

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
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MEETING

IN THE MATTER OF:

Acacia Skylan, Inc.  
t/a Acacia Wellness Bistro                      Show Cause  
4340 Connecticut Ave., NW                      Hearing  
Retailer CR - ANC-3F  
License No. 80916  
Case #13-CMP-00501

(Failed to Post License in a  
Conspicuous Place)

May 14, 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  
MIKE SILVERSTEIN, Member  
HECTOR RODRIGUEZ, Member  
JAMES SHORT, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG

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

(10:09 a.m.)

CHAIRPERSON MILLER: We have a Show Cause Hearing scheduled for 10:00, that's Case No. 13-CMP-00501, Acacia Wellness Bistro. Good morning.

MR. MACK: Good morning. My name is Thomas Mack. I'm here as the designated representative of Mr. Turker, who is the owner of Acacia.

CHAIRPERSON MILLER: Okay.

MR. MACK: I'm a professor of law at --

CHAIRPERSON MILLER: Wait, wait. Let me just get Ms. Gephardt on the record.

MR. MACK: Sorry.

MS. GEPHARDT: My name is Chrissy Gephardt. I'm here on behalf of the Office of the Attorney General.

CHAIRPERSON MILLER: Okay. Thank you. I'm sorry, I just wanted to get the introductions. You were saying now?

1                   MR. MACK: I'm an attorney, but  
2 I'm not here as an attorney for him. I'm here  
3 as a designated representative. I want to  
4 make that clear for the record, because I'm  
5 not admitted in the District. I'm a professor  
6 of law at the DC School of Law.

7                   And Acacia is a restaurant in our  
8 building, which is how I'm here.

9                   CHAIRPERSON MILLER: Okay.

10                  MR. MACK: More of a customer than  
11 an attorney.

12                  CHAIRPERSON MILLER: Okay.

13                  MR. MACK: There are no fact  
14 disputes in this matter. He did violate 25-  
15 711 by not having --

16                  CHAIRPERSON MILLER: Okay. Let me  
17 just say this. This is -- first, I have to  
18 ask if there are preliminary matters. Is this  
19 a preliminary matter? Because we are not  
20 getting into the hearing per se on the merits.

21                  MR. MACK: Oh.

22                  CHAIRPERSON MILLER: At this

1 point. We can, but I just want to know if  
2 there are preliminary matters before we move  
3 into the hearing.

4 MS. GEPHARDT: Well, Mr. Mack has  
5 said that he stipulates to the facts. Is that  
6 correct?

7 MR. MACK: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MS. GEPHARDT: So I guess, at this  
10 point, we are arguing for the penalty.

11 CHAIRPERSON MILLER: Okay. And  
12 what facts then are the parties stipulating  
13 to?

14 MS. GEPHARDT: Stipulating to the  
15 facts in the investigative report.

16 CHAIRPERSON MILLER: What's your  
17 name again?

18 MR. MACK: Thomas Mack, M-A-C-K.

19 CHAIRPERSON MILLER: M-A-C-K.  
20 Okay. So I just want to make sure that are  
21 you stipulating to all the facts in the  
22 Investigator's report?

1 MR. MACK: Yes.

2 CHAIRPERSON MILLER: Okay. All  
3 right. So there are not going to be any  
4 witnesses or anything like that? You are just  
5 going to argue the penalty?

6 MR. MACK: The law.

7 MS. GEPHARDT: We are just going  
8 to argue the penalty.

9 CHAIRPERSON MILLER: Okay. So  
10 procedurally, the Government has the burden of  
11 proof. The Government goes first. So are you  
12 prepared to argue first for the penalty and  
13 then we will hear from the applicant?

14 MS. GEPHARDT: That's fine. In  
15 this case, we had, originally, a \$250 fine for  
16 failure to post and carry the license. And in  
17 this case, because the fine was paid late, I  
18 believe it was paid on March 10, 2014. And  
19 this is the third secondary violation for this  
20 establishment.

21 Therefore, the range is between  
22 \$750 and \$1,000 and the Government is asking

1 for a fine of \$750, which at the lowest end of  
2 the range.

3 CHAIRPERSON MILLER: Okay.

4 MS. GEPHARDT: Thank you.

5 CHAIRPERSON MILLER: Okay. Thank  
6 you. All right. Mr. Mack?

7 MR. MACK: Thank you. A little  
8 bit of background. In my discussion with Ms.  
9 Eberhardt, when we tried to settle this  
10 matter, Mr. Turker, on his own, went to a  
11 status conference and they said he paid too  
12 late. Because he was late it was \$750. That  
13 didn't sound correct to me when he talked to  
14 me about it.

15 And so I called Ms. Eberhardt and  
16 I said what's your authority for doubling or  
17 tripling a ticket, because you have late  
18 payment, when we have asked for a hearing?  
19 She decided to get back to me on that and when  
20 she got back, she changed the reasoning of why  
21 they would only settle for \$750.

22 The reasoning was then what she

1 just said, a third violation. So I thought  
2 fine, a third violation, you know, \$750 we  
3 will pay it. He can certainly afford it. But  
4 when I looked up the regulation, that's not  
5 the law. That is not your own regulation.

6 The regulation is a third  
7 violation within three years generates \$750 to  
8 \$1,000, that's in both 802.1 and 803.1. One  
9 of those governs the Inspector, one of them  
10 governs you, the Board. And they are your own  
11 regulations.

12 This is not a third violation  
13 within three years. The first violation was  
14 on, according to your own records that we  
15 stipulated to, September 21, 2010. There is  
16 not three years expired on September 21, 2013.  
17 This violation is September 24, 2013, so it's  
18 not within the three year period.

19 Now, the Board could also use (b)  
20 there if that was met, which would generate a  
21 fine of \$500 to \$750 if it was a second  
22 violation within two years, but it did not

1 meet that either.

2 So when I called Ms. Eberhardt and  
3 said under your own regulations, the law is  
4 not any third violation generates \$750. It's  
5 a third violation within three years.

6 She then got back to me and said  
7 oh, we date that by adjudication, not the date  
8 of the violation. And I said well, that's not  
9 what your regulations say. And even if you  
10 did it by adjudication, by which she meant the  
11 date paid, we still haven't paid this one.  
12 There was no payment in March.

13 And so this has not been  
14 adjudicated yet. So nothing meets your three  
15 year rule.

16 Now, the reason we are wasting  
17 everyone's time here is Mr. Turker thought  
18 when he looked at the regulation he was  
19 entitled to just a warning, because it's a  
20 first violation. The violation is not having  
21 your license publicly displayed. He had it in  
22 the back of some other displays, flipping it

1 and that wasn't sufficient.

2 The law currently is if it's a  
3 first violation, you give them a warning, not  
4 a \$250 ticket. The City Council and this  
5 Board, by vote of 5-0, decided to do that, to  
6 say it is mandatory that there is a warning,  
7 not a fine of \$250.

8 When I brought that up to Ms.  
9 Eberhardt, she said well, that's true, but  
10 your vote did not become officially in place  
11 until the day after the violation.

12 So what we are requesting here, he  
13 certainly is not liable for more than \$250 and  
14 he is quite willing to pay that. But I think  
15 given the fact we have been put through this  
16 hassle and it is within the discretion of the  
17 Board, I think it ought to be reduced to a  
18 warning, because he didn't publicly display  
19 it. He was willing to pay the \$250, but they  
20 have been insisting \$750, which is, frankly,  
21 illegal.

22 And that's all we have to say.

1 There is no real factual dispute here, Madam  
2 Chair.

3 CHAIRPERSON MILLER: Okay. Thank  
4 you.

5 MEMBER ALBERTI: May I ask a  
6 question?

7 CHAIRPERSON MILLER: Sure.

8 MEMBER ALBERTI: First of all, who  
9 is Ms. Eberhardt? Oh, Ms. Gephardt?

10 MR. MACK: Oh, I'm sorry.

11 CHAIRPERSON MILLER: Ms. Gephardt.

12 MR. MACK: I apologize. I  
13 apologize.

14 MEMBER ALBERTI: I just wanted to  
15 make sure I understood that.

16 MR. MACK: Yes, I apologize.

17 MEMBER ALBERTI: But your last  
18 statement confused me. You said your client,  
19 I'll call him your client, I know you are a  
20 non-attorney representative, acting as a non-  
21 attorney representative, was willing to pay  
22 the citation, but that's not in evidence here.

1 I mean, we don't -- we have a request for a  
2 hearing.

3 MR. MACK: Okay. Well, then the--

4 MEMBER ALBERTI: So I mean, I just  
5 want to make sure that we have the appropriate  
6 facts on the record. So am I correct on that,  
7 Mr. Turker requested a hearing when the  
8 citation was issued?

9 MR. MACK: Yes, yes.

10 MEMBER ALBERTI: Okay. Thank you.

11 MR. MACK: But I would like to  
12 place on the record at the Status Hearing, he  
13 did say he was willing to pay \$250 towards  
14 settlement and he was told that no, it's \$750  
15 or you have to go to a hearing.

16 MEMBER ALBERTI: Okay. Thank you.

17 I understand that. Yes, thank you.

18 MR. MACK: Okay. Thank you.

19 CHAIRPERSON MILLER: Okay. Any  
20 other questions? Anything else? Okay.

21 So we are going to take this under  
22 advisement and look at the statute and the

1 facts and you will get a written order on this  
2 within 90 days.

3 MR. MACK: Thank you, Madam Chair.

4 CHAIRPERSON MILLER: Okay.

5 MS. GEPHARDT: Thank you.

6 MR. MACK: Hope you all go to  
7 Acacia.

8 CHAIRPERSON MILLER: What? I'm  
9 going to --

10 MR. TURKER: Hope to see you there  
11 one day, one time.

12 CHAIRPERSON MILLER: Okay. Yeah.  
13 So in order for us to consider that in closed  
14 session, we need to take a vote on that.

15 MR. MACK: Thank you all. Have a  
16 great day.

17 CHAIRPERSON MILLER: Thank you.  
18 Okay. As Chairperson of the Alcoholic  
19 Beverage Control Board for the District of  
20 Columbia and in accordance with Section 405 of  
21 the Open Meetings Amendment Act of 2010, I  
22 move that the ABC Board hold a closed meeting

1 for the purpose of seeking legal advice from  
2 our counsel on Case No. 13-CMP-00501, Acacia  
3 Wellness Bistro located at 4340 Connecticut  
4 Avenue, N.W., License No. 80916, in ANC-3F,  
5 per Section 405(b)(4) of the Open Meetings  
6 Amendment Act of 2010, and deliberating upon  
7 this case for the reasons cited in Section  
8 405(b)(13) of the Open Meetings Amendment Act  
9 of 2010.

10 Is there a second?

11 MEMBER BROOKS: Second.

12 CHAIRPERSON MILLER: I'll now take  
13 a roll call vote on the motion before us now  
14 that it has been seconded.

15 Mr. Brooks?

16 MEMBER BROOKS: I agree.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MEMBER ALBERTI: I agree.

19 CHAIRPERSON MILLER: Mr.

20 Rodriguez?

21 MEMBER RODRIGUEZ: I agree.

22 CHAIRPERSON MILLER: Ms. Miller

1 agrees.

2 Mr. Silverstein?

3 MEMBER SILVERSTEIN: I agree.

4 CHAIRPERSON MILLER: Mr. Short?

5 MEMBER SHORT: I agree.

6 CHAIRPERSON MILLER: So the vote  
7 is 6-0-0. The motion has passed.

8 I hereby give notice that the ABC  
9 Board will hold a hearing in closed session on  
10 this case pursuant to the Open Meetings  
11 Amendment Act of 2010 and issue a written  
12 decision within 90 days.

13 Okay. All right. So our next  
14 hearing is not until 11:00, so we will recess  
15 and come back at 11:00. Thank you.

16 (Whereupon, the Show Cause Hearing  
17 in the above-entitled matter was concluded at  
18 10:20 a.m.)

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