

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

JC 7, Inc.
t/a NY NY Diva
2606 18th Street, NW
Retailer CR - ANC-1C
License No. 92380
Case# 13-CMP-00359

Show
Cause
Hearing

(Substantial Change in
Operation Without Board
Approval)

June 18, 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
JAMES SHORT, Member

ALSO PRESENT:

MICHAEL STERN, OAG
JASON PERU, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Government. 3
Closing Statement by Government.14

WITNESSES:

Jason Peru, Investigator 5

EXHIBITS: IDENTIFIED RECEIVED

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

(11:29 a.m.)

CHAIRPERSON MILLER: Okay. The next case is a Show Cause Hearing, Case No. 13-CMP-00359, NY NY Diva located at 2406 18th Street, N.W., License No. 92380, in ANC-1C.

MR. STERN: Michael Stern representing the District of Columbia.

CHAIRPERSON MILLER: Okay. Good morning, Mr. Stern. Anybody here from NY NY Diva? Okay. I'm going to note for the record, according to my records, notice was served on NY NY Diva on February 21, 2014.

Okay. No one being here for NY NY Diva, Mr. Stern, do you want to proceed ex-parte?

MR. STERN: Yes.

CHAIRPERSON MILLER: Okay. Feel free to start whenever you are ready.

MR. STERN: Yes. The Government's evidence in this case will show that NY NY Diva was operating an establishment which had

1 been operating or using a summer garden beyond
2 the hours to which the garden was approved
3 resulting in a substantial change in what
4 their license allowed them without having
5 received prior approval from the Board.

6 At the close of evidence, we will
7 have a more extensive discussion about this
8 establishment and what the Government would
9 propose as a remedy in this case.

10 CHAIRPERSON MILLER: Okay.

11 MR. STERN: We would call
12 Investigator Peru.

13 CHAIRPERSON MILLER: Good morning.

14 Whereupon,

15 INVESTIGATOR JASON PERU
16 was called was called as a witness by Counsel
17 for the Government, and having been first duly
18 sworn, assumed the witness stand and was
19 examined and testified as follows:

20 INVESTIGATOR PERU: I do.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

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DIRECT EXAMINATION

MR. STERN: Good morning, Investigator. Can you give us your full name and spell your last name for the court reporter, please?

INVESTIGATOR PERU: Investigator Jason Peru, P-E-R-U.

MR. STERN: And are you employed, Mr. Peru?

INVESTIGATOR PERU: Yes, with the Alcoholic Beverage Regulation Administration.

MR. STERN: Okay. And what are your duties with the Alcoholic Beverage Regulation Administration?

INVESTIGATOR PERU: I'm an Investigator.

MR. STERN: Okay. And were you so employed on August 10, 2013 in the early morning hours?

INVESTIGATOR PERU: Yes, sir.

MR. STERN: Did you become known with an -- did an establishment by the name of

1 NY NY Diva become known to you at that time?

2 INVESTIGATOR PERU: Yes, sir.

3 MR. STERN: Okay. Can you give us
4 a little -- tell us what it was that drew your
5 attention to NY NY Diva?

6 INVESTIGATOR PERU: My supervisor
7 received a phone call on the ABRA Hotline in
8 reference to a noise complaint coming from the
9 establishment.

10 MR. STERN: Okay. And what did
11 you do?

12 INVESTIGATOR PERU: So my
13 supervisor and myself responded to the Diva
14 at, approximately, 1:45 a.m. We met with the
15 owner, Sammy Khan. We advised him of the
16 noise complaint. And we then proceeded --
17 noticed -- we proceeded inside the
18 establishment and upstairs on the third floor
19 that was not in use that a window was open,
20 which caused the noise to emanate from the
21 establishment.

22 Mr. Khan stated that he was able

1 to -- that the window was removed for
2 construction purposes and that he was able to
3 put the window back, which he did while we
4 were there.

5 MR. STERN: In the course of this,
6 did you have an occasion to review the
7 license, ABC license in the establishment?

8 INVESTIGATOR PERU: Yes. We did
9 ask Mr. Khan to see his license to check his
10 hours of operation.

11 MR. STERN: Okay. And what is it
12 that you discovered?

13 INVESTIGATOR PERU: Well, when we
14 arrived at the establishment, we observed
15 patrons outside on the summer garden of the
16 establishment.

17 MR. STERN: Okay.

18 INVESTIGATOR PERU: So we checked
19 the license and the license showed that
20 operating and sales hours was until 11:00 p.m.

21 MR. STERN: Okay. And what time
22 was it when you arrived?

1 INVESTIGATOR PERU: Approximately,
2 1:45 a.m.

3 MR. STERN: Okay. And when you
4 say there were patrons outside, what were the
5 patrons doing?

6 INVESTIGATOR PERU: They were
7 sitting there. I believe two of them had --
8 were consuming beverages.

9 MR. STERN: Okay. And were you
10 able to determine if they were alcoholic
11 beverages?

12 INVESTIGATOR PERU: I could not
13 determine that, no.

14 MR. STERN: Okay. And did you
15 discuss the hours of operation with Mr. Khan?

16 INVESTIGATOR PERU: Yes, we did.

17 MR. STERN: And what is it that --
18 how did that discussion go?

19 INVESTIGATOR PERU: Mr. Khan
20 stated that he was not aware that he had to
21 close down the summer garden at 11:00.

22 MR. STERN: Okay. Did that give

1 you any indication of whether or not he
2 regularly kept the summer garden open after
3 11:00?

4 INVESTIGATOR PERU: Yes.

5 MR. STERN: Okay. And what was
6 that indication that you got?

7 INVESTIGATOR PERU: Well, that --
8 because he was unaware of the hours, he was
9 most likely doing it before that date and
10 time.

11 MR. STERN: Okay. Now, I want to
12 show you what I have marked as Government's
13 Exhibit No. G-1 and ask you to take a look at
14 that and tell me what it is.

15 INVESTIGATOR PERU: The case
16 report you are referring to, sir?

17 MR. STERN: Yes.

18 INVESTIGATOR PERU: Yes.

19 (Whereupon, the above-referred to
20 document was marked as Government
21 Exhibit 1 for identification.)

22 MR. STERN: Is that something you

1 wrote in the normal course of your operations,
2 Investigator?

3 INVESTIGATOR PERU: Yes, sir.

4 MR. STERN: Okay. We would move
5 the admission of Government's Exhibit No. G-1,
6 which is the investigative report.

7 CHAIRPERSON MILLER: Okay.

8 Admitted.

9 (Whereupon, the above-referred to
10 document was received into
11 evidence as Government Exhibit 1.)

12 MR. STERN: Now, in the
13 investigative report I notice that there are
14 some pictures attached. Is that correct?

15 INVESTIGATOR PERU: Yes, sir.

16 MR. STERN: How many pictures do
17 you have?

18 INVESTIGATOR PERU: Three.

19 MR. STERN: Okay. Now, to give
20 clarification to the Board, what is the
21 picture, the first picture, the depiction?

22 INVESTIGATOR PERU: This is just

1 the picture of the window that was removed and
2 open on the third level, which allowed the
3 noise to escape.

4 MR. STERN: Okay. And what is the
5 second picture?

6 INVESTIGATOR PERU: The second
7 picture is the summer garden located in front
8 of the establishment.

9 MR. STERN: And I'm sorry, the
10 third picture?

11 INVESTIGATOR PERU: Is also the
12 summer garden located in front of the
13 establishment.

14 MR. STERN: Okay. And what was
15 your intent or what did you believe is
16 depicted in that picture, in the second
17 picture?

18 INVESTIGATOR PERU: That the
19 summer garden is being used past its approved
20 hours.

21 MR. STERN: Okay. Thank you.
22 Thank you. That's all the questions I have of

1 you.

2 CHAIRPERSON MILLER: Any Board
3 questions? Mr. Alberti?

4 MEMBER ALBERTI: Investigator
5 Peru, thank you for your excellent report.
6 Just in this third picture, what time -- the
7 second and third -- oops, I'm sorry.

8 Investigator Peru, in the second
9 and third picture what time were they taken?

10 INVESTIGATOR PERU: They were
11 taken when we first arrived at, approximately,
12 1:45.

13 MEMBER ALBERTI: About 1:45.
14 Okay. And the second picture, G -- Exhibit 3,
15 I see two individuals. Okay. That doorway to
16 the -- on the left hand side, is that the
17 doorway to NY Diva?

18 INVESTIGATOR PERU: That's one of
19 the entrances, yes, sir.

20 MEMBER ALBERTI: Okay. That's one
21 of the entrances?

22 INVESTIGATOR PERU: Yes.

1 MEMBER ALBERTI: There is two
2 individuals standing to the left of that
3 doorway. Do you know who they were or what
4 their association with NY Diva was, if any?

5 INVESTIGATOR PERU: The individual
6 in the black with the white towel in his back
7 pocket is a security officer.

8 MEMBER ALBERTI: Yes. And the
9 other individual? Do you know?

10 INVESTIGATOR PERU: I'm not sure.

11 MEMBER ALBERTI: Okay. So the
12 person in black with the white towel is an
13 employee of NY Diva?

14 INVESTIGATOR PERU: Yes, sir.
15 Okay. Thank you. I have no further
16 questions.

17 CHAIRPERSON MILLER: Okay.
18 Others? Any questions on Board questions?
19 Mr. Stern?

20 MR. STERN: No. No further
21 questions.

22 CHAIRPERSON MILLER: Okay. Thank

1 you very much.

2 INVESTIGATOR PERU: Thank you.

3 (Whereupon, witness was excused.)

4 MR. STERN: Should I continue?

5 CHAIRPERSON MILLER: Yes, please.

6 MR. STERN: The Government

7 believes that we have proven the elements of
8 the charges against the respondent. The
9 respondent had a limitation for his operation
10 of the summer garden until 11:00 and several
11 hours after that, the respondent was still
12 operating the summer garden. As you can see
13 in the pictures, people are drinking. They
14 are doing so. The garden is operating in full
15 view of an employee of the establishment.

16 The owner of the establishment
17 himself indicated that he wasn't sure -- he
18 didn't know at the time, allegedly, how late
19 he was allowed to operate the summer garden
20 which would indicate, I believe, a reasonable
21 conclusion from that is that he was operating
22 it regularly after 11:00.

1 For all these reasons, we believe
2 we have proven the elements of the violation.

3 A more interesting or excuse me,
4 more pertinent perhaps question is what the
5 Board should do if they find that this
6 violation has been proven.

7 This establishment has seven other
8 pending charges. In addition, my information
9 is that it was closed by the Health Department
10 and is now not open. In fact, my understanding
11 is the Board is going to be presented with a
12 cease and desist order for this establishment
13 some time later today.

14 What I would suggest, because the
15 seven additional charges include charges which
16 would require a revocation of the license on
17 at least -- in these other charges. And I
18 only say this by way of explanation.

19 On at least two occasions,
20 Investigators came in and there was pervasive
21 smell of marijuana and smoke in the
22 establishment in violation of both the Anti-

1 Smoking Rules and, of course, a violation of
2 the Drug Laws of the District of Columbia.

3 Additionally there, a number of
4 the violations involve noise violations, which
5 occurred after the warning that took place in
6 this case, as the Board has already heard
7 about. But those have not been adjudicated
8 yet.

9 So what my suggestion would be for
10 the Board in this case would be to issue a
11 suspension of the license indefinitely until
12 such time as the remaining charges are
13 adjudicated and at the conclusion of that
14 adjudication, the Board can address whether or
15 not continuation of this license or revocation
16 of this license is appropriate.

17 The only -- one thing I can add to
18 that is I heard a rumor from members of the
19 community that the licensee may be in
20 bankruptcy. I have not seen any paperwork
21 that confirms that. That may well change what
22 the Board is able to do because of the rules

1 of Bankruptcy Court.

2 But for right now, our
3 recommendation would be to indefinitely
4 suspend the license until adjudication of all
5 those charges against respondent and at that
6 time an appropriate one remedy that can
7 address all of the charges that are
8 outstanding can be addressed by the Board.

9 CHAIRPERSON MILLER: Until what?
10 What did you say? Your last --

11 MR. STERN: Until adjudication of
12 the remaining seven charges that are
13 outstanding.

14 CHAIRPERSON MILLER: And there
15 would be one order?

16 MR. STERN: And then, at that
17 time, depending on how many of them the Board
18 upheld or if any of them the Board upheld, the
19 Board can determine what the appropriate
20 penalty is for the number of violations.

21 Taking them piecemeal one at a
22 time, it's very difficult to -- for the Board,

1 I think, to address the severity of all of
2 them while some of them are -- have not been
3 adjudicated yet.

4 So this would take basically be
5 putting it on hold or a placemark in these
6 proceedings until such time as the Board sees
7 what the total picture is. And if the total
8 picture is what the Government contends that
9 this place -- that this license should be
10 revoked, the Board can address that once it
11 has all the adjudications in front of it.

12 If the total picture is somewhat
13 different, then the Board can also address it
14 that way. But I believe simply fining them
15 for one first violation doesn't really address
16 what all of the problems of this establishment
17 are.

18 CHAIRPERSON MILLER: So are you
19 counsel for all the cases?

20 MR. STERN: Yes, I am.

21 CHAIRPERSON MILLER: Okay. So do
22 you know how soon we are going to be --

1 MR. STERN: The Status Hearing on
2 those are on July 23rd now.

3 CHAIRPERSON MILLER: Yes.

4 MR. STERN: They were originally
5 the 2nd, but they got moved. I have some
6 expectation that they won't be here for that
7 either. So the trial will be the first week
8 in September, I think.

9 CHAIRPERSON MILLER: For all of
10 them?

11 MR. STERN: The week of September.
12 Well, right now, they are all scheduled on the
13 same day, yes.

14 CHAIRPERSON MILLER: For
15 September, okay. So you are not recommending
16 suspension for this case?

17 MR. STERN: Well, I'm recommending
18 suspension for -- as a -- pending a final
19 sentencing. So in other words, what I'm
20 recommending is that --

21 CHAIRPERSON MILLER: Because we
22 have six other outstanding cases.

1 MR. STERN: Right. That they --

2 CHAIRPERSON MILLER: You are --

3 MR. STERN: -- be suspended now
4 pending a final sentencing at the time all of
5 the cases have resolved.

6 CHAIRPERSON MILLER: And is that
7 based on any authority?

8 MR. STERN: Well, I think the
9 Board has the authority to suspend or fine
10 every establishment for any single violation.

11 MEMBER ALBERTI: Yes.

12 CHAIRPERSON MILLER: No standard?
13 Any violation, quarterly statements, we could
14 suspend them or whatever. Is that what you
15 are saying? That's it?

16 MR. STERN: Yes.

17 CHAIRPERSON MILLER: We have the
18 power to suspend period?

19 MEMBER ALBERTI: Simply put --

20 MR. STERN: Yes.

21 MR. STERN: -- certainly any
22 primary.

1 MR. STERN: Yes. And it's
2 certainly based on the seriousness of the
3 allegations against them and the number of
4 allegations that are coming and the fact that
5 otherwise the piecemeal method doesn't provide
6 adequate justice for all of the things that
7 have occurred.

8 I mean, giving them a \$1,000 fine
9 for this doesn't really resolve it.

10 CHAIRPERSON MILLER: Right. I
11 understand that. But if we had one of those
12 other cases before us today that dealt with
13 drugs or whatever --

14 MR. STERN: Unfortunately what
15 happens is -- and this is actually what
16 happened in this case and we were only, I
17 think, fortuitous that we got them all at the
18 same time.

19 But what happens is if an
20 establishment has a violation every two weeks,
21 while we are continually sending in notices
22 every two weeks, the Board never catches up to

1 see the total picture until all of them have
2 individually been adjudicated and then the
3 Board is looking at -- you know, is resolving
4 one and then another and another and then
5 another.

6 I think the better view for the
7 Board's purposes and I think for justice, in
8 general, is for the Board to look at the
9 overall picture. And this is just one, but we
10 can't allow the establishments to continue to
11 operate while they keep racking up violations.
12 So this would suspend them until such time as
13 we have all of the ones that are out there
14 available for adjudication. That's our
15 recommendation.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. Any other questions? Mr. Silverstein?

18 MEMBER SILVERSTEIN: Madam Chair,
19 I would add to that that each of these is, in
20 itself these violations, a warning to us, is
21 a reminder that this is an establishment that
22 appears to be creating a public danger. That

1 there is -- we can do each of these as the
2 system and Attorney General says one-by-one,
3 week-by-week and wait until something horrific
4 happens or we can do our duty to protect the
5 people of this city against establishments
6 that do have these hazards.

7 And the fact that this place has
8 already been closed by another agency is yet
9 another warning of the danger. This is not
10 something that we do easily. It is not
11 something that we take lightly. But our
12 primary function here about all else is to
13 ensure that people can enjoy the hospitality
14 of our city in a safe environment.

15 MR. STERN: I could not agree
16 more. This is not the first establishment
17 where I have seen this pattern and what
18 happens is after the sixth or seventh
19 violation, like this establishment, the
20 pattern it leaves is that the establishment
21 sort of gives up and things start really to
22 unravel.

1 And what happens is then someone
2 gets hurt badly in the establishment, while we
3 are trying to adjudicate all of the things we
4 are catching up with. And that's what I'm
5 trying -- one of the things I'm trying to do
6 by packaging these together at some point in
7 as near a future as we can do.

8 MEMBER ALBERTI: Ms. Miller, I
9 have heard what Mr. Stern has said. I take it
10 very seriously. And I appreciate very much
11 what he said and I will consider that, take
12 that under consideration as I deliberate this
13 case. And I think we ought to just move to
14 deliberations and get legal counsel on this
15 case.

16 I think Mr. Short has something to
17 say.

18 CHAIRPERSON MILLER: Are you
19 finished?

20 MEMBER ALBERTI: I am done.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Short?

1 MEMBER SHORT: Mr. Stern, thank
2 you very much for your recommendation. This
3 apparently has deteriorated. This situation
4 has deteriorated to the point, and it's as
5 Board Members have dedicated, that it's a
6 public danger. And we are going to deliberate
7 and find out the best situation.

8 Your recommendation will weigh
9 very heavy with me. Thank you.

10 MR. STERN: Thank you.

11 CHAIRPERSON MILLER: Okay. Does
12 that conclude your case?

13 MR. STERN: What's that?

14 CHAIRPERSON MILLER: Does that
15 conclude your case?

16 MR. STERN: Yes, that is the
17 conclusion of our case.

18 CHAIRPERSON MILLER: All right.
19 Thank you very much.

20 As Chairperson of the Alcoholic
21 Beverage Control Board for the District of
22 Columbia and in accordance with Section 405 of

1 the Open Meetings Amendment Act of 2010, I
2 move that the ABC Board hold a closed meeting
3 for the purpose of seeking legal advice from
4 our counsel on Case No. 13-CMP-000359, NY NY
5 Diva located at 2406 18th Street, N.W., per
6 Section 405(b)(4) of the Open Meetings
7 Amendment Act of 2010, and deliberating upon
8 this case for the reasons cited in Section
9 405(b)(13) of the Open Meetings Amendment Act
10 of 2010.

11 Is there a second? Mr. Brooks.

12 Oh, is there a second?

13 MEMBER ALBERTI: Second?

14 CHAIRPERSON MILLER: Thank you.

15 Mr. Alberti seconded the motion. Mr. Brooks?

16 I'm going to now take a vote on the motion now
17 that it has been seconded.

18 MEMBER BROOKS: I agree.

19 CHAIRPERSON MILLER: Okay. Mr.

20 Alberti?

21 MEMBER ALBERTI: 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: Okay. It
7 appears that the motion has passed by a 5-0
8 vote and the ABC Board will hold a closed
9 meeting in the ABC Board conference room
10 pursuant to the Open Meetings Amendment Act of
11 2010 on this case.

12 And we will issue an order within
13 90 days. Thank you.

14 MR. STERN: Thank you.

15 CHAIRPERSON MILLER: Okay. I
16 think that conclude this morning's calendar.
17 Let me see. Where is the calendar? Okay. So
18 the Board will recess.

19 (Whereupon, the Show Cause Hearing
20 in the above-entitled matter was concluded at
21 11:51 a.m.)

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