

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

2 9:41 a.m.

3 CHAIRPERSON ANDERSON: The next case on
4 our calendar is Case No. 19-PRO-00142, Cortez,
5 License No. 108275. Will the parties please
6 approach and identify themselves for the record,
7 please?

8 MR. CLINE: Good morning. Andrew Cline
9 on behalf of the Applicant.

10 CHAIRPERSON ANDERSON: Good morning,
11 Mr. Cline.

12 MR. ORLASKEY: Dan Orlaskey, ANC.

13 CHAIRPERSON ANDERSON: Good morning,
14 Mr. Orlaskey. Are there any preliminary matters
15 in this case?

16 MR. CLINE: Mr. Chairman, we have a
17 Motion to Dismiss pending, and I'd like to be
18 heard on it because I think that some of the
19 issues that are raised in that motion may not
20 have been at this point adequately addressed or
21 understood by the Board. I'd like to speak to it
22 for a few minutes if I might.

23 MR. ORLASKEY: The ANC hasn't had a
24 chance to prepare anything to respond to that.

25 CHAIRPERSON ANDERSON: A motion was

1 filed.

2 MR. ORLASKEY: Yes, and we filed a
3 response to it, but I was not prepared to --

4 CHAIRPERSON ANDERSON: He just wants --
5 I'm sorry.

6 MR. ORLASKEY: -- make arguments today.

7 CHAIRPERSON ANDERSON: I will give him
8 a couple of minutes. Do you have the motion?

9 MR. ORLASKEY: I don't have the motion
10 in front of me.

11 CHAIRPERSON ANDERSON: I do not expect
12 that he's making new arguments. I believe that
13 the arguments that he's making is the arguments
14 that were filed in his motion, so he just wants
15 to make it orally. I will give briefly an
16 opportunity to address the motion. If you have a
17 response, you can. If you don't have a response,
18 that's fine. I doubt that we will make a
19 decision today, but I'll give you a couple of
20 minutes, Mr. Cline, to make some oral arguments
21 on the motion that you have filed. Go ahead,
22 sir.

23 MR. CLINE: Mr. Chairman, we filed a
24 motion in this case and several other cases to
25 dismiss on the grounds that specifically this ANC

1 had filed protests, but did not say why. Under
2 one of the grounds of appropriateness, the
3 establishment was inappropriate ***9:43:46. Now
4 the Board has ruled on one of these motions, but
5 I thought it important to put these motions in
6 context and talk about what I'll call the
7 elephant in the room, which is something called a
8 settlement agreement process which we don't
9 acknowledge exists under the law.

10 What the settlement agreement process
11 is commonly understood to be is a process whereby
12 neighborhoods, and specifically ANCs, can demand
13 and extract settlement agreements without any
14 specific objection to the establishment. We
15 believe that that is why the regulations require
16 that there be a statement as to why it is under
17 one of the appropriateness grounds, there's an
18 objection to the license.

19 We've had mediation recently, and we
20 won't get into who or what, as it would be
21 inappropriate. When the mediator asked what the
22 concerns were, the response were there aren't any
23 concerns. So what's happening is this process is
24 being distorted, not because there are any
25 particular issues with a particular establishment

1 in many cases, but because of the desire on the
2 part certain ANCs to extract these agreements and
3 have their own set of rules and regulations in a
4 specific neighborhood.

5 The statute doesn't contemplate that.
6 We have a long ABC statute. It's very
7 comprehensive. We have a comprehensive set of
8 regulations. Those are the things that operators
9 should be expected to comply with. If there are
10 specific issues in a particular neighborhood with
11 a specific establishment, then yes, this process
12 is available to raise those issues, and those
13 issues will either be addressed through a hearing
14 where the Board will hear the evidence and say,
15 yeah, we've got a problem here. We should impose
16 some limitations or controls. Or through a
17 settlement, just like in a court case where
18 parties come together, they have a dispute, and
19 if they decide that they want to settle it before
20 it comes before the judge, then the parties are
21 free to do that, as they are in this process.

22 But what's happened here is this
23 process is off the tracks, it's off the rails,
24 and we have many applications that are being
25 protested, not because there's any particular

1 problem, as evidenced by the mediation that we
2 attended recently. We were told no, we don't
3 have any issues. The mediator said, well, what
4 are we doing here? So we don't know what we're
5 doing here in these cases other than an effort to
6 do something that's not authorized by the law.

7 Now in closing, I want to add there's
8 a study that has come out this morning. It was
9 released by the Mayor's Office of Nightlife and
10 Culture, and that study found 40 percent of the
11 survey respondents cited navigating regulatory
12 processes as a major operational challenge.
13 Nineteen percent specifically mentioned this
14 process. Now those challenges don't relate to
15 what the licensing staff does.

16 I mean, the licensing staff does a
17 good job. They push these applications through,
18 and although some think the timeline is too long,
19 at least it's certain. We know what it is. We
20 know what the timeline is. But the uncertainty
21 relates to these protests that are filed again,
22 not because there's any particular concern with a
23 specific establishment, but simply because of a
24 desire to impose and graft upon licensees in the
25 neighborhood an additional set of rules and

1 regulations which have not been authorized by
2 this Board and not authorized by the Council.

3 That's why we think this motion in the
4 Cortez case, along with the others that we've
5 filed in other cases, is so important. We think
6 at a minimum, a protestant should be able to say
7 in their initial filing why are they objecting to
8 a place? Why is it inappropriate under one of
9 the grounds of appropriateness? If it's peace,
10 order and quiet, is it because of people queuing
11 on the sidewalk? Is it because of noise from the
12 establishment? If it's real property values,
13 what is it specifically?

14 This doesn't impose any burden on
15 anyone. It's just common sense that okay, you're
16 complaining. What are you complaining about? So
17 with that in mind, we would ask the Board to
18 seriously consider the motion that we filed in
19 the Cortez case and in the other cases that are
20 before the Board, including the one that Board
21 has already decided, with an eye towards this
22 issue, specifically in light of the information
23 that's come out from the Nightlife Study that was
24 done comprehensively by the Mayor's Office on
25 Nightlife and Culture.

1 CHAIRPERSON ANDERSON: Thank you. Mr.
2 Orlaskey, do you have a response? You don't have
3 to, it's not necessary, but if you want to.

4 MR. ORLASKEY: I have just a few
5 comments. For one, the ANC has complied with all
6 of the requirements ABRA has set forth. Our
7 protest letter clearly states the basis for our
8 claims. What I think this really comes down to
9 is trying to make an already complicated and
10 difficult process for the community almost
11 impossible.

12 I believe what Mr. Cline described is
13 the process we're in right now. It is in process
14 and hasn't fully played out. I also think
15 revealing conversations that were had in
16 mediation, even just alluding to them, is
17 improper. I believe that having an oral argument
18 without, you know, giving the ANC notice that
19 this was about to happen is also improper.

20 I believe this issue was addressed in
21 the flash ruling, and I think that there should
22 be no reason why the motions in these other two
23 cases should be ruled on any differently.

24 CHAIRPERSON ANDERSON: Thank you, Mr.
25 Orlaskey. Just as an FYI, he filed a motion, you

1 filed a responsive motion and we're having a
2 hearing today. So it shouldn't have surprised
3 you that he would've wanted to address the motion
4 since both parties are here today. So I'm not
5 saying that you are unprepared, but he filed the
6 motion, you responded and so it's on our agenda.
7 The Board will take on the motion under
8 advisement and we will -- I know it's on our
9 legal agenda for the day, and we will issue a
10 decision based on the filings by both parties,
11 however.

12 MR. ORLASKEY: Okay.

13 CHAIRPERSON ANDERSON: So with that
14 said, this matter then is scheduled for a protest
15 hearing on April 1st at 1:30. I did read the
16 instructions earlier for a protest hearing. Are
17 both parties comfortable with the process moving
18 forward with the protest hearing if there is not
19 settlement?

20 MR. ORLASKEY: Yes.

21 MR. CLINE: Yes, sir. Thank you.

22 CHAIRPERSON ANDERSON: Thank you. So
23 April 1st at 1:30.

24 (Whereupon, the above-entitled matter
25 went off the record at 9:51:02 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Cortez

Before: DCABRA

Date: 02-26-20

Place: Washington, DC

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Court Reporter

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