIRPERSON ANDERSON: Yes. And so
3 then we can elevate his rights.

4 MR. HAAG: Yes, sir. I'm putting the
5 number in right now.

6 CHAIRPERSON ANDERSON: All right.
7 (Pause.) And who is Mr. Ferris? Mr. Ferris, can
8 you please spell and state your name for the
9 record and identify yourself, please?

10 MR. FERRIS: Yes, Elwyn Ferris on
11 behalf of the Shaw Dupont Citizens Alliance. The
12 name is spelled E-L-W-Y-N last name F-E-R-R-I-S.

13 CHAIRPERSON ANDERSON: And you're from
14 where? What affiliation?

15 MR. FERRIS: I'm representing the Shaw
16 Dupont Citizens Alliance.

17 (Pause.)

18 CHAIRPERSON ANDERSON: This we're
19 doing is being protested by the ANC, the group of
20 five or more and the Shaw Dupont Citizens
21 Alliance, is that correct?

22 MR. FERRIS: Yes. For SDCA, yes.

23 CHAIRPERSON ANDERSON: Yes, you're
24 one of the protesting, is that correct?

25 MR. FERRIS: That would be correct.

1 CHAIRPERSON ANDERSON: All right,
2 thank you.

3 MR. HAAG: Excuse me, Mr. Anderson,
4 I'm not able to put the phone number into the
5 chat. It's not letting me enter it. Am I?

6 CHAIRPERSON ANDERSON: Oh, hold on a
7 minute, please, hold on. Ms. Andrews, can you
8 assist Mr. Haag in how to put it. I don't want
9 to put the number because this is on the world
10 wide web, so I'm trying to figure out how can he
11 provide you with the number.

12 MS. ANDREWS: Mr. Haag, if there is a
13 Q&A feature, you can use that. The chat feature
14 if you just enter the phone number and press your
15 enter, it'll send, once you're done.

16 MR. HAAG: Sure. I see that. For
17 some reason, I have it here in the chat and I'm
18 clicking enter, but it's not going into the chat.

19 MS. ANDREWS: Okay. I will provide my
20 e-mail address to you.

21 MR. HAAG: Okay.

22 MS. ANDREWS: Stand by and you can e-
23 mail it to me. (Pause.)

24 CHAIRPERSON ANDERSON: All right, Mr.
25 Haag, we are having some issues with your

1 attorney. Do you want to proceed without him or-
2 -

3 MR. HAAG: Yes.

4 CHAIRPERSON ANDERSON: Do you want to
5 wait? All right, so you're saying we can proceed
6 without him if he is unable to get on, is that
7 what you're saying?

8 MR. HAAG: Yes.

9 CHAIRPERSON ANDERSON: All right, so
10 I'll give him another minute. Are you able to
11 communicate with him?

12 MR. HAAG: I am, yes, sir.

13 CHAIRPERSON ANDERSON: So, I'll give
14 you another minute. It's 10:46 so I'll give it
15 until 10:47. If he's not on, then we're going to
16 move on because this is just a status call so
17 this not.

18 MR. HAAG: Understood, sir. Feel free
19 to move on. I'll just update him afterwards.

20 CHAIRPERSON ANDERSON: I'm sorry,
21 what's his name again please?

22 MR. HAAG: Ely Hurwitz.

23 CHAIRPERSON ANDERSON: Ely
24 (Simultaneous speaking.)

25 MR. HAAG: Ely, so E-L-Y and then

1 Hurwits H-U-R-W-I-T-S.

2 MS. ANDREWS: I see Mr. Hurwitz has
3 joined. I'm going to go ahead and make him a
4 panelist.

5 CHAIRPERSON ANDERSON: All right,
6 thank you. (Pause.) Mr. Hurwitz? You can
7 unmute your phone please, sir. (Pause.) Mr.
8 Hurwitz, can you please spell and state your name
9 for the record?

10 MR. HURWITZ: Hello, can you hear me?

11 CHAIRPERSON ANDERSON: I can hear you,
12 sir. Can you please spell and state your name
13 for the record and your relationship.

14 MR. HURWITZ: Yes, hi. My name is Ely
15 Hurwitz. I'm on the phone here. I'm the
16 attorney for the Elements and the Alchemist.

17 CHAIRPERSON ANDERSON: This case is on
18 the Elements, sir. Can you spell your name for
19 the record please, sir?

20 MR. HURWITZ: Yes, E-L-Y H-U-R-W-I-T-
21 Z.

22 CHAIRPERSON ANDERSON: Thank you, Mr.
23 Hurwitz. All right. Good morning, everyone. As
24 I stated before this is a protest hearing status
25 and so let me start with you, Mr. Hurwitz. Are

1 there any preliminary matters you need to bring
2 to the attention of the Board? Again, this is
3 not substantive this is just preliminary. Do you
4 have any preliminary issues that you want to make
5 us aware of? (Pause.) Mr. Hurwitz? (Pause.)
6 Mr. Hurwitz? (Pause.) Mr. Hurwitz? Mr. Haag?

7 MR. HAAG: Yes, sir.

8 CHAIRPERSON ANDERSON: I am asking
9 your attorney and so I'll ask you, are there any
10 preliminary issues you want to bring to the
11 attention of the Board? Not any substantive
12 issues (Simultaneous speaking.)

13 MR. HAAG: A settlement agreement
14 draft.

15 CHAIRPERSON ANDERSON: Okay so--

16 MS. ANDREWS: I'm sorry to interrupt,
17 Mr. Chair, Mr. Hurwitz, I am going to unmute you.
18 You have to stop hitting mute.

19 MR. HURWITZ: Okay.

20 MS. ANDREWS: Okay, go ahead.

21 MR. HURWITZ: Thank you.

22 CHAIRPERSON ANDERSON: All right, Mr.
23 Hurwitz.

24 MR. HURWITZ: Yes, sir.

25 CHAIRPERSON ANDERSON: Since you're

1 Mr. Haag's representative, the question I'm
2 asking are there any preliminary matters you want
3 to bring to the attention of the Board? Not
4 substantive, just preliminary.

5 MR. HURWITZ: No there are not, sir.

6 CHAIRPERSON ANDERSON: I think that
7 Mr. Haag was saying something about a settlement
8 agreement. I guess (Simultaneous speaking.) Go
9 ahead, sir.

10 MR. HURWITZ: We have been in the
11 process of trying to negotiate a voluntary
12 settlement agreement with the ANC and the
13 community, but we have not been able to get a
14 draft of the document from them yet.

15 CHAIRPERSON ANDERSON: Okay, that's
16 fine. All right, so let me ask Commissioner
17 Harris, any preliminary issues you want to bring
18 to the attention of the Board?

19 MS. HARRIS: No, we are in the process
20 of working through the draft and should have
21 something over to Mr. Haag and Mr. Hurwitz soon.

22 CHAIRPERSON ANDERSON: And what about
23 Mr. Racilla? Any preliminary matters you want to
24 bring to the Board?

25 MR. RACILLA: Nothing beyond what's

1 already been stated by the other participants.

2 CHAIRPERSON ANDERSON: And, Mr.
3 Ferris? Mr. Ferris?

4 MR. FERRIS: Yes, I'm sorry, Chairman
5 Donovan. We don't have anything, any issues at
6 this time.

7 CHAIRPERSON ANDERSON: All right.
8 Now, okay, so this matter has been protested by
9 the ANC, the group of five or more and the Dupont
10 Shaw Citizens Association. I just want to inform
11 Mr. Racilla that if a settlement agreement is--
12 I'm just saying this procedurally. If a
13 settlement agreement is reached between the ANC
14 and the Applicant, if you're not a part of it,
15 then unfortunately, your protest will fall. Just
16 as a matter of law. I just wanted to say that if
17 you are not a part of it. If Mr. Ferris,
18 however, is not a part of the settlement
19 agreement, then we will move forward with a
20 hearing. If Mr. Ferris' organization is not a
21 part of the settlement agreement. It's just
22 that's how the law states, so the Board cannot
23 force the licensee to make a group a part of a
24 settlement agreement. So just as an FYI, okay?
25 All right, since there are no

1 procedural matters that should be brought to the
2 attention of the Board, this matter is scheduled
3 for--if the matter is not settled, this matter
4 will be scheduled for a protest hearing on
5 November 17, 2021 at 1:30 p.m. The Board
6 supports settlement agreements. The Board would
7 prefer if the parties settled the matter because
8 if the matter is settled, then at least we all
9 know that this is your community and you have
10 come to an agreement that is satisfactory to both
11 the community and the licensee.

12 If the Board has to make a decision
13 then one side or the other is going to be happy
14 and the other side is going to be upset, but if
15 we have to make a decision, we will make it.
16 Just want to let you know that we do, however,
17 support having these matters settled if the
18 parties can settle it. All right?

19 So now that we have scheduled this
20 matter for a protest hearing, there are a few
21 things that I would like to instruct you about
22 because the Board's practice under the public
23 emergency has changed. As you know, the Board's
24 hearings are conducted virtually so it is more
25 important than ever that protest hearings are

1 focused and address only those issues that are in
2 protest.

3 Following this hearing, you will
4 receive an e-mail from our general counsel's
5 office that will include a copy of the protest
6 information form and a copy of the exhibit form
7 as well as specific instructions for the hearing.
8 You're required to complete and submit the
9 protest information form kit and exhibits form at
10 least seven days before the date of the hearing.
11 If we do not receive a copy of your forms seven
12 days before the hearing, your application or your
13 protest may be subject to dismissal. These
14 documents not only need to be submitted to
15 ABRA.legal.dc.gov but to the opposing party as
16 well. Please know that these documents greatly
17 assist the Board in narrowing the protest issues
18 facilitating the process and keeping the parties
19 on point during the hearing.

20 Also, each side is limited to no more
21 than five witnesses and you will only have 60
22 minutes to present your case. This includes all
23 direct and cross examination of witnesses. The
24 Board does not intend to hear testimony on
25 matters that are not relevant to those issues

1 that are not being protested nor will the Board
2 tolerate repetitive testimony. Are there any
3 questions by anyone? (Pause.) Hearing none, we
4 thank you greatly for your cooperation. If you
5 have any questions leading up to the hearing,
6 please do not hesitate to contact our legal
7 office and they will provide whatever assistance
8 that you require to walk you through the process.
9 Thank you for participation here today.

10 The Board supports settlements. If
11 this matter cannot be settled, we will then see
12 you for this protest hearing on November 17, 2021
13 at 1:30 p.m.

14 Thank you very much for your
15 participation today and if there are parties who
16 are not a part of the other case, you can leave
17 this call and it is my understanding that some of
18 the parties are the same for the following case.
19 If it is the same party then you can stay, but
20 within our call.

21 (Whereupon, the above-entitled matter
22 went off the record at 10:55 a.m.)
23
24
25

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This is to certify that the foregoing transcript

In the matter of: Elements DC

Before: DCABRA

Date: 10-06-21

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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