

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: :

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Gordon Restaurant Group, LLC :

t/a To Be Determined :

1529 14th Street, NW :

License #ABRA-089190 :

Retailer CR - New Application:

Case #12-PRO-00042 :

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TUESDAY, May 29, 2012

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The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, 2000 14th Street, N.W., Suite 400S Washington, D.C., Ms. La Verne Fletcher, Agent, presiding.

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

10:32 a.m.

AGENT FLETCHER: Are the parties present in the matter of Gordon Restaurant Group, LLC? This is Case Number 12-PRO-00042, Gordon Restaurant Group, LLC, trading as Trade Name to Be Determined, 1529 14th Street NW, License Number ABRA-089190. This is a Retailer CR - New Application. The protest issues are adverse impact on peace, order, and quiet.

My name is La Verne Fletcher and I am conducting the Roll Call Hearing as the Board's Agent, pursuant to DC Official Code 1601.2.

Introductions, beginning with the Applicant.

MR. O'BRIEN: Stephen O'Brien for the Applicant.

AGENT FLETCHER: Thank you, Mr. O'Brien. Mr. O'Brien. And present for the Protestant?

1 MR. RAYMOND: Yes. Matt Raymond,  
2 R-A-Y-M-O-N-D, Vice-Chair of ANC-2F.

3 AGENT FLETCHER: Thank you, Mr.  
4 Raymond. And your name, sir?

5 MR. RAPPOLT: William Rappolt.  
6 I'm here for the Matrix Condominium  
7 Association. Jeremy Stein, Mark Friedman and  
8 myself. I have a letter from Jeremy Stein and  
9 Mark Friedman, designating me as their  
10 representative.

11 AGENT FLETCHER: And, Mr. Rappolt,  
12 you'll need to spell all those names. You can  
13 start with yours.

14 MR. RAPPOLT: Sure. My name is  
15 William, W-I-L-L-I-A-M, Rappolt,  
16 R-A-P-P-O-L-T. Then there's Jeremy Stein,  
17 J-E-R-E-M-Y S-T-E-I-N. And Mark Friedman,  
18 M-A-R-K F-R-I-E-D-M-A-N.

19 AGENT FLETCHER: And Mark Friedman  
20 is the Secretary of the Condo Association?

21 MR. RAPPOLT: That's correct.

22 AGENT FLETCHER: And, just so that

1 you know, Mr. Rappolt, I have the e-mail  
2 designating you as the representative. That  
3 e-mail that you have?

4 MR. RAPPOLT: Yes.

5 AGENT FLETCHER: Do you have a  
6 different document?

7 MR. RAPPOLT: I also have a  
8 letter.

9 AGENT FLETCHER: I'll take that  
10 one.

11 MR. RAPPOLT: I didn't realize  
12 that Mark wasn't on there -- on the e-mail.  
13 So --

14 AGENT FLETCHER: Okay. Thank you,  
15 very much. Okay. Two protest letters were  
16 filed in this matter. ANC-2F does have  
17 standing as a Protestant in this matter. The  
18 Matrix Condominium Owners Association, and  
19 Matrix is spelled M-A-T-R-I-X, the Matrix  
20 Condominium Owners Association does not have  
21 standing in this matter because Condominium  
22 Associations are not recognized as civic

1        associations that represent the entire  
2        community. A condo association represents the  
3        residents in the condo. But it's not an open  
4        membership for the public and it's not a  
5        public membership organization.

6                    Mr. Rappolt, did you have any  
7        comment or questions regarding that  
8        information?

9                    MR. RAPPOLT: No. It was a  
10       question we had and that's why we also  
11       protested individually.

12                   AGENT FLETCHER: You protested  
13       individually?

14                   MR. RAPPOLT: Yes.

15                   AGENT FLETCHER: That's the next  
16       question I was going to ask you, because your  
17       protest letter does indicate that the  
18       Association is filing and also that you are  
19       filing collectively as Protestants. Did you  
20       submit a letter with the names of Protestants  
21       on it, as well?

22                   MR. RAPPOLT: Yes. In the letter,

1 I don't know if you have it in front of you,  
2 and I also have a copy.

3 AGENT FLETCHER: Well, because I  
4 will tell you why I'm asking you that. I did  
5 notice that in your protest letter. But I did  
6 not see a list of signatures of individual  
7 Protestants.

8 MR. RAPPOLT: On the second page,  
9 Jeremy Stein signed the letter electronically.

10 AGENT FLETCHER: Yes. What we  
11 would need, in order for a group of  
12 individuals to be recognized as Protestants --  
13 we would actually need a protest letter signed  
14 by five individuals.

15 MR. RAPPOLT: Do you have a copy  
16 of the statute? Because I believe I thought  
17 the rule was -- and maybe I'm incorrect --  
18 that if it was directly abutting, you -- you  
19 only needed the one person to be the  
20 Protestant.

21 AGENT FLETCHER: Well, that's the  
22 other thing. Thank you for bringing that up.

1 I was going to address that next. That is  
2 true. An abutting -- the abutting property  
3 owner would have needed to file a protest.  
4 For us, an abutting property owner is not the  
5 building. I understand that the building is -  
6 - that the residents live above --

7 MR. RAPPOLT: Right.

8 AGENT FLETCHER: -- the  
9 establishment. The abutting property owner  
10 would have to be the person who's wall abuts  
11 the establishment.

12 MR. RAPPOLT: Okay. Well --

13 AGENT FLETCHER: It would have to  
14 be that person.

15 MR. RAPPOLT: -- that is -- I  
16 apologize for interrupting.

17 AGENT FLETCHER: Yes. That's  
18 okay.

19 MR. RAPPOLT: I -- I am, in fact,  
20 the abutting property owner. We share it. My  
21 floor is the ceiling of the establishment.

22 AGENT FLETCHER: And you would

1 have need to file a protest as an abutting  
2 property owner.

3 MR. RAPPOLT: I -- I did.

4 AGENT FLETCHER: You did?

5 MR. RAPPOLT: I am one of the  
6 signatures on the letter. It lists Jeremy  
7 Stein, President, William Rapport, Treasurer,  
8 and Mark Friedman, Secretary.

9 AGENT FLETCHER: And I can tell  
10 you, there are some issues with the letter  
11 that I didn't take issue with, just because it  
12 didn't matter because the Condominium  
13 Association doesn't have standing. But the  
14 letter that I have does not have any  
15 signatures. It has typed the letter S -- it's  
16 typed.

17 MR. RAPPOLT: Yes. That's an  
18 electronic -- I apologize.

19 AGENT FLETCHER: It's in  
20 parenthesis. We don't -- and then that's  
21 signed by Jeremy Stein. But let's just say  
22 that it was a hand-written signature. We

1 would recognize only Mr. Stein, because the  
2 signatures of William Rappolt and Mark  
3 Freidman were not there. We can only  
4 recognize a Protestant if they actually sign  
5 the letter. And so, even if -- even if a  
6 condominium association had standing, I would  
7 be asking you today for the letter that is  
8 actually signed by Mr. Stein. We can't accept  
9 -- we will accept the protest letter with his  
10 name typed by e-mail. But, at this point, we  
11 would actually need a signature.

12 MR. RAYMOND: What's the -- what's  
13 the process to appeal that? I mean, that  
14 sounds like a technicality.

15 AGENT FLETCHER: Well, it would be  
16 -- the process to appeal is to seek  
17 reinstatement. You can -- the condominium  
18 association is not granted standing today  
19 because condominium associations are not  
20 granted standing. That's the basis.  
21 Everything else that we're talking about is  
22 just discussion, based on the issues that were

1 raised. But the dismissal is based on the  
2 fact that a condominium association does not  
3 have standing.

4 So, when you seek reinstatement of  
5 the protest, it would be for the Board to  
6 reconsider that determination, that the  
7 condominium association is dismissed for.

8 MR. RAPPOLT: But what about --

9 AGENT FLETCHER: Because it's not  
10 granted standing. You can also raise the  
11 issue, if you want, that I did not consider  
12 Mr. Rappolt to be an abutting property owner.  
13 You did mention that in your protest letter.  
14 Because we don't have a protest from you, Mr.  
15 Rappolt, signed by you, filing a protest as an  
16 abutting property owner. So that's the next  
17 part. And the other thing was the list of  
18 Protestants that were referenced in the  
19 protest letter does not exist. There was no  
20 list of Protestants. We did not receive a  
21 list of Protestants. There would have needed  
22 to be at least the signatures of five

1 individuals, in order for you to be granted  
2 standing as a group.

3 MR. RAPPOLT: May I ask you one  
4 question?

5 AGENT FLETCHER: Yes.

6 MR. RAPPOLT: Specifically, for my  
7 -- for William Rappolt --

8 AGENT FLETCHER: Yes?

9 MR. RAPPOLT: For myself, just to  
10 clarify the issues of my protest, it's the  
11 fact that I didn't sign the letter is the  
12 reason that I am not being permitted to  
13 protest?

14 AGENT FLETCHER: Exactly. What we  
15 would need from you, if you're an abutting  
16 property owner, you do have a right to file a  
17 protest, but you would have to file it and  
18 signed your name and make a claim as being an  
19 abutting property owner. However, even though  
20 you didn't do that, with this letter, if you  
21 had signed this letter, I could accept that,  
22 because you would have signed a protest letter

1 and I could say well, you didn't submit your  
2 own, but, you know, I may have the discretion  
3 to grant you standing anyway. But there is no  
4 signed protest letter from Mr. Rappolt in the  
5 file.

6 MR. RAPPOLT: May I ask one more  
7 question of you?

8 AGENT FLETCHER: Yes.

9 MR. RAPPOLT: Is there any  
10 specific rule that the ABC Board has  
11 concerning signatures?

12 AGENT FLETCHER: Yes. Yes.

13 MR. RAPPOLT: That I should be  
14 aware of?

15 AGENT FLETCHER: Yes. Signatures  
16 are required. And if you want to e-mail me,  
17 I can -- and give me you e-mail address on  
18 that sheet -- I can e-mail you the  
19 regulations. But a protest letter has to have  
20 a signature. And if there is an individual  
21 group of Protestants, there has to be at least  
22 five people that actually sign the protest

1 letter. Even if there was a list of at least  
2 five individuals attached to Mr. Stein's  
3 letter, they couldn't have been granted  
4 standing.

5 MR. RAYMOND: Will you tell me  
6 what the process of reinstatement is? I don't  
7 remember.

8 AGENT FLETCHER: The process of  
9 reinstatement is just to seek reinstatement.  
10 You send a letter to the ABC Board, requesting  
11 reinstatement of the protest. You will  
12 mention the Roll Call Hearing today, the fact  
13 that the Roll Call Hearing was dismissed by  
14 the Board's Agent because a determination was  
15 made that condominium associations do not have  
16 standing. That is the reason that the protest  
17 is dismissed.

18 We discussed other elements in the  
19 letter, just because it was important because  
20 a protest could have been filed by a civic  
21 association in the community; a protest could  
22 have been filed by a group of five

1 individuals; a protest could have been filed  
2 by an abutting property owner. But one was  
3 not filed by an abutting property owner or a  
4 group of five individuals. So we discussed  
5 that, as well.

6 But, even before we get to that,  
7 the protest is just dismissed because the  
8 condominium association does not have  
9 standing. We don't have a protest of an  
10 abutting property owner. We don't have a  
11 protest for a group of protestants. So they  
12 don't have to be dismissed. They didn't file  
13 a protest in the first place. So the only  
14 dismissal is the condominium association,  
15 which did file a protest.

16 MR. RAPPOLT: So it's -- just so I  
17 can fully understand --

18 AGENT FLETCHER: Yes?

19 MR. RAPPOLT: It's your ruling  
20 that this isn't a joint protest under the --

21 AGENT FLETCHER: That's right.

22 There is no joint protest. There is just the

1 protest by the condominium association.

2 MR. RAPPOLT: And it's the ABC's  
3 -- is the an ABC rule that does not allow a  
4 joint protest?

5 AGENT FLETCHER: There can be a  
6 joint protest. But they have to -- there  
7 would have to be support of it. If this  
8 letter, filed by Mr. Stein, could have been  
9 accepted as a joint protest, so to speak, if  
10 there was a list of five individuals attached  
11 to it; five individual residents that live in  
12 the condominium association. We could  
13 consider that to be a group of five if that  
14 letter was attached.

15 If an abutting property owner had  
16 signed a protest letter claiming to be an  
17 abutting property owner, sharing a common  
18 wall, we could have accepted that as a part of  
19 this. But those two documents do not exist.  
20 And so those entities did not file a protest.

21 MR. RAPPOLT: I -- I -- I just  
22 have one concern.

1                   AGENT FLETCHER:  Yes?

2                   MR. RAPPOLT:  Madam Chairperson,  
3                   and that is the -- I mean, we believed that  
4                   this was a joint protest filed on behalf of  
5                   the Association and the three individuals  
6                   listed.

7                   AGENT FLETCHER:  Okay.

8                   MR. RAPPOLT:  Including myself,  
9                   who has a common wall with the association.  
10                  Admittedly, I did not sign the document.

11                  AGENT FLETCHER:  Right.

12                  MR. RAPPOLT:  For that reason, I  
13                  think, I understand you are ruling it to be  
14                  deficient.  Or are you also ruling that there  
15                  was not protest filed at all by me?

16                  AGENT FLETCHER:  Exactly.

17                  Exactly.

18                  MR. RAPPOLT:  So you do not  
19                  believe that this is a joint protest?

20                  AGENT FLETCHER:  It is not.

21                  MR. RAPPOLT:  Filed on my behalf?

22                  AGENT FLETCHER:  As far as we're

1 concerned, it is not. Now, the ABC Board can  
2 overturn any decision that I make. But, if  
3 you had -- even if you had signed this protest  
4 letter, I would -- I could consider that you  
5 filed a protest abutting, because it was  
6 referenced in the letter. But a protest must  
7 be signed by a Protestant. It must be.

8 MR. RAPPOLT: Okay.

9 AGENT FLETCHER: And Mr. Stein, he  
10 didn't sign a letter either, as far as we're  
11 concerned. This is a typed signature. It is  
12 not a signature. But the protest is dismissed  
13 anyway, because a condominium association  
14 doesn't have standing as a Protestant, so I  
15 don't have to address that issue at all. But  
16 we do not have a signed letter from Mr. Stein  
17 either. We have a typed signature on a  
18 letter, but not a signature. And the  
19 regulations do indicate that there must be a  
20 signature.

21 MR. RAPPOLT: Okay.

22 AGENT FLETCHER: But you know, at

1 the same time, you have a right to seek  
2 reinstatement. The ABC Board can look at the  
3 situation and make a different determination.  
4 So the condominium association will receive an  
5 order dismissing the protest. And, in that  
6 order, it gives the association ten days to  
7 seek reinstatement. So they can seek  
8 reinstatement within ten days of that order.  
9 And the association would need to provide a  
10 copy of the request to Mr. O'Brien, so that  
11 the Applicant would have an opportunity to  
12 respond to any request for reinstatement.

13 Anything else, Mr. Rappolt?

14 MR. RAPPOLT: No. That's it,  
15 Chairperson.

16 AGENT FLETCHER: And so, in this  
17 matter, ANC-2F is the only Protestant. And we  
18 need to set a date for mediation, a Status  
19 Hearing, and the Roll Call Hearing. And I  
20 will give you the dates for the Status and  
21 Protest Hearings first.

22 The date for the Status Hearing is

1 July 18, 2012, at 9:30 a.m. The date for the  
2 Protest Hearing is September 19, 2012, at 1:30  
3 p.m. And did you want to have the mediation  
4 on the same day as the other one, or a  
5 different day?

6 MR. RAYMOND: May we talk for a  
7 second?

8 AGENT FLETCHER: Sure.

9 (Whereupon, off the record  
10 discussion between parties ensued.)

11 MR. O'BRIEN: As to mediation, Ms.  
12 Fletcher, do you have anything on the week of  
13 the 25th of June?

14 AGENT FLETCHER: I do believe I  
15 do. Let me see. The week of the 25th?  
16 Tuesday, the 26th is available, at 9:00,  
17 10:00, 11:00 or 1:00.

18 MR. O'BRIEN: One o'clock. We've  
19 agreed on 1:00 p.m. on the 26th of June.

20 AGENT FLETCHER: One o'clock on  
21 the 26th? Okay. So mediation is set for 1:00  
22 p.m. on June 26, 2012.

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MR. RAYMOND: Ma'am, could you repeat the time of the Protest on September 19th?

AGENT FLETCHER: Yes. The time of the Protest Hearing is 1:30 p.m. Anything else? Okay. Thank you.

MR. O'BRIEN: Thank you.

AGENT FLETCHER: See you soon. Thank you for coming. The Roll Call Hearing is concluded.

(Whereupon, the Roll Call Hearing was concluded at 10:49 a.m.)

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