

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

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IN THE MATTER OF:                   :  
  :  
Biergarten Haus, Inc.            :     Show Cause  
t/a Biergarten Haus, Inc.:     Hearing  
1355 H Street NE                :  
Retailer CT                       :  
License No. 83695               :  
ANC 6A                            :  
Case No. 13-CMP-00634         :  
-----1/4

July 24, 2012

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

PRESENT:  
RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
MICHAEL SILVERSTEIN, Member  
HERMAN JONES, Member

ALSO PRESENT:  
Amy Schmidt, OAG

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

2:24 p.m.

CHAIRPERSON MILLER: Okay.

Normally we would adjourn for lunch. But I understand that our 1:30 is here. And I'm going to call the case in the event that there's a short matter, okay.

That case is 12-CMP-00634, Biergarten Haus, Inc., located at 1335 H Street NE, License Number 83695 in ANC 6A.

MR. MCGOVERN: Chairperson, it's 1355 H Street, not 1335.

CHAIRPERSON MILLER: I'm sorry. Okay. Let's correct the record, 1355 H Street, NE.

I think it's just because we've been going a long time this morning. It's actually right on my piece of paper. Okay.

Would you introduce yourselves for the record please?

MR. MCGOVERN: Hello. My name is Aaron McGovern. I am the owner of the

1 Biergarten Haus, located at 1355 H Street, NE,  
2 Washington, D.C.

3 MS. SCHMIDT: Good afternoon, Amy  
4 Schmidt, Assistant Attorney General on behalf  
5 of the District of Columbia.

6 CHAIRPERSON MILLER: Okay. So  
7 this was scheduled for a 1:30 Show Cause  
8 hearing. If there's a preliminary matter, we  
9 can hear that before the Board breaks for  
10 lunch.

11 MS. SCHMIDT: Yes, there's a  
12 preliminary matter.

13 CHAIRPERSON MILLER: Okay.

14 MS. SCHMIDT: In this case, Mr.  
15 McGovern can give more of the details.  
16 However, we're going to ask for a written  
17 warning from the Board. Because according to  
18 Mr. McGovern, he was informed by a DC official  
19 -- he can fill in the blanks -- that having  
20 the festival, having his bar on the street  
21 during the festival was appropriate.

22 CHAIRPERSON MILLER: Having his

1 what, I'm sorry, having his what on the --

2 MS. SCHMIDT: Serving alcohol on  
3 the street as part of the H Street Festival is  
4 appropriate. And he had done this before in  
5 the past. And Mr. McGovern had informed me,  
6 if he can fill in the blanks more than I can.

7 CHAIRPERSON MILLER: Okay.

8 MR. MCGOVERN: Every year around  
9 September 16th, the H Street Festival, which  
10 is a DC Main Street organized event, and Anwar  
11 Saleem, the person who's in charge of the H  
12 Street Festival, combines a footprint of the  
13 closings, works with DDOT, ABRA, submits the  
14 package from all of our businesses and outside  
15 vendors as well.

16 Every year we are allowed,  
17 depending on the fire lane, to have an  
18 extended serving of alcohol. And we do apply  
19 One Day Substantial Change, which as you can  
20 see I did that well in advance.

21 And all of our footprints were  
22 there. We have to have the barricades and

1 security, which we had.

2 And I think the ABRA investigator,  
3 he took pictures. And in that picture you can  
4 see our little FBI barricades and our security  
5 detail. And we do wrist bands and check the  
6 IDs.

7 I was completely caught off guard  
8 when I heard that we had a violation. It was  
9 about six months after. And I was just like  
10 why do we have a violation.

11 And they said, well, you're not  
12 allowed to serve outside. And if anybody's  
13 been to the H Street Festival, that's why we  
14 pull a One Day Substantial Change for this  
15 event.

16 So I just figured it was either a  
17 mis-communication, or a misunderstanding, or  
18 something. So that's why I'm here to just  
19 explain.

20 CHAIRPERSON MILLER: Okay. So is  
21 it your understanding that it's not reflected  
22 in your One Day Substantial Change license

1 that you can serve alcohol in the street, but  
2 it is reflected in the permit that H Street  
3 Festival gets for everybody?

4 MR. MCGOVERN: My understanding  
5 was we are given spaces by the DC maps. It's  
6 not like you can go, it's a free for all.

7 They give us an exact square  
8 footage footprint of where specifically we  
9 need to set up our setup.

10 And we also have our grills with  
11 our bratwurst and our roasted corn stands.  
12 But everything is paid for specifically, above  
13 and beyond our regular stuff.

14 And the criteria are as follows.  
15 You have to have this. If you are serving  
16 alcohol, you have to abide by these rules.  
17 And I've done it every year, paid it.

18 I just didn't see anything.  
19 Nothing's been different, is what I'm trying  
20 to say.

21 CHAIRPERSON MILLER: How many  
22 years?

1 MR. MCGOVERN: This will be my  
2 fourth year.

3 CHAIRPERSON MILLER: Okay. So I  
4 guess my question is, and we all should look  
5 for it in the future if there's a  
6 misunderstanding here. When you get your One  
7 Day Substantial license, is that map there  
8 too?

9 MR. MCGOVERN: My understanding  
10 through Anwar Saleem was when he submitted  
11 this whole thing for the festival to ABRA,  
12 that it specifically says Biergarten 1355.

13 And typically for the alcohol  
14 serving, it is in front of your building.  
15 It's not down the road four blocks where --  
16 they do give you an allocated space in front  
17 of your building. And that's where this  
18 specifically was that day.

19 CHAIRPERSON MILLER: Okay.

20 MR. MCGOVERN: So I think  
21 hindsight, learning a little bit more having  
22 come here today, I think next year I'll have

1 a photograph of the street, and the specifics  
2 on my application, and not rely so much on  
3 Main Street's application, as a double  
4 insurance policy.

5 Because I was absolutely caught  
6 off guard with this. And I couldn't believe  
7 it.

8 CHAIRPERSON MILLER: Ms. Schmidt,  
9 so --

10 MS. SCHMIDT: We're requesting  
11 that the Board give a written warning to  
12 remind him to look at his permit again next  
13 year in this matter.

14 CHAIRPERSON MILLER: Okay, as  
15 opposed to --

16 MS. SCHMIDT: Any fact finding  
17 actions.

18 CHAIRPERSON MILLER: Withdrawing  
19 prosecution though.

20 MS. SCHMIDT: No, no, no, fines  
21 and sanctions, no fines and sanctions, a  
22 warning.

1                   CHAIRPERSON MILLER:  A warning,  
2                   okay.  Board members with other questions?

3                   MR. ALBERTI:  I have a statement,  
4                   but I can either make it after you make your  
5                   motion or before.

6                   CHAIRPERSON MILLER:  No, I can  
7                   make --

8                   MR. ALBERTI:  Probably after you  
9                   make your motion, I'll make my statement.  Go  
10                  ahead.

11                  CHAIRPERSON MILLER:  After I make  
12                  my statement.

13                  MR. ALBERTI:  Mr. Jones, do you  
14                  have something?

15                  CHAIRPERSON MILLER:  Mr. Jones, do  
16                  you have a question?

17                  MR. HERMAN JONES:  Just what's  
18                  your rationale for the warning as opposed to  
19                  something else?

20                  MS. SCHMIDT:  Our rationale is  
21                  because, according to Mr. McGovern, that he's  
22                  done this every year in the past, and he

1       relied on the organizer of the festival to get  
2       the permits.

3                   I'm not saying it's totally  
4       justified, but a warning, I don't think it  
5       goes to the level of a sanction or a fine,  
6       considering this has been done in th past.  
7       This has been done in the past.

8                   MR. HERMAN JONES:   So just in  
9       terms of you're presenting to us a warning.  
10      And you're justifying that by saying it was  
11      communicated to him, something other than what  
12      was correct.   And he operated off of that  
13      misinformation.

14                  Why a warning versus a lesser fine  
15      or something different?   What's your  
16      justification for just giving him a warning  
17      and saying, oh, I'm sorry, don't do it again?

18                  MS. SCHMIDT:   Because he thought  
19      he was doing the right thing.   And the  
20      festival had been taking place like that.  
21      It's not a first time he's been doing this.  
22      It's been going for years.   Whether it was

1 right for years or not, I don't know.

2 But at this point though it's more  
3 a warning, just to be more specific that just  
4 don't take things for granted. He should  
5 look. And that's what the Government feels is  
6 justified at this point.

7 MR. HERMAN JONES: What type of  
8 violation would this be if it was not just a  
9 warning? What would it have been?

10 MS. SCHMIDT: Well, it probably  
11 would have been a fine.

12 MR. HERMAN JONES: No. I mean  
13 what type of, is it a secondary tier?

14 MS. SCHMIDT: I believe it is.

15 MR. HERMAN JONES: So I'm looking  
16 at his history. And this would not  
17 necessarily be his first secondary tier.

18 So I'm trying to understand to go  
19 from what it could be to a warning seems,  
20 you're basically saying that he has, you  
21 acknowledge he committed a violation.

22 MS. SCHMIDT: But it was --

1 MR. HERMAN JONES: But you want us  
2 to give him a warning for committing that  
3 violation.

4 And it doesn't appear that this is  
5 his first violation of a secondary tier type.

6 MS. SCHMIDT: Mr. Jones, this is  
7 what the Government's recommending. You are  
8 free to disagree with the Government.

9 I understand your concerns,  
10 however this is what we are recommending at  
11 this point.

12 MR. HERMAN JONES: I'm not  
13 concerned. I'm just trying to understand the  
14 rationale that you went into to get to get to  
15 that point. But if you don't have one, that's  
16 fine.

17 MS. SCHMIDT: I don't have one  
18 that I wish to share at this point, no.

19 CHAIRPERSON MILLER: Any other  
20 comments? Okay, well, I would move that we  
21 approve this Offer in Compromise.

22 It appears that this establishment

1 is a part of a bigger organization, a street  
2 festival that has gotten approvals I assume  
3 from all the normal entities, including DCRA,  
4 MPD, ABRA.

5 This establishment, as has been  
6 represented, was given a certain place on a  
7 map where to participate in this street  
8 festival, which is a street festival where  
9 everybody is in the street, so there's a  
10 reason for that, was told to be.

11 So I think if there's some  
12 confusion, we ought to look at it in the  
13 future.

14 But I don't see why this  
15 particular establishment should be sanctioned  
16 with any kind of a fine.

17 MEMBER SILVERSTEIN: Madam Chair,  
18 I second.

19 CHAIRPERSON MILLER: Okay. Any  
20 other comments?

21 MR. ALBERTI: Yes. My Board  
22 members, this is very similar to another case

1 that we addressed for the same festival. Mr.  
2 McGovern, I was at the festival and enjoyed it  
3 very much.

4 MR. MCGOVERN: I remember seeing  
5 you.

6 MR. ALBERTI: It was my  
7 observation that you and others, many others,  
8 operated in a way that you were taking  
9 appropriate steps for the safe and, well, safe  
10 service of alcohol.

11 It's also, as was presented in the  
12 other case by the Defendant, the same  
13 information about the fact that they believed  
14 that they were presented by the organizers  
15 with misleading information.

16 That concerns me. However, as in  
17 that case, I believe that the onus is on the  
18 individual owners to examine the One Day  
19 licenses that they're given and question them.  
20 These are experienced owners.

21 So I am going to dissent from your  
22 decision.

1                   And I'll also recommend, as I did  
2                   in the other case, that when -- and I have  
3                   heard that the H Street Festival was going to  
4                   be run again this year -- that if we get  
5                   requests for One Day licenses with the  
6                   upcoming festival that we bring every  
7                   individual owner who's requesting a license  
8                   before us so they hear directly from us what  
9                   we're approving and what we're not approving.

10                   This way, they don't have to rely  
11                   on the organizer and there will be no mis-  
12                   communication. And I think that's the safest  
13                   way, and I think it will be in everybody's  
14                   best interest.

15                   It'll take more time but I think  
16                   that, given these two cases that we've seen,  
17                   and maybe others we may have coming forward  
18                   before us, I think that's the most prudent way  
19                   to proceed.

20                   So, thank you for your time.

21                   CHAIRPERSON MILLER: Any other  
22                   comments?

1                   Okay, all right. Well, regardless  
2 of how we proceed in the future, I presented  
3 a motion that in this case we accept the Offer  
4 in Compromise within these individual  
5 circumstances.

6                   And Mr. Silverstein, I think, has  
7 seconded the motion.

8                   MEMBER SILVERSTEIN: Yes.

9                   CHAIRPERSON MILLER: Okay. All  
10 those in favor say aye.

11                   (Multiple Ayes)

12                   CHAIRPERSON MILLER: All those  
13 opposed?

14                   MR. ALBERTI: Opposed.

15                   MR. HERMAN JONES: Opposed.

16                   CHAIRPERSON MILLER: Okay, then the  
17 motion passes by a vote of 3 to 2 to 0. Thank  
18 you.

19                   MR. MCGOVERN: Thank you.

20                   CHAIRPERSON MILLER: Okay.

21                   (Off the record comments)

22                   CHAIRPERSON MILLER: Okay then,

1       it's 2:37. Let me just check the calendar  
2       before we adjourn.

3                   CHAIRPERSON MILLER: 3:30.

4                   CHAIRPERSON MILLER: Our next case  
5       is at 3:30. I believe that case has been  
6       withdrawn.

7                   MR. HERMAN JONES: Yes.

8                   CHAIRPERSON MILLER: And our 2:30  
9       has been cancelled. So we can catch up a  
10      little here. So then we'll adjourn until our  
11      next hearing, which is 4 o'clock p.m.

12                  MR. ALBERTI: Ms. Miller, would  
13      actually go on the record --

14                  CHAIRPERSON MILLER: Read them.

15                  MR. ALBERTI: -- and read those  
16      cases so that we don't have to come back to  
17      them.

18                  CHAIRPERSON MILLER: Okay. That's  
19      a good point. That's what happens when I go  
20      so late for lunch, okay.

21                               (Laughter)

22                  CHAIRPERSON MILLER: The next case,

1       okay, we just completed Biergarten, which I  
2       called.

3                       Our 2:30 case, Case Number 13-PRO-  
4       00063, 1301 Wine Bar, located at 1301 U Street  
5       NW, License Number 91682 in ANC 1B. This  
6       hearing is cancelled.

7                       The parties have submitted an  
8       executed settlement agreement for Board  
9       review and approval.

10                      Our 3:30 Fact Finding Hearing,  
11       Angelo H. Soares on behalf of Food Truck  
12       Association of Metropolitan Washington, 1100  
13       Alabama Avenue SE, that application has been  
14       withdrawn. So the hearing is cancelled.

15                      Okay, then we will return at 4  
16       o'clock p.m. for our next Fact Finding  
17       Hearing.

18                      (Whereupon, the hearing was  
19       concluded at 2:39 p.m.)

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<b>A</b>	<b>Ayes</b> 16:11	<b>Chairperson</b> 1:14 1:17 2:3,11,13 3:6 3:13,22 4:7 5:20 6:21 7:3,19 8:8,14 8:18 9:1,6,11,15 12:19 13:19 15:21 16:9,12,16,20,22 17:3,4,8,14,18,22	<b>DDOT</b> 4:13 <b>decision</b> 14:22 <b>Defendant</b> 14:12 <b>depending</b> 4:17 <b>detail</b> 5:5 <b>details</b> 3:15 <b>different</b> 6:19 10:15 <b>directly</b> 15:8 <b>disagree</b> 12:8 <b>dissent</b> 14:21 <b>District</b> 1:1 3:5 <b>doing</b> 10:19,21 <b>DONALD</b> 1:18 <b>double</b> 8:3 <b>D.C</b> 1:14 3:2	<b>fine</b> 10:5,14 11:11 12:16 13:16 <b>fines</b> 8:20,21 <b>fire</b> 4:17 <b>first</b> 10:21 11:17 12:5 <b>follows</b> 6:14 <b>Food</b> 18:11 <b>footage</b> 6:8 <b>footprint</b> 4:12 6:8 <b>footprints</b> 4:21 <b>forward</b> 15:17 <b>four</b> 7:15 <b>fourth</b> 7:2 <b>free</b> 6:6 12:8 <b>front</b> 7:14,16 <b>future</b> 7:5 13:13 16:2
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