

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF: :

Brooklyn on U, LLC, :

t/a Brooklyn :

1212 U Street NW : Fact Finding

Retailer CR - ANC 1B : Hearing

License No. 111411 :

Case #19-251-00071 :

(Unlawful Entry, Simple Assault, Destruction of Property and an Assault on a Police Officer) :

Wednesday
June, 26, 2018

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Donovan W. Anderson, presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
MIKE SILVERSTEIN, Member

JAMES SHORT, Member

REMA WAHABZADAH, Member

ALSO PRESENT:

STEPHEN O'BRIEN, COUNSEL FOR APPLICANT

MITCH MATHIS, APPLICANT

INVESTIGATOR MIKEA NELSON, ABRA

INVESTIGATOR MARK BRASHEARS, ABRA

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

2 2:40 p.m.

3 CHAIRPERSON ANDERSON: Good afternoon,
4 everyone. We're back on the record.

5 Our next case, a fact finding hearing,
6 Case Number 19-251-00071, Brooklyn, License
7 Number 111411.

8 Would the parties please approach and
9 identify themselves for the record, please.

10 MR. O'BRIEN: Stephen O'Brien for the
11 licensee.

12 CHAIRPERSON ANDERSON: Hold on one
13 minute, Mr. O'Brien. Hold on.

14 (Pause.)

15 MS. NELSON: Good afternoon.

16 CHAIRPERSON ANDERSON: Go ahead.

17 MR. O'BRIEN: Stephen O'Brien for the
18 licensee.

19 CHAIRPERSON ANDERSON: Good afternoon,
20 Mr. O'Brien.

21 MR. O'BRIEN: Good afternoon, Mr.
22 Chair. I'm accompanied by Mitchell Mathis, M A-

1 T-H-I-S. He's the managing member of the
2 licensee limited liability company.

3 CHAIRPERSON ANDERSON: Good afternoon,
4 Mr. Mathis.

5 MR. O'BRIEN: Hello.

6 CHAIRPERSON ANDERSON: Investigator?

7 MS. NELSON: Good afternoon. I'm
8 Investigator Mikea Nelson.

9 CHAIRPERSON ANDERSON: Good afternoon,
10 Investigator Nelson.

11 MR. BRASHEARS: Supervisory
12 Investigator Brashears with ABRA.

13 CHAIRPERSON ANDERSON: Good afternoon,
14 Mr. Brashears, Supervisory Investigator
15 Brashears.

16 All right. This is a fact finding
17 hearing. And I think this is a hearing -- I
18 don't recall if the chief, did the Chief of
19 Police request this fact finding hearing or did
20 ABRA by itself request this hearing? I don't
21 remember.

22 MR. O'BRIEN: ABRA requested it as a

1 proceeding at 251.

2 CHAIRPERSON ANDERSON: Okay. And the
3 facts, unlawful entry, simple assault,
4 destruction of property, and an assault on a
5 police officer.

6 And based on the nature of the
7 complaint, the Board thought that we would bring
8 the licensee in to have an explanation from their
9 process.

10 And we have not, we have not made any
11 decisions, so we have not referred it to show
12 cause or anything. So, based on what, so based
13 on what we're here today is then the Board will
14 make a determination whether or not we will NFA
15 it or take further action.

16 So, I just wanted you to know that.
17 I always try to be fair. So, I will let you know
18 if the Board has made a decision or what. So,
19 the Board has not made any decision about what,
20 if any, action will be taken. So, that decision
21 will be made as a result of this hearing. Okay.

22 All right. So, we'll start with

1 Investigator, Chief Investigator, Supervisory
2 Investigator Brashears or Ms. Nelson. Who is
3 taking the lead?

4 MR. BRASHEARS: Ms. Nelson.

5 CHAIRPERSON ANDERSON: All right, Ms.
6 Nelson. I know this is the first time you're
7 testifying before the Board. So, can you pull
8 the microphone a little bit closer to you and so
9 we can hear it.

10 So, can you let us know what is it
11 that -- Are you familiar with this case anyway?

12 MS. NELSON: Yes.

13 CHAIRPERSON ANDERSON: And how are you
14 familiar with this case?

15 MS. NELSON: I was the investigator
16 assigned to this case.

17 CHAIRPERSON ANDERSON: All right. So,
18 can you tell us what is it that, what is this
19 case about and what conclusions, if any, did you
20 formulate?

21 MS. NELSON: This case is initiated by
22 a 251 that was faxed to ABRA on Thursday, April

1 the 4th. The 251 included multiple offenses.

2 It included unlawful entry, simple
3 assault, destruction of property less than
4 \$1,000, and an assault on the police officers --
5 on a police officer.

6 According to the MPD-251, the suspect
7 entered Brooklyn from another location. He was
8 already intoxicated. And when entering he
9 touched two female patrons and was asked to --
10 once he was asked, he was asked to leave he
11 became irate. The owner actually asked him to
12 leave. And when leaving, he turned around and
13 assaulted two bystanders that were walking from
14 the 900 block of U Street towards the 1100 block
15 of U Street.

16 By the assault he pushed victim one
17 and he punched victim two in the face. And he
18 proceeded to run towards the 1100 block of U
19 Street where he assaulted a police officer during
20 his arrest.

21 During my investigation I spoke with
22 one of the victims. I contacted another victim

1 but was unable to reach them, unfortunately.

2 I spoke with ABC manager Katima
3 Riabaskul, -- excuse me if I'm saying the last
4 name wrong -- Mitchell Mathis, responding officer
5 Rider, as well as -- I apologize, that is all of
6 the people that I spoke with.

7 When speaking with the victim he
8 explained that he was leaving El Rey with one of
9 his friends and just walking up the street. He
10 did not have any affiliation with Brooklyn. And
11 it was a random attack.

12 He spoke with EMS but did not seek any
13 hospitalization or any type of medical attention
14 further than that.

15 When speaking with Ms. Riabaskul who
16 was present, so she was the manager present at
17 the time of the incident, she stated that she was
18 on the second floor of Brooklyn. They were
19 hosting a viewing party for a celebrity chef
20 Tobias, and they had approximately 10 to 15
21 patrons at the establishment at the time. The
22 event ended at 12:00 o'clock.

1 The assault happened at approximately
2 12:30 a.m.

3 The suspect was not served any alcohol
4 at the event because the establishment had
5 already made last call. He entered already
6 highly intoxicated. The owner Mr. Mathis noticed
7 that he was intoxicated at the bar. And after he
8 physically touched two of the patrons, that's
9 when he was the one who actually asked him to
10 leave.

11 When speaking with responding officer
12 Rider, he explained that there was allegedly
13 glass broken inside of the establishment that the
14 establishment had cleaned, as well as the door
15 was broken. I was unable to substantiate these
16 allegations because there was no security footage
17 available.

18 I found that Brooklyn was in violation
19 of their settlement agreement which states on
20 page 7, section 5, "The Applicant shall ensure
21 that the cameras utilized by the establishment
22 are operational, any footage of a crime of

1 violence or a crime involving a violent crime is
2 maintained for a minimum of 60 days, the security
3 footage is made available within 48 hours upon
4 request of MPD, ABRA, or the ANC 1B."

5 I found that Brooklyn did not have
6 footage for longer than 7 days of this incident.
7 However, upon returning to Brooklyn on June 25th,
8 at approximately 2:30, Brooklyn had 16 cameras
9 that maintained footage for 60 days that they
10 store on two hard drives. And I substantiated
11 that on my visit yesterday, June 25th at 2:30.

12 I was able to see security footage
13 from May 13th. That is the earliest footage that
14 I was able to see.

15 CHAIRPERSON ANDERSON: Have you -- Go
16 ahead. I'm sorry.

17 MS. NELSON: So, from speaking with
18 the owner and advising them of their violation,
19 they have become compliant.

20 CHAIRPERSON ANDERSON: And did they
21 ever, do you know whether or not they have a
22 security plan?

1 MS. NELSON: They do not.

2 CHAIRPERSON ANDERSON: I'm sorry. I'm
3 looking at the wrong, the wrong case. I
4 apologize.

5 Anything else you want to add?

6 MS. NELSON: No, sir.

7 CHAIRPERSON ANDERSON: All right. So,
8 in your, in your interaction with the
9 establishment did they cooperate with you? How
10 did they -- how was their approach to you when
11 you, in your interaction with the establishment?

12 MS. NELSON: Everyone was very
13 cooperative as far as giving information and
14 communicating with me on things that they need,
15 whether it had been more time to become compliant
16 or not.

17 CHAIRPERSON ANDERSON: Do you have
18 anything else prior to asking Mr. O'Brien, any
19 question? Go ahead, Mr. Short.

20 MEMBER SHORT: Good afternoon. Thank
21 you for an excellent report and presentation.

22 Were any emergency services called by

1 the establishment once this gentleman was put
2 out, the assailant was put out of the
3 establishment?

4 MS. NELSON: I believe that the
5 officers were the ones to have called EMS. They
6 were stationed on U Street, so they actually
7 witnessed the commotion and --

8 MEMBER SHORT: So just all the
9 fighting took place outside of the club. But I
10 guess what I'm asking is, it sounds like there
11 was some violence inside if there was some
12 windows broken or whatever else. Is that
13 correct?

14 MS. NELSON: Yes.

15 MEMBER SHORT: All right. But was MPD
16 notified about the fighting inside the club that
17 you know of?

18 MS. NELSON: From the report, MPD
19 stated that the witness, a witness actually told
20 them that there was glass broken inside.
21 However, when they responded to the scene they
22 did not see any glass.

1 MEMBER SHORT: Okay.

2 MS. NELSON: When speaking with Mr.
3 Mathis, he said that there was no glass inside of
4 the establishment as well.

5 MEMBER SHORT: Okay. Thank you very
6 much.

7 That's all I have, Mr. Chair.

8 CHAIRPERSON ANDERSON: Thank you, Mr.
9 Short.

10 Any other questions of any other board
11 members? Yes, Mr. Silverstein.

12 MEMBER SILVERSTEIN: Thank you,
13 Investigator Nelson.

14 In your opinion where, if anywhere,
15 did the licensee fall short in their response
16 here? Were there any problems?

17 MS. NELSON: I believe that the
18 licensee failed to follow their settlement
19 agreement. Other than that, I can't substantiate
20 that the licensee fell short any other way.

21 MEMBER SILVERSTEIN: Other than that
22 the response was satisfactory?

1 MS. NELSON: Yes, sir.

2 MEMBER SILVERSTEIN: Thank you. No
3 further questions.

4 CHAIRPERSON ANDERSON: So, you're
5 saying settlement agreement as far as the
6 security cameras that that's the portion you're
7 talking about?

8 MS. NELSON: Yes, sir.

9 CHAIRPERSON ANDERSON: Mr. O'Brien.

10 MR. O'BRIEN: Yes, sir.

11 As the investigator has explained,
12 this is not a case really involving any personnel
13 or customers of Brooklyn. The individual -- and
14 Mr. Mathis, as the investigator said, was
15 physically present. And it was Mr. Mathis who,
16 who ushered the bad actor out.

17 But this is 12:00 o'clock on a
18 Wednesday night. Somebody walks in the door,
19 appears to be intoxicated. Mr. Mathis'
20 subjective impression is there may have been more
21 than alcohol intoxication from the look in the
22 person's eyes.

1 At first Mr. Mathis thought he was
2 with a group of people in there. But then when a
3 customer complained, he asked the person to
4 leave.

5 He ushered the person out and got him
6 out the front door. Nothing happened, no
7 violence whatsoever inside. And out the front
8 door the person tried to get back in. And Mr.
9 Mathis kept on getting in his way.

10 He thought that the person had finally
11 given up and was departing the area. Started to
12 go back in, Mr. Mathis started to go back in.
13 Heard a commotion, and became aware that two
14 totally innocent people having nothing to do with
15 Brooklyn, who were walking down the street, had
16 encountered this bad actor who punched one of
17 them.

18 There was no call for emergency
19 service because police on the block became aware
20 of the commotion and chased the individual down a
21 couple blocks, where we are told he assaulted the
22 police officer trying to make an arrest.

1 So, it really doesn't have anything to
2 do with the operation of Brooklyn except the
3 issue of cameras. The security plan requires 60
4 days of footage. When the cameras were installed
5 Mr. Mathis understood that they were recording
6 for 60 days but never had occasion to try them
7 out. The establishment's only been open since
8 February. Never had occasion to actually confirm
9 that.

10 They became aware that now they were
11 -- I'll let Mr. Mathis tell you. There was
12 enough memory but not enough something else
13 technically, and that's why it didn't keep for 60
14 days. But that has been rectified.

15 But Mr. Mathis can answer any
16 questions the Board has.

17 CHAIRPERSON ANDERSON: I mean, I
18 guess, I mean you have an unruly person comes in.
19 I mean, is it a culprit -- I'm asking -- How do
20 you, what's their corporate mechanism to follow
21 to take care of that matter? Because if you put
22 the person out and then you have these other

1 things that occurred, so should they have called
2 the police or is it appropriate just to put the
3 person outside I mean?

4 MR. O'BRIEN: Well, if one's been in
5 this business for any period of time, one can
6 spot trouble when it walks in the door. And so
7 special attention is paid to a person like that
8 right off the bat.

9 But it is not -- when you tell
10 somebody that you're not going to serve them
11 alcohol and they have to leave, that alone should
12 not engender a call to the police.

13 The person grudgingly left but he
14 didn't start acting up physically until he was
15 already on the sidewalk. So, this is something
16 quite different than when you have two people
17 inside a place fighting and you push both of them
18 out on the sidewalk so they can continue their
19 fight out on the sidewalk. That's not the animal
20 we're discussing today.

21 I think if every time an establishment
22 asks a customer to leave, they have to call the

1 police. I don't think there's much else to do.

2 I think the establishment acted very
3 responsibly once they realized that this guy was
4 trouble to get him out. If he'd started swinging
5 at people inside, I would agree that would be
6 something different. But that's not what
7 happened as to our understanding as the witness
8 from ABRA just told me.

9 Did that respond to your question?

10 CHAIRPERSON ANDERSON: Sure. That's
11 fine.

12 I was just asking a question. I'm not
13 saying that they did or didn't do anything wrong.
14 Unfortunately, you put someone out and you have
15 all these other things occur, and should you have
16 recognized that there was something that I should
17 have done. Just put the person out and say it's
18 no longer my problem and then all of these things
19 occurred after the fact is just the query I was
20 having. I wasn't making any assumptions that the
21 establishment acted appropriate or inappropriate.
22 That was just a question I was asking.

1 MR. O'BRIEN: The only circumstance --
2 we're getting off target here about what happened
3 -- but the only circumstance that I would say
4 even though there was no violence, even though
5 they left, is if somebody was so, so intoxicated
6 or impaired as to raise a legitimate question
7 where they could take care of themselves. Then I
8 would say maybe this is a gray responsibility in
9 a circumstance like that to call for some kind of
10 help.

11 Again, that's not the case here. This
12 person was walking and talking. They didn't like
13 his looks, they didn't like the way he acted, but
14 I don't think it rose anywhere near a level that
15 police intercession would have been appropriate.

16 Of course, hindsight's always 20/20.

17 CHAIRPERSON ANDERSON: That's always
18 correct, yes.

19 Just another question, and I don't
20 know -- I know that Ms. Nelson stated that the
21 cameras now operate for 60 days. But I don't
22 know what happened before, but what mechanisms do

1 we have in place to ensure that the cameras would
2 always be working and recording for 60 days?

3 MR. O'BRIEN: Going forward?

4 CHAIRPERSON ANDERSON: Yes. Moving
5 forward, yes.

6 MR. O'BRIEN: I would think the
7 admonition from the Board which I should say is
8 something.

9 CHAIRPERSON ANDERSON: No.

10 MR. O'BRIEN: That, fine, there was a
11 missed --

12 CHAIRPERSON ANDERSON: No, I'm just --

13 MR. O'BRIEN: The problem has been
14 corrected.

15 CHAIRPERSON ANDERSON: What, what has
16 happened before. Yeah.

17 MR. O'BRIEN: And we hope not to see
18 you again and hear that the cameras didn't work.

19 CHAIRPERSON ANDERSON: No, but what
20 had happened before, how is it that they were not
21 aware of that?

22 MR. O'BRIEN: I have to let Mr. Mathis

1 answer that.

2 CHAIRPERSON ANDERSON: Okay.

3 MR. O'BRIEN: Because I think there
4 was a technical explanation which I simply don't
5 have the ability to digest.

6 CHAIRPERSON ANDERSON: All right.

7 MR. MATHIS: I mean, we had all of the
8 cameras, about 16 cameras, and the memory was
9 filled. You know, so we thought that the cameras
10 could go 60 days, but the memory filled up.

11 So, when this incident happened we
12 notice, oh my, the memory filled up with the
13 cameras, so we actually had to go out buy -- we
14 just did a whole new revamping of the cameras.
15 We bought 16 new cameras. We have memory,
16 everything, just so that we know that, you know,
17 we're totally good. And that's what she
18 investigated yesterday.

19 CHAIRPERSON ANDERSON: But I guess
20 what I'm trying to say that, and I'm not a
21 technical person, I'm just asking questions. I'm
22 not a technical person.

1 Now, how is it that does it record
2 over itself after 60 days, or how is it that
3 we're -- how is it that we now know that the
4 memory is not going to be full? Okay, it's
5 working now, but, okay, 3, 4 months down the --
6 we now recog -- I'm just trying to figure what,
7 how do we know that it's going to work?

8 MR. MATHIS: Well, one other thing is
9 is that I think Ms. Nelson, when she came by
10 yesterday, explained that if a incident does
11 happen that we can actually take, like, a memory
12 card and record the incident, keep it on file for
13 at least 60 days, and then if there's no
14 investigation either continue to keep it or we
15 can let it, you know, throw it away or whatever.
16 You know, so we know that as well, you know, on
17 top of what we did to ensure that we at least are
18 recording 60 days with our memory backing just to
19 have a second game plan, you know.

20 CHAIRPERSON ANDERSON: All right.
21 That's fine.

22 Yes?

1 MR. BRASHEARS: And just to clarify,
2 sir, the settlement agreement didn't specifically
3 state 60 days. It stated that the establishment
4 would maintain footage of acts of violence for 60
5 days.

6 CHAIRPERSON ANDERSON: All right.

7 MR. BRASHEARS: Just wanted to clarify
8 that, sir.

9 CHAIRPERSON ANDERSON: All right,
10 that's fine.

11 Any final comments you want to make,
12 Ms. Nelson?

13 MS. NELSON: No, sir.

14 CHAIRPERSON ANDERSON: Any other final
15 questions by any board members?

16 (No response.)

17 CHAIRPERSON ANDERSON: Mr. O'Brien,
18 any final comments you want to make?

19 MR. O'BRIEN: No, sir.

20 MEMBER SHORT: One question.

21 CHAIRPERSON ANDERSON: Yes, Mr. Short.

22 MEMBER SHORT: This is a restaurant;

1 correct?

2 CHAIRPERSON ANDERSON: Yes.

3 MEMBER SHORT: So they are not
4 required to have a security plan I would imagine?

5 CHAIRPERSON ANDERSON: That is
6 correct.

7 MEMBER SHORT: But I guess I need to
8 ask a question, do you think a security plan
9 would help this operation any? Because were you
10 serving food the night of this incident?

11 MR. MATHIS: Yes. It was a, it was
12 actually a chef's viewing, viewing event.

13 MR. O'BRIEN: The chef was in a
14 competition on television.

15 MR. MATHIS: Exactly.

16 MEMBER SHORT: Oh boy. Okay, well I
17 was just asking do you think a security plan
18 might help this operation?

19 MR. O'BRIEN: Are you addressing the
20 question to me?

21 MEMBER SHORT: Yes. Both of you.

22 MR. O'BRIEN: I would say based on

1 what I've heard today, no. This is a legitimate
2 restaurant and I don't see how a security plan
3 would have in any way stopped this from happening
4 out on the street.

5 MEMBER SHORT: Right.

6 MR. O'BRIEN: The answer to the
7 question, in this case, no, I don't, I don't see
8 that.

9 MEMBER SHORT: Okay, thank you.

10 That's all I have, Mr. Chair. Thank
11 you.

12 CHAIRPERSON ANDERSON: Well, one of
13 the things that, and I'll say that the licensee
14 appears to recognize that there was a problem.
15 And we have a fact finding hearing. And the
16 problem was taken care of in the sense that you
17 have updated the camera system prior to the
18 hearing. And so, therefore, there is not much I
19 can say because, whatever the problem is, it was
20 recognized and it was taken care of.

21 And so I want to commend you for doing
22 that.

1 And with that, I don't really have any
2 other comment. And so if there is no further, I
3 will recommend that the Board take no further
4 action on this matter. Is there a second?

5 MEMBER CATO: Second.

6 MEMBER SILVERSTEIN: Second.

7 CHAIRPERSON ANDERSON: Both Mr. Cato
8 and Mr. Silverstein have seconded the motion.

9 All those in favor, say aye.

10 (Chorus of ayes.)

11 CHAIRPERSON ANDERSON: Those opposed?

12 (No response.)

13 CHAIRPERSON ANDERSON: The matter
14 passes 5-0-0.

15 Thank you for being here. Have a good
16 day.

17 (Whereupon, at 3:02 p.m., the above-
18 entitled matter was concluded.)

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In the matter of: Brooklyn

Before: DCABRA

Date: 06-26-19

Place: Washington, DC

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