

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

IN THE MATTER OF: :
:
Café Europa, :
t/a LeDesales :
1725 De Sales Street, NW :
Retailer CR - ANC 2B : Show Cause Hearing
License No. 60754 :
Case #19-CMP-00061 :
:
(No ABC Manager on Duty) :

Wednesday
December 11, 2019

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
RAFI ALIYA CROCKETT, Member
JAMES SHORT, JR., Member
REMA WAHABZADAH, Member

ALSO PRESENT:

JASON FACCI, OAG
GEORGE GARCIA, Investigator

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

2 10:47 a.m.

3 MR. ANDERSON: All right, our next
4 case is -- is show cause hearing. Case number
5 19-CMP-00061, LeDesales, license number 60754.
6 Will the parties please approach and identify
7 themselves for the record, please?

8 MR. FACCI: Good morning Mr. Chairman
9 and members of the board, Jason Facci on behalf
10 of the District of Columbia.

11 MR. ANDERSON: Good morning Mr. Facci.
12 Is -- is -- I see there is no Licensee here. Are
13 you expecting the Licensee to show up, sir?

14 MR. FACCI: We have reached out to the
15 Licensee, Chairman, but we have not received any
16 response from them.

17 MR. ANDERSON: Is -- is the Government
18 ready to move forward, ex parte?

19 MR. FACCI: Yes, sir.

20 MR. ANDERSON: Pursuant to D.C.
21 Official Code, Section 25447, the board has the
22 authority to proceed ex parte, whereas the
23 Licensee waives the hearing or fails to appear
24 unless the hearing is extended for good or
25 sufficient cause. The board record reflects that

1 Licensee was properly served on August 29th,
2 2019. Seeing no Licensee here today and having
3 no good and sufficient cause to extend the
4 hearing, the board will proceed with a show-cause
5 hearing.

6 (Pause.)

7 MR. ANDERSON: Do you wish to make an
8 opening statement, sir?

9 MR. FACCI: Yes, Mr. Chairman, a brief
10 opening. Good morning again members of the
11 board. We're here today --

12 MR. ANDERSON: Can you speak up,
13 please sir? Pull the microphone closer to you.

14 MR. FACCI: We're here today in the
15 matter of LeDesales who has been charged with
16 having no board-approved ABC manager or owner
17 present during the establishment's licensed
18 business hours, in violation of D.C. Code 25-701.
19 Today you will hear from ABRA investigator George
20 Garcia who will testify that on April 3rd, 2019,
21 Mr. Garcia went to the establishment and observed
22 that no ABC manager or owner was present during
23 the establishment's licensed business hours,
24 while the establishment was open to the public,
25 and while patrons were consuming alcoholic

1 beverages.

2 MR. ANDERSON: Does the Government
3 have wish to call witnesses?

4 MR. FACCI: Yes, Mr. Chairman. The
5 Government will call Mr. George Garcia.

6 MR. ANDERSON: Mr. Garcia, if you'll
7 raise your right hand, please. Do you swear or
8 affirm to tell the truth and nothing but the
9 truth?

10 MR. GARCIA: I do.

11 MR. ANDERSON: Your witness, sir.

12 MR. FACCI: Mr. Garcia, can you state
13 and spell your name for the record?

14 MR. GARCIA: George, G-E-O-R-G-E,
15 Garcia, G-A-R-C-I-A.

16 MR. FACCI: Mr. Garcia, where are you
17 employed?

18 MR. GARCIA: The Alcoholic Beverage
19 Regulation Administration.

20 MR. FACCI: Okay. And what is your
21 title there?

22 MR. GARCIA: I am an investigator.

23 MR. FACCI: Okay. And how long have
24 you been an investigator for?

25 MR. GARCIA: For approximately 10

1 months now.

2 MR. FACCI: And what are your job
3 duties as an investigator?

4 MR. GARCIA: I conduct investigations
5 and inspections of ABC establishments within the
6 District of Columbia.

7 MR. FACCI: Are you familiar with the
8 establishment in this case, LeDesales?

9 MR. GARCIA: Yes.

10 MR. FACCI: How are you familiar with
11 them?

12 MR. GARCIA: I visited the
13 establishment on April 3rd of 2019 to serve the
14 establishment with service forms.

15 MR. FACCI: Okay. What does that
16 mean?

17 MR. GARCIA: Service forms is more of
18 a notification. It could be for an audit. It
19 could be for something else that an appointment
20 needs to be made for.

21 MR. FACCI: Okay. What time did you
22 visit the establishment?

23 (Pause.)

24 MR. GARCIA: I cannot recall.

25 MR. FACCI: Is there anything that

1 would refresh your recollection?

2 MR. GARCIA: My report.

3 MR. FACCI: Okay. Mr. Chairman, I'd
4 like to show the Witness what has been marked as
5 Government's Exhibit 1.

6 MR. ANDERSON: Sure.

7 MR. FACCI: Mr. Garcia, I am showing
8 you -- has been marked as Exhibit 1. Do you know
9 what that document is?

10 MR. GARCIA: Yes.

11 MR. FACCI: What is that document?

12 MR. GARCIA: It's a report I
13 submitted.

14 MR. FACCI: Okay. And who is the
15 report for?

16 (No audible response.)

17 MR. GARCIA: I'm sorry?

18 MR. FACCI: What is the subject of the
19 report?

20 MR. GARCIA: It's for no ABC managers
21 violation.

22 MR. FACCI: Okay. Is that a fair and
23 accurate copy of the report that you submitted in
24 the LeDesales matter?

25 MR. GARCIA: Yes, it is.

1 MR. FACCI: Okay. And do you see on
2 there -- if you can review the report for a
3 second, do you see what time you may have visited
4 the establishment on that day?

5 MR. GARCIA: At approximately 1:19.

6 MR. FACCI: Thank you. Mr. Chairman,
7 at this time I would like to just introduce
8 Government's Exhibit 1 into evidence. And I do
9 have copies for the board.

10 MR. ANDERSON: So moved. We -- the
11 board has. So moved.

12 (Whereupon, the above-referred to
13 document was marked as Government's Exhibit No. 1
14 for identification.)

15 (Whereupon, the above-referred to
16 document was received into evidence as Government
17 Exhibit No. 1.)

18 MR. FACCI: Thank you. So Mr. Garcia,
19 I'd like to discuss what you observed on April
20 3rd, 2019 when you did enter the establishment.
21 Did you speak with anybody?

22 MR. GARCIA: Yes. I originally made
23 contact with a female bar tender and identified
24 myself as an ABRA investigator and asked to speak
25 to the ABC manager or owner.

1 MR. FACCI: Okay. And what did you
2 hear in response?

3 MR. GARCIA: She said that she would
4 get someone. And then shortly after, a Zoe --
5 Zoe Bertrand -- identified herself as the
6 manager. And she stated that she forgot her ABC
7 manager's license.

8 MR. FACCI: What did you do as a
9 result?

10 MR. GARCIA: I did call an ABRA
11 investigator, Mikea Nelson, just to confirm that
12 she possessed ABC managers license. And
13 Investigator Nelson did confirm that she did not
14 possess an ABC managers license.

15 MR. FACCI: What happened after that?

16 MR. GARCIA: I notified the
17 establishment of the violation. And I told them
18 I would return to serve the service form.

19 MR. FACCI: And what was the violation
20 that you notified them of?

21 MR. GARCIA: A no-ABCs managers
22 violation.

23 MR. FACCI: Okay. Was there an owner
24 present for the establishment?

25 MR. GARCIA: No.

1 MR. FACCI: And how do you know that?

2 MR. GARCIA: The -- Zoe Bertrand
3 stated that she was the only one there.

4 MR. FACCI: Okay. Did you observe
5 patrons within the establishment during this
6 time?

7 MR. GARCIA: Yes.

8 MR. FACCI: All right. And what were
9 these patrons doing?

10 MR. GARCIA: There were multiple
11 patrons consuming alcoholic beverages.

12 MR. FACCI: What are the
13 establishment's licensed business hours?

14 MR. GARCIA: Can I refer to the
15 exhibit?

16 MR. FACCI: Yes.

17 (Pause.)

18 MR. FACCI: Well, Mr. Garcia, actually
19 I will direct your attention, in Government's
20 Exhibit 1, to what's been marked as Exhibit 1
21 within Government's Exhibit 1. It is the fifth
22 page. What is that document?

23 MR. GARCIA: The ABC license.

24 MR. FACCI: And according to the ABC
25 license, what are the establishment's licensed

1 business hours?

2 MR. GARCIA: The business hours on the
3 day in question was from 10:00 a.m. to 1:30 a.m.

4 MR. FACCI: Thank you. Mr. Garcia,
5 can you turn to what's been marked as Exhibit 2
6 on the next page? What is that document?

7 MR. GARCIA: That's a patron consuming
8 alcoholic beverages.

9 MR. FACCI: Okay. And who took your
10 photograph?

11 MR. GARCIA: I did.

12 MR. FACCI: Mr. Garcia, turning to the
13 next page, where it's been marked as Exhibit 3
14 within Government's Exhibit 1 -- what is that
15 photograph of?

16 MR. GARCIA: That's another set of
17 patrons consuming alcohol.

18 MR. FACCI: Okay. So after you
19 observed this violation and notified the
20 establishment of the violation, what did you do
21 next?

22 MR. GARCIA: I did leave the
23 establishment and return to the office. Just
24 confirm that Zoe Bertrand did not indeed have a
25 ABC managers license. But when I did do the

1 record, she did come up in the system saying that
2 she obtained the ABC managers license at 2:52
3 p.m.

4 MR. FACCI: 2:52 p.m. on which day?

5 MR. GARCIA: On the same day in
6 question -- April 3rd.

7 MR. FACCI: And what time did you go to
8 the establishment that day?

9 MR. GARCIA: At 1:19 p.m.

10 MR. FACCI: Okay. And how did you
11 document all of these findings from April 3rd,
12 2019?

13 MR. GARCIA: I do have extra exhibits
14 on the back for the -- no -- for the ABC managers
15 application. I entered that as an exhibit --
16 four -- exhibit number 4.

17 MR. FACCI: Can you explain what
18 Exhibit Number 4 is?

19 MR. GARCIA: Exhibit Number 4 is the
20 application that the -- Zoe Bertrand submitted to
21 ABRA in order to obtain an ABC managers license.

22 MR. FACCI: Thank you. Mr. Chairman,
23 I have no further questions for this witness.
24 And the Government rests its case in chief.

25 MR. ANDERSON: Mr. Garcia, when is it

1 that you went to visit the establishment?

2 MR. GARCIA: April 3rd.

3 MR. ANDERSON: April when?

4 MR. GARCIA: April 3rd.

5 MR. ANDERSON: April 3rd?

6 MR. GARCIA: Correct.

7 MR. ANDERSON: And -- and what is
8 exhibit -- what's -- and what is -- what is
9 Exhibit 4?

10 MR. GARCIA: It's a ABC managers
11 license application.

12 MR. ANDERSON: By whom?

13 MR. GARCIA: For Zoe Bertrand.

14 MR. ANDERSON: And when was this
15 submitted to the agency?

16 MR. GARCIA: On April 3rd.

17 MR. ANDERSON: On April 3rd?

18 MR. GARCIA: Correct.

19 MR. ANDERSON: So --

20 (Pause.)

21 MR. ANDERSON: So -- do you know
22 whether or not this application was submitted
23 prior to your receipt -- prior to your -- your
24 arrival at the establishment? Or after your
25 arrival at the establishment?

1 MR. GARCIA: It wasn't obtained prior
2 because after me getting to the office I did see
3 Ms. Bertrand at the -- at the office here.

4 MR. ANDERSON: What do you mean, you
5 did see her the office here?

6 MR. GARCIA: I did see her completing
7 her application.

8 MR. ANDERSON: I'm sorry, explain that
9 to me one more time.

10 MR. GARCIA: Zoe Bertrand, as I came
11 into the office -- Zoe Bertrand was at the front
12 desk completing her ABC managers license
13 application.

14 MR. ANDERSON: All right, so you left
15 her at the -- so you left the establishment --
16 about what time did you leave the establishment?

17 MR. GARCIA: I can't recall, but I
18 would say near 1:30 to 1:45.

19 MR. ANDERSON: And did you come direct
20 -- and you -- you saw her at the -- the
21 establishment when you were there, is that
22 correct?

23 MR. GARCIA: Correct.

24 MR. ANDERSON: And so you're saying
25 that you came back to the office and when you

1 came back to the office, you saw her at the front
2 desk?

3 MR. GARCIA: Completing her ABC
4 managers license application.

5 MR. ANDERSON: Okay. All right. Any
6 other questions by any of the board members?

7 (No audible response.)

8 MR. ANDERSON: Any follow-up
9 questions, sir?

10 MR. FACCI: No, sir.

11 MR. ANDERSON: Does the Government
12 rest?

13 MR. FACCI: The Government rests its
14 case in chief.

15 MR. ANDERSON: Thank you for your
16 testimony, sir. You can step down.

17 MR. GARCIA: Thank you.

18 MR. ANDERSON: Does the Government
19 have any other -- any other witnesses?

20 MR. FACCI: No, Mr. Chairman.

21 MR. ANDERSON: Does the Government
22 rest?

23 MR. FACCI: Yes.

24 MR. ANDERSON: Does the Government
25 wish to make a closing statement?

1 MR. FACCI: A brief closing statement.
2 The Government has established today by the
3 preponderance of the evidence that the
4 establishment, LeDeSales in this case, violated
5 D.C. Code 25-701 by having no board-approved
6 manager or owner on duty during the licensed
7 hours of sale. You heard from Mr. Garcia, who
8 testified that on April 30, 2019 he visited the
9 establishment. He spoke to the bar tender there.
10 That bar tender did not have an ABC managers
11 license. That bar tender was the only person
12 present working for the establishment. There was
13 no ABC manager -- she could not confirm whether
14 any ABC manager was on duty, or whether an owner
15 was on duty. And in fact, the person that Mr.
16 Garcia spoke with went to ABRA approximately an
17 hour-and-a-half after she was notified of this
18 ABRA violation to complete a ABC managers
19 licensed application. All of this, MR. Chairman,
20 is evidence that the establishment did not have a
21 valid ABC manager or owner on duty during the
22 licensed business hours while patrons were
23 consuming alcohol.

24 Accordingly, the District has
25 therefore met its burden under -- in this case,

1 and we ask that the board reach a conclusion and
2 a penalty that is in accordance with Title 25 of
3 the D.C. Code.

4 MR. ANDERSON: Do you wish to file --
5 the record is now closed. Do you wish to file
6 proposed findings of fact and conclusions of law,
7 or waive your right to do that?

8 MR. FACCI: We waive our right to do
9 that.

10 MR. ANDERSON: All right. So the
11 board will issue a decision on this in 90 days.
12 As Chairperson of the Alcohol Beverage Control
13 Board for the District of Columbia and in
14 accordance with D.C. Official Code section 2574B
15 of the Open Meetings Act, I move that ABC board
16 hold a closed meeting for the purpose of seeking
17 legal advice from our counsel on case number 19-
18 CMP-00061, LeDesales, pursuant to D.C. Official
19 Code section 2574b4 of the Open Meetings Act, and
20 deliberating upon case number 19-CMP-00061,
21 LeDesales, for the reason cited in D.C. Official
22 Code, Section 2574b13 of the Open Meetings Act.
23 Is there a second?

24 MR. SHORT: Second.

25 MR. ANDERSON: Mr. Short has seconded

1 the motion. I will now take a roll call vote on
2 the motion. Of course, now that has been second
3 -- Ms. Crockett?

4 MS. CROCKETT: I agree.

5 MR. ANDERSON: Mr. Short?

6 MR. SHORT: I agree.

7 MR. ANDERSON: Ms. Wahabzadah?

8 MS. WAHABZADAH: I agree.

9 MR. ANDERSON: Mr. Anderson -- I
10 agree. As it appears that the motion has passed,
11 I hereby give notice that ABC Board will recess
12 these proceedings to hold a closed meeting in the
13 ABC Board conference room, pursuant to Section
14 2574b of the Open Meetings Act. Thank you very
15 much. Have a good day.

16 (Whereupon, the above-entitled matter
17 went off the record at 11:02 a.m.)

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In the matter of: LeDesales

Before: DCABRA

Date: 12-11-19

Place: Washington, DC

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