

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

IN THE MATTER OF:

Cafe Europa, Inc.

t/a Panache

1725 Desales Street, NW

Retailer CR

License No. 60754

Show Cause

Hearing

(Status)

Case No. 13-CMP-00258

August 13, 2014

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

HECTOR RODRIGUEZ, Member

MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

INVESTIGATOR FELICIA DANTZLER

WALTER ADAMS, Representative of District of
Columbia

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

(10:33 a.m.)

CHAIRPERSON MILLER: Okay. Next we have a show cause hearing, Case number 13-CMP-00258, Panache located at 1725 Desales Street Northwest, License number 60754.

MR. ADAMS: Good morning, Madam Chair. I'm Walter Adams, and Members of the Board. I'm Walter Adams. I represent the District of Columbia.

CHAIRPERSON MILLER: Good morning, Mr. Adams. Is anybody here from Panache? Not hearing from anyone. We haven't been notified that I know of that someone is on their way. Do you have any information?

MR. ADAMS: I apologize, Madam Chair. I just wanted to, before I make any statements, make sure I've consulted my notes.

CHAIRPERSON MILLER: Okay.

MR. ADAMS: I have not spoken recently to the owner of the licensed establishment. The last time I had an actual

1 conversation with him was on July 17th.

2 So it was on July 17th regarding
3 this matter. At the time, he knew that the
4 matter was set for August 13th. The only
5 difference that I might know is that at an
6 earlier point, this hearing was originally
7 scheduled to occur at 11:00 a.m.

8 I'm not sure if he received notice
9 of any changes, but I'm assuming that he did
10 receive that notice that the hearing was
11 changed until 10:00 a.m.

12 But to be more responsive to the
13 point, I have not spoken with the owner since
14 July 17th, and I did try to reach out to him
15 via electronic mail, and I did not receive,
16 this week I did not receive a response.

17 CHAIRPERSON MILLER: Okay. I'm
18 looking through my notes here and I'm not
19 seeing evidence that he was served. Do you
20 have evidence that he was served?

21 I have evidence of service
22 attempts on May 13th, 14th, and 20th. But my

1 notes indicate the establishment was closed.
2 Did you say you talked to him? Well, maybe at
3 that time, I don't know what time they tried
4 delivering.

5 MR. ADAMS: Last time I spoke with
6 him was on July 17th frankly, regarding
7 finding some type of resolution to the matter.
8 He did not indicate to me whether or not his
9 establishment was open or not open, you know,
10 obviously, aside of just general conversation.

11 So I had no indication at that
12 time of the actual operating status. But to
13 my knowledge, obviously the license is still
14 active, though.

15 CHAIRPERSON MILLER: No, I think,
16 and it's not clear to me whether when a
17 service was attempted, it could have been
18 closed but it may not mean that the
19 establishment was closed. But what I'm trying
20 to figure out is if you have evidence that he
21 was served.

22 MR. ADAMS: I do not have with me

1 evidence of service. Only thing I do know is
2 that, again, he knew that the matter was,
3 according to my last conversation, he knew
4 that the matter was on the schedule for August
5 13th.

6 CHAIRPERSON MILLER: Okay.

7 MR. ADAMS: I'm not sure if it's
8 the matter of it's a time issue. But I do not
9 have proof of service, no.

10 CHAIRPERSON MILLER: Okay. So he
11 knew it was scheduled for, he indicated to you
12 he knew it was scheduled for August 13th.

13 MR. ADAMS: Yes, he --

14 CHAIRPERSON MILLER: But it was
15 previously scheduled for --

16 MR. ADAMS: He was aware that
17 there is a hearing for August 13.

18 CHAIRPERSON MILLER: Okay. You
19 know that from your conversation.

20 MR. ADAMS: From my conversations.
21 Frankly, I sent him an email Monday evening
22 saying we're having it on today. But I do

1 not, I cannot say for sure if I indicated the
2 time.

3 CHAIRPERSON MILLER: What?

4 MR. ADAMS: I cannot state whether
5 I indicated the time.

6 CHAIRPERSON MILLER: Okay. And
7 did he respond to that email?

8 MR. ADAMS: He has not responded
9 to my email, he has not returned any other
10 phone calls from me.

11 CHAIRPERSON MILLER: And you said
12 that this was previously scheduled for 11:00?

13 MR. ADAMS: Yes. In May it was.
14 I believe at some point, the time was switched
15 to 10 o'clock.

16 CHAIRPERSON MILLER: Okay, right.

17 MR. ADAMS: And we're getting
18 pretty close to it.

19 CHAIRPERSON MILLER: I see that in
20 my notes also. All right.

21 MR. ADAMS: I'm sorry, my
22 apologies. There was a second status hearing,

1 I believe, on July 16th. And after July 16th,
2 you know, obviously it was set, the hearing
3 time was set for 10:00 a.m.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER SILVERSTEIN: Do you want
6 to do this without him?

7 CHAIRPERSON MILLER: I think I
8 just want to confer with our general counsel
9 about the service issue.

10 (Off microphone discussion)

11 CHAIRPERSON MILLER: Okay. I have
12 more information that the respondent was
13 served on June 17th, 2014 with the charges and
14 the dates of the status hearing and the show
15 cause hearing.

16 But as you stated, Mr. Adams, the
17 time said 11 o'clock a.m. and not 10:00. So
18 we would suggest that we would perhaps wait
19 until 11:00.

20 MR. ADAMS: The District has no
21 objections to that.

22 CHAIRPERSON MILLER: Okay. And at

1 that time, do you feel comfortable proceeding
2 ex parte?

3 MR. ADAMS: Absolutely.

4 CHAIRPERSON MILLER: Okay. All
5 right, so we will recess then until 11
6 o'clock. Thank you.

7 (Whereupon, the above-entitled
8 matter went off the record at 10:42 a.m. and
9 resumed at 11:20 a.m.)

10 CHAIRPERSON MILLER: Okay, Mr.
11 Adams, you've already introduced yourself for
12 the record. And the Respondent has not come.
13 It's 21 minutes after 11:00, and the hearing
14 was noticed for 11:00, at that time so that he
15 got notice. So do you wish to proceed ex
16 parte?

17 MR. ADAMS: Yes, the District
18 would like to proceed ex parte.

19 CHAIRPERSON MILLER: Okay.

20 MR. ADAMS: And the District would
21 waive an opening statement and call its sole
22 witness, Investigator Felicia Dantzler to

1 testify in this matter.

2 CHAIRPERSON MILLER: Okay, great.

3 MR. ADAMS: And I will state for
4 the record, this case is for a single charge
5 for the establishment not having an ABC
6 manager on the premises while the
7 establishment was open and patrons were
8 consuming alcohol. So I'll just call
9 Investigator Dantzler to the stand.

10 CHAIRPERSON MILLER: Good morning.
11 Do you swear to tell the truth, the whole
12 truth, nothing by the truth?

13 INVESTIGATOR DANTZLER: I affirm.

14 CHAIRPERSON MILLER: Okay.

15 MR. ADAMS: Ms. Dantzler, can you
16 please state your name, and spell it for the
17 record?

18 INVESTIGATOR DANTZLER: Felicia
19 Dantzler, F like Frank, E-L-I-C-I-A. Last
20 name phonetically, D like David, A-N-T-Z-L-E-
21 R.

22 MR. ADAMS: And Ms. Dantzler, you

1 are an investigator for the District of
2 Columbia Alcoholic, I'm sorry, Beverage
3 Regulation, correct?

4 INVESTIGATOR DANTZLER: Correct.

5 MR. ADAMS: All right, and since
6 you've been with ABRA, or which is the office
7 is called, have you been familiar with an
8 establishment named Panache?

9 INVESTIGATOR DANTZLER: Yes.

10 MR. ADAMS: And that
11 establishment's located on 1725 Desales Street
12 Northwest, correct?

13 INVESTIGATOR DANTZLER: Correct.

14 MR. ADAMS: And on March 3rd,
15 2013, were you on duty?

16 INVESTIGATOR DANTZLER: I was.

17 MR. ADAMS: And on March 13th,
18 2013, did you have occasion to be actually
19 present at the establishment that's named
20 Panache?

21 INVESTIGATOR DANTZLER: Correct.

22 MR. ADAMS: All right, and can you

1 just tell the Board the circumstances from
2 your being at the establishment and what you
3 observed?

4 INVESTIGATOR DANTZLER: Yes. On
5 March 3rd, 2014, it was a Saturday night for
6 a Sunday morning when I visited the
7 establishment to issue them a Notice to Appear
8 for an audit.

9 MR. ADAMS: And you did find that
10 the establishment did have a violation,
11 correct?

12 INVESTIGATOR DANTZLER: Yes.

13 MR. ADAMS: As part of that, you
14 created an investigative report?

15 INVESTIGATOR DANTZLER: Correct.

16 MR. ADAMS: All right, and I'm
17 going to hand you a file. Madam Chair, if you
18 would, I would like to hand the Investigator
19 a document that's marked as District's Exhibit
20 number 1.

21 CHAIRPERSON MILLER: Sure.

22 MR. ADAMS: Investigator Dantzler,

1 the document that you hold before you, is that
2 is your Investigative Report for investigation
3 number 13-CMP-00258, correct?

4 INVESTIGATOR DANTZLER: Correct.

5 MR. ADAMS: And do you recognize
6 this document?

7 INVESTIGATOR DANTZLER: I do.

8 MR. ADAMS: And what is that
9 document. And sorry, and is this your
10 Investigative Report that you completed?

11 INVESTIGATOR DANTZLER: Yes, it
12 is.

13 MR. ADAMS: And that was
14 completed, I guess, on November of 2013,
15 November 25th, 2013? Or basically late 2013.
16 Is that correct?

17 INVESTIGATOR DANTZLER: Correct.

18 MR. ADAMS: And it has your
19 signature?

20 INVESTIGATOR DANTZLER: It does.
21 I do need to make a correction for the date of
22 occurrence. I stated incorrectly 2014. It

1 should be March 3rd of 2013.

2 MR. ADAMS: No problem. And duly
3 noted for the record. I would like to move
4 into the record what's marked for District's
5 Exhibit number 1 into evidence, which is
6 Investigator Dantzler's Investigative Report.

7 CHAIRPERSON MILLER: Okay,
8 admitted.

9 MR. ADAMS: And I'll hand it to
10 staff. All right, Ms. Dantzler, when you went
11 to the establishment to provide Notice of
12 Audit, tell the Board what occurred.

13 INVESTIGATOR DANTZLER: I visited
14 the establishment around 12:30 in the morning.
15 I Entered through the front unlocked doors.
16 Once inside, I observed a couple of people
17 sitting at the bar, and a couple sitting at a
18 table.

19 MR. ADAMS: All right. And what
20 did you do, and was there anything else
21 regarding the establishment to indicate that
22 it was open at that time?

1 INVESTIGATOR DANTZLER: Yes.

2 There was background music playing, as well as
3 a television that was playing at the bar.

4 MR. ADAMS: And based on your
5 experience with this establishment, at that
6 time, at 12:30 in the morning, is this
7 establishment normally open?

8 INVESTIGATOR DANTZLER: It is.

9 MR. ADAMS: Is it authorized to be
10 open at that time?

11 INVESTIGATOR DANTZLER: It was.

12 MR. ADAMS: And in this case, it's
13 authorized to be operated until 2:30, is that
14 correct?

15 INVESTIGATOR DANTZLER: Yes.

16 MR. ADAMS: A.m., 2:30 a.m.?

17 INVESTIGATOR DANTZLER: 2:30 a.m.

18 MR. ADAMS: All right. So it's
19 12:30 a.m. So once you observed that there
20 are patrons within the establishment, what did
21 you do, or what did you observe at that point?

22 INVESTIGATOR DANTZLER: I got the

1 attention of a female who was behind the bar,
2 and I identified myself as an ABRA
3 Investigator, and I then requested to speak
4 with the ABC manager or the owner.

5 MR. ADAMS: And what did she say?

6 INVESTIGATOR DANTZLER: She
7 advised me that the ABC manager was not there,
8 and then she went on to say that the
9 establishment was closed.

10 MR. ADAMS: All right. And so
11 after she said the establishment was closed,
12 what was your response?

13 INVESTIGATOR DANTZLER: I looked
14 to my right and I observed a female patron
15 with a glass of what appeared to be red wine
16 sitting on the bar table.

17 MR. ADAMS: And did you say
18 anything else to this female employee at this
19 point?

20 INVESTIGATOR DANTZLER: I did. I
21 asked to speak to the ABC manager. And at
22 that time, she identified herself as the ABC

1 manager.

2 MR. ADAMS: And specifically what
3 did she say in terms of her being the ABC
4 manager?

5 INVESTIGATOR DANTZLER: She
6 uttered that she was the ABC manager and that
7 her license was expired.

8 MR. ADAMS: Okay.

9 INVESTIGATOR DANTZLER: Her ABC
10 license was expired.

11 MR. ADAMS: Now in terms of the
12 patron that was at the bar, what did you
13 observe regarding the patron at the bar and
14 the beverage?

15 INVESTIGATOR DANTZLER: Well, I
16 asked the lady who was identified as Gizelle,
17 I cannot pronounce her last name but it starts
18 with a W to get her ABC manager's license for
19 me.

20 And when she did so, I said to her
21 it looks like the patron, your customer is
22 drinking your wine. And I said either you can

1 ask her or you can just admit that she has a
2 glass of wine.

3 MR. ADAMS: And what did she do at
4 that point?

5 INVESTIGATOR DANTZLER: Oh, she
6 admitted.

7 MR. ADAMS: Now in terms of the,
8 now were there other, outside of any patrons,
9 can you discuss whether or not there are any
10 other persons at the establishment including
11 employees at the establishment?

12 INVESTIGATOR DANTZLER: Yes, there
13 was a gentleman who was cleaning up.

14 MR. ADAMS: Okay. So the woman
15 was identified as Gizelle, she stated that she
16 was the ABC manager. Did she provide any
17 information that would indicate that she was
18 the ABC manager?

19 INVESTIGATOR DANTZLER: Yes, she
20 presented her ABRA issued ABC manager's card.

21 MR. ADAMS: Yes, okay.

22 INVESTIGATOR DANTZLER: Which

1 showed an expiration, looking at my report
2 here, December 2nd of 2012.

3 MR. ADAMS: All right, and so this
4 is March 3rd of 2013. So I can safely say that
5 that was four months after expiration of that
6 license, correct?

7 INVESTIGATOR DANTZLER:
8 Approximately three. December.

9 MR. ADAMS: Okay, at least three
10 months?

11 INVESTIGATOR DANTZLER: Yes, sir.

12 MR. ADAMS: All right. In terms
13 of very quickly, did Gizelle or this employee,
14 did she make any attempts to identify whether
15 anyone else was a manager of any sort for the
16 establishment at that time?

17 INVESTIGATOR DANTZLER: No, she
18 did not volunteer anyone else as an ABC
19 manager. And she told me that she actually
20 was going to be going to my office on the next
21 business day to renew her license, ABC
22 manager's license.

1 MR. ADAMS: And did she actually,
2 after the fact, did she actually do that?

3 INVESTIGATOR DANTZLER: Yes, she
4 did.

5 MR. ADAMS: Okay. I have no
6 further questions for you, Investigator
7 Dantzler.

8 CHAIRPERSON MILLER: Okay. Are
9 there Board questions? I've got a quick
10 question.

11 INVESTIGATOR DANTZLER: Yes,
12 ma'am.

13 CHAIRPERSON MILLER: Did she say
14 that the establishment was closed?

15 INVESTIGATOR DANTZLER: Yes.

16 CHAIRPERSON MILLER: Did she give
17 any other examples of showing that it was
18 closed?

19 INVESTIGATOR DANTZLER: No. I did
20 see someone cleaning.

21 CHAIRPERSON MILLER: You did see
22 someone cleaning, okay. And was it your

1 impression that it was open?

2 INVESTIGATOR DANTZLER: Yes.

3 CHAIRPERSON MILLER: Okay. And
4 can you just state why you thought it was
5 open?

6 INVESTIGATOR DANTZLER: Because
7 the front door that I entered through was
8 unlocked, and there were patrons still inside,
9 and the television was on, and background
10 music was being played.

11 CHAIRPERSON MILLER: Okay. And
12 about how many patrons were there?

13 INVESTIGATOR DANTZLER: Four.

14 CHAIRPERSON MILLER: Okay. And
15 you saw someone with wine in front of them, is
16 that it?

17 INVESTIGATOR DANTZLER: Yes.

18 CHAIRPERSON MILLER: Okay. And
19 did you confirm that that was wine in some
20 way?

21 INVESTIGATOR DANTZLER: No, I
22 believed it was wine. It was a clear glass.

1 The red liquid looked like red wine, and I
2 even asked Ms. Gizelle, either I can ask the
3 customer if they have an alcoholic beverage,
4 or either you can admit that they have it.

5 CHAIRPERSON MILLER: Right. And
6 can you remind me, did she admit?

7 INVESTIGATOR DANTZLER: Yes, she
8 did.

9 CHAIRPERSON MILLER: She admitted
10 it was wine. Okay. Any other questions? Any
11 follow up questions?

12 MR. ADAMS: No, no follow up
13 questions.

14 CHAIRPERSON MILLER: Okay, thank
15 you very much.

16 INVESTIGATOR DANTZLER: My
17 pleasure.

18 CHAIRPERSON MILLER: Okay.

19 MR. ADAMS: If you'd like to,
20 Madam Chair, I can proceed forward with
21 closing arguments.

22 CHAIRPERSON MILLER: It's your

1 call.

2 MR. ADAMS: The District closes
3 its case, it has no further fact witnesses, so
4 the District is willing to proceed forward
5 with closing arguments at this point.

6 Bottom line, Madam Chair, through
7 the testimony of Ms. Dantzler, Investigator
8 Dantzler, she has proven the charge that is
9 before you that essentially the establishment
10 failed to have an owner or board manager on
11 site for the sale, service, or consumption of
12 an alcoholic beverage.

13 Based upon the evidence, it is
14 clear that Ms. Dantzler was able to enter the
15 establishment, that other patrons were within
16 the establishment, and that at least one
17 patron did have an alcoholic beverage that she
18 was able to consume.

19 It was admitted by the employee
20 who was present that the beverage that the
21 patron possessed was indeed an alcoholic
22 beverage. This employee also provided

1 evidence that although she was an ABC manager,
2 her certification had expired well in December
3 of 2012, which was well prior to the date of
4 the assessment.

5 And so therefore, because
6 regardless of any statements that was made to
7 the investigator, the establishment was indeed
8 open and operating, and was allowing
9 consumption of alcoholic beverages to be made.

10 So therefore, based upon this
11 supportion that the establishment that wasn't
12 present for the establishment -- the
13 establishment does have a bit of a weird
14 investigative history here.

15 Based upon my calculation, this is
16 the establishment's six violation in a four
17 year period. And how I come to that
18 conclusion is the fact that there were two
19 cases that were, I apologize, I had notes, but
20 of course I left them at the office.

21 Going back to, I apologize, to
22 case August 1st of 2008, that's when I'm

1 counting back to is the first incident. That
2 is within the wile counting. But this would
3 be the sixth incident.

4 There were two other incidents
5 that occurred prior to the matter at hand, but
6 they were not adjudicated until after this
7 incident occurred, and frankly prior to the
8 District issuing a notice for this case.

9 So either way, that's just my, the
10 District's, the Prosecutor's recommendation in
11 terms of how the interpretation, obviously the
12 Board can make its own interpretation of its
13 record. So as a result, it being six
14 violations within a four year period, the
15 District recommends a fine of the \$6,000.

16 CHAIRPERSON MILLER: Okay.

17 MR. ADAMS: I have no further
18 comments.

19 CHAIRPERSON MILLER: Thank you
20 very much. So I'm going to close the record.
21 We have the one exhibit in the record, the
22 investigative case report. And do you wish to

1 file a proposed findings of fact and
2 conclusions of law, or waive your right to do
3 so?

4 MR. ADAMS: Thank you very much,
5 may I be excused?

6 CHAIRPERSON MILLER: No, no.

7 MR. ADAMS: Oh, sure. I can't be
8 excused.

9 CHAIRPERSON MILLER: I asked you a
10 question.

11 MR. ADAMS: Oh, sorry, what was
12 the question? I apologize.

13 CHAIRPERSON MILLER: Do you want
14 to file a proposed findings of facts and
15 conclusions of law, or waive your right to do
16 so?

17 MR. ADAMS: I absolutely waive my
18 right to do so.

19 CHAIRPERSON MILLER: Okay. Yes,
20 you can be excused. I am going to read the
21 instructions and take a vote on a closed
22 meeting to deliberate this. So you don't have

1 to stay for that necessarily. Okay, thank you
2 very much.

3 MR. ADAMS: Thank you.

4 CHAIRPERSON MILLER: As
5 Chairperson of the Alcoholic Beverage Control
6 Board for the District of Columbia and in
7 accordance with Section 405 of the Open
8 Meetings Amendment Act of 2010, I move that
9 the ABC Board hold a closed meeting for the
10 purpose of seeking legal advice from our
11 counsel on Case number 13-CMP-00258.

12 Per Section 405(b)4 of the Open
13 Meetings Amendment Act of 2010 and
14 deliberating upon this case for the reasons
15 cited in Section 405(b)13 of the Open Meetings
16 Amendment Act of 2010. Is there a second?

17 MEMBER BROOKS: Seconded.

18 CHAIRPERSON MILLER: Okay, Mr.
19 Brooks has seconded the motion. I'll now take
20 a roll call vote on the motion now that it's
21 been seconded. Mr. Brooks?

22 MEMBER BROOKS: I agree.

1 CHAIRPERSON MILLER: Mr. Alberti?

2 MEMBER ALBERTI: I agree.

3 CHAIRPERSON MILLER: Mr.

4 Rodriguez?

5 MEMBER RODRIGUEZ: I agree.

6 CHAIRPERSON MILLER: Miller

7 agrees. Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: And Mr.

10 Short?

11 MEMBER SHORT: I agree.

12 CHAIRPERSON MILLER: It appears
13 that the motion is passed by a six, zero, zero
14 vote. And I hereby give notice that the ABC
15 Board will hold this aforementioned meeting in
16 the ABC Board conference room, and will issue
17 an order within 90 days. Okay, that concludes
18 that show cause hearing case.

19 (Whereupon, the hearing in the
20 above-entitled matter was concluded at 11:37
21 a.m.)

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