

DISTRICT OF COLUMBIA  
+ + + + +  
ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

IN THE MATTER OF:

GBP, LLC t/a Tackle Box  
3245 M Street, NW  
Retailer CR - ANC-2E  
License No. 84952  
Case #13-CMP-00286 &  
Case #13-CMP-00286(a)

Show Cause  
Hearing  
(Status)

(Failed to Post ABC Licenses,  
Substantial Change without  
Boards Approval (Expansion  
of Operation), Substantial  
Change without Boards  
Approval (Increase in  
Occupancy)

April 23, 2014

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

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
HECTOR RODRIGUEZ, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG

P R O C E E D I N G S

(10:00 a.m.)

1  
2  
3 CHAIRPERSON MILLER: Okay. And  
4 then the next case is Case No. 13-CMP-00286  
5 and 13-CMP-00286(a), Tackle Box located at  
6 3245 M Street, N.W., License No. 84952, in  
7 ANC-2E.

8 MS. GEPHARDT: Good morning,  
9 Chrissy Gephardt on behalf of the Office of  
10 the Attorney General.

11 MR. KLINE: Good morning, Andrew  
12 Kline on behalf of the applicant.

13 MR. UMBEL: Jonathan Umbel, owner  
14 of GBP, LLC.

15 CHAIRPERSON MILLER: Okay. Good  
16 morning.

17 MR. UMBEL: Good morning.

18 CHAIRPERSON MILLER: And did you  
19 all get notice of this hearing?

20 MR. KLINE: Yes. We have received  
21 notice, read it, understood it and we waive  
22 any required formal reading.

1 CHAIRPERSON MILLER: Okay. Good.  
2 All right. Are there any issues you want to  
3 bring to our attention?

4 MS. GEPHARDT: Yes. The parties  
5 have come to an offer in compromise that we  
6 would like to present to the Board.

7 In this case, with respect to 13-  
8 CMP-00286, for Charge 1 we are proposing a  
9 \$100 fine. For charge -- excuse me, I  
10 apologize. A \$1,000 fine, I forgot the zero.

11 CHAIRPERSON MILLER: Okay.

12 MS. GEPHARDT: A \$1,000 fine for  
13 Charge 1. We are going to consolidate Charges  
14 4 and 5 into Charges 2 and 3. We are,  
15 therefore, proposing for Charge 2 a \$2,500  
16 fine and for Charge 3 a \$1,500 fine for a  
17 total of \$5,000 to be paid within 60 days.

18 CHAIRPERSON MILLER: Can you  
19 explain your consolidation?

20 MS. GEPHARDT: Yes. In this case,  
21 this was a continuing violation. The  
22 establishment was operating a second floor

1 area as a bar and when ABRA came back two  
2 weeks later, they were still continuing to  
3 operate the bar without Board approval.

4 And so the Government has decided  
5 to see this as a continuing violation and,  
6 therefore, the reason why we are just,  
7 essentially, taking the facts of 4 and 5 and  
8 integrating them into 2 and 3.

9 CHAIRPERSON MILLER: Okay. I got  
10 it. Okay.

11 MR. KLINE: And, Madam Chair, if I  
12 may add, this represents a true compromise,  
13 which the applicant is willing to accept. If  
14 we go to hearing, the applicant's position  
15 will be quite different in terms of what the  
16 impact is of one substantial change and  
17 whether it can lead to multiple charges.

18 CHAIRPERSON MILLER: Yes.

19 MR. KLINE: We are not here to  
20 argue any of that today, but --

21 CHAIRPERSON MILLER: Yes, right.

22 MR. KLINE: -- by way of

1 background, the Board asked, so I just wanted  
2 the Board to be clear that the charges in the  
3 compromise are accepted.

4 CHAIRPERSON MILLER: Right. Okay.  
5 Mr. Alberti? So we just heard an OIC  
6 presented to us.

7 MEMBER ALBERTI: Um-hum.

8 CHAIRPERSON MILLER: I don't know  
9 whether you want to participate in this.

10 MEMBER ALBERTI: Could I hear?  
11 Yes. If it could be restated, that would be  
12 great. I appreciate that very much.

13 CHAIRPERSON MILLER: Okay.

14 MS. GEPHARDT: Do you want me to  
15 repeat it?

16 MEMBER RODRIGUEZ: Yes, please.

17 CHAIRPERSON MILLER: Yes.

18 MS. GEPHARDT: Okay.

19 CHAIRPERSON MILLER: Thank you.

20 MS. GEPHARDT: Okay. So in this  
21 case, we have five charges. For Charge 1, we  
22 are proposing a \$1,000 fine. And then for the

1 rest of the charges, we are going to  
2 consolidate Charges 4 and 5 into Charges 2 and  
3 3. And therefore, we are proposing for  
4 Charges 2 and 3 a \$2,500 fine for Charge 2 and  
5 a \$1,500 fine for Charge 3, for a total of a  
6 \$5,000 fine to be paid within 60 days.

7 CHAIRPERSON MILLER: Within 60  
8 days, okay.

9 MEMBER ALBERTI: Charge 2 and --  
10 what is being combined again?

11 MS. GEPHARDT: Essentially, the  
12 Charges 4 and 5 are going to be consolidated  
13 into Charges 2 and 3 because they arise out of  
14 the same set of facts. It is a different  
15 date, but --

16 MEMBER ALBERTI: So they are  
17 actually being -- they are really admitting  
18 guilt to one charge?

19 MS. GEPHARDT: That's correct.  
20 Yes, that's correct.

21 MEMBER ALBERTI: Well, this  
22 combining doesn't compute to me. I don't

1 understand that. So do we have one charge?

2 I mean, what --

3 MS. GEPHARDT: Well, we have one  
4 charge --

5 MEMBER ALBERTI: Administratively,  
6 what do we see on the history? What do we see  
7 on the record? What is the charge?

8 MS. GEPHARDT: Well --

9 MEMBER ALBERTI: I mean, I  
10 understand they all come from one fact, but  
11 when we are admitting liability, we typically  
12 admit liability to one charge.

13 MS. GEPHARDT: Right.

14 MEMBER ALBERTI: And so what is  
15 the charge here?

16 MS. GEPHARDT: So the charge is --  
17 well, if we go back to -- let's see, go back  
18 to the notice, we have got Charge 2,  
19 substantially change in method of operation by  
20 expanding the operation of the establishment  
21 to another floor without Board approval.

22 And then Charge 3 is substantially

1 changing the method of operation.

2 MEMBER ALBERTI: I understand.

3 MS. GEPHARDT: Okay.

4 MEMBER ALBERTI: I get that. I  
5 get that.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER ALBERTI: You don't have to  
8 read that --

9 MS. GEPHARDT: Okay.

10 MEMBER ALBERTI: -- for me.

11 MS. GEPHARDT: So what --

12 MEMBER ALBERTI: But what I don't  
13 understand is, and maybe someone can explain  
14 this to me, what is the charge before us that  
15 is being presented to us for which they are  
16 admitting liability? I mean, I can't say --  
17 you know, I have never seen an animal out  
18 there in our records that says oh, it's all  
19 three charges combined and I have never seen  
20 a statute that says oh, it's all three charges  
21 combined.

22 It may stem from the same set of

1 facts, but typically there is one charge and  
2 that's the charge that ends up going on their  
3 record. That's the charge that is before us.  
4 So that's what I'm asking. What is the  
5 charge?

6 What is the charge? Are you  
7 dropping some of these charges?

8 MS. GEPHARDT: I mean --

9 MEMBER ALBERTI: Because they all  
10 stem from the same set of facts and we are  
11 presented with one charge? What? Maybe -- if  
12 I'm totally off base, please, somebody help me  
13 with this.

14 MR. KLINE: Madam Chair, if I may?

15 CHAIRPERSON MILLER: Yes.

16 MR. KLINE: There is another  
17 issue, so I would request that we be given  
18 five minutes, so we can sort this out and come  
19 back to the Board, because I understood the  
20 OIC differently and I think there may be a  
21 different defect.

22 So if you could give us five

1 minutes?

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: Maybe we can sort that  
4 out and also sort out the response to Mr.  
5 Alberti's question.

6 MEMBER ALBERTI: Thank you.

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: And since I think we  
9 are the last matter before --

10 CHAIRPERSON MILLER: No, I want to  
11 come back to my protest case. Yeah. Yeah,  
12 that's fine.

13 MR. KLINE: Great. Thank you.

14 CHAIRPERSON MILLER: It has taken  
15 longer than I thought it would anyway, so go  
16 ahead and take 10 minutes.

17 MR. KLINE: Okay.

18 (Whereupon, at 10:07 a.m. a recess  
19 until 10:23 a.m.)

20 CHAIRPERSON MILLER: Okay. We're  
21 back on the record.

22 Do the parties have something they

1 want to report to us with respect to this OIC?

2 MS. GEPHARDT: Yes. The parties  
3 do have something to report.

4 CHAIRPERSON MILLER: Okay.

5 MS. GEPHARDT: In this case, the  
6 offer has been modified somewhat. And that is  
7 that for -- we will still have \$1,000 fine for  
8 Charge 1. We will have a \$2,000 fine for  
9 Charge 2. A \$2,000 fine for Charge 3. And we  
10 will be dropping Charges 4 and 5. And that is  
11 a total fine of \$5,000 to be paid within 60  
12 days.

13 MR. KLINE: And for the record, to  
14 address the issue that was raised earlier,  
15 these violations would be considered together  
16 the second primary tier violation, second to  
17 the one on the investigative report that I  
18 have to one that is listed as 12/7/2011. They  
19 arise from the same set of facts.

20 MEMBER ALBERTI: Okay. May I?

21 CHAIRPERSON MILLER: I missed --  
22 could you say that again?

1                   MEMBER ALBERTI: May I ask a  
2 question with respect to that?

3                   CHAIRPERSON MILLER: Well, I  
4 missed -- I need him to repeat it first.

5                   MEMBER ALBERTI: Okay. Good.

6                   CHAIRPERSON MILLER: Because I  
7 didn't catch exactly that last point.

8                   MR. KLINE: So these two  
9 violations arise from the same set of facts.  
10 It's our position that these are -- that this  
11 represents the second primary tier violation.  
12 The first primary tier violation is listed on  
13 the investigative report that I'm looking at  
14 as having occurred on 12/7/2011.

15                   CHAIRPERSON MILLER: Okay.

16                   MR. KLINE: And that was a staff  
17 settlement, but I'm presuming even though it  
18 was a staff settlement, it is considered the  
19 first, although I'm not quite clear on that  
20 point, frankly.

21                   CHAIRPERSON MILLER: Okay.

22                   MEMBER ALBERTI: May I ask a

1 question?

2 CHAIRPERSON MILLER: Sure.

3 MEMBER ALBERTI: So I just -- and  
4 I'm trying to -- I'm asking this because I  
5 want to be fair to you and your client.

6 MR. KLINE: We appreciate that.

7 MEMBER ALBERTI: So I understand  
8 for fining purposes that these two charges,  
9 Charge 2 and 3, are considered the second. No  
10 argument. It's standard practice, standard  
11 policy. But then we go on the record, so if  
12 there was a subsequent charge next year, they  
13 would be -- that charge -- if there was  
14 another primary in six months or a year, that  
15 primary would now count as the fourth, because  
16 you have these two and the one from January  
17 that you mentioned.

18 Is that your understanding?

19 MR. KLINE: No, it's not. And if  
20 that is the Board's position, then we would  
21 likely withdraw the offer in compromise,  
22 because this is very much a compromise.

1                   Our position is that it all  
2 evolves from the same set of facts. Our  
3 position is that there is one violation for  
4 purposes of compromise and we have agreed to  
5 do what we are talking about. But if it is  
6 the Board's position that this represents the  
7 second and the third, then I think that that's  
8 something that we need to rethink.

9                   MEMBER ALBERTI: Okay. I'll  
10 comment on that in a second, but I want to ask  
11 another question.

12                   Has your client filed an  
13 application for a substantial change?

14                   MR. KLINE: No. They have ceased  
15 using the area that was at issue. Is that  
16 correct?

17                   MR. UMBEL: That's correct.

18                   MR. KLINE: Yes.

19                   MEMBER ALBERTI: Okay. So the  
20 statement by -- well, I won't go into that.  
21 I don't want to bring that up.

22                   CHAIRPERSON MILLER: Okay. All

1 right.

2 MEMBER ALBERTI: I would just  
3 comment to my fellow Board Members, I'm not  
4 sure that -- I mean, we would have to -- we  
5 would have to break again, because I would  
6 have to consult with our legal team if we can  
7 -- if we are accepting fines for those  
8 individual charges if we could put them on the  
9 record as only -- whether or not we would have  
10 to count them in the future as individual  
11 charges. I don't know. I would have to  
12 consult with our legal experts.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: Our general  
15 counsel on that one.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: But, I mean, we  
18 appreciate your effort to make clear on the  
19 record.

20 MEMBER ALBERTI: Yes.

21 MR. KLINE: Because we interpreted  
22 it --

1                   MEMBER ALBERTI: Yes, I don't want  
2 to blindside you.

3                   CHAIRPERSON MILLER: Okay. Any  
4 other questions? I think we should recess and  
5 confer with our counsel on that issue as  
6 that's really the factor in you going forward  
7 at all.

8                   All right. So we will recess and  
9 get back to you shortly.

10                  (Whereupon, off the record for a  
11 recess.)

12                  CHAIRPERSON MILLER: Okay. As  
13 Chairperson of the Alcoholic Beverage Control  
14 Board for the District of Columbia and in  
15 accordance with Section 405 of the Open  
16 Meetings Amendment Act of 2010, I move that  
17 the ABC Board hold a closed meeting for the  
18 purpose of seeking legal advice from our  
19 counsel on Case Nos. 13-CMP-00286 and 13-CMP-  
20 00286(a), Tackle Box, per Section 405(b)(4) of  
21 the Open Meetings Amendment Act of 2010, and  
22 deliberating upon this case for the reasons

1 cited in Section 405(b)(13) of the Open  
2 Meetings Amendment Act of 2010.

3 Is there a second?

4 MEMBER ALBERTI: Second.

5 CHAIRPERSON MILLER: Mr. Alberti  
6 seconded the motion. I'll now take a roll  
7 call vote.

8 Mr. Brooks?

9 MEMBER BROOKS: I agree.

10 CHAIRPERSON MILLER: Mr. Alberti?

11 MEMBER ALBERTI: I agree.

12 CHAIRPERSON MILLER: Mr.

13 Rodriguez?

14 MEMBER RODRIGUEZ: I agree.

15 CHAIRPERSON MILLER: Ms. Miller  
16 agrees. The motion has passed by a 4-0-0  
17 vote. We will now go and convene in the  
18 conference room and be back shortly.

19 (Whereupon, at 10:30 a.m. a recess  
20 until 10:42 a.m.)

21 CHAIRPERSON MILLER: Okay. We are  
22 back on the record.

1                   MR. KLINE: We have a further  
2 clarification.

3                   MS. GEPHARDT: Yes. We actually  
4 have a clarification here. In looking at the  
5 code, which what we have charged at, for  
6 example, Charge 2, which is a violation of  
7 762(b)(3), when we look at that it states that  
8 for 762(b)(3), "To expand to another floor,  
9 roof or deck is a primary tier violation."  
10 This is the older version of the ABRA Code,  
11 ABRA Regulations.

12                   If you then look at 762(b)(1),  
13 which is Charge 3, "Increasing the occupancy  
14 or the use of the interior space is a  
15 secondary tier violation."

16                   When these acts occurred, the  
17 older code was in effect. So what we are  
18 faced here with then is two secondary tier  
19 violations and a primary tier violation. And  
20 we still maintain the same fines.

21                   CHAIRPERSON MILLER: Okay.

22                   MS. GEPHARDT: The same OIC, but

1 just for clarification for the Board, we are  
2 only dealing with one primary tier violation.

3 CHAIRPERSON MILLER: Okay. Did  
4 everybody get that? All right. So Charge No.  
5 1 is a secondary?

6 MS. GEPHARDT: Charge No. 1 is a  
7 secondary.

8 CHAIRPERSON MILLER: Okay. Charge  
9 No. 2?

10 MS. GEPHARDT: Would be a -- is a  
11 primary.

12 CHAIRPERSON MILLER: Okay.

13 MS. GEPHARDT: And Charge No. 3 is  
14 a secondary.

15 CHAIRPERSON MILLER: But the same  
16 fine? I mean the --

17 MS. GEPHARDT: Exactly, exactly.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER ALBERTI: And wait.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: So may I ask,  
22 762(b)(1), you are claiming is a secondary?

1 MS. GEPHARDT: That's correct.

2 MR. KLINE: Yeah, before your new  
3 Civil Penalty Schedule, it was a secondary.  
4 Under the current schedule, it's a primary.

5 MEMBER ALBERTI: Okay.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER ALBERTI: Thank you for  
8 that question.

9 CHAIRPERSON MILLER: Okay.

10 MR. KLINE: Madam Chair, I also  
11 direct the Board's attention to 800.3 of the  
12 new Civil Penalty Schedule which says "Whether  
13 they are classified as primary or secondary  
14 shall be determined with reference to the  
15 Civil Penalty Schedule in effect when the  
16 violation was committed."

17 MEMBER ALBERTI: Oh, I see. And I  
18 have to apologize. I wasn't -- I had that  
19 flipped.

20 MR. KLINE: Okay.

21 MEMBER ALBERTI: I'm sorry.

22 MR. KLINE: I was trying to get us

1       there.

2                   MEMBER ALBERTI:   So and this  
3       happened in?

4                   MS. GEPHARDT:   2013.

5                   MEMBER ALBERTI:   What was the date  
6       again?

7                   MEMBER ALBERTI:   Okay.   I'm okay.

8                   CHAIRPERSON MILLER:   Okay.

9                   MEMBER ALBERTI:   I just had  
10      reversed.

11                   MR. KLINE:   I understand.

12                   MEMBER ALBERTI:   I apologize.

13                   MR. KLINE:   It's confusing.

14                   MEMBER ALBERTI:   Thank you very  
15      much.

16                   CHAIRPERSON MILLER:   Okay.   Any  
17      other questions?   This is within 60 days  
18      payment?

19                   MR. KLINE:   Yes.

20                   MS. GEPHARDT:   Yes.

21                   CHAIRPERSON MILLER:   Okay.   All  
22      right.   Any other questions?   Otherwise, I'm

1 going to make a motion.

2 Okay. My motion would be that we  
3 approve this -- wait a minute. Do I have the  
4 consent of the applicant to this offer in  
5 compromise of three charges, a fine for three  
6 charges. Charge 1 is \$1,000; Charge 2 is  
7 \$2,000; Charge 3 is \$2,000, Charge 1 and 3 are  
8 considered secondaries because of the law that  
9 was in effect at the time that it occurred and  
10 Charge 2 is a primary.

11 MR. KLINE: Yes.

12 CHAIRPERSON MILLER: And payment  
13 is within 60 days.

14 MR. KLINE: We consent to the  
15 proposed offer in compromise and waive any  
16 right to hearing or appeal if it's accepted by  
17 the Board.

18 CHAIRPERSON MILLER: Okay. Okay.  
19 Then I move that we approve this offer in  
20 compromise for Charge 1 of \$1,000, Charge 2  
21 \$2,000 and Charge 3 \$2,000 to be paid within  
22 60 days. Charge 2 to be considered as a

1 primary and 1 and 3 as secondaries. Do I have  
2 a second?

3 MEMBER ALBERTI: Second.

4 CHAIRPERSON MILLER: Mr. Alberti  
5 has seconded the motion. Any comments?

6 MEMBER ALBERTI: Well, just --

7 CHAIRPERSON MILLER: Yes?

8 MEMBER ALBERTI: -- I could say  
9 this at the end, but right now I just want to  
10 thank everyone for their patience.

11 CHAIRPERSON MILLER: Okay.

12 MS. GEPHARDT: We want to thank  
13 you for your patience.

14 CHAIRPERSON MILLER: All right.  
15 Any other comments?

16 All those in favor say aye.

17 ALL: Aye.

18 CHAIRPERSON MILLER: All those  
19 opposed? All those abstaining? The motion  
20 passes 4-0-0.

21 MR. KLINE: And now that the  
22 motion has passed, I want to thank the Board

1 for taking the time to look at the law and  
2 make sure we get the law right. From where I  
3 sit, that's important and we do appreciate  
4 that.

5 CHAIRPERSON MILLER: Okay. Thank  
6 you.

7 MEMBER ALBERTI: Thank you, Mr.  
8 Kline.

9 MR. KLINE: Thank you.

10 (Whereupon, the Show Cause  
11 (Status) Hearing in the above-entitled matter  
12 was concluded at 10:49 a.m.)

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