

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

9:40 a.m.

CHAIRPERSON ANDERSON: Good morning, everyone. I would like to welcome you to the regularly scheduled meeting of the District of Columbia Alcoholic Beverage Control Board. Please know that today's hearings will be conducted in accordance with D.C. Official Code Section 2-574 of the Open Meetings Act.

Today is April 11, 2018. I would first like to introduce Members of the Board with us today. To my far right is Mr. Donald Isaac, Sr. and to his left is Mr. Bobby Cato. To my immediate right is Mr. Nick Alberti. To my far left is Mr. Mike Silverstein and to my immediate left is Mr. James Short. My name is Donovan Anderson. I'm Chairman of the Board. We have six Members in attendance today for the conduct of business.

I would like to mention two things before we get started. First of all, if you have any electronic devices, pagers, cell phones or

1 such, please, make certain that they are turned
2 off to avoid any interruption of the proceedings.

3 Secondly, there is a piece of paper on
4 each table. When you come forward as your case
5 is called, please, take a seat at the table and,
6 please, sign-in. This is to ensure the correct
7 spelling of your name for the record.

8 Additionally, when you introduce
9 yourself for the record, please, spell your name
10 aloud for the court reporter.

11 I will note that the approximate time
12 is 9:42 a.m. I apologize that we didn't start
13 here promptly at 9:30 this morning, but we were
14 trying to do some business back there and I know
15 that the calendar out here is light for the day.

16 The first case on our calendar is Case
17 No. 18-PRO-00006, Cork Wine Bar & Market, License
18 No. 107308.

19 And I have a statement to make, but I
20 guess if there are folks here from that case, you
21 can come up and identify yourself for the record,
22 please.

1 MS. CHAVERRI: Good morning.

2 CHAIRPERSON ANDERSON: Good morning.

3 MS. CHAVERRI: My name is Katie
4 Chaverri, K-A-T-I-E C-H-A-V-E-R-R-I, and I
5 represent the Group of Five or More protestants
6 today in this matter. And this is Liz D'Angio,
7 she is the representative of that group.

8 CHAIRPERSON ANDERSON: Good morning.

9 MS. D'ANGIO: Morning.

10 CHAIRPERSON ANDERSON: You can sign in
11 your name, please.

12 MS. D'ANGIO: Sure.

13 MS. CHAVERRI: Sure.

14 CHAIRPERSON ANDERSON: A settlement
15 agreement was provided to the Board yesterday by
16 the ANC. And because a settlement agreement was
17 provided to the Board for the Board's approval
18 and acceptance by operation of law, pursuant to
19 25-609(b), that if there is a protest and the ANC
20 signed a settlement agreement, then a Group of
21 Five or More falls.

22 The only people who would still

1 remain, even if there is a settlement agreement,
2 would be a civic association, I think. Yes, a
3 civic association, an abutting property -- yeah,
4 it would be the ANC, a citizens association or an
5 abutting property owner. These are the folks who
6 would still remain in the protest if the ANC
7 signs a settlement agreement.

8 I know that the Group of Five or More
9 was concerned that the ANC was dismissed at the
10 Roll Call Hearing because they did not show up
11 and so, therefore, you guys moved on. But
12 unfortunately, the way the statute states it says
13 that if there is a protest and if -- it doesn't
14 say who the parties are. It just specifically
15 states that if there is a protest and if the ANC
16 signs a settlement agreement, then a group no
17 longer has standing to move forward in a Protest
18 Hearing.

19 MS. CHAVERRI: Well, we would submit
20 in this case where the ANC was dismissed from the
21 proceeding on February 5, 2018 and failed to file
22 a Motion for Reinstatement within 10 days as

1 provided by the order of the Board, that the ANC
2 no longer has standing in order to execute or
3 enter into any settlement agreement with the
4 applicant.

5 If the ANC and the applicant were
6 permitted to move forward as they hope to with
7 the settlement agreement that was signed
8 yesterday, then it would disenfranchise the
9 protesters who still had standing to make a
10 protest and plan to move forward on the 24th or
11 25th at the actual hearing and their issues would
12 effectively be unaddressed.

13 And that is exactly what is happening
14 here, because what happened in this instance is
15 the Group of Five or More has at least three
16 specific issues that we believe are reasonable
17 requests that were being worked into a settlement
18 agreement that we were discussing at the
19 mediation that occurred before the Board's
20 Mediator a couple of weeks ago.

21 All of those issues have remained
22 unaddressed entirely and are not found in any way

1 within the settlement agreement. We believe the
2 settlement agreement as proposed merely states
3 that the establishment, Cork, will operate within
4 the bounds of the DCRA Rules.

5 Although, we do believe that some of
6 the proposals in there, including housing the
7 garbage and public space, would violate other
8 code provisions, DC Code and Municipal Code
9 provisions.

10 Section 25-609 provides two scenarios
11 where the Board should consider ANC comments, if
12 the ANC were duly before the Board.

13 And the first one is if the ANC were
14 to submit recommendations and the second one is
15 if the ANC were to protest a license.

16 So here, we invoke the second
17 situation where there was a license that was
18 protested, but the ANC failed to show up, failed
19 to support and to advance the cause of the
20 community and now we are in a position where even
21 though Section (b) does state that the Group of
22 Five or More would be dismissed here, all of our

1 issues weren't addressed.

2 In fact, we, the Group of Five, have
3 expended resources to remain involved in this to
4 participate meaningfully and to try and get these
5 issues addressed. And they are effectively
6 disenfranchised by the action of the ANC to
7 circumvent, the ANC sort of I would say in
8 concert with the applicant, the requirements that
9 are set forth in the code. To me, it seems
10 somewhat unconstitutional.

11 Furthermore, there are requirements
12 within the regulations that the applicant
13 communicate with protesters. And in this case,
14 that has never happened. The applicant has
15 communicated through the ANC representative by
16 providing diagrams after the protesters had asked
17 for them, but has never made direct communication
18 with the protesters, the Group of Five, and that
19 is required by Section 25-445(c) that says that
20 "If the applicant fails to make a good faith
21 effort to contact protestants timely, the Board
22 shall deny the license application."

1 And again, that also happened in this
2 case. So our position is that the application
3 should be denied. We believe it should be denied
4 and that they should be required to refile if
5 they wish to do this and to do so properly and
6 properly notice the parties that require notice,
7 including a citizens association here that did
8 not receive direct notice of the proceeding until
9 way after the fact.

10 Alternatively, we would request that
11 the Protest Hearing that is presently scheduled
12 go forward. I believe it is on the 25th at 1:30.

13 CHAIRPERSON ANDERSON: Well, the
14 unfortunate thing for you, the first issue
15 regarding the settlement agreement and whether or
16 not we are talking about standing or not, the
17 statute is clear that if there is a Group of Five
18 or More and there is an ANC, if the ANC signs --
19 say for example the ANC was -- had standing and
20 they were here today and they signed a settlement
21 agreement --

22 MS. CHAVERRI: We are under a

1 different situation.

2 CHAIRPERSON ANDERSON: All right. But
3 I'm just --

4 MS. CHAVERRI: Yeah, we understand
5 that.

6 CHAIRPERSON ANDERSON: Yeah, but I'm
7 just -- what I'm saying to you though, even if
8 none of your issues are --

9 MS. CHAVERRI: We understand.

10 CHAIRPERSON ANDERSON: -- addressed--

11 MS. D'ANGIO: Right.

12 MS. CHAVERRI: We understand.

13 CHAIRPERSON ANDERSON: -- in the
14 settlement agreement, it doesn't really matter
15 because the statute states that the ANC's
16 settlement agreement, once they sign it, whether
17 or not you are a part of it or not, then you
18 fall.

19 MS. CHAVERRI: Um-hum.

20 MS. D'ANGIO: But it's not --

21 MS. CHAVERRI: It's not this case.

22 MS. D'ANGIO: -- this case.

1 CHAIRPERSON ANDERSON: But I'm just
2 addressing that one first.

3 MS. CHAVERRI: Um-hum.

4 CHAIRPERSON ANDERSON: But the
5 information that is given to me by our General
6 Counsel in the interpretation of the statute it
7 doesn't specifically -- the statute does not
8 state whether or not they have standing or not,
9 whether or not they are here.

10 The interpretation of the statute has
11 always been if there is a settlement -- if there
12 is a protest and if there is a settlement
13 agreement that was signed by the ANC, the group,
14 a Group of Five or More would fall. The only
15 groups that would still remain irrespective of
16 the settlement agreement, the only groups who
17 would still remain would be an abutting property
18 owner, another ANC or a citizens association.
19 And that's how -- the interpretation of the
20 statute.

21 So what I'm informed by legal is that
22 it doesn't matter whether or not they were a

1 protestant. It doesn't matter whether or not the
2 ANC had protested the hearing, as long as there
3 is -- the license, as long as there is a protest,
4 if the ANC signs a settlement agreement, then a
5 group, the group would fall.

6 And so that's the decision of the
7 Board. Of course, you have the -- you can appeal
8 our decision and the Board will -- legal will
9 make a decision. We will reconsider it. But at
10 the moment, the position of the Board is that
11 based on 25-609(b), that there is a settlement
12 agreement that was submitted to the Board for
13 consideration and the Group of Five, your
14 protest, falls.

15 MS. CHAVERRI: Well, if -- this
16 effectively equates to the rights of the people
17 who actually have a direct interest in then
18 property. So all of the neighbors, group of 12
19 individuals' rights being circumvented and
20 completely disregarded by the process.

21 And to me, it seems unconstitutional
22 and I believe that -- well, we will discuss with

1 the clients whether they want to appeal, but I
2 believe that it would be overturned, respectfully
3 to your counsel, at a different level, because it
4 absolutely divests these property owners of their
5 rights to protest.

6 They don't even have the option to
7 come to a hearing and have their day in court by
8 virtue of what counsel is saying, is telling you.
9 Because essentially, there is no voice. You
10 could theoretically have a rogue ANC member who
11 is in cahoots with an applicant who agrees to
12 whatever it is that the applicant wants in
13 exchange for we don't know and everybody else's
14 rights are just completely disregarded in the
15 process.

16 CHAIRPERSON ANDERSON: But it's not --
17 a settlement agreement that we will oppose, it's
18 not coming from an ANC member. It's coming from
19 the entire ANC. And so the entire ANC that --
20 who represents the area, they -- whatever
21 settlement agreement that comes to us, it will
22 tell us that, you know, they had a public

1 meeting. They had a vote. This is the vote.

2 And that the ANC endorses the settlement

3 agreement.

4 So we are not -- it's not just okay,
5 just from a Single Member District.

6 MS. D'ANGIO: None of our concerns
7 were addressed.

8 CHAIRPERSON ANDERSON: But --

9 MS. D'ANGIO: Just frankly.

10 CHAIRPERSON ANDERSON: -- I know, but
11 the unfortunate thing, that's what I'm saying, is
12 -- and that's why I broke it up into, so if the
13 ANC had standing, if the ANC was a part of this
14 hearing --

15 MS. CHAVERRI: We understand.

16 CHAIRPERSON ANDERSON: -- it doesn't
17 really matter --

18 MS. CHAVERRI: It was discussed.

19 CHAIRPERSON ANDERSON: -- you would
20 still have the same argument to say none of our
21 issues were concerned, because if -- we couldn't
22 tell the ANC that they would have to make -- that

1 you would have to -- that you could be -- that
2 you would have to be a party to the settlement
3 agreement.

4 MS. CHAVERRI: Yes.

5 CHAIRPERSON ANDERSON: We couldn't
6 tell them.

7 MS. CHAVERRI: We understand.

8 CHAIRPERSON ANDERSON: We can't tell
9 folks who can be parties to agreements. But the
10 interpretations though of the statute it's
11 basically that if there is a settlement -- if
12 there is a protest, if there is a settlement
13 agreement by the ANC, then the group falls. It
14 doesn't matter whether or not the ANC was a party
15 to the protest. If they came in at the last
16 minute and they meet with the applicant and a
17 settlement agreement is reached, then you no
18 longer have a voice, because the statute
19 basically states that the voice that you have,
20 the ANC is expressing your voice, because they
21 are representing the entire community.

22 Okay? So you have the right to -- we

1 will -- you can appeal that, but that's the
2 position. And I thought it was important to
3 provide, since you are here today, to you the
4 explanation and have you express what you are --
5 because you were here today. I didn't want to
6 just say it's dismissed and give you -- an
7 opportunity to listen to you and listen to your
8 concerns.

9 And I do hear your concerns, but
10 that's just what the statute states and that's
11 the position of the Board.

12 MS. CHAVERRI: We appreciate your
13 time. Thank you.

14 CHAIRPERSON ANDERSON: Thank you.

15 (Whereupon, the Protest (Status)
16 Hearing was concluded at 9:54 a.m.)
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C E R T I F I C A T E

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In the matter of: M&A Hospitality, LLC

Before: DC ABRA

Date: 04-11-18

Place: Washington, DC

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Court Reporter

NEAL R. GROSS

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