



T-A-B-L-E O-F C-O-N-T-E-N-T-S

ORAL ARGUMENT

Stephen O'Brien. . . . . 4, 18  
Joshua Levy. . . . . 9, 21

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

2 11:16 a.m.

3 CHAIRPERSON ANDERSON: All right. Our  
4 next case is a Protest Hearing (Status) Case No.  
5 19-PRO-00036, Trump International Hotel  
6 Washington D.C., License No. 100648.

7 Will the parties, please, move forward  
8 and identify yourself for the record, please?

9 MR. O'BRIEN: Stephen O'Brien for the  
10 license applicant, Mr. Chair.

11 CHAIRPERSON ANDERSON: Good morning,  
12 Mr. O'Brien.

13 MR. LEVY: Good morning. Joshua Levy  
14 for the group.

15 CHAIRPERSON ANDERSON: Good morning,  
16 Mr. Levy.

17 All right. All right. This is Case  
18 No. 19-PRO-00036, application to renew Retailer's  
19 Class CH License, Trump International Hotel,  
20 Trump Hotel located at 1100 Pennsylvania Avenue,  
21 N.W.

22 We are here today to hear oral

1 argument on the applicant's Motion to Dismiss  
2 filed September 3, 2019. Specifically, the Trump  
3 Hotel seeks to dismiss the protest of a Group of  
4 5 or More individuals due to a lack of standing.

5 The protestants filed an opposition to  
6 the Motion to Dismiss supported by four exhibits.  
7 A reply to the opposition followed on September  
8 13, 2019 and then just yesterday the protestant  
9 filed a sur-reply.

10 The issue before the Board today is  
11 whether the members that make up the Group of 5  
12 or More individuals, the protestants, have  
13 standing to protest the renewal of the alcoholic  
14 beverage license held by the hotel pursuant to  
15 D.C. Code § 25-601.

16 Mr. O'Brien, it's your position that  
17 they do not and it's your motion, so let's hear  
18 from you first.

19 We will then hear from Mr. Levy as to  
20 why the Board should affirm the protestant's  
21 standing. We have set an hour for this hearing  
22 and I'm hopeful we won't need more than that, if

1 that. So please mind the clock.

2 So, Mr. O'Brien, it's your motion and  
3 please let us know.

4 MR. O'BRIEN: Thank you, Mr. Chair.  
5 After the Roll Call in this case, we filed a  
6 Motion to Dismiss on different grounds. The  
7 Board overruled that motion, but in its order, I  
8 think it is dated June 20th, the Board ruled or  
9 granted, I would say, summary judgment to the  
10 applicant on the appropriateness grounds.

11 So the only thing moving forward in  
12 this case, with respect to this motion then, is  
13 the composition of the Group of 5.

14 The -- we have established after  
15 finally getting the addresses that four of the  
16 purported eight members are not residents of the  
17 District of Columbia.

18 Now, the statute requires that a Group  
19 of 5 be comprised of five individuals who are  
20 either residents of the District of Columbia or  
21 property owners in the District of Columbia. And  
22 we can -- you can mix and match. You can have

1 three residents perhaps and maybe two property  
2 owners.

3 In this case, we have demonstrated  
4 that four of the members of the group of eight  
5 and that is Kennedy, Boddie, Moline, and Jennifer  
6 Butler are not residents of the District of  
7 Columbia and were not, at the time of filing of  
8 this protest.

9 I don't understand from the opposition  
10 or the sur-reply any challenge of those -- of  
11 that factual assertion.

12 Rather, we are faced in what I would  
13 deem a desperate effort to keep this ball in the  
14 air with the contention that Moline is a property  
15 owner in D.C. and the foundation for that, as I  
16 understand it, is that Moline, not in his own  
17 name, but in the name of his employer, signed a  
18 license agreement to rent three offices and a  
19 work station in a shared office suite, sort of  
20 like a WeWork type arrangement and that that  
21 makes him a property owner in the District of  
22 Columbia.

1           I think it's a silly argument. And  
2 with that, I'll rest. Well, I should point out,  
3 I think what we all know though, that once the  
4 Board determines that the Group of 5 is less than  
5 five, then the protest must be dismissed. That's  
6 established by the Board's own precedence. Thank  
7 you.

8           CHAIRPERSON ANDERSON: Just a question  
9 I want to ask you, Mr. O'Brien.

10          MR. O'BRIEN: Sure.

11          CHAIRPERSON ANDERSON: Because you  
12 said that you have stated how the protestant  
13 stated that Moline is a property owner. So what  
14 is a property owner? Who is a property owner  
15 under the statute?

16          MR. O'BRIEN: One who owns property.  
17 Moline does not own any property.

18          CHAIRPERSON ANDERSON: Well, the  
19 statute is clear that the person has to -- that a  
20 property owner is one who owns property in the  
21 District.

22          MR. O'BRIEN: Yes.

1                   CHAIRPERSON ANDERSON: And it's your  
2 contention that based on the information that was  
3 provided, is that Mr. Moline does not own  
4 property in the District of Columbia?

5                   MR. O'BRIEN: That is correct.

6                   CHAIRPERSON ANDERSON: And it's also  
7 your contention then that out of the eight, that  
8 there is no contention that I think Foer, Boddie  
9 and Butler are not D.C. residents?

10                  MR. O'BRIEN: Or property owners.

11                  CHAIRPERSON ANDERSON: Or property  
12 owners. And so out of the eight, so that leaves  
13 five? I'm just saying out of the eight  
14 originals, that only -- that left five  
15 individuals who could have qualified. Is that  
16 correct?

17                  MR. O'BRIEN: (No audible answer.)

18                  CHAIRPERSON ANDERSON: No, you  
19 initially stated that there were eight folks who  
20 signed off in the group. Is that correct?

21                  MR. O'BRIEN: Yes. And represented  
22 that they were residents --



1 CHAIRPERSON ANDERSON: Right.

2 MR. O'BRIEN: -- of Washington, D.C.

3 CHAIRPERSON ANDERSON: Right. And out  
4 of the eight, three people Foer, Boddie and  
5 Butler that the protestants have agreed, and I'm  
6 asking, that they agreed that they are not  
7 residents of the District of Columbia or property  
8 owners of the District of Columbia. Is that  
9 correct?

10 MR. O'BRIEN: I don't recall in their  
11 pleadings a specific concession of that, but they  
12 haven't challenged the representation.

13 CHAIRPERSON ANDERSON: Haven't. So  
14 the challenge right now is, at least from your  
15 perspective, regarding the Moline. The Moline,  
16 that's the one that it has been that this person  
17 is being presented as a property owner in the  
18 District?

19 MR. O'BRIEN: That is correct.

20 CHAIRPERSON ANDERSON: Okay. All  
21 right. All right. Mr. Levy, how do you respond  
22 to the motion, sir?

1           MR. LEVY: Good morning, Mr. Chairman  
2 and Board. Appreciate the opportunity to respond  
3 and be before you today.

4           With regard to the papers before you,  
5 the issue is not as narrow as the applicant makes  
6 it. The issues before you are not limited to the  
7 question of whether these five people have  
8 standing to go forward with the protest. The  
9 issue I will address in a second.

10           I also want to make sure that the  
11 Board is reminded of the papers that discuss the  
12 origins of this matter and how this group has not  
13 waived its right to a Show Cause Hearing or  
14 another hearing that would be required under the  
15 law.

16           Let me first address the protest  
17 standing issue that applicant raises orally with  
18 you and the questions, Mr. Chairman, that you  
19 had.

20           It is uncontested in this case that--  
21 yes?

22           MEMBER CROCKETT: Can you, please,

1 bring the mike towards you?

2 MR. LEVY: Sure.

3 MEMBER CROCKETT: Thank you.

4 MR. LEVY: This microphone?

5 MEMBER CROCKETT: Yes. Thank you.

6 MR. LEVY: Is that better?

7 MEMBER CROCKETT: Yes.

8 MR. LEVY: Thank you. With regard to  
9 standing, applicant does not dispute that four of  
10 the members of the group are D.C. residents.  
11 Goldfrank is one, Mr. Foer, who is behind me who  
12 did not appear at the Roll Call Hearing and is  
13 here for the Status Hearing, is another, Rabbi  
14 Aaron Poteck is the third and the fourth is  
15 Reverend William Lamar.

16 The applicant does not dispute that  
17 they are residents. We are talking about do we  
18 have five? There is nothing in the law that  
19 precludes additional people from joining in a  
20 protest, but to get standing for a protest, we  
21 understand that it has to be five people who are  
22 either residents of the District or property

1 owners.

2 So four are not in dispute. We are  
3 talking about one additional person. Rabbi  
4 Moline is a property owner in the District. And,  
5 Mr. Chairman, you asked the applicant how is  
6 property owner defined under the relevant  
7 statute, which is 25-601.

8 And applicant gave you a tautological  
9 answer. He said the property owner is the owner  
10 of property. That doesn't tell you very much.

11 The property owner in 25-601 does not  
12 distinguish the landlord from a tenant, does not  
13 distinguish the lessor from the lessee. Other  
14 D.C. statutes do.

15 The City Council knows how to  
16 distinguish different kinds of property owners  
17 from each other, different kinds of people with  
18 stakes in real property in the District when it  
19 wants to legislate. It did not do that here in  
20 25-601 in the title that governs all things  
21 related to the licenses of alcohol in the  
22 District of Columbia.

1           And indeed, in applicant's papers, it  
2           refers the Board to another statute where the  
3           City Council understood how to make that  
4           distinction in the Snow Shoveling Statute.

5           And in that statute, it distinguishes  
6           a property owner from a tenant. The City Council  
7           is silent in 25-601 on what a property owner is.  
8           And the case law from the D.C. Superior Court  
9           looking at past Agency decisions and indeed  
10          Alcohol Beverage Control Board decisions says  
11          clearly to you all you should interpret the term  
12          property owner broadly in terms of generally  
13          broadly to encourage participation in processes  
14          like this, so that you aren't lobbied by people  
15          on the sidelines.

16          Let's use the front door. Let's have  
17          the lights on. Let's do this transparently.  
18          Let's have people from the community come in.  
19          And then on the merits, you can make the decision  
20          you need to make, but let's at least allow  
21          participation.

22                 Applicant does not want this to --

1 there to be a hearing. He has tried everything  
2 imaginable to try to move to dismiss this  
3 proceeding from going forward.

4 We have been transparent with the  
5 Board. Applicant knows that three of these  
6 members aren't D.C. residents because we informed  
7 the Board of that. We did not mislead the Board.  
8 And we did not mislead applicant. And so with  
9 all that, we maintain that the five members have  
10 standing.

11 If in the event the Board disagrees  
12 with that position, we want to make clear that  
13 this group, as you recall, initially filed a  
14 complaint under a different provision of Title 25  
15 last summer. Filed a complaint under 25-447 and  
16 asked for an Order to Show Cause.

17 And as the Board knows, under that  
18 provision anybody can come forward with a  
19 complaint. There is no requirement for residency  
20 in the District. There is no requirement for  
21 property ownership in the District. Anybody can  
22 come before this Board and file a complaint at

1 any time. And that's what the complainants did.

2 We supplied the Board with evidence  
3 this high giving you a reasonable belief that  
4 applicant has violated a provision of the title,  
5 specifically the statutory good character  
6 requirement under 25-301(a)(1).

7 The Board has yet to reach a decision  
8 on whether it has a reasonable belief of such  
9 evidence. It didn't reach that in September when  
10 it wrote counsel. Instead, the Board said to  
11 counsel, in a letter on September 2018, that is  
12 an issue that we can take up when the license is  
13 being applied for or when it is being -- when the  
14 licensee is applying for a transfer or the  
15 licensee is applying for renewal.

16 So immediately after it became public  
17 that there was a renewal, we asked the Board to  
18 turn to that issue. ABRA came back to us and said  
19 we can look at this as a protest, but nobody  
20 waived their right to a Show Cause Hearing.

21 And so we maintain that a hearing  
22 should go forward in question of good character.

1 And the question of whether the applicant is in  
2 compliance with that statutory provision, whether  
3 through a Protest Hearing, whether through a Show  
4 Cause Hearing or whether there should be an  
5 Administrative Procedure Act Hearing under 1-1509  
6 because now we have got the ANC weighing in.

7 The ANC has written you multiple  
8 times. Now on its own, I resent the suggestion  
9 in the papers that we had some hand in writing  
10 the letters, ridiculous. The ANC where the  
11 applicant resides wrote this Board and said we  
12 support this complaint. We support this protest.

13 Under law, the Board has to give the  
14 ANC great weight. And of course if the Board  
15 wants to adopt the ANC's position that in fact  
16 the applicant is in violation of the statute,  
17 applicant is going to want a hearing and  
18 applicant should have a hearing.

19 And all we ask is that we take a part  
20 in that hearing. But whether you were looking at  
21 a Protest Hearing, a Show Cause Hearing or a Due  
22 Process Hearing, this Board has had evidence the



1 applicant is in violation of the statutory  
2 provision now for 15 months and the hearing is  
3 warranted.

4 CHAIRPERSON ANDERSON: The concern I  
5 have because this is a Protest Hearing and so for  
6 a Protest Hearing, and as you are aware in all  
7 hearings, standing can be raised at any point.  
8 And as I've been Chair for this Board for the  
9 past four years, and I can only give you examples  
10 of when we have a condo association decides to  
11 protest a liquor license and one of the things  
12 that we go by is to look to see, especially when  
13 it comes to a condo, whether or not they are  
14 owners or renters.

15 And so at least for a condo, if they  
16 are not like an abutting property -- if they are  
17 not an owner, then we do not give standing to a  
18 renter. So therefore, they have to provide to us  
19 that they are an actual owner. And so, at least  
20 in my experience, I have known that -- I'm just  
21 using that example of when we have had Protest  
22 Hearings with tenants in a condo, that we only

1 grant standing to actual owners and not renters.

2 So I -- the Board, I'm sorry, might --  
3 we -- it's my understanding that we have a  
4 significant amount of decisions that defines what  
5 a property owner is. And I'm not sure at this  
6 juncture, and I don't know whether or not your  
7 definition complies with what the Board has done  
8 previously.

9 MR. LEVY: May I respond?

10 CHAIRPERSON ANDERSON: Sure.

11 MR. LEVY: Thank you. Surely if the  
12 Board had defined what a property owner was to  
13 exclude my client, applicant would have raised  
14 that ABRA decision with you. Applicant did not.  
15 There are none.

16 And applicant has filed two papers  
17 with you. There are no citations to any ABRA  
18 decisions defining property owners to exclude a  
19 tenant or a sub-tenant. The example you gave of  
20 a member of a condominium association is a worthy  
21 one, of course, and let me just distinguish it  
22 from my client who is a sub-tenant of a

1 commercial property.

2 A member of a condominium association  
3 is in a large organization with -- which is  
4 democratically constituted.

5 CHAIRPERSON ANDERSON: No, I'm not  
6 saying that. I'm just saying I was just giving a  
7 condo as a --

8 MR. LEVY: Sure.

9 CHAIRPERSON ANDERSON: -- not  
10 necessarily as an association.

11 MR. LEVY: Sure, sure, of course. I  
12 just wanted to distinguish that --

13 CHAIRPERSON ANDERSON: Okay.

14 MR. LEVY: -- situation from my  
15 client, which is the sub-tenant of a commercial  
16 building.

17 CHAIRPERSON ANDERSON: Mr. O'Brien?

18 MR. O'BRIEN: He is not a sub-tenant.  
19 The interface alliance itself is not even a sub-  
20 tenant, it's a licensee to occupy a little corner  
21 of a full floor executive suite.

22 Now Rabbi Moline signed on behalf of

1 his employer, but if the Chair of this Board or  
2 Mr. Moosally, for instance the Director of the  
3 Alcoholic Beverage Regulation Agency were to sign  
4 an agreement that we are going to ask the Board  
5 and ABRA can occupy this space in this building,  
6 that doesn't make the Chair or Mr. Moosally a  
7 tenant, much less a licensee.

8 But I have to challenge the claim that  
9 there has been no misleading here. This case has  
10 been fraught with misleading since day one. I  
11 would like to go over the chronology.

12 This all starts back in June of last  
13 year when the group represented by Mr. Levy, a  
14 Group of 7 at that time, submitted a complaint to  
15 the Board. I've got copies if anybody wants to  
16 see it here.

17 The complaint recites at paragraph 5  
18 "The following residents of Washington, D.C.  
19 believe the licensee is in violation," and on and  
20 on. And on page 27 of that complaint, it is  
21 signed by the seven. There were  
22 misrepresentations starting then.

1           Now, in May of this year when the  
2 protest window was open, counsel filed a  
3 purported protest that was not signed by the  
4 individuals. We moved to dismiss on that ground  
5 alone because the regulations required the  
6 protestants sign, the individuals.

7           The Board ruled, and I know I'm  
8 paraphrasing here, that essentially the  
9 signatures from June of 2018 could be deemed to  
10 have migrated to the May 2019 file, protest file.

11           The Board has so ruled that's the law  
12 of the case, but at no time did anybody from the  
13 protest group say, Board Members, wait a minute,  
14 I really don't have a place in the city, I'm not  
15 a resident.

16           In fact, and I've got the chronology  
17 here, on May 28th was the Roll Call. Jennifer  
18 Butler showed up and put her name into the  
19 microphone. Now, I read the transcript. The  
20 Board's Agent, Ms. Fletcher, did not ask each  
21 person to state an address, but by that time and  
22 it is undisputed, Ms. Butler was out in -- lived

1 in Maryland, but she showed up here pretending to  
2 be a protestant.

3 The Board eventually ordered release  
4 of the addresses. The protective order to try to  
5 keep them secret was denied, that was in June.

6 In July there was a motion to add another  
7 protestant to the protestant team and that seemed  
8 strange to us, at least at the time, because if  
9 you have five, it doesn't matter if you have 50  
10 or 500, you just need five.

11 That suggested that somebody knew at  
12 some point that they were short of the requisite  
13 five. They tried to get somebody else in, that  
14 didn't work. Finally, the Board ordered that the  
15 addresses be released whereupon, for the first  
16 time, we were able to go out and test the  
17 validity of these things.

18 Now, at no time has any member, any of  
19 the four people who are not valid protestants  
20 come to the Board and said wait a minute, there  
21 may be a misunderstanding here. I'm not really a  
22 D.C. resident, never.

1           The Board on its order of denying the  
2 motion to add Susan Flanders enumerates who the  
3 protestants are. That order is denied I think  
4 July 24th, the motion recites "The group as  
5 presently recognized by the Board consists of  
6 Foer, Kennedy, Goldfrank, Lamar, Butler, Potek,  
7 Boddie and Moline.

8           At no point does anybody say wait a  
9 minute, Board, there has been a mistake made  
10 here. Some of these people do not qualify. No.  
11 We had after fighting for it, after having to  
12 fight for it, get the addresses and then we get  
13 to the bottom of it.

14           I challenge the representation that  
15 the Board and the applicant have not been misled.  
16 Now, if the Board grants the Motion to Dismiss  
17 the Protest on standing grounds, the contested  
18 case is over. There is nothing left before the  
19 Board to rule on.

20           The group can file complaints as often  
21 as they wish and the Board will do what it deems  
22 appropriate with those complaints, but the

1       contested case, why we are here today, is  
2       strictly on the issue of fitness and the  
3       protestants' lack standing notwithstanding the  
4       claim that Moline is a property owner, it's  
5       false. Thank you.

6                   MR. LEVY: May I respond?

7                   CHAIRPERSON ANDERSON: Yes, Mr. Levy.

8                   MR. LEVY: I'm really sorry that  
9       applicant's counsel has wasted your time with  
10       arguments that are totally irrelevant to this  
11       proceeding and false.

12                   We are talking about whether Mr.  
13       Moline, Rabbi Moline qualifies to have standing  
14       as a protestant. He has now taken you through a  
15       false chronology alleging fraud on the part of my  
16       complaints in May. It's disgusting. It's  
17       inappropriate. And after I'm done, you are going  
18       to apologize.

19                   As I have included in our papers on  
20       Monday, the only reason why applicant knows that  
21       three of these members are not District of  
22       Columbia residents is because we informed ABRA of



1 that and ABRA shared that information with Mr.  
2 O'Brien. I have attached it to the filing on  
3 Monday.

4 On July 16, 2019, Jonathan Berman sent  
5 the addresses that I had supplied to the Board to  
6 Mr. O'Brien. So Mr. O'Brien's protest that we  
7 never informed the Board of the current status of  
8 the individuals' residences is incorrect. We  
9 did. And that is why you know.

10 Secondly, when we initially filed the  
11 complaint where there is no residency  
12 requirement, Reverend Boddie and Judge Kennedy  
13 had residences in the District. Reverend Butler  
14 had a residence in the District at the time we  
15 filed the complaint as well. After we filed the  
16 protest, I learned she moved.

17 But to treat this process like this is  
18 some sort of fraud or on poor Mr. Trump, it's  
19 insanity. We have been straightforward with the  
20 Board. We have been straightforward with Mr.  
21 O'Brien. Mr. O'Brien is here a lot. He  
22 understands that there is a regular process to

1 investigate whether the individuals forming a  
2 protest have standing or not. He is entitled to  
3 get information to investigate. He is making  
4 much more out of this than is necessary.

5 The bottom line is that there are four  
6 uncontested people who have standing. There is a  
7 question about whether Mr. Moline is a property  
8 owner. We argue that he is. There is no ABRA  
9 decision to the contrary. Applicant doesn't cite  
10 anything to the contrary. And we have reserved  
11 our rights to have other hearings.

12 MR. O'BRIEN: Mr. Chair?

13 CHAIRPERSON ANDERSON: Yes?

14 MR. O'BRIEN: Counsel just made a  
15 representation as to his personal knowledge. And  
16 I'm perfectly prepared to believe that when  
17 counsel filed this protest in May, that he was  
18 unaware that Reverend Butler had moved to  
19 Maryland maybe two months before, a month or two  
20 before. I'm prepared to believe that. I'm  
21 prepared to believe she didn't pick up the phone  
22 and call him.

1                   But since he is making  
2                   representations, may I suggest the Board ask him  
3                   when he became aware that Kennedy, Boddie and  
4                   Moline were not residents of the District of  
5                   Columbia as he represented in his file? That  
6                   would be the question I would suggest the Board  
7                   ask.

8                   MR. LEVY: And here is the answer.  
9                   May I approach?

10                  CHAIRPERSON ANDERSON: Hold on. Has  
11                  Mr. O'Brien seen the document?

12                  MR. LEVY: It's just crazy. This is  
13                  an email to you from July 16, 2019, it's from  
14                  ABRA. It's from Jonathan Berman. Is that you,  
15                  Mr. Berman, standing up? The -- I sent a list of  
16                  the addresses to ABRA. ABRA sent them to you,  
17                  Mr. O'Brien.

18                  MR. O'BRIEN: After, after.

19                  MR. LEVY: That's --

20                  MR. O'BRIEN: After representing that  
21                  they were residents, after not providing the  
22                  addresses at the time of filing.

1 MR. LEVY: No, it was at the time of  
2 filing, that's when we forwarded it to you.

3 MR. O'BRIEN: At the time of filing--

4 MR. LEVY: At the time of filing, I  
5 sent the addresses --

6 MR. O'BRIEN: Okay.

7 MR. LEVY: -- upon request of ABRA.

8 MR. O'BRIEN: I have not interrupted  
9 and I suggest you not either.

10 CHAIRPERSON ANDERSON: For the --

11 MR. LEVY: I'm not the one personally  
12 attacking --

13 CHAIRPERSON ANDERSON: -- since this  
14 matter is being transcribed, I would ask both  
15 counsel one person speak at a time to make sure  
16 that we have a clean record just in case --

17 MR. LEVY: Sure. Let me respond.

18 MR. O'BRIEN: I have the floor.

19 CHAIRPERSON ANDERSON: Go ahead, Mr.  
20 O'Brien.

21 MR. O'BRIEN: Thank you. So that's my  
22 suggestion to the Board. Counsel has chosen to

1 say well, I didn't know that Butler wasn't a  
2 resident when I filed this in May. And I'm  
3 prepared to believe that, it's logical that she  
4 didn't pick up the phone and call him.

5 But my suggestion since he wants to  
6 make representations about what he knew, my  
7 suggestion is the Board ask him when he knew that  
8 Kennedy, Moline and Boddie were not, in fact,  
9 residents of the District of Columbia as he  
10 represented to the Board and as he allowed the  
11 Board to continue to believe after the Board  
12 recited them as protestants in its June 24 order  
13 denying the motion to add yet another protestant.

14 That to me would be the appropriate  
15 question, but it's up to the Board whether it --

16 CHAIRPERSON ANDERSON: Well, that's  
17 not necessarily relevant to me. I mean, as the--  
18 we only need five people. And so and to me the  
19 argument is whether or not Moline is a resident  
20 of the District of Columbia to make this a Group  
21 of 5 or More.

22 And so I'm not -- I don't think it is

1 that important. And as you know, as attorneys,  
2 and I -- we make representations based on  
3 information that our client has represented to  
4 us. And as you stated, Mr. O'Brien, people make  
5 decisions and your client does not necessarily  
6 always call you and let you know what is it that  
7 they are doing.

8 And so I'll take your representation  
9 and I'll take -- I will leave it as an attorney,  
10 because as attorneys we make representations  
11 based on the information that is provided to us  
12 from our client. And as you stated, if a client  
13 moved out of the District of Columbia, the  
14 litigations move in and they might not think it  
15 was important for them to inform their attorney  
16 to say that -- and maybe that person was not even  
17 aware that in order for them to protest the  
18 matter, they have to be a resident of the  
19 District of Columbia.

20 I'm just leaving it at that. I'm  
21 leaving it at that.

22 MR. O'BRIEN: They signed it back in--

1 last year --

2 CHAIRPERSON ANDERSON: No, but --

3 MR. O'BRIEN: -- saying they were  
4 residents of the District of Columbia.

5 CHAIRPERSON ANDERSON: And I don't  
6 know if they were at the time, but I'm just  
7 saying --

8 MR. O'BRIEN: They were not, sir.

9 CHAIRPERSON ANDERSON: I'm not -- I  
10 guess for me, the relevance -- where we are right  
11 now, we are only talking about -- it doesn't  
12 appear to me that we are trying to make a  
13 determination. It appears that there is  
14 agreement on four and we are here trying to make  
15 a determination on whether or not there is a  
16 fifth member. I think that's where we are. I  
17 think that's where they are.

18 MR. O'BRIEN: The four that are still  
19 standing were not investigated, once we found out  
20 it was below five, we didn't bother with that.  
21 We did not make any concessions.

22 CHAIRPERSON ANDERSON: All right. But

1 we are not making -- the decision to -- the  
2 motion is that they do not have five. And the  
3 arguments that are being made today it's on this  
4 one person, Moline, is that the information that  
5 the protestant provided to the Board to  
6 substantiate their D.C. residency, you are saying  
7 that based on information that is provided, that  
8 person does not qualify as a resident in D.C. Is  
9 that correct?

10 MR. O'BRIEN: A property ownership.

11 CHAIRPERSON ANDERSON: Yes, a property  
12 ownership.

13 MR. O'BRIEN: Yes, they don't claim  
14 Moline as a resident.

15 CHAIRPERSON ANDERSON: Right. That  
16 the information that is provided to the Board to  
17 say that this -- that Moline owns property in the  
18 District of Columbia. You are saying that this  
19 document does not support that this person is a  
20 property owner in the District of Columbia. Is  
21 that correct?

22 MR. O'BRIEN: Under any reasonable or



1 plausible definition of the term property owner.

2 CHAIRPERSON ANDERSON: I'm just trying  
3 to make sure that I'm clear in my mind.

4 MR. O'BRIEN: That's absolutely  
5 correct. And, Mr. Chair?

6 CHAIRPERSON ANDERSON: Yes?

7 MR. O'BRIEN: My -- when you gave me  
8 before at the start of this conversation, I was  
9 very brief. I just laid it out and said this is  
10 what is before you and that is it. I bring this  
11 up on a rebuttal only because representations  
12 were made during argument.

13 I would agree with you. It's as  
14 simple as can be. If Moline is not a property  
15 owner, they don't claim he is a resident any  
16 more, they used to, but they don't any more. If  
17 Moline is not a property owner then this case is  
18 over.

19 CHAIRPERSON ANDERSON: Okay. That's  
20 your opinion. And that is the crux of this  
21 decision for us.

22 MR. O'BRIEN: That is absolutely

1 correct.

2 CHAIRPERSON ANDERSON: That's the crux  
3 of this decision that the Board has to make.

4 Mr. Levy?

5 MR. LEVY: I agree that with regard to  
6 the question of standing for a Protest Hearing  
7 the question is limited to whether Mr. Moline,  
8 whether Rabbi Moline is a property owner. And if  
9 applicant could share with you an ABRA decision  
10 defining property owner to exclude people like  
11 Rabbi Moline, he would have, he has not, because  
12 there is not.

13 The statutory definition of property  
14 owner doesn't exist. The definition of property  
15 owner in 25-601 is undefined and the case law  
16 that talks about participation in ABRA decisions,  
17 in ABRA process and in particular a Protest  
18 Hearing says to ABRA and to the Board encourage  
19 participation. Read these terms to encourage  
20 participation, don't read them to exclude  
21 participation.

22 And not withstanding all of that, we

1 have reserved our right to a hearing under other  
2 parts of the statute that we have asked for and  
3 we renew those arguments and renew those requests  
4 with the Board.

5 CHAIRPERSON ANDERSON: All right. Any  
6 other argument? I'm sorry, any Board Members  
7 have any questions that you wish to ask either  
8 party?

9 MEMBER CROCKETT: No.

10 CHAIRPERSON ANDERSON: No. So what  
11 I'm going to do is that this is your motion, Mr.  
12 O'Brien, and I'll give you the final word, but do  
13 you want to make any closing arguments?

14 MR. O'BRIEN: No, I said everything I  
15 think is appropriate.

16 CHAIRPERSON ANDERSON: Mr. Levy, any  
17 closing arguments?

18 MR. LEVY: No, thank you.

19 CHAIRPERSON ANDERSON: All right. I  
20 want to thank both parties for their arguments  
21 today. And the Board will take this matter under  
22 advisement and since we are going to go in

1 session, I guess I should read this.

2 As Chairperson of the Alcoholic  
3 Beverage Control Board for the District of  
4 Columbia and in accordance with DC Official Code  
5 Section 2-574(b) of the Open Meetings Act, I move  
6 that the ABC Board hold a closed meeting for the  
7 purpose of seeking legal advice from our counsel  
8 on Case No. 19-PRO-00036, Trump International  
9 Hotel Washington, D.C., pursuant to DC Official  
10 Code Section 2-574(b)(4) of the Open Meetings Act  
11 and deliberating upon Case No. 19-PRO-00036,  
12 Trump International Hotel Washington, D.C., for  
13 the reasons cited in DC Official Code Section 2-  
14 574(b)(13) of the Open Meetings Act.

15 Is there a second?

16 MEMBER SHORT: Second.

17 CHAIRPERSON ANDERSON: Mr. Short has  
18 seconded the motion.

19 I will now take a roll call vote on  
20 the motion before us now that it has been  
21 seconded it.

22 Mr. Short?

1 MEMBER SHORT: I agree.

2 CHAIRPERSON ANDERSON: Ms. Crockett?

3 MEMBER CROCKETT: I agree.

4 CHAIRPERSON ANDERSON: Mr. Cato?

5 MEMBER CATO: I agree.

6 CHAIRPERSON ANDERSON: Mr. Anderson?

7 I agree.

8 As it appears that the motion has  
9 passed, I hereby give notice that the ABC Board  
10 will recess these proceedings to hold a closed  
11 meeting in the ABC Board conference room pursuant  
12 to Section 2-574(b) of the Open Meetings Act.

13 Thank you for your presentation.

14 MR. LEVY: Thank you very much.

15 CHAIRPERSON ANDERSON: We will issue  
16 a written order.

17 MR. O'BRIEN: A housekeeping matter?

18 CHAIRPERSON ANDERSON: Yes, Mr.

19 O'Brien?

20 MR. O'BRIEN: I don't know when the  
21 Board is going to make its decision --

22 CHAIRPERSON ANDERSON: The Board will

1 issue a decision very shortly. I'm not sure if  
2 you know this, Mr. O'Brien, I don't like to have  
3 things sitting, because I might forget what the  
4 arguments are.

5 MR. O'BRIEN: Okay.

6 CHAIRPERSON ANDERSON: Yes.

7 MR. O'BRIEN: The housekeeping matter  
8 is this --

9 CHAIRPERSON ANDERSON: Yes, sir.

10 MR. O'BRIEN: -- there is a Protest  
11 Hearing scheduled --

12 CHAIRPERSON ANDERSON: For?

13 MR. O'BRIEN: -- I think it is the  
14 last week in October.

15 MR. LEVY: October 25th.

16 MR. O'BRIEN: The 25th.

17 CHAIRPERSON ANDERSON: 25th.

18 MR. O'BRIEN: Which is essentially a  
19 month out. I don't know how long -- I understand  
20 promptly, very promptly, I got that. But I don't  
21 know long it is going to take for an order to  
22 issue.

1 CHAIRPERSON ANDERSON: Okay.

2 MR. O'BRIEN: And then we are going to  
3 have working backwards, the requirement of a PIF.

4 CHAIRPERSON ANDERSON: Yes.

5 MR. O'BRIEN: And if this protest  
6 should survive today, I will be filing a Motion  
7 in Limine as to the scope of evidence to be  
8 considered.

9 CHAIRPERSON ANDERSON: Okay.

10 MR. O'BRIEN: What I'm suggesting is  
11 that the Protest Hearing date of the 24th be --

12 CHAIRPERSON ANDERSON: I think it's  
13 the 23rd. It would be the 23rd and we have -- it's  
14 not going to occur, Mr. -- I'll say this to you.  
15 It's not going to occur on the 23rd because you  
16 look at the schedules today, we have a 1:30  
17 Protest Hearing and we have two 4:30 Protest  
18 Hearings on our schedule today.

19 So this is scheduled for a Protest  
20 Hearing on the 23rd. I strongly doubt that it  
21 would occur.

22 MR. O'BRIEN: Okay. Then so the

1 parties don't have to go to needless work. Can  
2 the Board order that the 23rd date be taken off  
3 the calendar and it will be rescheduled based on  
4 developments when the Board issues its order on  
5 this motion?

6 CHAIRPERSON ANDERSON: Yes, I would  
7 agree with that, because as I'm saying I just --  
8 I'll schedule matters today and as I said before  
9 I have scheduled -- we've scheduled a Protest  
10 Hearing on the 23rd at 1:30 and we have scheduled  
11 two Protest Hearings for the 23rd at 4:30.

12 So I don't see how we can have another  
13 Protest Hearing on the 23rd.

14 MR. O'BRIEN: The 23rd is out.

15 CHAIRPERSON ANDERSON: Yes.

16 MR. O'BRIEN: And we will see what  
17 happens.

18 CHAIRPERSON ANDERSON: Yes.

19 MR. O'BRIEN: Thank you.

20 CHAIRPERSON ANDERSON: Right. Thank  
21 you very much for being here today.

22 All right. The Board is in recess



1       until our 1:30 hearing.

2                       (Whereupon, the Protest (Status)

3       Hearing was concluded at 11:55 a.m.)

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C E R T I F I C A T E

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Before: Alcoholic Beverage Control Board

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