

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

2 10:12 a.m.

3 MS. FLETCHER: I'm LaVerne Fletcher.

4 I'm conducting the roll call hearing as the
5 Board's agent.

6 I'm calling Case No. 21-PRO-00074.

7 This is Creole on 14th, LLC, trading as Creole on
8 14th, 3345 14th Street, Northwest, License No.
9 ABRA-115577.

10 This is a retailer Class CR, for a
11 substantial change to change the hours of
12 operation; add dancing and the cover charge to
13 the entertainment endorsement. The protest
14 issues are adverse impact on peace, order, and
15 quiet.

16 And thank you for waiting.

17 The Applicant, Jeffeary Miskiri,
18 actually appeared in person. So, he was out in
19 the lobby, which is where I was, which is why we
20 had the delay. He wasn't able to find the link
21 to the roll call hearing this morning. So, he
22 made his presence in person. Therefore, the
23 application will not be dismissed because,
24 although he's not present online, he did appear
25 today.

1 He also informed me that he and the
2 ANC have entered into a Settlement Agreement
3 which was forwarded to him this morning by
4 ANC 1A.

5 Mr. Schwartz, were you aware of that?

6 MR. SCHWARTZ: No, I was not aware of
7 that.

8 MS. FLETCHER: And that's okay. It
9 was just FYI.

10 I also have received an email
11 indicating that ANC 1A was not able to locate
12 their link this morning. So, I have attempted to
13 send it. I'm not sure if I was success or not,
14 but that would explain why ANC 1A is not here.
15 Therefore, ANC 1A will not be dismissed for not
16 appearing. They've tried to contact us this
17 morning to say that they didn't receive a copy of
18 the link.

19 So, that leaves us with Tivoli
20 Partners Commercial, LLC, care of Horning
21 Brothers. And, Mr. Schwartz, you're representing
22 Tivoli Partners?

23 MR. SCHWARTZ: Yes, I am.

24 MS. FLETCHER: Tivoli Partners, so we
25 have the protest from Tivoli Partners. The

1 protest filed by Tivoli Partners appears to be a
2 dispute between the landlord and the tenant. And
3 landlord and tenant disputes cannot be resolved
4 through ABRA. And so, landlords and tenants
5 don't have standing to file protests.

6 MR. SCHWARTZ: But we're also a tenant
7 in the building. We have our offices in the
8 building, and we are protesting because of the
9 noise that comes from the establishment and it
10 affects all the tenants in the building.

11 MS. FLETCHER: Exactly. And so, I
12 actually understand that, too, Mr. Schwartz. The
13 only way that Tivoli Partners Commercial could
14 become a Protestant is if they are abutting
15 property owners, if your property abuts the
16 property of Creole on 14th Street. And that
17 wasn't indicated in the protest letter, but is
18 your building abutting?

19 MR. SCHWARTZ: We're in the same
20 building. In other words, they're on the ground
21 floor retail, but we are in the building above
22 them on the third floor.

23 MS. FLETCHER: So, there's a floor
24 between you?

25 MR. SCHWARTZ: That, I don't know,

1 technically. I think it's -- I'm not sure.

2 MS. FLETCHER: Uh-hum. Okay. Well,
3 for the purpose of the roll call hearing, Mr.
4 Schwartz, I'll have to dismiss Tivoli Partners
5 Commercial, LLC, care of Horning Brothers, as a
6 Protestant because this appears to be a landlord-
7 tenant dispute, and the properties don't appear
8 to abut.

9 But what's going to happen is the
10 Board will issue an order dismissing the protest
11 for the reasons I just stated, and you'll have an
12 opportunity to explain to the Board why Tivoli
13 Partners Commercial, LLC, should be a Protestant,
14 and the Board will make a decision regarding
15 that.

16 MR. SCHWARTZ: The only reason I can't
17 make a protest is because I own the abutting the
18 property. In other words, I own the rest of the
19 shopping center that they're in. So, I own all
20 the property that abuts them and that's the
21 nature of the complaint.

22 MS. FLETCHER: Well, the complaint
23 talks about a landlord-tenant dispute, and
24 there's no discussion about any abutting
25 properties. But if that is the case, Mr.

1 Schwartz --

2 MR. SCHWARTZ: Yes.

3 MS. FLETCHER: -- you can make that
4 case when you respond, and the Board will take
5 that into consideration.

6 MR. SCHWARTZ: I thought I did. If
7 you look at the protest, I'm complaining about
8 the decibel levels of the music coming into the
9 adjacent properties, which I own.

10 MS. FLETCHER: Uh-hum, yeah.

11 MR. SCHWARTZ: I own the property next
12 door, which is the Hispanic Theater.

13 MS. FLETCHER: The GALA? Uh-hum.

14 MR. SCHWARTZ: Yeah, GALA. GALA. So,
15 we own GALA. So, we are leasing it to GALA, and
16 GALA complains to us over and over again about
17 the noise that comes into their theater while
18 they're trying to have a performance.

19 MS. FLETCHER: Uh-hum.

20 MR. SCHWARTZ: And I articulate that
21 in my protest letter.

22 MS. FLETCHER: Yes, you do.

23 And let me just for the court
24 reporter, GALA is spelled G-A-L-A, capital G,
25 capital A, capital L, capital A, all capital

1 letters. It's the GALA Hispanic Theater.

2 And so, Mr. Schwartz, and I'm going to
3 get to the GALA Hispanic Theater in a moment
4 because they also filed a protest.

5 The Tivoli Partners Commercial, LLC,
6 cannot be considered a Protestant at this stage
7 because, from reading the protest letter, it
8 appears to be a landlord-tenant dispute. As a
9 matter of fact, it's discussed somewhere in your
10 protest letter that this is a landlord-tenant
11 dispute. And there is some language in there
12 related to the lease as well.

13 MR. SCHWARTZ: Yes, yes. That is
14 true, but it affects the entire center, though.
15 See, we own --

16 MS. FLETCHER: Yeah.

17 MR. SCHWARTZ: We own the entire
18 center, and I'm saying that the patrons that are
19 going there late at night are disrupting the
20 stores next door, the rest of our property. So,
21 I am an adjacent -- I rent all of the adjacent
22 property around this particular establishment.

23 MS. FLETCHER: Well, you'll have an
24 opportunity, Mr. Schwartz, to demonstrate to the
25 Board that you're an abutting property owner. It

1 just doesn't appear to be that way at this stage.
2 But if that's the case --

3 MR. SCHWARTZ: Yeah.

4 MS. FLETCHER: -- you'll have a chance
5 to explain that to the Board and, also, that this
6 is not a landlord-tenant dispute. You can
7 explain to the ABC Board why it's not a landlord-
8 tenant dispute, and they'll take that into
9 consideration.

10 MR. SCHWARTZ: Okay.

11 MS. FLETCHER: And so, I'm going to,
12 based on what we've discussed already, I'll have
13 to dismiss Tivoli Partners Commercial, LLC, care
14 of Horning Brothers, as a Protestant today. But
15 when the Board issues their order, Mr. Schwartz,
16 you can provide all that additional information.

17 MR. SCHWARTZ: Are they going to go
18 ahead and issue an order with regard to the
19 request to change the hours and the dancing and
20 cover charge?

21 MS. FLETCHER: The order that they're
22 going to be issuing is going to dismiss Tivoli
23 Partners Commercial, LLC, as a Protestant.
24 That's the order that you're going to receive,
25 and you'll have an opportunity to explain to the

1 Board why you should be a Protestant. If the
2 Board reinstates you as a Protestant, then I'll
3 get back to you because we would need to schedule
4 a mediation to try to resolve this matter.

5 MR. SCHWARTZ: It would be a mediation
6 with Jeffeary Miskiri?

7 MS. FLETCHER: So, it would be a
8 mediation with --

9 MR. SCHWARTZ: Creole.

10 MS. FLETCHER: -- the owner.

11 MR. SCHWARTZ: Yeah.

12 MS. FLETCHER: With the owner and any
13 party that's been granted standing.

14 MR. SCHWARTZ: I see. So, in order to
15 have standing, I need to make clearer that we, in
16 fact, own all of the property which abuts this
17 particular property, and we should have standing
18 because we are harmed as an adjacent property
19 owner?

20 MS. FLETCHER: Well, once you get the
21 Board order, it will explain the reason why the
22 protest was dismissed, which includes what you
23 just said, that Tivoli Partners Commercial, LLC,
24 is not an abutting property owner and that this
25 is a landlord-tenant dispute.

1 MR. SCHWARTZ: Got it.

2 MS. FLETCHER: So, you'll --

3 MR. SCHWARTZ: Okay. And then, I have
4 an opportunity to respond to that before they
5 make a decision on the license?

6 MS. FLETCHER: Yeah. So, at this
7 point, there haven't been any decisions made on
8 the license. So, you're going to get an order
9 dismissing the protest. You will have an
10 opportunity to respond to that order within 10
11 days upon receipt of it.

12 I still have two more Protestants to
13 go through right now. So, let me do that, and at
14 the end of that, we'll see where we stand.

15 MR. SCHWARTZ: Okay.

16 MS. FLETCHER: But, right now, I'm
17 going to look at the GALA Hispanic Theater, which
18 also filed a protest. There's no one here from
19 the GALA Hispanic Theater. So, GALA will be
20 dismissed for a couple of reasons.

21 One, because they failed to appear
22 today. And two, GALA is a tenant. And you're
23 right, they're a tenant in the Tivoli Theater
24 Building. That's your building, Mr. Schwartz?

25 MR. SCHWARTZ: Yes.

1 MS. FLETCHER: Okay. And so, they're
2 a tenant in the building, but they are not an
3 abutting property owner. And so, in order for
4 GALA to be considered a Protestant, they would
5 have to be an abutting property owner. They
6 would have to own the property that abuts the
7 Creole on 14th.

8 So, the GALA Hispanic Theater is also
9 dismissed. But the same thing applies to them,
10 Mr. Schwartz. They'll receive an order from the
11 ABC Board dismissing their protest for the
12 reasons that I just mentioned. And they will
13 also have 10 days to seek reinstatement of their
14 protest.

15 MR. SCHWARTZ: Okay. But if I own
16 that property, and it abuts the licensed
17 property, then I would have to standing, I would
18 think?

19 MS. FLETCHER: Yeah, the Board will
20 make that decision, but, yes, they would -- if
21 you provide them whatever information you have to
22 show that your property abuts Creole on 14th.
23 And, yes, the Board can make that decision.

24 MR. SCHWARTZ: Okay. Thank you.

25 MS. FLETCHER: You're very welcome.

1 And if that happens, Mr. Schwartz,
2 you'll hear from me because we'll need to
3 schedule a time for mediation between you and the
4 owner.

5 MR. SCHWARTZ: Okay. Is there one
6 more Protestant?

7 MS. FLETCHER: There's one more
8 Protestant. There's ANC 1A.

9 ANC 1A filed a protest as well. They
10 contacted our office this morning that they
11 weren't able to find a link to the roll call
12 hearing today, but they've been in communication
13 with us.

14 The Applicant, Jeffeary Miskiri,
15 appeared today and said that ANC 1A had entered
16 into a Settlement Agreement with Creole on 14th.
17 He said that he just received it this morning.

18 I don't know that we received it yet,
19 but just give me a moment. So, maybe I could
20 update the record related to that Settlement
21 Agreement before I conclude the roll call
22 hearing.

23 MR. SCHWARTZ: How does that
24 Settlement Agreement affect the hearing today? I
25 mean, do you still have authority to deny, no

1 matter what the settlement says, do you still
2 have authority to deny the requested extended
3 hours?

4 MS. FLETCHER: So, the Board hasn't
5 made a decision about that yet. So, the Board is
6 going to -- all of this, this entire case has to
7 evolve first.

8 If you are an abutting property owner,
9 you would be able to have a protest independent
10 of ANC 1A.

11 MR. SCHWARTZ: Yeah.

12 MS. FLETCHER: If ANC 1A has entered
13 into a Settlement Agreement with Creole on 14th,
14 then if the Board approves that Settlement
15 Agreement, they approve it. And so, the ANC
16 would no longer be a Protestant because they
17 settled.

18 But if the Board determines that
19 you're an abutting property owner, then your
20 protest would continue to stand. And there would
21 have to be a mediation between you and Creole on
22 14th to try to resolve your concerns. And if
23 they were not resolvable, then there would have
24 to be a protest hearing between Creole on 14th
25 and Tivoli Partners Commercial, LLC. Your

1 protest would be handled separately from ANC 1A.

2 MR. SCHWARTZ: I see.

3 MS. FLETCHER: Because abutting
4 property owners have standing, well, standalone.

5 MR. SCHWARTZ: So, the Board won't
6 make a decision on the extended hours as long as
7 we have a valid protest that's being processed?

8 MS. FLETCHER: That's right.

9 MR. SCHWARTZ: Okay.

10 MS. FLETCHER: That is right.

11 Mr. Schwartz, give me one minute to
12 see if the ANC has provided any additional
13 information that I can give you before I conclude
14 the roll call hearing.

15 MR. SCHWARTZ: Yeah, I would love a
16 copy of it. If you can email me a copy of that
17 ANC agreement, it would be interesting.

18 MS. FLETCHER: So, at this stage, the
19 Board hasn't seen it or approved it.

20 MR. SCHWARTZ: Yeah. Okay.

21 MS. FLETCHER: So, that would become
22 a public record once it's on the Board's agenda
23 and approved. Right now, I don't even know if we
24 have it. Hold on a second. Give me one minute.

25 (Pause.)

1 Okay. Mr. Schwartz, I just got an
2 email from Christine Miller.

3 For the court reporter, that's spelled
4 C-H-R-I-S-T-I-N-E; Miller, M-I-L-L-E-R.

5 Ms. Miller just sent an email saying
6 that the ANC entered into a Settlement Agreement
7 with Creole on 14th Street, and that they just
8 sent the Settlement Agreement in.

9 So, that Settlement Agreement will be
10 put on the Board's agenda for review. If they
11 approve it, you will at some point be able to get
12 a copy of it.

13 MR. SCHWARTZ: All right.

14 MS. FLETCHER: But, in terms of Tivoli
15 Partners Commercial, LLC, we move forward with
16 the dismissal order and your opportunity to
17 explain to the Board how you're abutting.

18 MR. SCHWARTZ: Okay. Can I just ask
19 you one question? If the ANC's settlement is,
20 basically, allowing for the extended hours, and
21 the Board approves that, there's little
22 opportunity for me to do much at that point,
23 then, right

24 MS. FLETCHER: Well, so the Board
25 would have to -- there would still be a protest

1 hearing. As an abutting property owner, your
2 protest hearing doesn't go away because the ANC
3 entered into a Settlement Agreement. But the
4 Board would take your testimony and the testimony
5 of Creole on 14th Street into consideration
6 before it issues an order. They will still issue
7 an order if there's a protest hearing.

8 MR. SCHWARTZ: I see. But they may
9 approve the ANC thing before I get that
10 opportunity?

11 MS. FLETCHER: Well, the entire case
12 has to be completed before the license is issued.

13 MR. SCHWARTZ: Oh, I see. I see.
14 Okay. So, even if they approve ANC's settlement,
15 they could then, again, after I protest, decide
16 not to extend the hours?

17 MS. FLETCHER: It's possible. You
18 never know what's going to happen at the end of a
19 protest hearing. But, as long as there is a
20 Protestant standing --

21 MR. SCHWARTZ: Yeah.

22 MS. FLETCHER: -- the license is not
23 issued.

24 MR. SCHWARTZ: Okay. Got it. Okay.
25 So, then, I will get my order, and then, I can

1 decide if I want to continue with the protest, or
2 at least try to?

3 MS. FLETCHER: Yes, you can.

4 MR. SCHWARTZ: Oh, okay.

5 MS. FLETCHER: Yes, you can. And, you
6 know, Mr. Schwartz, you can, if you're in
7 communication with the GALA Hispanic Theater -- I
8 know they are tenants of yours -- you can, you
9 know, sort of explain to them what happened
10 today, too.

11 MR. SCHWARTZ: Okay. I will.

12 All right. Well, thank you so much.

13 MS. FLETCHER: Okay. Well, thank you
14 for coming.

15 MR. SCHWARTZ: Hey, it was a pleasure.

16 MS. FLETCHER: Okay. Take care.

17 MR. SCHWARTZ: All right. Bye-bye.

18 MS. FLETCHER: All right. Bye-bye.

19 The roll call hearing is now
20 concluded.

21 (Whereupon, at 10:32 a.m., the hearing
22 was concluded.)

23

24

25

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In the matter of: Creole on 14th

Before: DCABRA

Date: 10-18-21

Place: teleconference

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Court Reporter

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