

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

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IN THE MATTER OF: :
:
Brothers Burger Bar, LLC, :
t/a Felicity Lounge :
707 H Street, N.E. : Show Cause
Retailer CR - ANC 6C : Hearing
License No. 112502 :
Case #21-CMP-00038 :
:
(No ABC Manager on Duty, :
Failed to Follow a Board :
Order) :
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Wednesday
January 12, 2022

The Alcoholic Beverage Control Board
met via 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:

- SARAH FASHBAUGH, DC ABRA Staff
- ANTHONY CELO, ESQ., DC OAG
- JOHN FIORENTINE, ABRA Investigator
- MARK RUIZ, ABRA Investigator

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

2 CHAIRPERSON ANDERSON: Moving now to
3 our afternoon session, the first case on our
4 afternoon session is Case Number 21-CMP00038,
5 Felicity Lounge, License Number 112502.

6 Ms. Fashbaugh, can you please elevate
7 the rights for the parties in this case, please.

8 I'm sorry.

9 MS. FASHBAUGH: Please --

10 CHAIRPERSON ANDERSON: No, I'm sorry.
11 Hold on. I'm sorry. Hold on, Miss. Yes, go
12 ahead, Miss. Yes. My apologies.

13 MS. FASHBAUGH: Please stand by. I do
14 not see a Darrell Jones.

15 Anthony Celo, your rights have been
16 elevated. Mark Ruiz, your rights have been
17 elevated.

18 That is all, Mr. Chair.

19 CHAIRPERSON ANDERSON: All right.
20 Thank you.

21 MR. CELO: I am also expecting
22 Investigator John Fiorentine. Is he also needing
23 to have his rights elevated?

24 CHAIRPERSON ANDERSON: Ms. Fashbaugh,
25 have you seen Mr. Fiorentine?

1 Yes, I see Mr. Fiorentine. I see
2 Mr. -- all right. Do we -- is -- is Mr. Jones
3 available?

4 (No response.)

5 CHAIRPERSON ANDERSON: Mr. Celo, have
6 you had any conversation with Mr. Jones?

7 MR. CELO: Yes, sir, Mr. Chairman. I
8 did have conversations with Mr. Jones. We were
9 unable to reach a settlement in this matter.

10 I would note that he was not at the
11 status hearing, either. I do not know if he
12 intended to be here today. Our conversations did
13 not get that far.

14 CHAIRPERSON ANDERSON: I'm sorry.
15 When was the last time you had conversations with
16 him?

17 MR. CELO: It would have been shortly
18 before the status hearing, within a few days of
19 that. But I can find the exact date if you need
20 it.

21 CHAIRPERSON ANDERSON: Yes, please,
22 sir.

23 MR. CELO: Please hold on one moment.

24 CHAIRPERSON ANDERSON: Thank you.

25 (Pause.)

1 CHAIRPERSON ANDERSON: All right. You
2 don't have to answer that question. All right.
3 Mr. -- I'm sorry. Miss --

4 MR. CELO: Sorry. It appears that I
5 spoke to him on or about the 29th or 30th of
6 November; I think the 29th. And I've left
7 multiple messages for him since then, but I don't
8 have the exact dates of those messages. But
9 since the status hearing.

10 CHAIRPERSON ANDERSON: Okay. That's
11 fine. I just want to -- is Mr. Darrell Jones
12 online? If Mr. Darrell Jones is having some
13 technical issues, can you please raise your hand
14 or identify yourself in the chat?

15 Ms. Fashbaugh, can you do me one other
16 favor, please? Can you -- is there anyone else
17 sitting out there waiting to participate in any
18 hearings this afternoon?

19 MS. FASHBAUGH: Yes, I see the name
20 Seka Chef. I'm going to unmute you and you can
21 tell us if you're related to any of the cases.
22 So you're unmuted now, Seka Chef.

23 MS. CHEF: No, I'm not.

24 CHAIRPERSON ANDERSON: Okay. So
25 you're not -- okay. All right. We don't have --

1 okay. Fine. So thank you. You can -- you can
2 move that person back, Ms. -- so all right.
3 Okay. All right. Give me a minute.

4 Mr. Celo, are you -- are you prepared
5 to move forward?

6 MR. CELO: I am, Your Honor.

7 CHAIRPERSON ANDERSON: All right.

8 Pursuant to D.C. -- pursuant to D.C. Official
9 Code Section 25-447, the Board has the authority
10 to proceed ex parte, where the licensee waives
11 the hearing or fails to appear unless the hearing
12 is extended for good cause and sufficient cause.

13 The Board's record reflects that the
14 licensee was properly served by personal service
15 on November 5, 2021 -- on personal services made
16 on November 5, 2021.

17 Seeing no licensee here and having no
18 good and sufficient cause to extend this hearing,
19 the Board will proceed with the show-cause
20 hearing.

21 All right. Mr. Celo, can you please
22 spell and state your name for record, please.

23 MR. CELO: Anthony Celo, C-E-L-O, on
24 behalf of the District.

25 CHAIRPERSON ANDERSON: All right.

1 Thank you, Mr. Celo. This is the first time
2 you're appearing before me, and so I apologize.
3 Sorry. All right. Do you have a witness you
4 wish to call, sir?

5 MR. CELO: Yes, Mr. Chairman.

6 CHAIRPERSON ANDERSON: Well, let me
7 ask you a question before you call a witness. Do
8 you wish to make an opening statement, or do you
9 just want to call -- so, it's your -- why -- do
10 you wish to make an opening statement?

11 MR. CELO: I'll waive the opening
12 statement in this case.

13 CHAIRPERSON ANDERSON: All right. So
14 who is the first -- who is your first witness,
15 sir?

16 MR. CELO: Investigator Ruiz.

17 CHAIRPERSON ANDERSON: Mr. Ruiz, can
18 you raise your right hand, please.

19 Do you swear or affirm to tell the
20 truth and nothing but the truth?

21 INVESTIGATOR RUIZ: I do.

22 CHAIRPERSON ANDERSON: All right.

23 Thank you. Your witness, sir.

24

25 DIRECT EXAMINATION

1 BY MR. CELO:

2 Q Investigator Ruiz, can you
3 please

4 describe to the Board your position and how many
5 years you have worked in that position?

6 CHAIRPERSON ANDERSON: I'm sorry. Can
7 you also -- can you spell and state your name,
8 Mr. Ruiz?

9 INVESTIGATOR RUIZ: Yes. First name's
10 Mark, M-A-R-K, last name, Ruiz, R-U-I-Z. I am
11 also an investigator with the Alcoholic Beverage
12 Regulation Administration for approximately two
13 and a half years -- actually almost three years
14 now.

15 And I investigate -- conduct
16 inspections and investigations within ABC
17 establishments located within the District of
18 Columbia.

19 BY MR. CELO:

20 Q And Investigator Ruiz, did you
21 have

22 cause to investigate Felicity Lounge in the
23 matter that has brought us here today?

24 A Yes.

25 MR. CELO: And at this time I

1 request

2 permission to present what has been marked as
3 Exhibit 1 -- Government Exhibit 1, specifically.

4 CHAIRPERSON ANDERSON: All right. Ms.
5 Fashbaugh, can you -- can you give Mr. Celo the
6 opportunity to present, please. Ms. Fashbaugh?

7 MS. FASHBAUGH: This has been
8 accomplished.

9 CHAIRPERSON ANDERSON: Okay. Thank
10 you. Go ahead. You can share your screen, sir.

11 MR. CELO: All right.

12 BY MR. CELO:

13 Q Investigator Ruiz, are you
14 seeing the
15 shared screen?

16 CHAIRPERSON ANDERSON: No, we're not
17 seeing it, sir.

18 INVESTIGATOR RUIZ: No.

19 CHAIRPERSON ANDERSON: Yes, now we
20 are.

21 MR. CELO: Thank you.

22 INVESTIGATOR RUIZ: Yes, I can see it
23 now.

24 MR. CELO: Thank you.

25 BY MR. CELO:

1 Q This document has been marked as
2 Government Exhibit 1. Have you had an
3 opportunity to review this document before the
4 hearing?

5 A I have.

6 Q And are you familiar with this
7 document?

8 A Yes, this is the document I
9 drafted.

10 Q And when you say you drafted it,
11 you
12 authored this document?

13 A Yes.

14 Q And did you present all the
15 exhibits
16 that I am scrolling through now in this document,
17 as well?

18 A I did.

19 Q And is this a fair and accurate
20 copy
21 of the report that you prepared?

22 A Yes.

23 MR. CELO: And I apologize for the
24 echo. I don't know if that's something on my
25 end. But is the Board hearing the testimony

1 okay?

2 CHAIRPERSON ANDERSON: I can. Mr.
3 Short, can -- mute your phone, please, Mr. Short.
4 Let me see if it gets any better. I think that's
5 the only person I see -- go ahead, Mr. -- go
6 ahead, sir.

7 MR. CELO: Thank you.

8 BY MR. CELO:

9 Q Investigator Ruiz, can you
10 please
11 explain what the case report is as a document for
12 the Board?

13 A Yeah. The investigative report
14 is the
15 findings from the result in a complaint that I
16 investigated on August 13, 2021 for Felicity
17 Lounge.

18 Q Thank you. And can you tell me
19 what
20 occurred on August 13, 2021?

21 A Yes. I arrived at the
22 establishment
23 after receiving notification from Supervisory
24 Investigator John Fiorentine that a complaint was
25 made in regards to the establishment allowing

1 hookah smoking inside of the establishment.

2 So I arrived at the establishment
3 approximately 11:56 p.m. I spoke with the -- a
4 male security guard at the front verbally and
5 identified myself as an ABRA investigator and
6 displayed my badge and credentials, and asked to
7 speak with the ABC manager or owner at -- that
8 was present that evening.

9 The security officer immediately
10 turned and entered the establishment, at which
11 time I followed, in which I met with a manager by
12 the name of Dominic Jones.

13 Q And did you speak with Mr.
14 Jones?

15 A I did. I asked Mr. Jones if
16 there was
17 an ABC manager or owner present that evening. He
18 identified himself as being an owner.

19 Q Did he direct you to anyone
20 alleged to
21 be an ABC manager?

22 A He did consult with a female
23 bartender
24 behind. He stated that she was an ABC manager.
25 I followed up with the female bartender. She

1 mistakened her tips card to be for an ABC
2 manager's license.

3 She was not an ABC manager, and no one
4 else on -- at the establishment had an ABC
5 manager's card.

6 Q And did she acknowledge in your
7 conversation with her that she was not an ABC
8 manager?

9 A Yes. After I clarified what I
10 was
11 looking for, she said she was not.

12 Q And according to your records
13 regarding the establishment, is Mr. Jones a
14 recognized owner of the establishment?

15 A He is not.

16 Q With regard to the complaint
17 concerning hookah, did you see any hookah smoking
18 in the establishment?

19 A Yes. Upon my entrance to the
20 establishment, I did observe approximately six
21 hookah devices throughout the establishment, with
22 patrons smoking from them.

23 Q And did Mr. Jones acknowledge
24 that he
25 routinely sells hookah in the establishment?

1 A Mr. Jones -- well, I notified
2 him why

3 I was there and what I observed. He did respond
4 by saying that this was an unfair violation, that
5 he sells approximately 10 hookahs each evening,
6 and he has to do that to remain in business.

7 Q Did you or any of the
8 investigators

9 confirm whether or not he has an exemption to
10 sell tobacco and hookah in the establishment?

11 A Yes. Supervisory Investigator
12 Fiorentine did follow up on August 24 with the
13 Department of Health Tobacco Control Program to
14 confirm their status, and they did -- still did
15 not have the proper permits in place.

16 Q And I am scrolling down to show
17 you

18 what was marked on your report as Exhibit 2.
19 This would be page 18 of Government Exhibit 1.
20 Do you recognize this photograph?

21 A I do.

22 Q What is this a photograph of?

23 A This is a photograph of me
24 standing at

25 the end of the -- well, not of me, but of the bar

1 with patrons with the hookah devices in front of
2 them.

3 Q And did you take this
4 photograph?

5 A I did.

6 Q And then on the next page,
7 Exhibit 3,
8 do you recognize this photograph?

9 A Yes. This will also detail a
10 patron
11 sitting at the bar with a hookah, with the
12 smoking device in her left hand.

13 Q And did you witness her using
14 this
15 device?

16 A I did.

17 MR. CELO: At this time, I move for
18 the entry of Government Exhibit 1.

19 CHAIRPERSON ANDERSON: So moved.

20 MR. CELO: And I have stopped sharing
21 that exhibit for the moment.

22 CHAIRPERSON ANDERSON: Thank you.

23 BY MR. CELO:

24 Q Investigator Ruiz, is it a
25 violation

1 to have no ABC manager on duty?

2 A It is.

3 Q And in your investigation, did

4 you

5 determine that this was the first secondary tier

6 violation this establishment had had?

7 A I determined that it was a

8 violation

9 that evening. I'm not sure approximately of the

10 history you stated.

11 Q And is it a violation to permit

12 hookah

13 without obtaining the exemption?

14 A It is.

15 Q And did you determine that, on

16 that

17 evening, this establishment violated that

18 provision?

19 A I did.

20 MR. CELO: Nothing further at this

21 time.

22 CHAIRPERSON ANDERSON: All right.

23 Thank you. Any questions by the Board Members?

24 Any questions by any Board Members?

25 (No response.)

1 CHAIRPERSON ANDERSON: All right.

2 Hearing none, thank you, Mr. Ruiz, for your
3 testimony.

4 INVESTIGATOR RUIZ: You're welcome.

5 CHAIRPERSON ANDERSON: Do you have
6 another witness, sir?

7 MR. CELO: Yes, sir, Mr. Chairman.
8 The District calls Investigator Fiorentine.

9 CHAIRPERSON ANDERSON: Mr. Fiorentine,
10 can you raise your right hand, please. Do you
11 swear or affirm to tell the truth and nothing but
12 the truth? I can't hear you, Mr. Fiorentine.

13 INVESTIGATOR FIORENTINE: I do.

14 CHAIRPERSON ANDERSON: All right.

15 Thank you. Your witness, sir.

16 DIRECT EXAMINATION

17 BY MR. CELO:

18 Q Could you please state and spell

19 your

20 name for the record.

21 A Supervisory Investigator John

22 Fiorentine, J-O-H-N F-I-O-R-E-N-T-I-N-E.

23 Q And Investigator Fiorentine,

24 what is

25 your specific title role and how long have you

1 worked for ABRA?

2 A I am the supervisory
3 investigator in

4 charge of the orange team. I supervise the
5 inspection and investigation of ABC-licensed
6 establishments, and I am the program manager for
7 the Noise Control Program.

8 And I have worked for ABRA for
9 approximately three years.

10 Q Thank you. And did you hear the
11 testimony of Investigator Ruiz?

12 A I did.

13 Q He indicated that you had
14 directed the

15 investigation in response to a complaint. Could
16 you please elaborate on that?

17 A I did. ABRA had received a
18 complaint

19 through our electronic complaint system that --
20 the complaint had mentioned that the
21 establishment was in violation of a previously
22 directed Board order, and I tasked Investigator
23 Ruiz to investigate that allegation.

24 Q And following his investigation,
25 did

1 you confirm that Felicity Lounge had not obtained
2 an exemption for -- from DOH regarding the
3 tobacco use?

4 A That is correct. I contacted
5 the
6 Tobacco Control Program Manager, Ms. Carrie
7 Dolquist [phonetic] and verified that the
8 establishment had not obtained the necessary
9 paperwork or permits to be exempted from the
10 Tobacco Control regulations.

11 Q And as part of your
12 investigation, did
13 you look into the violation history of this
14 establishment?

15 A I did look into the violation
16 history
17 of the establishment.

18 Q Were you able to determine
19 whether or
20 not the action of permitting hookah without an
21 exemption constituted their third primary tier
22 violation within a three-year period?

23 A It did.

24 Q And the violation that was
25 testified

1 to with not having an ABC manager present, did
2 that constitute the first secondary tier
3 violation for this establishment?

4 A It did.

5 Q As part of your investigation,
6 did you

7 look into any monies or fines outstanding to the
8 District from this establishment?

9 A I did.

10 Q Does Felicity Lounge currently
11 have

12 any outstanding monies owed to the District?

13 A It does. Felicity Lounge has an
14 outstanding balance of approximately \$13,000 with
15 the Metropolitan Police Department for the
16 reimbursable detailed officers that were required
17 to be present at the establishment for a Board
18 order.

19 The establishment was subsequently
20 suspended from that program due to being in
21 arrears.

22 Q And they were required to have
23 these

24 officers as the result of an order of discord,
25 correct?

1 A That is correct.

2 Q And had they ever made payments
3 on any
4 of those invoices?

5 A Based on my investigation and
6 the
7 information presented to me from the program
8 manager, Ms. Brenda Smith, it does not appear
9 that the establishment had ever made a payment
10 for its reimbursable detail.

11 Q Does that \$13,000 outstanding
12 bill
13 give you concern as to whether or not they would
14 make payment were a fine issued in this case?

15 A It does. It also gives me
16 concern
17 whether they would be in compliance with a Board
18 order in the future because they owe such a
19 substantial amount, and the Board order requires
20 two officers' presence if live entertainment is
21 conducted.

22 And so I have serious misgivings
23 whether they would be able to meet that
24 requirement, given the amount of money owed.

25 Q And because of that concern

1 regarding

2 payment of fines, do you believe that a different
3 penalty may be appropriate in this case?

4 A I do, that a financial penalty
5 may not
6 dissuade that behavior.

7 MR. CELO: Thank you. Nothing further
8 at this time.

9 CHAIRPERSON ANDERSON: Any -- thank
10 you. Any questions by any Board Members?

11 MEMBER SHORT: Mr. Chair?

12 CHAIRPERSON ANDERSON: Go ahead, Mr.
13 Short.

14 MEMBER SHORT: Investigator
15 Fiorentine, thank you for your excellent
16 testimony and reports. How many times have you
17 been to this establishment, Felicity Lounge, 707
18 H Street Northeast?

19 INVESTIGATOR FIORENTINE: Mr. Short,
20 I can't tell you an exact number. I can tell you
21 it's probably a dozen or more.

22 MEMBER SHORT: Then every time you've
23 gone there, have there been Board orders to guide
24 them to different types of behavior in the
25 establishment?

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INVESTIGATOR FIORENTINE: No, sir.

But they do have, I would say, a history of noncompliance to fairly important Board orders. They were the first establishment that was found in violation of the first Mayor's order, now two years ago into the pandemic.

MEMBER SHORT: Thank you very much, and thank you for a great job, and continue to go. Sooner or later, the road has got to end for violators like this.

And I'll just simply say this, continue doing a wonderful job. We appreciate the work you do. All of us Board Members appreciate all the work you do, and we will do our very best to assist you in doing your job as well as we possibly can. Thank you.

INVESTIGATOR FIORENTINE: Thank you, sir.

CHAIRPERSON ANDERSON: Any other questions by any of the Board Members?

(No response.)

CHAIRPERSON ANDERSON: Any redirect, Mr. Celo?

MR. CELO: No, Mr. Chairman.

CHAIRPERSON ANDERSON: Do you need to

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make a -- do you want to make a closing, sir?

MR. CELO: Yes, I --

CHAIRPERSON ANDERSON: I'm sorry. Do you rest?

MR. CELO: Yes, Government rests.

CHAIRPERSON ANDERSON: All right. Do you want to make a closing?

MR. CELO: Yes, a brief closing, if I may.

CHAIRPERSON ANDERSON: Sir, go ahead.

MR. CELO: The Government has proven by a preponderance of the evidence that two violations occurred at the establishment, Felicity Lounge, on August 13, 2021.

They failed to have an ABC manager on duty, a violation of D.C. Code 25-701, their first secondary tier violation. They also failed to follow Board order 2021-221, by permitting hookah without obtaining an exemption from DOH, a violation of D.C. Code 25-823(a)(6).

This would be their third primary tier violation within three years. Given the history of this establishment and the \$13,000 that are still due in owing, this Government's position is

1 that a fine is insufficient to rectify the
2 situation and is inappropriate as the form of
3 punishment, in and of itself.

4 As a result, the Government would
5 request either a revocation of their license or,
6 at the very least, a significant suspension of
7 their license, in addition to any fines levied by
8 this Board.

9 The Government has therefore proven
10 the charges laid out in the notice to show cause,
11 and asks the Board to impose the appropriate
12 penalties under D.C. Code 25-823 and 25-701.
13 Thank you.

14 CHAIRPERSON ANDERSON: Thank you, sir.

15 MR. CELO: Thank you.

16 CHAIRPERSON ANDERSON: All right.

17 As Chairperson of the Alcoholic
18 Beverage Control Board for the District of
19 Columbia, in accordance with D.C. Official Code
20 Section 25-74(b) of the Open Meetings Act, I move
21 that ABC Board hold a closed meeting for the
22 purpose of seeking legal advice from our counsel
23 on Case Number 21-CMP00038, Felicity Lounge,
24 pursuant to D.C. Official Code Section 25-
25 74(b)(4) of the Open Meetings Act, and deliberate

1 upon 21-CMP00038, Felicity Lounge for the reasons
2 cited in D.C. Official Code Section 25-74(b)(13)
3 of the Open Meetings Act.

4 Is there a second?

5 MEMBER SHORT: Mr. Short. I second.

6 CHAIRPERSON ANDERSON: Mr. Short has
7 seconded the motion. We will now have a roll
8 call vote on the motion.

9 Mr. Short?

10 MEMBER SHORT: Mr. Short. I agree.

11 CHAIRPERSON ANDERSON: Mr. Cato?

12 MEMBER CATO: Bobby Cato. I agree.

13 CHAIRPERSON ANDERSON: Ms. Crockett?

14 MEMBER CROCKETT: Rafi Crockett. I
15 agree.

16 CHAIRPERSON ANDERSON: Ms. Hansen?

17 MEMBER HANSEN: Jeni Hansen. I agree.

18 CHAIRPERSON ANDERSON: Ed Grandis?

19 MEMBER GRANDIS: Edward Grandis. I
20 agree.

21 CHAIRPERSON ANDERSON: And Mr.

22 Anderson. I agree. And it appears that the
23 motion has passed 6-0-0. I hereby give notice
24 that the ABC Board will recess this proceeding to
25 hold a closed meeting in ABC conference room,

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pursuant to Section 25-74(b) of the Open Meetings Act.

Thank you very much for the presentation. The Board will issue a decision within 90 days. Thank you. Have a great afternoon.

MR. CELO: Thank you.

(Whereupon, the above-entitled matter went off the record.)

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This is to certify that the foregoing transcript

In the matter of: Felicity Lounge

Before: DCABRA

Date: 01-12-22

Place: teleconference

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Court Reporter

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