

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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ROLL CALL HEARING

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 IN THE MATTER OF: :  
 :  
 Jemel's Bulldog, LLC :  
 t/a The Moxy Hotel :  
 Washington, DC :  
 1011 K Street, N.W. :  
 License #ABRA-109673 :  
 Retailer CH - New :  
 Application :  
 Case #18-PRO-00056 :  
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MONDAY, JULY 9, 2018

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The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Ms. LaVerne Fletcher, Agent, presiding.

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

2 10:01 a.m.

3 AGENT FLETCHER: Would the parties in  
4 the matter of the Moxy Hotel please come forward?  
5 This is Case number 18-PRO-00056, Jemel's  
6 Bulldog, LLC, 1011 K Street N.W., License number  
7 ABRA-109673.

8 This is a retail to Class CH new  
9 application. The protest issues are adverse  
10 impact on peace, order, and quiet, residential  
11 parking, and vehicular and pedestrian safety, and  
12 real property values.

13 My name is LaVerne Fletcher. I'm  
14 conducting the Roll Call Hearing as the Board's  
15 agent. Introductions, beginning with the  
16 applicant, please.

17 MR. O'BRIEN: Stephen O'Brien for the  
18 applicant. I'm accompanied by Mark Namdar, A-M-  
19 D-A-R, who is the general manager of the hotel.

20 AGENT FLETCHER: Thank you, Mr.  
21 O'Brien. And present on behalf of the 1010 Mass  
22 Avenue Condominium Unit Owners Association.

1 MS. PEACOCK: Yes. Molly Peacock,  
2 legal counsel for the -- Hi. Molly Peacock,  
3 attorney for the condominium association, 1010  
4 Massachusetts Avenue Condominium. With me is  
5 Emil Hill. I'll let him introduce himself.

6 MR. HILL: Hi. My name is Emil Hill.  
7 I am president of the condo association, and  
8 joined by about 12 other members of, residents  
9 of, and owners of 1010 Mass.

10 AGENT FLETCHER: Okay. And can you  
11 state your name, and spell it for the record,  
12 please?

13 MR. HILL: Emil Hill, E-M-I-L, H-I-L-  
14 L.

15 AGENT FLETCHER: Oh, Hill. Okay.

16 MR. HILL: Yes.

17 AGENT FLETCHER: Thank you, Mr. Hill.  
18 And you're the president of the condo  
19 association?

20 MR. HILL: Yes.

21 AGENT FLETCHER: Okay. And Ms.  
22 Peacock, are you also representing the

1 condominium association?

2 MS. PEACOCK: Yes, ma'am.

3 AGENT FLETCHER: Okay. And, Mr. Hill,  
4 you mentioned that there's some individual  
5 residents present today as well?

6 MR. HILL: Yes.

7 AGENT FLETCHER: If each one of you  
8 could stand up between Mr. Hill and Ms. Peacock,  
9 there's a microphone right there. If you would  
10 just state your name, and spell it for the  
11 record. Everyone that's present. Okay.

12 MR. AMY: Good morning. My name is  
13 Brian Amy, spelled B-R-I-A-N, last name is  
14 spelled A-M-Y.

15 AGENT FLETCHER: Thank you.

16 MR. HUTTINGER: Jim Huttinger, H-U-T-  
17 T-I-G-E-R.

18 MS. HUTTINGER: Marissa Huttinger, A-  
19 R-I-S-S-A.

20 AGENT FLETCHER: Excuse me. What did  
21 you say is your first name?

22 MS. HUTTINGER: Marissa.

1 AGENT FLETCHER: Okay.

2 MS. HUTTINGER: M-A-R-I-S-S-A, H-U-T-  
3 T-I-N-G-E-R.

4 AGENT FLETCHER: Oh. H-U-T-T-I-N-G-  
5 E-R?

6 MS. HUTTINGER: Correct.

7 AGENT FLETCHER: Thank you.

8 MR. LAVAL: Bruce Laval, last name is  
9 L-A-V-A-L.

10 AGENT FLETCHER: L-A-V-A-L?

11 MR. LAVAL: L-A-V-A-L.

12 AGENT FLETCHER: And what's the first  
13 name?

14 MR. LAVAL: Bruce.

15 AGENT FLETCHER: Oh, thank you.

16 MS. AMY: Ruth Amy, spelled A-M-Y.

17 AGENT FLETCHER: Thank you.

18 MR. SIMBACH: John Simbach, spelled J-  
19 O-H-N, S-I-M-B-A-C-H.

20 AGENT FLETCHER: B-A-C-H?

21 MR. SIMBACH: Correct.

22 AGENT FLETCHER: Thank you.

1 MR. ZUPPE: Jerry Zuppe. That's Z-U-  
2 P-P-E.

3 AGENT FLETCHER: Z-U-P-P-E. And  
4 that's Jerry with a J?

5 MR. ZUPPE: Yes.

6 AGENT FLETCHER: Thank you.

7 MS. ZUPPE: Elaine Zuppe, E-L-A-I-N-E,  
8 Z-U-P as in Peter, P as in Peter, E.

9 MS. ASHLEY: Marty Ashley. M-A-R-T-Y,  
10 A-S-H-L-E-Y.

11 MS. KRONQUIST: Kate Kronquist, K-A-T-  
12 E, K-R-O-N-Q-U-I-S-T.

13 MS. LINDSAY: Julie, J-U-L-I-E,  
14 Lindsay, L-I-N-D-S-A-Y.

15 MS. STROMANN: Sheriann Stromann.  
16 Sheriann is S-H-E-R-I-A-N-N, and the last name is  
17 Stromann, S-T-R-O-M-A-N-N.

18 AGENT FLETCHER: Okay. The first name  
19 is S-H-E-R-I-A-N-N?

20 MS. STROMANN: That is correct.

21 AGENT FLETCHER: And what's the, spell  
22 the last name one more time.

1 MS. STROMANN: S-T-R-O-M-A-N-N.

2 AGENT FLETCHER: Okay.

3 MS. STROMANN: Okay.

4 AGENT FLETCHER: Thank you.

5 MR. STROMANN: Nicholas Stromann, N-I-  
6 C-H-O-L-A-S, same last name as Sheriann, S-T-R-O-  
7 M-A-N-N.

8 AGENT FLETCHER: S-C --

9 MR. STROMANN: S-T-R-O-M-A-N-N.

10 AGENT FLETCHER: Oh, thank you.

11 MR. BARBOUR: Dennis Barbour. D-E-N-  
12 N-I-S, B-A-R-B-O-U-R.

13 AGENT FLETCHER: Thank you.

14 MR. SCHALLENBERG: Good morning.

15 Legal name William Schallenberg, S-C-H-A-L-L-E-N-  
16 B-E-R-G.

17 AGENT FLETCHER: Thank you. And did  
18 everyone present sign the protest letter? Did  
19 everyone sign the protest letter?

20 (Chorus of Yes)

21 AGENT FLETCHER: Okay, thank you.

22 That's a collective Yes. Thank you.

1 MS. PEACOCK: I think we have one  
2 more.

3 AGENT FLETCHER: Is there one more?

4 MS. PEACOCK: Yes.

5 MR. HAMMER: Go up there?

6 MS. PEACOCK: Stand right here. Good.  
7 Hi, how are you?

8 MR. HAMMER: Hi. First and last name?

9 MS. PEACOCK: First and last name.

10 MR. HAMMER: First name John, last  
11 name Hammer. And I also have a proxy for Victor  
12 Voloshin.

13 AGENT FLETCHER: Okay. I'll take  
14 that. Ms. Peacock, are you also representing the  
15 person that Mr. Hammer is referring to?

16 MS. PEACOCK: Yes.

17 AGENT FLETCHER: Thank you, Mr.  
18 Hammer. And what's Victor's last name?

19 MR. HAMMER: Voloshin, V-O-L-O-S-H-I-  
20 N.

21 AGENT FLETCHER: Good.

22 MR. O'BRIEN: V as in Victor?



1 MR. HAMMER: Yes.

2 AGENT FLETCHER: And the last name,  
3 Mr. O'Brien, is spelled V, what was that? Is  
4 that V-S-O?

5 MR. HAMMER: V-O-L-O-S-H-I-N.

6 AGENT FLETCHER: V-O-L-O-S-H-I-N.

7 Thank you. Thank you very much. The 110  
8 Massachusetts Avenue Condominium Unit Owners  
9 Association does not have standing as a  
10 protestant, because condominium associations do  
11 not have standing.

12 The residents that live inside the  
13 condominium do have standing as protestants. And  
14 so, the association is dismissed, but not the  
15 residents. The residents are granted full  
16 standing, because at least five of them are  
17 present today.

18 MR. O'BRIEN: Ms. Fletcher, may I  
19 speak to them?

20 AGENT FLETCHER: Yes.

21 MR. O'BRIEN: I question the standing  
22 of the individuals. Because the protest petition

1 does not state any of the statutory grounds for  
2 protest.

3 AGENT FLETCHER: Okay. Ms. Peacock,  
4 do you want to respond to that?

5 MS. PEACOCK: Sure. If I may also  
6 start by saying that the condominium association  
7 owns property. So, from that perspective it is,  
8 I would submit that it's --

9 AGENT FLETCHER: Do you have proof of  
10 that today, that the condominium association owns  
11 the property?

12 MS. PEACOCK: Yes, I do.

13 AGENT FLETCHER: Okay.

14 MS. PEACOCK: It's, the condominium  
15 association is established by a declaration of  
16 covenants, which is supported in my records. The  
17 covenants describe the property. I can, the  
18 covenants are rather lengthy. But I can read to  
19 you --

20 AGENT FLETCHER: Well, just the  
21 section that says that the association owns the  
22 property.

1 MS. PEACOCK: Sure. Yes. The  
2 declarant, that's the developer of the  
3 association. I'm reading out from the  
4 declaration of covenants recorded in my records.  
5 Hereby submits the land located in the District  
6 of Columbia, and more particularly described in  
7 Exhibit A to this declaration, which I can flip  
8 to right now.

9 It's kind of a long description, but  
10 I'll read relevant parts. Lot number 56 and  
11 Square number 342 in a subdivision made by  
12 American Federation of Government Employees.  
13 It's for a plat recorded in Liber (phonetic) 156  
14 at Folio 103, in the Office of the Surveyor of  
15 the District of Columbia.

16 AGENT FLETCHER: Ms. Peacock, let me  
17 do this just to make it shorter. I understand  
18 that that will be a relatively long declaration.  
19 Can you, would you be able to show that document  
20 to Mr. O'Brien, just briefly, and point out to  
21 him please where it shows that the --

22 MR. O'BRIEN: I'm willing to accept

1 that the declaration describes --

2 AGENT FLETCHER: The property?

3 MR. O'BRIEN: The property --

4 AGENT FLETCHER: Yes.

5 MR. O'BRIEN: -- that constitutes the  
6 condominium.

7 AGENT FLETCHER: But that's what it,  
8 yes, that's what it --

9 MR. O'BRIEN: Yes. I'm not  
10 challenging that.

11 MS. PEACOCK: Okay.

12 MR. O'BRIEN: Okay. The issue --

13 AGENT FLETCHER: That's what is --

14 MR. O'BRIEN: -- though is, the  
15 condominium association, unless it's truly unique  
16 in the District, itself does not own any  
17 property.

18 AGENT FLETCHER: Well, yes, I'm, it's  
19 clear that -- I understand the declaration so  
20 far. I mean, I know there's more to go. That's  
21 why I was asking if there's any place in  
22 particular inside the declaration that shows that

1 the association owns the building.

2 I know the condominium association, I  
3 understand your role. I mean, it was very clear  
4 in the letter. But what's not clear or stated in  
5 the letter, or clearly stated in the letter is  
6 that your association owns the building.

7 MR. HILL: Got it. Got it.

8 MR. O'BRIEN: One way to get to the  
9 bottom of that is, unless this is a very unusual  
10 condominium is the condominium association  
11 doesn't get a real estate property tax bill  
12 history.

13 AGENT FLETCHER: I did check the  
14 Department of Consumer and Regulatory Affairs  
15 Property Ownership Database this morning. And I  
16 didn't see that the association owns the  
17 property. But that database is not always  
18 current. So, I've done a little research this  
19 morning. Mr. Hill, let me ask you. Does the  
20 association own the building?

21 MR. HILL: My understanding is that  
22 the residents, and as part of the association

1       joined into an agreement that we do, all of us,  
2       own the building. That's my understanding.

3               AGENT FLETCHER: So, what I'm going to  
4       do today, I'm going to dismiss the association.  
5       At the upcoming status hearing before the ABC  
6       Board if you want to provide them with evidence  
7       that the association owns the building, then  
8       you'll have an opportunity to do so at that time.

9               MR. O'BRIEN: May I suggest that we're  
10       probably, don't even need to go that far.  
11       Because the association, assuming that it owned  
12       property, my understanding is it's not an  
13       abutting property owner.

14               AGENT FLETCHER: That's right.

15               MR. O'BRIEN: It's separated by a  
16       public alley.

17               AGENT FLETCHER: Yes.

18               MR. O'BRIEN: And the Board's  
19       precedent is clear, abutting means touching. So,  
20       the mere fact that the association is a nearby  
21       property owner would not give it standing in any  
22       event.

1                   AGENT FLETCHER: Well, so that is also  
2 a factor. One thing in the protest letter that  
3 was mentioned was that some of the, with  
4 reference to abutting. The protest letter  
5 mentions something about some abutting residents.  
6 But there aren't any abutting residents. And so  
7 --

8                   MR. HILL: There are no abutting.  
9 Abutting meaning touching the building?

10                   AGENT FLETCHER: Yes. Yes. For our  
11 definition they're touching. In the protest  
12 letter you speak about being adjacent. And you  
13 mention that the building I believe is 163 feet  
14 away. You mentioned, somebody has measured the  
15 distance from the building to --

16                   MR. HILL: Yes.

17                   MS. PEACOCK: Well, it's 163 units.  
18 Pardon me. It's about a little less than 20 feet  
19 away.

20                   AGENT FLETCHER: Yes. And so, you  
21 know, like I said, I didn't recognize the  
22 association as abutting. But you're, you don't

1 appear to be, and a condominium association  
2 doesn't have standing as a protestant. And  
3 there's no evidence today that the association  
4 owns the building. And so, for all those reasons  
5 the association is dismissed.

6 But any time a protest is dismissed  
7 you always have an option to petition the ABC  
8 Board for reconsideration. Because the  
9 association will receive a Board order dismissing  
10 the protest. And ten days upon receipt of that  
11 order you can, you have an opportunity to explain  
12 to the Board why you think the association does  
13 have standing.

14 MR. HILL: So, my question, the  
15 individual unit owners do have standing, and they  
16 can file individual petitions?

17 AGENT FLETCHER: Well, they've already  
18 done that. So, what, so Mr. O'Brien a moment ago  
19 objected to any of the residents having standing,  
20 because they're, the way the protest letter was  
21 submitted, the protest letter was submitted so  
22 that the, it appears that the association is



1 filing the protest. And then attached to the  
2 protest letter are approximately 73 signatures.  
3 But they were attached to the protest filed by  
4 the association.

5 MR. HILL: Okay.

6 AGENT FLETCHER: That's what you were  
7 referring to, Mr. O'Brien?

8 MR. O'BRIEN: Well, what I'm saying  
9 is, I see that there's a letter in the file from  
10 Counsel. But the, when we're now talking about  
11 the individuals we're talking about a petition,  
12 which I haven't counted 70 odd signatures.

13 But the petition doesn't state any  
14 statutory grounds for protest. It simply says,  
15 we oppose. And that's deficient as a matter of  
16 law. I note the petition doesn't incorporate the  
17 letter. It just says, we oppose.

18 AGENT FLETCHER: Well, do you --

19 MR. O'BRIEN: That's why I'm saying  
20 it's subject to being stricken.

21 AGENT FLETCHER: Ms. Peacock, did you  
22 want to respond to that?

1 MS. PEACOCK: Sure. Thank you. The  
2 letter is submitted on behalf of the protestors  
3 listed on the petition, as stated in the first  
4 page of the letter.

5 This letter serves as the protestors'  
6 formal objection to the issuance of the liquor  
7 license, pursuant to D.C. Code Section, et  
8 cetera. The letter goes on to discuss standing,  
9 and all the grounds for the objections from the  
10 protestors.

11 AGENT FLETCHER: The way that I read  
12 the protest letter it appeared that you didn't  
13 specifically state that you were incorporating  
14 the protestants. But the letter implies that the  
15 --

16 MS. PEACOCK: No. I think it does  
17 specifically --

18 AGENT FLETCHER: It says that you, it  
19 says that the law firm represents certain owners  
20 and residents. That's what you're referring to?

21 MS. PEACOCK: That are listed in the  
22 enclosed --

1 AGENT FLETCHER: Yes.

2 MS. PEACOCK: -- petition.

3 AGENT FLETCHER: I see what you're  
4 saying. I am granting standing to the group of  
5 73. Because it appears that, from the protest  
6 letter, that you are representing both groups.

7 MS. PEACOCK: Yes.

8 MR. O'BRIEN: May I make my record on  
9 that?

10 AGENT FLETCHER: Yes.

11 MR. O'BRIEN: Okay.

12 AGENT FLETCHER: Mr. O'Brien.

13 MR. O'BRIEN: I understand the letter  
14 refers to the petition. But the individuals did  
15 not sign the letter. There's a petition that  
16 doesn't incorporate the grounds recited in the  
17 letter. Okay. For all we know, and I'd be very  
18 surprised if all 73 people who signed this read  
19 the letter.

20 MR. HILL: Actually, we all read the  
21 letter. We sent it around to everybody. They  
22 had their own individual copies of the letter.

1 We did not just put the letter at the front desk  
2 and let people sign it. We actually sent the  
3 letter around to every unit owner.

4 AGENT FLETCHER: And that's --

5 MR. HILL: Seventy-three people came  
6 down to the front desk to sign it after having  
7 the letter.

8 AGENT FLETCHER: Okay. And that's,  
9 just for the record, that's Mr. Hill speaking.

10 MR. HILL: Yes.

11 AGENT FLETCHER: Okay.

12 MR. O'BRIEN: Again though, for the  
13 record, the protest petition itself, the document  
14 that the individuals signed does not state any  
15 statutory grounds. And it does not incorporate  
16 the letter of Counsel.

17 AGENT FLETCHER: The, and so, that is  
18 so noted. And of course, Mr. O'Brien will have  
19 an opportunity to file a motion to dismiss the  
20 group of residents that, I'm going to grant  
21 standing to the 73 residents today. If Mr.  
22 O'Brien decides to motion the Board to dismiss

1 the 73 residents, then you'll be copied on the  
2 motion.

3 MS. PEACOCK: Right.

4 AGENT FLETCHER: And you'll have an  
5 opportunity to respond.

6 MS. PEACOCK: Very good.

7 AGENT FLETCHER: We need to set a date  
8 for a mediation. And I have a date for you for  
9 the protest hearing. But not a date for the  
10 status hearing today. When you receive the  
11 hearing notice, a status hearing date will be  
12 included.

13 So, today I'm going to give you the  
14 date for the protest hearing. And then we'll set  
15 a date for the mediation. The protest hearing in  
16 this case is set for September 12, September 12  
17 at 1:30 p.m.

18 And I will give you the next available  
19 date for mediation. The next available date for  
20 mediation is Thursday, July 26 at 9:00 a.m.,  
21 10:00 a.m., 11:00 a.m., or 1:00 p.m.

22 MR. O'BRIEN: The 26th at 1:00 p.m.

1 would be okay for me.

2 AGENT FLETCHER: Would that work for  
3 you, Ms. Peacock?

4 MS. PEACOCK: Yes.

5 MR. HILL: Yes. I'd actually prefer  
6 the 9:00 a.m. if you had --

7 AGENT FLETCHER: Well, so, Mr. Hill,  
8 are you a resident --

9 MR. HILL: Yes.

10 AGENT FLETCHER: -- as well?

11 MR. HILL: And I'm an owner, yes.

12 AGENT FLETCHER: Okay. Thank you.  
13 So, let me add that to my list of people that  
14 were present today. So, you're the president of  
15 the association and a resident?

16 MR. HILL: Yes.

17 AGENT FLETCHER: Just a second. I  
18 count 17 individuals as being present today. Ms.  
19 Peacock, before we set the date for mediation,  
20 that means that at the upcoming status hearing  
21 only you need to appear on behalf of the group.

22 MS. PEACOCK: Okay.

1                   AGENT FLETCHER: Because at least five  
2 are present today. At the mediation only you  
3 need to appear. Everybody doesn't need to appear  
4 for a mediation.

5                   MS. PEACOCK: They can if they want.  
6 Sometimes it's helpful to have -- But, right.

7                   AGENT FLETCHER: Everybody --

8                   MS. PEACOCK: Yes.

9                   AGENT FLETCHER: Everybody has a right  
10 to be present.

11                  MS. PEACOCK: Thank you for clarifying  
12 that.

13                  AGENT FLETCHER: Mr. O'Brien is  
14 available at 1 o'clock on Thursday, July 26. Is  
15 that a good time for you, Ms. Peacock, and Mr.  
16 Hill?

17                  MS. PEACOCK: Well, it sounds like our  
18 folks prefer 9:00 a.m.

19                  MR. HILL: Yes. I would prefer 9:00  
20 a.m. just to get it over, and not take the rest  
21 of the day. Unlike Mr. O'Brien we all have other  
22 jobs too, besides just representing buildings.

1 MR. O'BRIEN: And I have other  
2 clients. I can't do it on the, at 9:00 a.m. I  
3 can compromise at 11:00 a.m. on the 26th.

4 MR. HILL: 11:00 a.m.

5 AGENT FLETCHER: 11:00 a.m. on the  
6 26th?

7 MR. O'BRIEN: Yes. We're in  
8 agreement.

9 AGENT FLETCHER: Mediation is set for  
10 Thursday, July 26 at 11:00 a.m. Are there any  
11 questions at all? Thank you for coming. If you  
12 have any questions my card is on the table. And  
13 when you come on the 11th, just check in out  
14 front. Most likely it will be in this room.

15 MS. PEACOCK: Very good. Thank you.

16 AGENT FLETCHER: Okay. Thank you.

17 MR. HILL: Thank you very much.

18 AGENT FLETCHER: We'll see you soon.

19 Thank you.

20 (Whereupon, the above-entitled matter  
21 went off the record at 10:24 a.m.)

22



|   |   |   |   |
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This is to certify that the foregoing transcript

In the matter of: The Moxy Hotel

Before: DC ABRA

Date: 07-09-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

*Neal R Gross*

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Court Reporter

**NEAL R. GROSS**

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