

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

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R & J. 24 Liquors, Inc. : Motion

t/a Town Square Gourmet : Hearing

4418 MacArthur Blvd., NW :

Retailer A - ANC-3D :

License No. 78664 :

Case #12-PRO-00022 :

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February 13, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, 2000 14th Street, N.W., Suite 400S Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

MIKE SILVERSTEIN, Member

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

2 (11:02 a.m.)

3 CHAIRPERSON MILLER: Okay. I'm
4 going to call the next case on the calendar,
5 which is Case No. 12-PRO-00022, Town Square
6 Gourmet, located at 4418 MacArthur Boulevard,
7 N.W., License No. 78664 in ANC-3D.

8 And if you all would come take a
9 seat at the table, sign-in and then introduce
10 yourselves for the record when you are ready.
11 You can have a seat, please. Okay. Why don't
12 we start with you? Okay. If you -- no, you
13 don't have to be sworn in actually for this,
14 because we are not going to take any testimony
15 or evidence.

16 This is just to hear any
17 arguments, legal arguments on the Motion for
18 Reconsideration that the protestants filed.
19 Okay. So if you could give me your name?

20 MS. OH: Sophia Oh.

21 CHAIRPERSON MILLER: Okay. Ms.
22 Oh, I guess I should swear you in as an

1 Interpreter. I didn't realize you were here
2 as an Interpreter, so I will swear you in
3 anyway, just to be sure.

4 Do you solemnly affirm that you
5 will faithfully and accurately interpret the
6 proceedings in this matter from Korean into
7 English and from English into Korean to the
8 best of your ability?

9 MS. CHOE: Yes.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. And you are with?

12 MS. CHOE: Richard Kim.

13 CHAIRPERSON MILLER: Mr. Kim.
14 Okay. And, sir, are you participating or just
15 in the audience?

16 UNIDENTIFIED SPEAKER: I'm just in
17 the audience today.

18 CHAIRPERSON MILLER: Audience,
19 okay. Okay. I just don't need to take your
20 name for the record then. And, sir?

21 MR. ROSS: My name is Stuart Ross
22 and I'm representing -- I am a member of ANC-

1 3D and I'm presenting their argument today.

2 CHAIRPERSON MILLER: Okay. So --
3 no, go ahead and translate. All right. On
4 November 20, 2012, the Board issued an order
5 granting renewal of the license for Town
6 Square Gourmet, but that order isn't final
7 because a Motion for Reconsideration was filed
8 within 10 days after the issuance of the
9 order.

10 So the subject of this hearing
11 today is only the Motion for Reconsideration.

12 All right. This is -- Mr. Ross is
13 representing ANC-3D, the protestant. And he
14 filed the motion. So we have some questions
15 for you, but I want to give you an
16 opportunity, first, in case you want to argue
17 on behalf of the motion.

18 MR. ROSS: I'll do whatever you
19 like. If you would like to ask questions
20 first, I'll do that. And if you would like
21 for me to outline our argument, I would be
22 prepared to do that as well.

1 CHAIRPERSON MILLER: Okay. If you
2 could just briefly outline it, because we do
3 have it, but just --

4 MR. ROSS: Okay.

5 CHAIRPERSON MILLER: -- so they
6 can hear it as well.

7 MR. ROSS: I'll try and be as
8 brief as I can.

9 CHAIRPERSON MILLER: Right. Okay.

10 MR. ROSS: You start with Section
11 25-301, the general qualifications for all
12 applicants. And that statute says "Before
13 issuing, transferring to a new owner or
14 renewing a license, the Board shall determine
15 that the applicant meets all of the following
16 criteria." I think two of the criteria are in
17 play in this situation.

18 The applicant is of good character
19 and generally fit for the responsibilities of
20 licensure and that's number one.

21 And number four, the applicant has
22 not been convicted of any misdemeanor bearing

1 on fitness for licensure in the five years
2 before filing the application.

3 So the first criteria, which needs
4 to be determined, is good character and the
5 fitness. And I do not believe that the Board
6 made a proper finding on that. And I think
7 that the Board needs to make that finding
8 under the law as interpreted by the District
9 of Columbia Court of Appeals.

10 And even if I, as a protestor,
11 have not convinced you that the license should
12 be denied, the renewal should be denied, the
13 case of Craig vs. the ABC Board, which is
14 cited in my brief, at 72 A.2d 584, says the
15 following and I quote "Nevertheless, we see
16 nothing in the statute which relieves the
17 Board from its obligation to determine that
18 the applicant is of good moral character and
19 generally fit for the responsibilities of
20 licensure."

21 This obligation is not dependent
22 upon whether or not anyone makes a character

1 challenge before issuing the license. The
2 Board must be satisfied that all statutory
3 requirements have been met.

4 Therefore, upon remand, the Board
5 must make the required character determination
6 before it decides that the license should be
7 issued.

8 But there is another case that
9 impacts on this as well and that's the Haight
10 case and that's cited in the brief at 43 A.2d
11 493. And that case makes a determination of
12 what are the standards for your responsibility
13 if you find good moral character and fitness
14 for licensure.

15 And the case says that, quoting,
16 "The Board avoided this quagmire," your Board,
17 "by construing the statutory requirement of
18 good moral character and general fitness in
19 the circumstances of this case to proscribe
20 illegal conduct and no more."

21 Well, I wanted to look at what
22 proscribe actually meant, so this morning I

1 looked it up in the dictionary. To denounce
2 or condemn, to prohibit or to outlaw.

3 And I think what that says is that
4 if someone has engaged in, from the opinion,
5 "illegal conduct," that you cannot find that
6 that person is of good moral character and
7 fitness for licensure.

8 Well, we know that Mr. Kim was
9 arrested and Mr. Kim was convicted and that
10 conviction became final when he was sentenced
11 in the second week of -- the first week of
12 July and that was about five weeks before we
13 had our hearing here on the 15th.

14 But, of course, there is more
15 conduct that Officer Aaron Bailey testified
16 about when he was here, which involved -- and
17 he identified 14 different arrests of
18 juveniles by Montgomery County Police. And in
19 each of those arrests, the source of the
20 alcohol was from Town Square. And he had
21 continuous contact with those individuals
22 through observing them buy following the

1 Maryland license plates out and radioing ahead
2 to his colleagues.

3 So I think that there is a -- it
4 seems to me that there is a wide amount of
5 illegal conduct including conviction that
6 would prohibit you or make it very difficult
7 for you to find good moral character. That's
8 the first issue.

9 The second issue is the stand-
10 alone issue, I think, and that is the
11 requirement of paragraph 4. The applicant has
12 not been convicted of any misdemeanor bearing
13 on fitness for licensure in the five years
14 before filing the application.

15 He has been and even if there were
16 no standard of general good character and
17 fitness for licensure in the requirements that
18 you are -- that are statutory, this is a
19 separate stand-alone and I believe that that
20 conviction would, on its own, make it
21 appropriate to not renew the license.

22 It's a stand-alone. It also

1 impacts on the character and fitness issue.
2 But if there is no character or fitness, this
3 is just like you would have to be 21 years of
4 age. If you are convicted of a misdemeanor,
5 you can't get a renewal.

6 And then there is a third reason
7 if you didn't want to deal with the -- with
8 what I have called the statutory issues. The
9 third reason is contained in our protest
10 application.

11 In there, we filed under the DC
12 Code Section 25-315, "The Board should take
13 into account the renewal applicant's poor
14 record of compliance with the laws and
15 regulations of the District of Columbia."

16 I believe that if there was ever a
17 case where denial of a renewal of license
18 should be made, it would be in this case. I
19 think that and hope that you all will send a
20 strong message.

21 I don't -- perhaps the owners of
22 Town Square had an epiphany and decided to

1 change their operating methodology, but it
2 seems to me that the epiphany really came when
3 they were arrested and charged after a long
4 period of time of being the central place for
5 teenage purchase of liquor, not just in the
6 District where I live, but also in the State
7 of Maryland and into Virginia.

8 And you will remember that Officer
9 Aaron Bailey when asked to describe this, and
10 this is also in my brief, said that watching
11 that store and the teenagers go in and out
12 was, I believe he called it, because it was
13 shark week on the Discovery Channel, a feeding
14 frenzy. And that's what it was.

15 And I would hope that you all
16 would give reconsideration. I also want to
17 thank you for allowing us to have this hearing
18 and for accepting our reconsideration brief.
19 We think it is important and I'll be happy to
20 answer any questions that you have.

21 CHAIRPERSON MILLER: Thank you. I
22 think the way we should proceed then is I

1 think that the Board should ask our questions
2 of you now while it is fresh based on what you
3 have argued. And then we will turn to Mr. Kim
4 and see if there is an opposition and work
5 that way.

6 I have some questions to start. I
7 mean, it looks to me like you are bringing to
8 our attention 25-301 and 25-315 basically in
9 your Motion for Reconsideration, separate from
10 the appropriate standards.

11 So on 25-301, No. 4 deals with
12 whether the applicant has been convicted of a
13 misdemeanor. The way it reads is that we have
14 to make a finding (4) "The applicant has not
15 been convicted of any misdemeanor bearing on
16 fitness for licensure in the five years before
17 filing the application."

18 Do you know the date that the
19 application was filed?

20 MR. ROSS: For renewal?

21 CHAIRPERSON MILLER: For renewal.

22 Because I'll go back, because of the way it

1 reads, 25-301 says "Before issuing/
2 transferring to a new owner or renewing a
3 license, the Board shall determine that the
4 applicant meets all of the following
5 criteria."

6 So we are looking at here a
7 renewal of a license. And (4) says literally,
8 "Applicant hasn't been convicted of a
9 misdemeanor bearing on fitness for licensure
10 in the five years before filing the
11 application."

12 Now, do you know the date that the
13 application was filed?

14 MR. ROSS: I do not know when the
15 application was filed. I know it is probably
16 some place --

17 CHAIRPERSON MILLER: Okay. Do you
18 know the conviction date?

19 MR. ROSS: Yes, I do.

20 CHAIRPERSON MILLER: Okay.

21 MR. ROSS: Conviction, as I
22 understand conviction, is not when the trial

1 takes place. It is when someone is sentenced.
2 He was sentenced on the 7th of July. The
3 sentence was suspended. The fines were
4 suspended. We had our hearing five weeks
5 later.

6 CHAIRPERSON MILLER: Okay. So my
7 question to this specific literal reading of
8 this provision is it appears that the
9 conviction took place after the filing of the
10 application, not before the filing of the
11 application. The way this particular
12 provision reads literally, it says "five years
13 before the filing of the application."

14 So I would like a response to the
15 application of that provision here. Do you
16 understand my question?

17 MR. ROSS: Are you -- well, I was
18 just going to ask you. Are you saying that in
19 any situation where in between filing of an
20 application and a conviction, that somehow
21 this would not apply?

22 CHAIRPERSON MILLER: I'm asking --

1 this is oral argument on your motion. So I'm
2 asking your response to that provision and how
3 you would argue that it applies or doesn't
4 apply or should apply or should be
5 interpreted.

6 MR. ROSS: Right. I believe that
7 your investigators were no notice of this,
8 because directly it was contained in the
9 protest report that Ms. Mathieson filed and I
10 know that I mentioned it to her at that time.
11 And I believe -- and it's in the record of the
12 proceeding.

13 So I would -- it would be my
14 position that if there was a conviction prior
15 to the time that you considered it, that you
16 would be entitled to consider that in two
17 ways.

18 No. 1, under No. 4 and No. 2 under
19 the good character and willingness and
20 fitness, excuse me. So I think it has two
21 places and I would take the -- I would say
22 that I think it would be relevant to both of

1 those and I would think it -- I think it does
2 stand alone.

3 CHAIRPERSON MILLER: Okay. I want
4 to ask you, the Haight case that you referred
5 us to regarding criminal activity or and also
6 the moral character issue, the Haight case,
7 okay.

8 No. 12 talks -- says the
9 following. Now, they had some different codes
10 back then, but I think we are dealing with the
11 same provisions. This interpretation of 25-
12 115(a)(1) does not render Section (a)(1)
13 redundant of 25-115(a)(2), because Section
14 (a)(2) does not prescribe all illegal conduct.
15 It covers only misdemeanor convictions under
16 the National Prohibition Act within the
17 previous five years and any felony convictions
18 within the previous 10 years.

19 Are you familiar with what
20 convictions the Court was referring to with
21 respect to the National Prohibition Act?

22 MR. ROSS: No, I'm not.

1 CHAIRPERSON MILLER: Okay.

2 MR. ROSS: But I'm happy to supply
3 that for the record.

4 CHAIRPERSON MILLER: You are what?

5 MR. ROSS: I will be happy to
6 supply that for the record.

7 CHAIRPERSON MILLER: Okay. I
8 think that you said that Mr. Kim -- that on
9 page 13 of the transcript it says that Mr. Kim
10 was convicted on May 22, 2012 for sale of
11 alcoholic beverages to a minor. And I didn't
12 see that on page 13 of the transcript.

13 MR. ROSS: I'm looking for it
14 right now.

15 CHAIRPERSON MILLER: Okay.

16 MR. ROSS: It's right on page --
17 line 19.

18 CHAIRPERSON MILLER: Okay.

19 MR. ROSS: Mr. Kim was, it says,
20 evicted after he was arrested for selling to
21 minors. He got a suspended sentence. He was
22 given 30 days, which was suspended. I think

1 there is a typo here that says evicted.

2 CHAIRPERSON MILLER: Okay. But it
3 doesn't say the date, does it or which Court?

4 MR. ROSS: If I -- are you
5 reading --

6 CHAIRPERSON MILLER: I can't. I
7 don't have it in front of me. I just noted
8 that in my review. Oh, wait a second, yes,
9 I have it in front of me.

10 MR. ROSS: I pulled --

11 CHAIRPERSON MILLER: And I think
12 today you may have given us a different date,
13 so I just was wondering.

14 MR. ROSS: Well, I have -- I
15 pulled the case under the Court cases on-line.

16 CHAIRPERSON MILLER: Yes.

17 MR. ROSS: And the sentencing date
18 was -- excuse me, I said July. It was May --
19 it was June 7, 2012 was the conviction date,
20 because that was when he was sentenced.

21 CHAIRPERSON MILLER: Okay. So we
22 didn't have that in the record at our protest

1 hearing.

2 MR. ROSS: That he was what?

3 CHAIRPERSON MILLER: That he was
4 convicted on June 7th in D.C. Court. You are
5 asking us to take judicial notice of it. It
6 really wasn't in the hearing.

7 MR. ROSS: I think it is in your--
8 the report of your inspector, who noted that
9 the conviction was there.

10 CHAIRPERSON MILLER: Okay.

11 MR. ROSS: And I also believe
12 there was a separate proceeding instituted by
13 the Board as to show cause and I think that
14 proceeding is still pending.

15 CHAIRPERSON MILLER: Okay. All
16 right. But it wasn't in the hearing, that
17 specific information was not in the
18 transcript. I was looking at page 13 of the
19 transcript and I know there was a reference to
20 a conviction, but it wasn't what day or what
21 Court or anything that specific.

22 MR. ROSS: Well, I'm sorry I

1 didn't add that, but, I mean --

2 CHAIRPERSON MILLER: So you are
3 asking us to take -- in 301 we can look beyond
4 the transcript is basically what you argued
5 anyway.

6 MR. ROSS: I don't follow that.
7 I'm sorry.

8 CHAIRPERSON MILLER: When we are
9 looking to make sure that the applicant meets
10 the qualifications for licensure under 301 and
11 315, we are not limited to the Protest
12 Hearing, I think is what you argued.

13 MR. ROSS: Well, I'm saying that I
14 believe that that was introduced in the report
15 of Ms. Mathieson, so it was before you. And
16 I believe that I stated that he had been
17 convicted without giving the date. But to my
18 way of thinking, there was no denial of that,
19 either to Ms. Mathieson's or mine.

20 CHAIRPERSON MILLER: No. Okay. I
21 just wanted to clarify your position then,
22 because my understanding, I thought, from your

1 motion for reconsideration is there was
2 certain evidence in the record that goes to
3 your point. But even if it wasn't in that
4 record that the Board under Craig had an
5 obligation itself to make sure that the
6 standards were met under 301 and 315.

7 MR. ROSS: I think that's a fair
8 categorization of what I believe.

9 CHAIRPERSON MILLER: Okay. Okay.
10 Did you give us authority for the conclusion
11 that a sale to minor per se makes a licensee
12 unfit for licensure? Is that your position?

13 MR. ROSS: Yes. I think if you
14 look at the quote from the text of Haight --

15 MEMBER SILVERSTEIN: Madam Chair,
16 may I ask a question of your question?

17 CHAIRPERSON MILLER: All right.

18 MEMBER SILVERSTEIN: Are you
19 speaking of a criminal sale to minors
20 conviction or of a sale to minors conviction
21 here at the Board?

22 MR. ROSS: I believe a sale to

1 minors is criminal conduct, which are the
2 words -- illegal conduct, which are the words
3 that are used in the case. So I believe that
4 when he sells or sold alcohol to minors, that
5 was illegal conduct.

6 I'm not saying he was convicted of
7 all those 14, he wasn't. He wasn't named or
8 anything. But I believe illegal conduct
9 doesn't necessarily have to take the form of
10 a conviction. I think when people do
11 something wrong, it's illegal conduct.

12 CHAIRPERSON MILLER: Well, I mean,
13 I think that he raises a good question, in
14 that we do have sale to minor violations by
15 establishments and they don't all go to
16 convictions in Court.

17 So I'm not drawing a conclusion,
18 at this point. I'm asking you do you -- is it
19 your position that any sale to minor is
20 criminal activity or moral offense or
21 whatever? Is there a distinction --

22 MR. ROSS: Illegal conduct, yes.

1 I would go with the phrase illegal conduct and
2 I would, as a point of reference, have the --
3 I would look at the testimony of Aaron Bailey
4 who testified from Montgomery County and
5 identified the records and those records
6 indicated that the -- alcohol -- that the
7 citations that they issued to teenagers for
8 the illegal possession of alcohol, that the
9 sale of all of that alcohol in the 14 that he
10 identified for the record appeared from --
11 came from Town Square.

12 So I think that is illegal
13 conduct. That would be my position.

14 CHAIRPERSON MILLER: Do you want
15 to follow-up on that?

16 MEMBER SILVERSTEIN: Yes.

17 CHAIRPERSON MILLER: Go ahead.

18 MEMBER SILVERSTEIN: Commissioner
19 Ross, Mr. Ross, I think there is a very
20 serious line of demarkation here between
21 someone who might inadvertently sell liquor to
22 someone in a restaurant or someone with a fake

1 ID and may do it not knowingly or may do it
2 perhaps they are sloppy and someone whose
3 actions rise to the level where there is
4 police action against them and a conviction in
5 Court.

6 And I think that what you are
7 saying is what you are saying, that this
8 particular Section 301 comes into play when
9 there has been a criminal conviction. You are
10 not saying that simply every time somebody --
11 anybody sells liquor to minors, that they have
12 -- that we have to take their license away.

13 MR. ROSS: I don't -- I do not
14 take that position.

15 MEMBER SILVERSTEIN: You are
16 saying that?

17 MR. ROSS: I'm saying --

18 MEMBER SILVERSTEIN: Go ahead.

19 MR. ROSS: I'm arguing this
20 situation is what I'm saying and I'm trying to
21 make the point that under the phrase illegal
22 conduct, that we know that there is one

1 incident of that and an issue has been raised
2 about the five year period of time. And I
3 tried to address that as best I could.

4 But I think that when you have
5 somebody sitting here from Montgomery County
6 who can recount through his eyeball
7 experiences where the sale was made, I would
8 consider that to be illegal conduct, not a
9 conviction, but illegal conduct. And that
10 would be part and parcel, I think, of an
11 appropriate inquiry to determine good
12 character and fitness for licensure.

13 MEMBER SILVERSTEIN: And as far as
14 the issue of the date of the infraction or the
15 date of the sentencing, do you believe that
16 this law is such that it would lead to an
17 observed conclusion that someone could commit
18 an offense, be arrested and then come in and
19 apply for a license renewal prior to the
20 sentencing thinking they could get in under
21 the wire?

22 MR. ROSS: Well, I hadn't thought

1 about that one, but I think that -- I would
2 think that that would never happen.

3 MEMBER SILVERSTEIN: Isn't that
4 what has occurred here though, that --

5 MR. ROSS: Well, his -- he filed
6 his application before -- for renewal. I
7 don't know the date he filed his application
8 for renewal and I said that. But if he filed
9 his -- let's say he filed it on January 1,
10 2012 and he was arrested on -- I can tell you
11 -- and he was arrested in February, February
12 12th or something like that, I believe in that
13 circumstance that his arrest should be part
14 and parcel of the consideration of whether or
15 not he has good character or fitness.

16 I take the Chairlady's point of
17 the five year -- prior to the filing of the
18 five year, I take that point, but I disagree
19 with that. But I understand the point she is
20 trying to make.

21 Hopefully in answer to your
22 question, even if No. 4 did not apply, I guess

1 I don't see how the Board could have ignored
2 the sworn testimony or the conviction itself
3 and also th sworn testimony of the Montgomery
4 County representative who came down here and
5 testified.

6 It seems to me that if you apply
7 that, it vitiates the intention of this
8 particular section, which is to not have
9 someone who has been convicted get a renewal
10 of their license. If you have got a
11 conviction, then you have got illegal conduct.
12 Those are a couple of the phrases that I think
13 are in play, as you all deliberate this.

14 MEMBER SILVERSTEIN: Thank you,
15 sir. No further questions, Madam Chair.

16 CHAIRPERSON MILLER: Others?
17 Okay. Then I'll just pursue a little further.
18 Do you think -- is it your opinion that any
19 illegal conduct would constitute unfitness
20 under Category 1, the applicant is of good
21 character, generally fit for the
22 responsibilities of licensure?

1 MR. ROSS: No, I do not think that
2 any -- as somebody misread a card in a bar,
3 somebody forgot to ask for a card and it
4 happened to be one of your people who were
5 sitting there who was younger. I'm not saying
6 that. I'm saying that taken as a whole, the
7 conduct, it talks about conduct and character.

8 And taken as a whole, I think the
9 record in this case is replete with
10 unchallenged -- it has been confirmed that all
11 this happened, in my view, and there is
12 nothing in the record that suggests it wasn't
13 the case of what transpired.

14 CHAIRPERSON MILLER: Okay. And
15 can you elaborate on what you think was the
16 applicant's poor record of compliance with the
17 laws and regulations of the District of
18 Columbia? Is it those incidents that we
19 heard?

20 MR. ROSS: It would be those
21 incidents and his arrest.

22 CHAIRPERSON MILLER: Okay.

1 MR. ROSS: If it --

2 CHAIRPERSON MILLER: Those
3 incidents being that which was the topic of
4 the Protest Hearing?

5 MR. ROSS: Yes, the Montgomery
6 County -- if you put them together, there is
7 15 incidents in the record where the alcohol
8 purchased -- purchases were made to minors.
9 14 I think from Montgomery County and one from
10 the District of Columbia.

11 CHAIRPERSON MILLER: So would it
12 be your position that even if there had not
13 been a conviction that the Board should find
14 that the applicant didn't meet the test of
15 good character and general fitness for
16 licensure based on those incidents of -- with
17 Montgomery County and the sale to minors that
18 came out in the Protest Hearing?

19 MR. ROSS: It would be my --
20 because I think there is a pattern of conduct.
21 And that conduct is emanating from the
22 District of Columbia. Indeed, that I'm sure

1 that they told people up in District 2 that
2 they were -- what they were doing. Maybe they
3 didn't. I don't know if they told you all at
4 that particular period of time, but I know
5 that they did afterwards, because that's in
6 the record as well.

7 So I think it impacts the District
8 of Columbia's desire to have law and order
9 observed in the operation of its businesses
10 here in the District and I'm sure that if
11 sales were made to people in Montgomery County
12 -- well, I can't say that, that would be
13 speculation on my part. And I was going to
14 say -- I won't say that.

15 I mean, his store is in the
16 District is my point and that's where it
17 emanated from. And I think that sale to
18 minors regardless of whether the minor lives
19 in Virginia or lives in Maryland, I think
20 that's illegal conduct.

21 CHAIRPERSON MILLER: Okay. Any
22 other questions for Mr. Ross? Okay. Thank

1 you.

2 MR. ROSS: Thank you very much.

3 CHAIRPERSON MILLER: Okay. So Mr.
4 Ross filed a written Motion for
5 Reconsideration. Does Mr. Kim have a copy of
6 that?

7 MR. ROSS: Pardon?

8 CHAIRPERSON MILLER: Did you serve
9 him?

10 MR. ROSS: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. ROSS: I served him
13 personally.

14 CHAIRPERSON MILLER: Okay.

15 MR. ROSS: At his store. which is
16 right by my house.

17 CHAIRPERSON MILLER: Okay. Okay.

18 Would he like to respond to the motion? He
19 didn't file in opposition to the motion, as
20 far as the Board is aware? He didn't file
21 anything in writing in opposition to the
22 Motion for Reconsideration, correct? No.

1 Okay.

2 Would you like to say anything in
3 opposition now to the Motion for
4 Reconsideration?

5 (Papers rustling/lots of noise.)

6 MR. KIM: He didn't get any
7 warning or notice. He receive email that the
8 people just watch you and just got caught. He
9 has claimed this is unfair because he had not
10 understand. He thought this problem kind of
11 such a way that too much, but he admit that
12 what he did is -- that's wrong. He sorry.

13 CHAIRPERSON MILLER: Okay. Thank
14 you. All right. So are there any other
15 questions? Okay. So thank you very much for
16 coming down and addressing the motion. And we
17 are going to give it some more thought and
18 issue an order.

19 MR. ROSS: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. ROSS: As I said, thank you
22 very, very much for giving me the opportunity

1 to testify.

2 CHAIRPERSON MILLER: Thank you.

3 MEMBER ALBERTI: If we're going to
4 deliberate, it's a closed meeting.

5 CHAIRPERSON MILLER: Yes, okay. I
6 just don't know when we are going to do it.
7 I am going to read the instructions.

8 MEMBER ALBERTI: We are going to
9 close the meeting for Board deliberation.

10 CHAIRPERSON MILLER: I'm not sure
11 when we are going to deliberate.

12 MEMBER ALBERTI: We are going to
13 close the meeting for deliberations and that's
14 an administrative matter the Chair will be
15 doing.

16 MR. ROSS: Thank you very much.

17 CHAIRPERSON MILLER: Okay. Yes,
18 thank you.

19 MEMBER ALBERTI: Thank you.

20 CHAIRPERSON MILLER: All right.

21 As Chairperson of the Alcoholic Beverage
22 Control Board for the District of Columbia and

1 in accordance with Section 405 of the Open
2 Meetings Amendment Act of 2010, I move that
3 the ABC Board hold a closed meeting for the
4 purpose of seeking legal advice from our
5 counsel on Case No. 12-PRO-00022, Town Square
6 Gourmet, per Section 405(b)(4) of the Open
7 Meetings Amendment Act of 2010, and
8 deliberating upon this case for the reasons
9 cited in Section 405(b)(13) of the Open
10 Meetings Amendment Act of 2010.

11 Is there a second?

12 MEMBER BROOKS: Second.

13 CHAIRPERSON MILLER: Mr. Brooks
14 has seconded the motion. I'll take a roll
15 call. Mr. Brooks?

16 MEMBER BROOKS: I agree.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MEMBER ALBERTI: I agree.

19 CHAIRPERSON MILLER: Ms. Miller
20 agrees.

21 Mr. Silverstein?

22 MEMBER SILVERSTEIN: I agree.

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CHAIRPERSON MILLER: Mr. Jones?

MEMBER JONES: I agree.

CHAIRPERSON MILLER: Okay. As it appears that the motion has passed, I hereby give notice that the ABC Board will hold a closed meeting in the ABC Board conference room pursuant to the Open Meetings Amendment Act of 2010 today or next month.

Okay. And I think that we have no other cases on the agenda for this morning's calendar, so we will recess until, I believe, 1:00 p.m.

(Whereupon, the Motion Hearing in the above-entitled matter was concluded at 11:42 a.m.)

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