

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF: :
:
Jefferson Grill, Inc., :
t/a Macombo Lounge :
5335 Georgia Avenue NW : Fact Finding
Retailer CN - ANC 4D : Hearing
License No. 771 :
:
(Request to Extend :
Safekeeping) :

Wednesday
October 9, 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
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
JAMES SHORT, JR., Member

ALSO PRESENT:

ROBERT CLAYTON, APPLICANT
MICHAEL WOODFOLK, APPLICANT
RESIDENTS OF 1100 BLOCK OF JEFFERSON STREET,
PROTESTANTS

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

2 11:09 a.m.

3 CHAIRPERSON ANDERSON: We're back on
4 the record. Our next case is a fact-finding
5 hearing on Macombo Lounge, license number 771.
6 Would all parties having matters before the ABC
7 Board regarding the Macombo Lounge please move
8 forward.

9 Are you here for -- since you're here,
10 well, why don't you identify -- all right, let's
11 start with the Licensee.

12 MR. CLAYTON: Oh, Robert Clayton.
13 Yes.

14 CHAIRPERSON ANDERSON: You are the
15 licensee. Is that correct?

16 MR. CLAYTON: That's correct. Yes.

17 CHAIRPERSON ANDERSON: And who are
18 you, Mr. Clayton?

19 MR. CLAYTON: General Counsel, Chief
20 Operating Officer of Jefferson Grill, Inc.

21 CHAIRPERSON ANDERSON: Good morning,
22 Mr. Clayton.

23 MR. CLAYTON: And also, President is
24 Michael Woodfolk, who is the President of
25 Jefferson Grill, Inc.

1 CHAIRPERSON ANDERSON: Good morning,
2 Mr. Wood --

3 MR. CLAYTON: Woodfolk.

4 CHAIRPERSON ANDERSON: Woodfolk. Good
5 morning. And who do we have here. You guys can
6 move forward, pull up some chairs, and come to
7 the table and tell me who you are.

8 GROUP OF RESIDENTS: We're residents
9 of the 1100 block of Jefferson.

10 CHAIRPERSON ANDERSON: All right. All
11 right. All right, just -- okay, just have a seat
12 back there first and, I mean -- right. We'll
13 see. All right.

14 We're here today on a Motion for
15 Declaratory Order filed by Jefferson Grill, Inc.,
16 also known as Macombo Lounge, Retailer Class C
17 and license number 771.

18 Macombo Lounge is asking the Board to
19 exempt it from the requirement to renew its
20 license by September 30, 2019, and to exempt it
21 from requirement to extend its license in
22 safekeeping, or, in the alternative, extending
23 the deadline for renewal and safekeeping, as well
24 as waiving any late fees.

25 It appears from the record that

1 Macombo Lounge does not have clean hands pursuant
2 to Section 47-2861(1)(b), and therefore, has not
3 renewed its CN license.

4 As licensees well know, in order to
5 qualify for renewal, the applicant must satisfy
6 the Clean Hands requirement.

7 Mr. Clayton, the Board is in receipt
8 of your pleadings.

9 MR. CLAYTON: Mm-hmm.

10 CHAIRPERSON ANDERSON: The floor is
11 yours. Please explain to the Board why we should
12 let your client renew its license or postpone
13 renewal for another day?

14 MR. CLAYTON: Well, as the pleadings
15 state, the reason why no action has been taken
16 substantively, is because we were waiting for a
17 response to our request for a reconsideration of
18 our offer in compromise submitted to the Office
19 of Tax and Revenue in December of 2018.

20 It's been over nine months and,
21 curiously and mysteriously enough, yesterday
22 afternoon, the day before today's hearing, we did
23 receive a response

24 So, as my alternative relief we're
25 seeking, is that we have an additional 30 days to

1 submit our request for extension of safekeeping,
2 and 90 days from the date the receipt of the
3 response, to submit a renewal of our license.

4 In addition, we also ask for an
5 exemption -- a waiver of any late fees, because
6 the late fees were occasioned by the delay by the
7 Office of Tax and Revenue.

8 CHAIRPERSON ANDERSON: I'm not quite
9 sure if the -- in the four years that I've been
10 Chair, I'm not sure the Agency has been -- and
11 I'm not making any decision -- I don't think we
12 waive late fees.

13 MR. CLAYTON: Understood, but the
14 statute is discretionary.

15 CHAIRPERSON ANDERSON: But I was about
16 to say, that's something that -- but I was just
17 responding just when you asked for the waiver of
18 late fees. And so far, the Board might excuse
19 you to -- we might renew your license late
20 pending all the late fees.

21 But I guess -- and I'm not making a
22 decision on that, but that's just your request.
23 So, you're stating that you're unable to renew
24 your license. And why, again, are you unable to
25 renew your license?

1 MR. CLAYTON: Because the Office of
2 Tax and Revenue had not made a decision on our
3 request for an offer in compromise of our
4 situation with them.

5 As a consequence, because no decision
6 was made, we are unable to (1) get a Clean Hands
7 certificate, (2) renew our business license, and
8 (3) then submit both to the Board here to get a
9 renewal of our ABRA license.

10 CHAIRPERSON ANDERSON: But -- all
11 right. And I know I read all the pleadings. But
12 in order to renew your license we need a Clean
13 Hands certificate.

14 MR. CLAYTON: Correct.

15 CHAIRPERSON ANDERSON: And if a Clean
16 Hands certificate is not provided, we cannot
17 renew your license. However, there is an
18 exception in the law stating that if a person
19 went to 47-2862(8)(b), if you appeal this matter
20 through the Office of Administrative Hearings,
21 then that should not prevent you from renewing
22 your license.

23 However, you have not done that. Is
24 that correct?

25 MR. CLAYTON: What matter have we not

1 appealed?

2 CHAIRPERSON ANDERSON: You have not
3 formally appealed the assessment through a
4 hearing at the Office of Administrative Appeals.

5 MR. CLAYTON: As I indicated, we just
6 received the response from the Office of Tax and
7 Revenue yesterday afternoon.

8 CHAIRPERSON ANDERSON: I'm saying --
9 we're saying two different things.

10 MR. CLAYTON: Okay.

11 CHAIRPERSON ANDERSON: You're not
12 saying to us that -- because the statute's clear.
13 The statute's clear that states that in order to
14 renew your license, you have to provide us a
15 Clean Hands certificate.

16 MR. CLAYTON: Right.

17 CHAIRPERSON ANDERSON: There are no
18 exceptions. The only exception is that if you're
19 stating the only reason why you cannot get a
20 Clean Hands certificate is because you're
21 appealing the tax assessment at the Office of
22 Administrative Hearings and that is in
23 litigation.

24 So, if that's in litigation, then that
25 should not prevent you from getting a Clean Hands

1 certificate. You haven't done that --

2 MR. CLAYTON: But that's not what
3 we're asking.

4 CHAIRPERSON ANDERSON: -- formerly.
5 But --

6 MR. CLAYTON: We're not asking to
7 renew the license. We're asking for additional
8 time to submit the renewal, so we can supply the
9 Board with a Clean Hands certificate.

10 The reason why we are unable to
11 provide the Board with a Clean Hands certificate
12 in conjunction with a renewal prior to
13 September 30th, is because we did not receive any
14 actions by the Office of Tax and Revenue.

15 So, we're not asking to renew our
16 license today. We're asking for a clarification
17 on whether the law allows us additional time to
18 submit the renewal application because of the
19 action, or -- excuse me, inactivity, on the part
20 of a government agency, which precluded us from
21 submitting our renewal application timely.

22 CHAIRPERSON ANDERSON: But I told
23 you -- and I'm thinking off the top of my head,
24 because I've learned today that I'm now a tax
25 lawyer because I just had a hearing dealing with

1 OTR and taxes. And here's a second hearing I'm
2 having dealing with OTR and taxes.

3 So, while I'm going through this, I'm
4 learning another area of law that I wasn't
5 necessarily prepared to respond.

6 So, that's what -- but what I'm saying
7 to you, the only exception that I'm aware of that
8 provides you more time not to renew your license
9 on September 30, is if there's a tax assessment,
10 you are formally appealing this tax assessment
11 through the Office of Administrative Hearings.

12 If that is in play, then you can come
13 to us and state, oh, by the way, I am -- OTR
14 provided us a tax bill. We're contesting it.
15 We've filed a hearing. And so, the law says, if
16 we are contesting this tax assessment through
17 this formal proceeding, then you should renew it.

18 But you're not saying that. You're
19 just saying that there is a dispute between the
20 Agency -- between the taxpayer and OTR. And we
21 made an offer. They didn't respond to us until
22 yesterday, and so therefore, now you're asking us
23 for 120 days to provide us information to see if
24 you can qualify for Clean Hands.

25 Because you're not even saying --

1 you're not -- I'm trying to follow-up what you're
2 saying, because you're not even saying to us
3 today that we will get a Clean Hands certificate
4 from OTR in 120 days.

5 You're asking us -- repeat what is it
6 you're asking the Board again?

7 MR. CLAYTON: All they ask is for an
8 additional period of time, now -- well, the
9 alternative relief, because that is what is
10 applicable now that we have a response.

11 The alternative relief is that we have
12 an additional 90 days --

13 CHAIRPERSON ANDERSON: Right.

14 MR. CLAYTON: -- to either renew the
15 license, or not renew the license. If we can't
16 get the Clean Hands certificate in that period of
17 time, then we understand we won't be able to
18 submit a renewal application.

19 But we should not be prejudiced
20 because the government agency took nine months to
21 respond to a simple request.

22 Now, as to the Administrative Hearing
23 part, actually, we have 30 days from the date we
24 receive a response from the Office of Tax and
25 Revenue, to file an appeal with the -- not the

1 Office of Administrative Hearings, but within
2 Superior Court.

3 So, we have 30 days from yesterday to
4 file an appeal with the DC Superior Court.

5 CHAIRPERSON ANDERSON: I just threw
6 that out to say, because as I've stated before,
7 or in another case, we are not involved in the
8 minutiae of getting a Clean Hands certificate.

9 All that the Board requires in order
10 to renew your license, you need to get a Clean
11 Hands certificate. It's not our issue, it's not
12 our concern, why a Clean Hands certificate cannot
13 be attained by the licensee. That's not us.

14 The law says that in order for you to
15 renew your license, you have to provide a Clean
16 Hands certificate. And your making excuses to us
17 and -- when I said -- so --

18 MR. CLAYTON: What we're asking for is
19 a clarification of the law. That's why we ask
20 for a declaratory order.

21 Under the statute, if there is
22 confusion as to whether or not a certain law or
23 statute applies to the licensee under a unique
24 set of facts, then we're entitled to seek
25 declaration from the Board. And that's what

1 we've done.

2 We're not making excuses. We have a
3 unique set of facts, one that I'm sure -- or
4 likely that the Board has not dealt with before,
5 where a government agency's actions have caused a
6 licensee to be unable to protect its property
7 rights, which is the case here.

8 Because if we don't -- technically, if
9 we didn't submit our response -- I mean, our
10 renewal application, by September 30th, then we
11 were beyond the date and could lose our license.

12 Well, we were precluded from doing
13 that because the Office of Tax and Revenue took
14 nine-plus months to respond to a simple offer.
15 So, we're asking for a clarification from the
16 Board, a declaration from the Board, as to
17 whether or not the particular statutes quoted in
18 this brief are applicable in this particular
19 instance. It's not an excuse.

20 CHAIRPERSON ANDERSON: But from what
21 I'm hearing from you, when you said an offer, I'm
22 extrapolating that taxes owed, the licensee
23 didn't pay the tax and the licensee is trying to
24 negotiate a tax payment with the government.
25 Right?

1 MR. CLAYTON: That's in part correct.
2 Taxes were owed. The Office of Tax and Revenue
3 could not and did not calculate the amount due
4 until December of 2018. Okay?

5 At that moment, when they finally
6 calculated the amount due, we submitted an offer
7 to pay the amount due. That's why we're here
8 now. We submitted in December. We did not get a
9 response to that until yesterday.

10 They were notified that a renewal of
11 our license was coming up by September 30th. Yet
12 and still, we did not get a response until
13 yesterday, eight days past September 30th.

14 CHAIRPERSON ANDERSON: All right. You
15 have a question, Ms. Crockett?

16 MS. CROCKETT: Yes. Sir, just to
17 clarify, per briefs, it's my understanding that
18 OTR notified you in October of the total taxes
19 due. October of 2018. You just stated that they
20 didn't notify you until December. But I'm
21 reading that you were notified on October 5, 2018
22 of the total taxes due.

23 MR. CLAYTON: The amount changes in
24 the time period but with additional penalties and
25 interest. The principal amount was established

1 but penalties and interest were accruing.

2 MS. CROCKETT: Okay. You also
3 continued to state that it took them nine months
4 to get back to you. My understanding from this
5 is that you received notification in November of
6 2018 that they did not accept your first offer in
7 compromise.

8 MR. CLAYTON: That's correct. And we
9 were invited to submit not a new offer, but an
10 explanation as to what the offer entailed.

11 MS. CROCKETT: Okay. So, I would just
12 like the record to be clear that it's not that
13 they didn't respond for nine months. They did in
14 fact respond to you in November of 2018 with an
15 original rejection. And then you went back and
16 asked for another offer.

17 MR. CLAYTON: No. It's the same
18 offer, but clarified. The Office of Tax and
19 Revenue rejected the offer because they were
20 uncertain as to what the conditions were for our
21 offer. We clarified that in a follow-up offer in
22 December.

23 MS. CROCKETT: Okay.

24 MR. CLAYTON: So, it's the same offer.
25 It's just with clarification.

1 MS. CROCKETT: Okay. And then you met
2 with them in April.

3 MR. CLAYTON: Correct. And was told
4 that I would have an answer in seven days.

5 MS. CROCKETT: And between April and
6 now how many times have you been in contact with
7 OTR about this matter?

8 MR. CLAYTON: I have spoken with or
9 emailed -- her name is Ms. Jenkins, I believe --
10 at least six times.

11 CHAIRPERSON ANDERSON: Who? Ms. who?

12 MR. CLAYTON: I think it's
13 Ms. Jenkins. I have to check.

14 CHAIRPERSON ANDERSON: Ms. Jenkins?

15 MR. CLAYTON: I don't know have my
16 notes with me here.

17 CHAIRPERSON ANDERSON: Ms. Jenkins
18 from what agency?

19 MR. CLAYTON: Office of Tax and
20 Revenue. Not from the --

21 CHAIRPERSON ANDERSON: I just want --
22 yeah. Our general counsel is Ms. Jenkins. So, I
23 just want to make sure that it's another --

24 MR. CLAYTON: I can show you the name.

25 CHAIRPERSON ANDERSON: -- Ms. Jenkins

1 from a different agency. I just want the record
2 to clearly reflect that.

3 MR. CLAYTON: It's something I can
4 tell you the name.

5 MS. CROCKETT: Thank you,
6 Mr. Chairman.

7 MR. CLAYTON: I have the letter here.
8 Give me a second. I think I have it here. It's
9 on my email. That would be an easier way to get
10 it. Bear with me for just one second.

11 Jacqueline Mason, the Office of Tax
12 and Revenue, Program Analyst in the Office of the
13 Director, Compliance Administration.

14 So, including yesterday's email, I
15 would think it would be seven times I've spoken
16 or emailed her, mostly saying that we've
17 submitted the offer in December, or the renewed
18 offer in December, we haven't heard from you. Mm-
19 hmm.

20 CHAIRPERSON ANDERSON: Mr. Clayton,
21 you're asking this Agency to get involved
22 between -- to be involved between a negotiation
23 between your client and another District agency.

24 What I said, because you are saying
25 that one of the reasons why you're unable to

1 renew is because OTR did not timely provide you a
2 response to your offer because they took nine
3 months to respond to your offer, that prevented
4 you from satisfying the tax obligation to receive
5 a Clean Hands certificate. That's basically what
6 you're stating.

7 MR. CLAYTON: I guess you could say
8 that. But we're not asking you to get involved
9 in what we're doing.

10 CHAIRPERSON ANDERSON: Yes, you are.
11 Because you're asking us to -- you're saying
12 that, right or wrong, that their delay prevented
13 you from doing what you need to do.

14 And so therefore, we should excuse you
15 from that renewing timely because another agency
16 was delayed in providing you a response to an
17 offer that was made.

18 MR. CLAYTON: Well, we're not asking
19 you to get any more involved than you already are
20 when you get notification from the Office of Tax
21 and Revenue or the DCRA that a licensee either
22 doesn't have a business license or doesn't have a
23 Clean Hands certificate.

24 CHAIRPERSON ANDERSON: But although --

25 MR. CLAYTON: So, what I ask is no

1 more than what you generally communicate between
2 offices in any event.

3 CHAIRPERSON ANDERSON: Yeah, but all
4 we do in those cases, that we say to the
5 taxpayer, okay, that's nice. Get us a Clean
6 Hands certificate and we'll give you your
7 license.

8 We don't say to the -- all that we say
9 to the taxpayer is that you don't have a Clean
10 Hands certificate, come back to us when you have
11 a Clean Hands certificate.

12 So, we never say to the taxpayer, I'll
13 give you two days, so we're going to renew your
14 license, I'll hold your renewal in abeyance for
15 two days or three days or for four days, until
16 you can get the certificate.

17 All we say to the taxpayer is that you
18 cannot renew because you do not have a Clean
19 Hands certificate. Come back to us when you have
20 solved this problem, this issue, with whatever
21 agency you have the dispute with.

22 MR. CLAYTON: Well, no. You get a
23 little bit more involved than that --

24 CHAIRPERSON ANDERSON: No, sir.

25 MR. CLAYTON: -- when you get to the

1 licensee. You --

2 CHAIRPERSON ANDERSON: No. We send
3 the licensee back and say to the licensee, we
4 cannot renew your license because you don't have
5 a Clean Hands certificate. When you have it, you
6 can come back to us.

7 That's -- unless I'm wrong, someone
8 needs to correct me. But that's the analysis at
9 the Agency does, is that we need this piece of
10 paper. Come back to us when you have this piece
11 of paper. You can't come back to us until you
12 have it.

13 Now, some licensees, they come back to
14 us and they say to us, okay, fine, I now have
15 this piece of paper. As you had stated before,
16 can you waive the late fees? And then, the Board
17 will say, yea, nay, or maybe so. But we never
18 get involved.

19 We never give a licensee to say we'll
20 give you one month, two months, or three months,
21 to come back with the document. We basically,
22 like, your license needs to be renewed on
23 September 30th. If it's not renewed by a certain
24 date, we send you a letter to say that there is a
25 \$50, or whatever the cost is, to renew the

1 license and if you do not respond at some point,
2 then the Board will issue cease-and-desist order
3 saying that you can't operate.

4 In your case, the Board will -- if you
5 have not renewed the license within safekeeping
6 or pay the safekeeping fees, the Board will just
7 automatically, after whatever process that we
8 follow, will cancel the license because the fees
9 haven't been paid.

10 MR. CLAYTON: And getting back to your
11 initial point how involved you get, focusing on
12 what you said, you issue a cease-and-desist
13 order, that's getting involved.

14 CHAIRPERSON ANDERSON: No, we issue a
15 cease-and-desist because you haven't given us the
16 paper. That's so we don't get involved.

17 MR. CLAYTON: No. In this instance,
18 specifically, you got involved. When I say you,
19 the Board got involved, by holding a hearing, a
20 closed door hearing, and issuing a cease-and-
21 desist order, because notification was given to
22 the Board somehow --

23 CHAIRPERSON ANDERSON: Not in -- no --

24 MR. CLAYTON: Wait a minute.

25 CHAIRPERSON ANDERSON: Okay, I'm

1 sorry. I apologize.

2 MR. CLAYTON: -- from the DCRA that
3 this licensee did not have a renewed business
4 license. So, you held a hearing. At the end of
5 that hearing on March 28th, you then directed
6 agents to come to our establishment to seize our
7 license and put it in mandatory safekeeping.

8 Further involvement was then you held
9 a hearing, or scheduled a hearing. First, we
10 submitted a response, and then we held a hearing
11 on whether or not our not having a renewed
12 license was an imminent threat to the health and
13 safety of the residents of the District of
14 Columbia.

15 So, that is more than just saying to
16 a taxpayer, show us your Clean Hands certificate
17 and we'll give you a license. You got intimately
18 involved in the process.

19 CHAIRPERSON ANDERSON: Well, I
20 disagree with you, sir. And it's -- because I
21 don't have the paperwork in front of me, but the
22 Board gets involved because the Licensing
23 Division will tell us that there's an issue here.

24 Because this licensee hasn't provided
25 the proper paperwork, the ABC Board should issue

1 a cease-and-desist order because either the
2 license hasn't been -- and based on the timeline
3 that you're talking about, it's probably -- when
4 your license is in safekeeping, it's
5 automatically renewed every six months.

6 MR. CLAYTON: But we have to submit a
7 request for extension.

8 CHAIRPERSON ANDERSON: Right. Right.
9 And then, the Board will decide if it's routine
10 to grant it. But it appears that there were
11 issues when the request came in, maybe initially,
12 to extend the safekeeping, then issues came up to
13 say -- I don't know. I don't remember intimately
14 what happened, but I cannot talk about where we
15 are today.

16 MR. CLAYTON: Initially, the request
17 for extension of safekeeping was so we could both
18 finish renovations, and also deal with the Office
19 of Tax and Revenue.

20 The renovations were completed but we
21 still hadn't gotten a response or the situation
22 with the Office of Tax and Revenue finalized.
23 So, that's where we are now.

24 So, our request was made based on the
25 fact that we were still waiting for a response

1 from the Office of Tax and Revenue, which, as I
2 indicated, came yesterday.

3 But we had to submit, out of an
4 abundance of caution, we submitted the request
5 for the extension on September 16th, because we
6 didn't think we were going to get a response from
7 Tax and Revenue by the 30th.

8 But we may be a little bit far afield
9 of the motion that was presented, where we're
10 seeking declaratory orders from the Board as to
11 whether or not these particular statutes quoted
12 apply under these unique set of circumstances.

13 That's where we are. And that's why
14 we're here today. That's my understanding. Now,
15 I don't know why there's potential protesters to
16 request for -- at a fact-finding hearing, for
17 request for declaratory orders.

18 So, as a point of order, I'd like to
19 know why we have protesters. Because this is not
20 a protested or a contested hearing.

21 CHAIRPERSON ANDERSON: Well, from --
22 you file a motion and the community weighed in,
23 and I don't know how the community was aware of
24 the motion. And so the community weighed in on
25 the request that you made.

1 MR. CLAYTON: Okay. But we have a
2 settlement agreement with the community, that
3 before any action is taken before the Board, that
4 we are supposed to be given written notice in
5 advance. I haven't received anything.

6 CHAIRPERSON ANDERSON: As I said --

7 MR. CLAYTON: So, I would ask that
8 anything that the, quote unquote, community and
9 the ANC -- which I'm sure is probably
10 represented -- presents, not be considered as
11 part of this hearing, because pursuant to the
12 terms of the settlement agreement, we're supposed
13 to be given advance notice.

14 CHAIRPERSON ANDERSON: The documents
15 that were filed with the ABC Board by the
16 community, were those documents shared with you?

17 MR. CLAYTON: No. So, that would
18 constitute ex-parte communication, I believe.

19 (Off mic comments.)

20 CHAIRPERSON ANDERSON: As you know,
21 all these hearings are public hearings. And
22 they're not contested. So, therefore, if we have
23 fact-finding hearing, the members of the public
24 show up and say that we're having a fact-finding
25 hearing and there's something I want to add, then

1 it's up to the Board whether or not we're going
2 to entertain -- because it's a public hearing.
3 And so, if you have a public hearing, it's
4 uncontested and members of the public show up and
5 say that I want to weigh in, that's something
6 that the Board can determine, whether or not
7 they're going to allow the public to weigh in,
8 since they're here and they want to make whatever
9 statements they have.

10 I don't know whether or not the Board
11 will allow -- I know that the paper that was
12 filed with the Board, any time anybody file
13 documents with the Board, it ends up on one of
14 our agendas. It ends up on our legal agenda, to
15 say that we have received this information and
16 the Board will make some type of ruling, whether
17 or not we will consider it, or is it just an FYI
18 for the Board.

19 So, any time the Board receives any
20 type of communication from any entity regarding
21 any issue, it will end up on our agenda to say
22 that we received it and what action that we will
23 take.

24 So, I'm not saying I'm going to
25 entertain them today. But I'm just saying, it is

1 a public hearing. It's not a contested hearing.

2 MR. CLAYTON: That's right.

3 CHAIRPERSON ANDERSON: So, any member
4 of the public could show up because they see on
5 our calendar that we're having a hearing on an
6 entity that they have some concern about.

7 So, any member of the public can show
8 up to say, can I be heard on this entity.

9 MR. CLAYTON: Understood. However,
10 that would, first, require the Board action to
11 allow witnesses to testify. Next, it would also,
12 if there's going to be written documentation
13 submitted to the Board, I would think due process
14 and pure fairness would require that the licensee
15 who filed the motion be provided advance copies
16 of whatever is being filed.

17 Further, if it's going to be a fact-
18 finding hearing, the facts that are being
19 presented have to be relevant to the issue
20 presented. And the issue presented is just
21 basically for declaratory relief.

22 If anything that a witness is going to
23 present outside and beyond the scope of that,
24 that would be irrelevant and prejudicial. And
25 I'm assuming that the documents presented to the

1 Board were not something dealing with whether or
2 not we should have additional time to file for
3 renewal of our license. I'm certain it was
4 probably opposition to the existence of the club
5 in the first place.

6 But me not having a copy of it, I
7 couldn't speak intelligently on that.

8 CHAIRPERSON ANDERSON: Well, I guess
9 you're a learned attorney, so therefore, I think
10 you have a sense of your client and the area that
11 the license is located, and however or whatever
12 the community might think or feel about the
13 existence of that establishment within the
14 community.

15 MR. CLAYTON: I'm confident that
16 that's what it says. But again, I don't have a
17 copy. And again, we do have a settlement
18 agreement and the settlement agreement does
19 require that before any action is taken before
20 the Board, that the licensee have an opportunity
21 to cure or respond.

22 CHAIRPERSON ANDERSON: Bur remember,
23 as I stated, you requested a hearing. All our
24 hearings are published on our agendas.

25 MR. CLAYTON: Mm-hmm.

1 CHAIRPERSON ANDERSON: And this is a
2 fact-finding hearing, so this is a public
3 hearing. It's open to the public. And so,
4 because our agenda is published, members of the
5 public became aware of the fact that we're having
6 a hearing today on your entity -- it doesn't
7 matter what the issue is -- that your entity is
8 before the Board today and it's just a fact-
9 finding hearing where the Board is gathering
10 information.

11 And I guess members of the community
12 were saying that, oh by the -- whatever the issue
13 is that the Board is gathering information about
14 this entity, we have some concerns that we want
15 to bring to the attention of the Board.

16 MR. CLAYTON: And that's all well and
17 good.

18 CHAIRPERSON ANDERSON: Whether or not
19 it's relevant to the point to why the person is
20 here, then that's debatable. But I think the
21 public is saying that we published our calendar,
22 this is an entity within our neighborhood.

23 And who knows, maybe they decided to
24 come to state that, oh, we realize like the
25 Macombo Lounge, and so therefore what is it that

1 they're asking you. We're here because they are
2 a entity within our neighborhood that is a
3 positive influence in our neighborhood, so
4 therefore, we wanted to come and weigh in and
5 tell the Board that, yes, we support their
6 request.

7 MR. CLAYTON: But I don't even know
8 what request they would be supporting, since they
9 were not served with a copy of the motion. So,
10 they could not be addressing the issues presented
11 in the motion. That's impossible.

12 CHAIRPERSON ANDERSON: I -- I'm --

13 MR. CLAYTON: But further on that
14 point, if we're going to entertain witnesses, I
15 would --

16 CHAIRPERSON ANDERSON: I did not -- I
17 didn't --

18 MR. CLAYTON: -- would have loved
19 advance notice so I could have presented
20 witnesses that would truly represent a cross
21 section of the neighborhood.

22 CHAIRPERSON ANDERSON: Well, I didn't
23 say that the Board was going to entertain the
24 witnesses. I'm just saying that this is where we
25 are. And it's a novel issue that you're asking

1 the Board to make a decision on. So, therefore,
2 we are -- we're listening to the request that's
3 being made by you.

4 MR. CLAYTON: And because the issue is
5 purely one of law, and only one is really of
6 discretion on the part of the Board -- that is
7 whether or not to impose late fees -- then I
8 don't see how witnesses would enhance the Board's
9 ability to make a decision as to whether or not a
10 law applies to a particular licensee.

11 CHAIRPERSON ANDERSON: Let me have the
12 questions by the other Board members.

13 You submitted an affidavit by
14 Michael --

15 MR. CLAYTON: Whitford.

16 CHAIRPERSON ANDERSON: -- Whitford.

17 MR. CLAYTON: As required by the
18 statute.

19 CHAIRPERSON ANDERSON: All right. All
20 right, I've listened to -- I thought that the
21 responses that were filed by the community were
22 shared with you. And although it's a public
23 hearing that any member of the public can appear,
24 that I think in this particular case I'm not
25 going to allow the public to weigh in, in this

1 particular case. But I'd like to acknowledge
2 that members of the public did show up today at
3 the hearing.

4 They did file papers regarding the
5 request that was made on our agenda today, our
6 legal agenda. That the Board will respond to the
7 request that was made by the community in their
8 filings. Because we have to acknowledge that we
9 received it. So, when -- at some point today
10 when the Board reads its legal agenda, the Board
11 will acknowledge that these requests came in and
12 what the Board's response to the requests.

13 MR. CLAYTON: Well, is the licensee
14 going to get a copy of what was filed?

15 CHAIRPERSON ANDERSON: I don't see any
16 reason why -- I thought that it was shared with
17 you. I don't see any reason why it wouldn't be
18 shared with you. But as I said before, it's just
19 whenever we have any matter and we receive
20 paperwork from any entity outside -- any member
21 of the public, the Mayor, the City Council,
22 whoever, the Board acknowledges on one of our
23 agenda that we receive it and what action, if
24 any, we will take regarding that response, those
25 documentation.

1 MR. CLAYTON: All right.

2 CHAIRPERSON ANDERSON: So, I
3 just -- just to clarify the record again, what is
4 this that you're asking of the Board to do?

5 MR. CLAYTON: The relief requested, as
6 stated in the motion, is -- just a second.
7 Because I probably laid it down -- that we've
8 received a response from the Office of Tax and
9 Revenue yesterday --

10 CHAIRPERSON ANDERSON: Can I ask you
11 a question?

12 MR. CLAYTON: Mm-hmm.

13 CHAIRPERSON ANDERSON: So, when is the
14 response that you -- since you put it in the
15 record, so what is the response you received from
16 the OTR yesterday?

17 MR. CLAYTON: After nine months of
18 waiting, they rejected the offer in compromise.

19 CHAIRPERSON ANDERSON: As they
20 rejected it previously.

21 MR. CLAYTON: Well, yes. But again,
22 as I pointed out to Commissioner Cato -- or
23 Crockett, excuse me -- that this was the same
24 offer. It was just an explanation as to what the
25 conditions that were placed on the offer were.

1 That's what they had requested, that we clarify
2 what the conditions were. Because there were
3 several -- four conditions to the offer. So,
4 that's where we are.

5 So now, we will file an appeal with
6 the District of Columbia Superior Court as to the
7 rejection. But in any event, the ask is that
8 pending the decision from the Office of Tax and
9 Revenue, that the licensee now be allowed an
10 additional 30 days from the date it receives a
11 final decision of the Office of Tax and Revenue,
12 to request the extension of the safekeeping of
13 its ABRA license. It's already done that.

14 CHAIRPERSON ANDERSON: So, you're
15 saying 30 days from yesterday.

16 MR. CLAYTON: Correct. However, we've
17 done that already. It was already submitted on
18 September 16th. Next, we ask an additional
19 90 days from the date, yesterday, we received our
20 response from the Office of Tax and Revenue, to
21 submit the request to renew our ABRA license.

22 So those -- and then, third -- I'm
23 sorry -- under the unique facts of this
24 particular case, the licensee is requesting that
25 the late renewal fees that would be applicable

1 after September 30th be waived under DCMR
2 Title 23, Section 208.2, which allows the Board
3 discretion as to whether or not to impose late
4 fees.

5 CHAIRPERSON ANDERSON: But -- all
6 right, if we were to renew the license or to
7 allow the license to remain in safekeeping, it
8 would be through March 31, 2020.

9 MR. CLAYTON: That's correct.

10 CHAIRPERSON ANDERSON: So, you're
11 asking us, without making any decision whether or
12 not to renew the license, we are extending --
13 where half of the period in safekeeping that we
14 would have granted anyway, because you're asking
15 us for 120 days. That's four months.

16 MR. CLAYTON: Well, no. We're asking
17 for --

18 CHAIRPERSON ANDERSON: For --

19 MR. CLAYTON: No, we were only asking
20 for 30 days from when we got an answer to request
21 the extension of safekeeping. We've already
22 requested the extension of safekeeping.

23 CHAIRPERSON ANDERSON: Right. I know.

24 MR. CLAYTON: And --

25 CHAIRPERSON ANDERSON: And if you've

1 asked for safekeeping, you had to do it
2 September 30th --

3 MR. CLAYTON: Mm-hmm.

4 CHAIRPERSON ANDERSON: -- if the Board
5 granted it, it would be through March 31, 2020,
6 because it's only for six months.

7 MR. CLAYTON: That's right.

8 CHAIRPERSON ANDERSON: But you're
9 asking for 30 days from yesterday, and then
10 additional 90 days, which is 120 days.

11 MR. CLAYTON: No. No. We're only
12 asking for 90 days from yesterday to renew our
13 license.

14 CHAIRPERSON ANDERSON: Right. But --

15 MR. CLAYTON: The two are separate.
16 Extension of safekeeping is one thing. So, you
17 can extend safekeeping without having a renewed
18 license.

19 But if we go to September 30 -- or,
20 excuse me, to March 30th with an extension of the
21 safekeeping, at the end of that safekeeping
22 period, if the license hasn't been renewed,
23 you're going to take the appropriate action
24 that -- well, whatever you deem to be appropriate
25 action at that point.

1 CHAIRPERSON ANDERSON: So, you're
2 asking for an additional 90 days to renew your
3 license.

4 MR. CLAYTON: Right.

5 CHAIRPERSON ANDERSON: And the reason
6 why you're asking for an additional 90 days to
7 renew your license is because you're saying that
8 OTR did not timely respond back to the offer that
9 you had made to -- they had not timely responded
10 to your counteroffer regarding the amount of
11 taxes that were due.

12 MR. CLAYTON: Right. They didn't
13 respond prior to September 30th, which would have
14 been the renewal date.

15 CHAIRPERSON ANDERSON: Well, I said
16 timely. You said timely. Because you said this
17 has been going on for a period. So, you're
18 saying that they did not timely respond. And so,
19 based on the failure for them to respond, the
20 Board should grant you that period of time.

21 And then -- we're going to take this
22 matter under advisement because it needs a lot of
23 thought. But again, as I stated at the onset of
24 the hearing, if under the statute I'm only
25 aware -- and maybe I will be reminded -- that

1 47-2862(8)(b), under that circumstance the Board
2 could do that.

3 If there was a dispute, you have filed
4 it through -- you have filed a formal appeal
5 through the Office of Administrative Hearings,
6 then that statute clearly states that that should
7 not prevent the Board from renewing your license
8 because you didn't have Clean Hands certificate.

9 But your request is not within that
10 statute. So, that's not within -- it's not
11 clearly defined. If it was within that statute,
12 then it's an easier decision to make. But it's
13 not within that statute. So therefore, the Board
14 has to decide whether or not that's something
15 that we can do. And I don't know.

16 MR. CLAYTON: Further evidence or
17 justification for the declaratory orders that
18 we -- or the motion for declaratory orders that
19 we filed. Because we're in what is known as the
20 gray area here.

21 CHAIRPERSON ANDERSON: Well --

22 MR. CLAYTON: Because we were not
23 privileged to file an appeal until we got a
24 response. We got the response yesterday.

25 CHAIRPERSON ANDERSON: But --

1 MR. CLAYTON: So now, we appeal.

2 CHAIRPERSON ANDERSON: But you're not
3 saying that the appeal says -- at least the
4 statute said if the outstanding balance is in
5 dispute. And you're not saying that a balance is
6 in dispute. You're saying that we owe the taxes
7 but we believe that we provided them an offer to
8 say that, rather than -- that we're going to
9 offer you \$.50 on the dollar to settle the
10 matter. That's basically what you're saying.

11 MR. CLAYTON: No. In fact, the amount
12 is in dispute, because whereas the principal
13 amount may be established, it's the penalties and
14 interest that is in dispute, because the Office
15 of Tax and Revenue has discretion whether or not,
16 in certain circumstances and under certain
17 events, to impose or waive penalties and
18 interest.

19 We think that our situation is one
20 where penalties and interest should be waived
21 under some of these circumstances. So, we
22 shouldn't have the penalties and interest imposed
23 for the entire period of the nine-month-plus
24 period.

25 So, yes, the amount of taxes are in

1 dispute. And until we received their response
2 yesterday, again, we were not privileged to take
3 any action to appeal either their decision or the
4 amount of taxes that they are now claiming due.

5 CHAIRPERSON ANDERSON: All right.
6 Anything else you want to say?

7 (Off mic comments.)

8 CHAIRPERSON ANDERSON: All right,
9 Mr. Clayton. You've brought up OTR in this
10 matter.

11 MR. CLAYTON: Mm-hmm. Well, that's --

12 CHAIRPERSON ANDERSON: Because you're
13 saying that the dispute is with OTR. And magic
14 is -- I'm just saying the dispute is with OTR
15 because of OTR inaction, why we're here today.
16 Is that correct?

17 MR. CLAYTON: That's correct.
18 That's -- we're here because we had not received
19 a response from the Office of Tax and Revenue
20 until yesterday.

21 CHAIRPERSON ANDERSON: Well, it
22 appears that we have someone from OTR here --

23 MR. CLAYTON: Well, I kind of
24 suspected that.

25 CHAIRPERSON ANDERSON: -- to bring

1 some clarification that issuance since you
2 brought that -- and I'm not saying this is
3 that -- it doesn't appear to me that the
4 community can respond -- that the community is
5 here, but it's not apparent to me, at least a
6 cursory review of the filings, that they are in a
7 position to respond to your OTR issue.

8 They're probably here to respond to
9 other issues regarding the establishment. But
10 since this is a discreet issue regarding OTR, and
11 that you're asking because of OTR, so if the
12 representative from OTR, if he's in the audience,
13 if he wants to address the issues, then I'll
14 allow him to respond.

15 So, I'm just distinguishing why I'm
16 allowing someone from OTR to speak and not the
17 community to speak, because it's -- I imagine
18 that the community doesn't really have our
19 response regarding the dispute between the
20 licensee and OTR. So, you can come up, sir. And
21 state your name for the record, please.

22 MR. BUIE: Yes. My name is William
23 Buie. I'm Senior Counsel in the General
24 Counsel's office for Tax and Revenue.

25 CHAIRPERSON ANDERSON: Mr. Buie, you

1 sat in the audience and you heard the response
2 with the establishment and OTR. And the
3 establishment is asking the Board to use its
4 discretion to give some leeway based on the
5 inaction of another agency.

6 And as I've stated before, this agency
7 does not get into disputes. For us to do an
8 action, all that we require is that you provide a
9 Clean Hands certificate.

10 So, the Board is not our purview to
11 try to find out why that the licensee cannot
12 provide us with a Clean Hands certificate. We
13 just said, give it to us and we'll renew your
14 license, or we do whatever it is.

15 But we're entertaining the motion --
16 motion was made by counsel and the Board is
17 entertaining it. And so, if you can shed some
18 light on this matter. Not the dispute that's
19 not -- maybe you can tell us the nature of the
20 taxes in a sense of what type of taxes, or what's
21 this dispute and what's going on from your office
22 as far as this establishment.

23 MR. BUIE: Sure. First off, I don't
24 think it's a dispute, per se, as the taxpayer's
25 acknowledged they owe the base tax, which is a

1 significant amount of sales tax.

2 MR. CLAYTON: Please don't disclose
3 the amount.

4 CHAIRPERSON ANDERSON: No, I --

5 MR. CLAYTON: I'm just saying.

6 CHAIRPERSON ANDERSON: -- but I put
7 out there that I don't care about the amount.
8 I'm just asking what type of taxes are due.

9 MR. CLAYTON: Right.

10 MR. BUIE: Yeah. I was going to say
11 before I was interrupted, that the taxpayer owes
12 a significant amount of sales tax. He received a
13 notice about a year ago from our collection
14 division that that amount was being assessed and
15 received notice of such -- of the amount of
16 taxes.

17 At that point, he applied and we gave
18 him final determination, which was a final notice
19 of the amount due, which included base tax,
20 penalty, and interest.

21 At that point, my understanding,
22 talking to Ms. Mason, which is our -- in our
23 office, they sought to have the collection
24 division's determination reconsidered. It's not
25 an appeal.

1 So, I think my understanding is they
2 had made several offers to our Collection
3 Division. We had declined to accept those
4 offers, as they had a right to go to our Internal
5 Reconsideration Office to have the Collection
6 Division's determination reconsidered.

7 I believe we went back and forth over
8 a number of months. I was peripherally involved
9 with some of the discussions with Ms. Mason as to
10 their proposal.

11 We asked for information and certain
12 documents for them to justify why we should
13 accept this reconsideration ultimately. And it
14 probably did take several months. We have other
15 things going on in the office.

16 However, my understanding from
17 Ms. Mason was the taxpayer was notified verbally
18 last week that their proposal was being denied,
19 and that the tax was due.

20 I'll also point out that when they
21 received the collection notice last year, which
22 was a final determination, they had that right to
23 appeal that at DC Superior Court then. They
24 chose not to do that. And then, in turn, they
25 went to our Office of Reconsideration.

1 I'll also clarify, to go to Superior
2 Court they have to pay the tax that is due in
3 terms of tax, penalty and interest, in order to
4 have the right to go to Superior Court.

5 So, my assumption is that's why they
6 went to the Office of Reconsideration to have
7 that determination by our Collection Division
8 reconsidered.

9 So, as of right now, when I became
10 aware that they had made the determination last
11 week, I was under the understanding that they had
12 sent a written notice to the taxpayer. I found
13 out yesterday they had not done that. And that's
14 when I made Ms. Mason aware that they should send
15 a letter to the taxpayer to notify him formally
16 that their proposal had been rejected.

17 So, as of right now they have a tax
18 liability with our office. We would not grant
19 Clean Hands at this point and we're determining
20 our next steps for possible enforcement. And
21 that's where we stand right now.

22 CHAIRPERSON ANDERSON: Basically, what
23 you're saying is that the tax is due and it was
24 unpaid, and so -- how does a taxpayer end up in
25 collections?

1 MR. BUIE: Without going into any
2 details --

3 CHAIRPERSON ANDERSON: Just generally.
4 Not -- I said a taxpayer.

5 MR. BUIE: Generally, it gets to
6 collections when the taxpayer either did not file
7 a return, they filed a return generally and did
8 not pay it.

9 I mean, those are basically the two
10 ways they get to our Collection Division. They
11 had a monthly sales tax liability. They either
12 did not file the returns, or they filed the
13 returns and did not pay. That's how it gets to
14 collection.

15 It's pretty cut and dried. And in
16 this case, the taxpayer did not pay. And that's
17 why it went to collection. My understanding was,
18 we tried to negotiate settlement with the
19 taxpayer. Our Collection Division rejected their
20 proposals. Hence, they went to our Office of
21 Reconsideration.

22 And, I guess, as he's saying, they're
23 not contesting the base taxes due, which is base
24 tax of sales tax that's owed. They're contesting
25 the penalty and interest.

1 And legally, interest cannot be waived
2 by our office statutorily, unless it's a mistake
3 that was made by our office. So, the only thing
4 that would be waived possibly, would be penalty,
5 at our discretion, and we decided not to waive
6 penalty or interest.

7 MR. CLAYTON: This is the first I'm
8 hearing this.

9 CHAIRPERSON ANDERSON: Yes, Mr. --

10 MR. CLAYTON: That's the first I'm
11 hearing of that. But --

12 CHAIRPERSON ANDERSON: Hearing what
13 portion, sir?

14 MR. CLAYTON: Hearing what?

15 CHAIRPERSON ANDERSON: Hearing what
16 portion?

17 MR. CLAYTON: That they had made a
18 final determination not to waive penalties and
19 interest. That's the first --

20 CHAIRPERSON ANDERSON: Well, I think
21 one of the things he said statutorily, they can't
22 waive the interest. So, whether or not they made
23 a final decision, it's -- at least what I heard
24 is that by statute they cannot waive the
25 interest. The only thing that is within their

1 discretion is to waive the penalty.

2 MR. BUIE: If it is --.

3 MR. CLAYTON: I was told something
4 else. But that's -- I mean, that's between the
5 communication I had with the director of the
6 office. But as indicated, I just received the
7 letter yesterday.

8 The telephone conversation he's
9 referring to with Ms. Mason, since he wasn't a
10 party to, I will discuss with the Board and
11 advise that Ms. Mason indicated to me that the
12 Board -- excuse me, the OTR -- was considering
13 not accepting our offer.

14 I responded to her that I would like
15 the opportunity before a final decision is made,
16 I would like the opportunity to have a face-to-
17 face meeting, which, in response, she indicated
18 that she would take that information back to the
19 Board and would get back to me.

20 The next I heard from Ms. Mason was
21 that a decision still had not been made, but she
22 sent several questions last Friday, one of which
23 is -- actually, I don't remember the question,
24 but she sent me several questions last week.

25 Then, yesterday, I received the

1 letter. And the letter was the final
2 determination. Because at the last paragraph it
3 says, please note that this decision is final.
4 If you disagree with this decision, you may
5 appeal directly to the DC Superior Court.

6 So, it was not until I received this
7 letter, dated yesterday, that we were informed of
8 a final decision having been made by the Office
9 of Tax and Revenue with regard to our offer in
10 compromise.

11 CHAIRPERSON ANDERSON: And how long do
12 you have to appeal this matter?

13 MR. CLAYTON: Thirty days.

14 CHAIRPERSON ANDERSON: All right. Any
15 final comments you want to make?

16 MR. CLAYTON: Only in response, if
17 necessary.

18 CHAIRPERSON ANDERSON: ABC Board will
19 take this matter under advisement. Thank you.

20 MR. CLAYTON: Thank you.

21 CHAIRPERSON ANDERSON: The Board is in
22 recess until our 1:30 hearing.

23 (Whereupon the above-entitled matter
24 went off the record at 12:06 p.m.)
25

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In the matter of: Macombo Lounge

Before: DCABRA

Date: 10-09-19

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