

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:

Generator DC Opeo LLC
t/a Washington Courtyard
by Marriott
1900 Connecticut Ave. NW
License #ABRA - 111618
Retailer CH - License
Renewal
Case #19-PRO-00041

MONDAY, JUNE 10, 2019

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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, Board
Agent, presiding.

ALSO PRESENT:

MATTHEW MINORA, Licensee's Counsel
KENNETH MARKS
ERIC LAMAR

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

2 11:37 a.m.

3 MS. FLETCHER: Would the parties in
4 the matter of Washington Courtyard by Marriott
5 please come forward?

6 This is Case number 19-PRO-00041,
7 Generator DC Opeo LLC, 1900 Connecticut Avenue
8 Northwest, License number ABRA-111618. This is a
9 Retailer Class CH license renewal. The protest
10 issues are adverse impact on peace order inquired
11 (phonetic).

12 My name is La Verne Fletcher,
13 conducting the role call hearing as the Board's
14 agent. Introductions beginning with the
15 Applicant, please.

16 MR. MINORA: Matthew Minora from the
17 law firm Mallios & O'Brien on behalf of the
18 Applicant.

19 MS. FLETCHER: Thank you, Mr. Minora.
20 Is Kenneth Marks present?

21 MR. MARKS: Yes, ma'am.

22 MS. FLETCHER: Good morning, Mr.

1 Marks.

2 MR. MARKS: Good morning.

3 MS. FLETCHER: Mr. Marks, would you
4 spell your name for the record, please?

5 MR. MARKS: It's Kenneth, K-E-N-N-E-T-
6 H, Marks, M-A-R-K-S.

7 MS. FLETCHER: And is Grant
8 Fulgenhauer present?

9 MR. MARKS: He could not stay.

10 MS. FLETCHER: Okay. And your name,
11 sir?

12 MR. LAMAR: Eric Lamar.

13 MS. FLETCHER: E-R-I-C?

14 MR. LAMAR: Yes, ma'am. Last name L-
15 A-M-A-R.

16 MS. FLETCHER: Mr. Lamar, let's see
17 here. One second, please.

18 First of all, Mr. Marks, you are
19 granted standing as a participant (phonetic)
20 because your property will be actually implied
21 (phonetic).

22 MR. MINORA: Ms. Fletcher, we take

1 issue with that.

2 MS. FLETCHER: Okay. Thank you.

3 MR. MINORA: Although Mr. Marks, the
4 property that Mr. Marks is referring to as
5 ***inaudible 11:40:30 but the property itself is
6 actually owned by two trusts, neither of which
7 filed a protest, so there is no actual protest by
8 the name of the abutting property owner.

9 MS. FLETCHER: Kenneth -- are you
10 saying that Kenneth Marks is not the owner?

11 MR. MINORA: Correct. It is the
12 living -- Kenneth Marks Living Trust and the
13 Helen J. Marks Living Trust are the property
14 owners. And nothing's been filed in the name of
15 either trust.

16 MS. FLETCHER: And so, Mr. Marks,
17 you're the tenant at the location?

18 MR. MARKS: I'm the owner of the
19 location.

20 MS. FLETCHER: You are the owner of
21 the location.

22 MR. MARKS: Yes.

1 MS. FLETCHER: And Mr. Minora, what
2 did you just say?

3 MR. MINORA: I think the two trusts
4 that own the property, so if Mr. -- if there was
5 a property -- or a protest to be filed on behalf
6 of the abutting property under there, it should
7 have been filed in either name of -- either trust
8 or both trusts. But nothing was filed in the
9 name of the trust that actually owned the
10 property.

11 MS. FLETCHER: So are you saying that
12 Kenneth Marks is not the owner?

13 MR. MINORA: Correct. Not according
14 to the Office of the Casting Revenue (phonetic)
15 and the deed we have on file.

16 MS. FLETCHER: Mm-hmm.

17 And so Mr. Marks, do you have a
18 response to that?

19 MR. MARKS: That's a technicality. I
20 am the owner of the property, along with my wife,
21 Helen Marks. And we took ownership for estate
22 purposes in the name of the trust. So I am the

1 trustee of the trust, and that I believe is
2 sufficient.

3 If I may speak up.

4 MS. FLETCHER: Yes.

5 MR. MARKS: We have, both Mr. Lamar
6 and I have had conversations with I believe it's
7 Counsel for the new owners of the Courtyard
8 Marriot, and we both don't feel as though there's
9 going to be any problem arriving at agreements on
10 the operation of the new ownership that is taking
11 over.

12 We would prefer to go to mediation
13 just to make sure that that's the case. Thus
14 far, all matters between the parties have been
15 very congenial.

16 MS. FLETCHER: What I'm going to do in
17 light of the injection of the Applicant, I'm
18 going to grant conditional standing. We're going
19 to proceed as we would. What that means is that
20 because there's a dispute over the issue, the ABC
21 Board -- I'm assuming that, Mr. Minora, you'll be
22 filing a motion to dismiss the protest?

1 MR. MINORA: Correct. Yeah. If he's
2 granted standing today, then yes, we will.

3 MS. FLETCHER: Okay. So let's assume
4 that Mr. Minora does that, file a motion to
5 dismiss the protest. He'll file the motion. Mr.
6 Marks, you'll get an opportunity to respond in
7 the way that you just did. And then the ABC
8 Board will decide whether or not you are the
9 owner of the property.

10 But for the purpose of the role call
11 hearing, I'm going to grant conditional standing.
12 When there's a dispute, when there's a legal
13 dispute, the Board likes to take a look.

14 So I'm granting conditional standing
15 to you, Mr. Marks, and we'll just proceed with
16 the dates for mediation, the status hearing, and
17 the protest hearing. If the Board decides that
18 you are the owner, then those dates will stand.
19 If the Board decides you're not the owner, then
20 the dates go away.

21 But for today, we'll just move forward
22 with scheduling dates for mediation, status

1 hearing, and protest hearing. I'm going to
2 schedule the date for mediation a little further
3 out to give Mr. Minora an opportunity to file
4 that motion to dismiss; Mr. Marks, to give you
5 time to respond to that. But I'm just going to
6 go ahead and schedule the dates just further out.

7 Any questions about that, Mr. Marks?

8 MR. MARKS: No, Your Honor.

9 MS. FLETCHER: The date for the --

10 MR. MINORA: Ms. Fletcher, are you all
11 -- is it -- do I have standing as well, or will I
12 --

13 MS. FLETCHER: Yeah. And I'm going to
14 get to yours --

15 MR. MINORA: Okay.

16 MS. FLETCHER: -- next. Thank you,
17 Mr. Minora.

18 MR. MINORA: Thank you.

19 MS. FLETCHER: You're very welcome.

20 These dates are going to apply to you
21 two. The status hearing is scheduled for
22 September 11th. The status hearing is scheduled

1 for September 11th at 9:30 a.m. So that gives
2 you plenty of time for, Mr. Minora to file the
3 motion, you to respond to the motion and,
4 depending on what the Board does, you will show
5 up for the status hearing.

6 The protest hearing is set for October
7 9, October 9 at 4:30 p.m.

8 Okay. Mr. Lamar, now I'm going to
9 move to your protests.

10 MR. LAMAR: May I make a comment, Ms.
11 Fletcher?

12 MS. FLETCHER: Yes.

13 MR. LAMAR: I'm the designated rep for
14 the Westmoreland Cooperative --

15 MS. FLETCHER: Mm-hmm.

16 MR. LAMAR: -- where I am a resident.
17 And I filed because we are an abutting property.
18 We directly abut on the Courtyard Marriot in
19 exactly the same way as Mr. Marks's property
20 does.

21 He occupies the western property line,
22 and the Westmoreland occupies the northern

1 property line. However, in my notification
2 letter, it doesn't mention that we're an abutting
3 property.

4 It is a zero-clearance situation.

5 MS. FLETCHER: So Mr. Lamar, I -- your
6 first name is spelled E-R-I-C?

7 MR. LAMAR: Yes, ma'am.

8 MS. FLETCHER: And the last name is L-
9 A-M-A-R.

10 MR. LAMAR: Yes, ma'am.

11 MS. FLETCHER: So your protest letter
12 is in the file. I'm looking at your protest
13 letter.

14 Mr. Minora, did you get a copy of that
15 protest letter?

16 MR. MINORA: Yes, Ms. Fletcher.

17 MS. FLETCHER: Your protest letter,
18 you signed it.

19 MR. LAMAR: I did.

20 MS. FLETCHER: You are in Unit number
21 62?

22 MR. LAMAR: Yes, ma'am.

1 MS. FLETCHER: The way your protest
2 letter is filed, I have to look at it as a
3 protest filed by you, which is fine. It's okay -
4 - if you are personally abutting. So you live at
5 2122 California Street Northwest.

6 MR. LAMAR: Yes, ma'am.

7 MS. FLETCHER: The hotel is located at
8 1900 Connecticut Avenue Northwest.

9 MR. LAMAR: Yes, ma'am.

10 MS. FLETCHER: And you're saying that
11 the properties abut.

12 MR. LAMAR: Yes, ma'am.

13 MS. FLETCHER: And do they -- are they
14 touching the walls? Any walls touching?

15 MR. LAMAR: There is a concrete
16 property wall that lies between the two
17 properties. So there is that property wall. We
18 are directly on one side. They are directly on
19 the other.

20 MS. FLETCHER: But there's some space
21 in between.

22 MR. LAMAR: No.

1 MS. FLETCHER: Okay. So what you just
2 described sounded like space in between to me.
3 But you're saying you're on one side of the wall,
4 and they're on the other side of the wall, in
5 your unit. I'm only talking about your unit only
6 now, just --

7 MR. LAMAR: My unit --

8 MS. FLETCHER: -- Unit number 62.

9 MR. LAMAR: No. I'm talk -- the ABC
10 guidance references the word property. And so
11 that's what I was guided by. The two properties
12 abut. It does not say my unit. It says
13 property.

14 MS. FLETCHER: Okay. So it's going to
15 be your unit. I mean, I -- for us, it's going to
16 be your unit. For -- I'm just going to give you
17 an example.

18 For example, if you live at 2122 in
19 Unit number 62 and the hotel and the building
20 abut but your unit is located around the corner,
21 then your unit, your personal unit is -- does not
22 abut. That's the way the Board has looked at

1 abutting.

2 MR. MINORA: And Ms. Fletcher, with
3 regard to his ownership, the property's actually
4 owned by the Westmoreland Cooperative, not Mr.
5 Lamar as individual sense.

6 MS. FLETCHER: Well, and so I'm going
7 to get to that next.

8 Mr. Lamar, so your protest, because
9 you signed it, has to be looked at as an
10 individual protestant. So that's why I was
11 asking where you personally are located.

12 This protest, for our purposes, was
13 filed by Eric Lamar and not by the Westmoreland
14 apartment building. Although you did mention in
15 your protest letter that the Westmoreland is a
16 60-unit apartment building, this protest was
17 filed by you.

18 MR. LAMAR: As the designated
19 representative of the Westmoreland Cooperative.

20 MS. FLETCHER: Yeah. We don't have a
21 protest filed by the Westmoreland Cooperative.
22 But if you did, then I would take another look.

1 This protest was filed by Eric Lamar.
2 But it does say, "We are exercising adverse
3 protest procedure in order to obtain a voluntary
4 agreement with Generator." So it does say we,
5 but you signed it. So there's no protest filed
6 by the Westmoreland.

7 MR. LAMAR: But as I said, I am -- I
8 filed it on behalf of the Cooperative.

9 MS. FLETCHER: Yeah, but the -- yeah.
10 I'm not going to look at it that way. So what
11 I'm going to do, I'm going to dismiss this
12 protest.

13 And so, Mr. Lamar, although you
14 mentioned the Cooperative a couple of times here,
15 it's not on the Cooperative's letterhead. It
16 says we. And so I'm assuming that you live in
17 the Westmoreland?

18 MR. LAMAR: That is correct. Yeah.

19 MS. FLETCHER: Okay. And you refer to
20 our in the Westmoreland and we, but then you
21 signed it. I don't see a protest from the
22 Westmoreland.

1 MR. LAMAR: Isn't the language that
2 you mentioned, the use of the pronouns we and
3 our, isn't it explicitly clear that I am writing
4 the protest on part of the Cooperative? If that
5 were not the case, I would use the pronoun I.

6 MS. FLETCHER: Yeah. It's not clear
7 to me. But what you can do when you get the
8 Board order dismissing the protest because the
9 Board agent decided that this protest is filed by
10 an individual, you can explain to the Board that
11 your -- that you were actually filing a protest
12 on behalf of the Westmoreland 60-unit apartment
13 building, which you said is abutting. And the
14 Board can overturn what I said today and grant
15 you standing as a protestant.

16 But the way that I look at your
17 protest letter, it appears to me to be a protest
18 filed by Eric Lamar who resides at the
19 Westmoreland, which is a 60-unit apartment
20 building that abuts.

21 And that's why I was asking where your
22 unit personally is located within the building.

1 If you were to say that you're in Unit 62 and
2 that your unit is upstairs and some portion of
3 the hotel was downstairs touching, then I would
4 be granting you personally standing as a
5 protestant.

6 And so the protest filed by Eric Lamar
7 is dismissed. And I just want to make one other
8 point.

9 Mr. Lamar, in this -- in your protest
10 letter, you designated yourself as the
11 representative of the Westmoreland. There's no
12 protest filed by Westmoreland that designates
13 you. So there are a couple of different factors.
14 I just wanted to mention that as one of the
15 factors.

16 The other thing, a protest was also
17 filed by Grant Fulgenhauer. That's Grant, G-R-A-
18 N-T, F like Frank, U-L-G-E-N-H-A-U-E-R.

19 Mr. Marks, he signed the ***inaudible
20 11:53:34 this letter is you. His address is
21 2115.

22 MR. MARKS: Right next door.

1 MS. FLETCHER: His property does not
2 abut, but it was determined using the geographic
3 information system that yours does. His appears
4 to abut yours but not the hotel.

5 And so Mr. Fulgenhauer's protest is
6 dismissed as an abutting property owner.

7 We need to set a date for the
8 mediation. I'm going to put it out toward the
9 status hearing date to give Mr. Minora time to
10 file the motion to dismiss. Mr. Marks, you get
11 time to respond to the motion. If the Board
12 determines that you do have standing, we'll just
13 proceed with the dates that we set up.

14 Yes, Mr. Marks?

15 MR. MARKS: If I may make a comment.

16 MS. FLETCHER: Yes.

17 MR. MARKS: I'm a little surprised at
18 the proceeding from the hotel because all
19 conversations up until now have been most
20 congenial and have been very understanding of the
21 peace and quiet of the nature of our
22 neighborhood.

1 And I think that without taking up
2 more time and energy from this Board, I would ask
3 them to please have the gentleman that I have
4 been speaking with contact me so we can come to a
5 resolution and avoid any further proceeding here.

6 MS. FLETCHER: Mm-hmm. Well, the --
7 that -- Mm-hmm.

8 MR. MARKS: I do own the property, and
9 how you own it from an estate standpoint is just
10 -- I mean, that's a technicality that I believe
11 I'm a little uneasy about, right?

12 MS. FLETCHER: Yes.

13 MR. MARKS: And I -- it does not share
14 the good faith that I have seen in the past
15 months leading up to this hearing today. Just an
16 editorial comment.

17 MS. FLETCHER: Right. Well, that's
18 one of the reasons that I'm going to schedule the
19 date for the mediation out as far as possible
20 before the status hearing so that between now and
21 then, maybe the matter can be settled. I just
22 have to -- I'm just going to put these dates out

1 there in case it's not. So maybe it will happen.

2 The status hearing is September 11 and
3 -- at 9:30, and the protest hearing is October 9
4 at 4:30. I'm going to set the date mediation.
5 I'll set it out to August 27. I'll set it out to
6 August 27th.

7 MR. MARKS: I will not be in the
8 country.

9 MS. FLETCHER: Let's see. Okay. What
10 about September 10? That's the day before the
11 status hearing, but that date is available.
12 Would that be good, Mr. Marks?

13 MR. MARKS: Any date is fine.

14 MR. MINORA: That works for us as
15 well.

16 MS. FLETCHER: What's a good time for
17 you, Mr. Minora?

18 MR. MINORA: The afternoon preferably,
19 if that --

20 MS. FLETCHER: A 1:00 or 2:00?

21 MR. MINORA: 1:00 or 2:00, either one.

22 MS. FLETCHER: Okay. We'll just --

1 let's make it for 1:00 o'clock on Tuesday,
2 September 10th. And if the matter is resolved
3 before then, we cancel the mediation, status
4 hearing, protest hearing -- all gets cancelled.

5 And Mr. Lamar, if you petition the ABC
6 Board to grant you standing as a protestant, can
7 you copy Mr. Minora on that? And if the Board
8 decides to grant you standing as a protestant,
9 you -- those dates would also apply to you.

10 If we do have a mediation on --

11 MR. LAMAR: October 9th.

12 MS. FLETCHER: The mediation is
13 actually September 10th.

14 MR. LAMAR: It's September 11th?

15 MS. FLETCHER: It's September 10, I
16 believe, right? Yeah, the mediation is September
17 10.

18 So Mr. Lamar, if you petition the ABC
19 Board for standing as an abutting property owner,
20 which is what you're saying in your letter, if
21 the Board grants you standing as an abutting
22 property owner, you stand alone. You are --

1 would be a protestant in your own right, which
2 means that unless you and the hotel reach and
3 agreement, then you and the hotel would appear
4 for mediation on September the 10th because if
5 the Board grants you standing as a protestant, as
6 an abutting property owner, unless you resolve
7 the protest with the hotel, then you still have a
8 right to come to mediation and you will come to
9 the status hearing and the protest hearing.

10 MR. LAMAR: So does that apply if the
11 Westmoreland Cooperative makes it clear that I'm
12 -- I am their -- acting as their designated
13 agent?

14 MS. FLETCHER: The Westmoreland --
15 just hold on. Speaking ahead of time here
16 because the Westmoreland is not a -- considered a
17 protestant. But let me just give you some
18 information on it.

19 MR. LAMAR: That's your position as
20 agent. But I suppose I'm --

21 MS. FLETCHER: That's okay. You --
22 I'm just -- I'm the Board's agent. The Board can

1 do anything they want.

2 MR. LAMAR: No, I understand. And if
3 I may finish.

4 MS. FLETCHER: Yes, you may.

5 MR. LAMAR: So my protest, that -- my
6 protest would be that I am, in fact, acting as
7 the designated representative for the Cooperative
8 and taking exception to the Agent's ruling about
9 what constitutes an abutting property.

10 Does that go to the general counsel?

11 MS. FLETCHER: Yes.

12 MR. LAMAR: Okay. I think I
13 understand your point.

14 MS. FLETCHER: Yes.

15 MR. LAMAR: And what our next step is.

16 MS. FLETCHER: Yes. Okay. Well, so
17 maybe I'll see you in mediation, maybe I won't.

18 MR. LAMAR: I hope you will.

19 MS. FLETCHER: The date is out there.

20 And thank you --

21 MR. LAMAR: Thank you.

22 MS. FLETCHER: -- Mr. Lamar. Anything

1 else you want to put on the record before we
2 close?

3 MR. LAMAR: I would say that it --
4 it's apparent to me that the definition, the
5 operative definition is -- that the -- that you
6 are using -- I would describe it as an effective
7 technicality, that we are a zero-clearance
8 abutting property.

9 It's quite clear. There is no
10 separation between the two properties. And that
11 I would -- I will be asking the Board to
12 recognize the reality of the situation versus a
13 technical application of -- or that's happening
14 today.

15 But in any event, I appreciate your
16 listening.

17 MS. FLETCHER: And you know what, Mr.
18 Lamar? If you have a picture, that would be
19 helpful to the Board, too.

20 MR. LAMAR: Sure.

21 MS. FLETCHER: If we have a picture
22 showing where the properties abut --

1 MR. LAMAR: Okay.

2 MS. FLETCHER: -- that would -- if you
3 don't -- it's not a requirement.

4 MR. LAMAR: No, that -- we will.

5 MS. FLETCHER: If you do, that would
6 be helpful --

7 MR. LAMAR: Sure.

8 MS. FLETCHER: -- because it sounds
9 like you -- you know, you may have some specific
10 information about the property.

11 MR. LAMAR: Well, thank you so much.

12 MS. FLETCHER: Well, you are very
13 welcome, and --

14 MR. MINORA: Ms. Fletcher, just for
15 clarification --

16 MS. FLETCHER: Yes.

17 MR. MINORA: -- it's your position
18 that the letter filed by Mr. Lamar was not filed
19 on behalf of the Westmoreland --

20 MS. FLETCHER: Yes.

21 MR. MINORA: -- Coop? It was filed on
22 --

1 MS. FLETCHER: Yes.

2 MR. MINORA: That's -- okay. I just
3 want to make that clear.

4 MS. FLETCHER: Yes.

5 MR. MINORA: All right. Thank you.

6 MS. FLETCHER: Okay. You are very
7 welcome.

8 MR. MARKS: If I may clarify some
9 dates?

10 MS. FLETCHER: Yes, Mr. Marks.

11 MR. MARKS: I see the mediation is
12 September 10th.

13 MS. FLETCHER: Yes.

14 MR. MARKS: The date of September 11th
15 was for what purpose?

16 MS. FLETCHER: That was for the status
17 hearing. So the purpose of the status hearing,
18 Mr. Marks, just so you know, the only purpose of
19 the status hearing is to -- the Board just wants
20 to know the status of the case.

21 So if the case is resolved before the
22 11th, if you submit a settlement agreement, you

1 don't need to come on the 11th.

2 But let's just say you come to
3 mediation on the 10th and you are not sure if
4 you're going to reach a settlement agreement or
5 you don't reach a settlement agreement on the
6 10th, then you would need to come on the 11th and
7 report the status. And you would just say we
8 were in mediation yesterday. We didn't settle,
9 or we're going to continue working on a
10 settlement.

11 MR. MARKS: Thank you very much.

12 MS. FLETCHER: You are very welcome.

13 MR. MINORA: Thank you, Ms. Fletcher.

14 MS. FLETCHER: Okay. Thank you very
15 much.

16 The role call hearing is concluded.

17 Thank you.

18 (Off the record.)
19
20
21
22

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Before: DCABRA

Date: 06-10-19

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