

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
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MEETING

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IN THE MATTER OF: :
:
Beg Investments LLC, :
t/a Twelve Restaurant and : Show Cause
Lounge : Hearing
1123 H Street NE : (Status)
Retailer CT :
License No. 76366 :
Case No. 14-CMP-00107 :
-----:

OCTOBER 1, 2014

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

PRESENT:
RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
NICK ALBERTI, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

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P R O C E E D I N G S

9:49 a.m.

MS. MILLER: Good morning, Mr. Short.

MR. SHORT: Good morning, I am James Short.

MS. MILLER: We are now on our second case. That is Case No. 14-CMP-00107. Twelve Restaurant and Lounge, located 1123 Eighth Street, Northeast, License No. 76366 in ANC 6A.

MR. ADAMS: Good morning, Madam Chairman, Walter Adams representing the District of Columbia.

MS. MILLER: Good morning.

MR. LAFANDE: Good morning, Matthew LaFande, a member of the District of Columbia Bar, for and on behalf of BEG Investments, LLC, the owner of the establishment subject to these proceeding. Present to my left at the table is Mr. Bernard Gibson, who is an owner of that

1 company.

2 MS. MILLER: Good morning. And  
3 Mr. Gibson received notice of this hearing?

4 MR. GIBSON: Yes.

5 MR. LAFANDE: We had notice of  
6 the hearing and we're questioning at the  
7 moment is what notice of the investigative  
8 report that we were to receive. I don't  
9 think anybody's seen that.

10 MS. MILLER: You haven't seen the  
11 investigative report yet?

12 MR. LAFANDE: Do you have the  
13 service -- do you have any indication of  
14 service of that?

15 MS. MILLER: I really can't  
16 respond. Oh, yes, I can. Excuse me. Let me  
17 see what my, look at my notes. I have in my  
18 notes that the Notice of the Status/Show  
19 Cause Hearing was served on September 8th.

20 MR. LAFANDE: Again the --

21 MS. MILLER: 2014.

22 MR. LAFANDE: Let me restate my

1 inquiry again as to, do you have any  
2 indication as the, of any service of an  
3 investigation report?

4 MS. MILLER: Okay, I, that  
5 wouldn't show up in my notes, so that's what  
6 I'm saying. I don't think that I could  
7 respond to that, but if you are wanting to  
8 put on the record that you don't, did you  
9 get, you got the notice of the, this  
10 hearing?

11 MR. LAFANDE: The Notice of  
12 Hearing but not notice of, but not no  
13 service of any investigative report.

14 MS. MILLER: Okay. We'll make a  
15 note of that then.

16 MR. LAFANDE: And for that  
17 reason, we move under 25832 District of  
18 Columbia Code, to dismiss this matter as it  
19 being in violation of Sub A, and that there  
20 has been no service of the investigative  
21 report and therefore the matter is untimely.

22 MS. MILLER: And that's 25-A?

1 MR. LAFANDE: It's 32A.

2 MS. MILLER: Okay.

3 MR. ADAMS: Madam Chairman, can I  
4 be heard?

5 MS. MILLER: Yeah, let me just  
6 finish on the first one. Just to ask my  
7 routine questions, whether Mr. Gibson read  
8 the Notice and understood the Notice of the  
9 Status Hearing today?

10 MR. LAFANDE: That necessarily  
11 requires incorporation by reference of an  
12 investigative report we haven't seen, so we  
13 have not received proper notice in that  
14 regard. We have received notice of the  
15 hearing. We don't understand what the  
16 proceedings are about, because we haven't  
17 received any notice of the, we haven't  
18 received service of the investigative  
19 report, as is required by District of  
20 Columbia laws.

21 MS. MILLER: Okay. Yes, Mr.  
22 Adams.

1 MR. ADAMS: Very briefly. If  
2 there's a motion before the body, it should  
3 be done in writing. That's stated within  
4 the, as well within the procedures in terms  
5 of a Motion to Dismiss. I think it would be  
6 fair for both parties to be able to brief  
7 it. I would say at the outset, in terms of  
8 there being any form of prejudice regarding  
9 whether or not there is a notice or not,  
10 notice is properly served in terms of  
11 providing notices as to show cause hearings.  
12 Whereas the statute may require there to be  
13 an investigative report to be served at a  
14 certain point, the only thing that that, it  
15 doesn't mean that any substantive rights are  
16 changed in terms of the respondents. If  
17 anything, the only thing it would change  
18 would be the timing of the show cause  
19 hearings, but it wouldn't actually change,  
20 wouldn't actually provide impetus for a  
21 dismissal of the substantive charge itself.  
22 But that's the reason that a matter like

1 this should be done in writing.

2 MR. LAFANDE: I think at this  
3 point when we're discussing the authority of  
4 the Board to proceed, its statutory  
5 jurisdictional authority, asking if there's  
6 any evidence or even a pro-offer from the  
7 government that this has ever been served  
8 upon the Respondent, I think that can be  
9 resolved here and now.

10 Does somebody in this room have  
11 some evidence that there was ever service of  
12 the investigative report upon the  
13 Respondent? I think that does not require  
14 any further briefing than that. And I think  
15 we're entitled to that. And I think there's  
16 some burden upon the government before we go  
17 any further to demonstrate that.

18 MR. ADAMS: All right. Then my  
19 question to Respondent would be what efforts  
20 have you done to ask the government for such  
21 information, which could easily have been  
22 provided to you well before this hearing?

1 MR. LAFANDE: Not our burden.

2 MS. MILLER: Okay.

3 MR. ADAMS: Well, then the fact  
4 of the matter is that you didn't take, take  
5 upon the efforts that you could have done.

6 MR. LAFANDE: Not our burden.

7 MR. ADAMS: So therefore, based  
8 upon my reading of the statute, there is no  
9 substantive rights. So, I think what would  
10 be best for the Court to do is simply have  
11 you do a written motion, which is required  
12 by the regulations and that can be done by  
13 the Board in a reasonable fashion prior to  
14 the show cause hearing.

15 MS. MILLER: Okay. I would agree  
16 with Mr. Adams. You're welcome to file a  
17 Motion to Dismiss, but it should be in  
18 writing, with the government having the  
19 opportunity to respond in writing.

20 MR. LAFANDE: You're improperly  
21 shifting the burden upon the Respondent to  
22 show that the government has any authority

1 to proceed at the onset. This Board does  
2 not have the ability to drag licensees  
3 before it when the government hasn't even  
4 attempted to meet --

5 MS. MILLER: Okay.

6 MR. LAFANDE: -- it's requirement  
7 to initiate the case here.

8 MS. MILLER: Mr. LaFande, this  
9 is, we have a lot of status cases right now,  
10 and this isn't a motions hearing. This is  
11 really status. And that's what you're  
12 telling me, the status and you are certainly  
13 free to file that motion.

14 MR. ADAMS: And one thing I'll  
15 add is that if the Board wants to just  
16 simply make a photocopy of the investigative  
17 report then that could be done now. And  
18 there wouldn't be any issue regarding that -  
19 -

20 MR. ALBERTI: Well, Mr. Adams, we  
21 have a copy of the investigative report here  
22 and we will, it is now being handed to Mr.

1 LaFande.

2 MR. ADAMS: So the official  
3 record will now reflect that as of October  
4 1st at 9:57 a.m. he now also has the  
5 investigative report and Court can then  
6 schedule the show cause accordingly.

7 MR. LAFANDE: I again move to  
8 dismiss since this has been untimely and  
9 there's no evidence that it has ever been  
10 timely. We are now seven months after this  
11 alleged occurrence and we are first learning  
12 what the allegations are. The government  
13 simply wishes to ignore what Congress and  
14 the D.C. Panel has set forth as a time  
15 limitation for these sorts of proceedings  
16 because of the prior abuses of the  
17 government in this regard, specifically set  
18 forth in the alleged cited material of the  
19 2009 law, D.C. Law 17361 Sub 2. This is  
20 highly inappropriate and I would very much  
21 like everyone in this room to somehow  
22 recognize and come into conformance with

1 what the law requires.

2 MS. MILLER: Okay.

3 MR. ADAMS: Do a motion.

4 MS. MILLER: So as of now, the  
5 show cause hearing schedule for December 3rd,  
6 2014 at 10:00 a.m. However --

7 MR. ADAMS: Hopefully, that's 62  
8 days away.

9 MS. MILLER: What?

10 MR. ADAMS: That's 62 days away,  
11 so that really wouldn't affect anything.  
12 They'd have two months, plus two days, or  
13 actually two months plus an additional day  
14 to prepare for a hearing, so that shouldn't  
15 affect the schedule at all.

16 MS. MILLER: Okay. I'm going to  
17 leave it up to, well I think --

18 MR. LAFANDE: I'd like to have  
19 the December 3rd date converted to a motions  
20 hearing.

21 MS. MILLER: Okay. So what I'd  
22 like you to do, invite you to do then, Mr.

1 LaFande is just put all this in writing and  
2 the Board will consider it.

3 MR. LAFANDE: I, and I will --

4 MS. MILLER: And there's time for  
5 us to change it if we decide we would like  
6 to do that.

7 MR. LAFANDE: Well, and since  
8 we're here scheduling things, if I am going  
9 to file a motion, again I move that the  
10 December 3rd hearing be converted to a  
11 motions hearing, so that we may be heard on  
12 that matter before proceeding and  
13 determining whether my client's limited  
14 resources must be expended upon an unlawful  
15 prosecution in this regard.

16 MR. ADAMS: The District objects.  
17 Number one the, the motions hearing can be  
18 the same day as the show cause hearing.  
19 It's a very simple matter. Frankly, if  
20 we're talking about resources, if you have  
21 two separate days, there will actually be  
22 more of a burden upon the client. So,

1 again, real motion it could be done very  
2 quickly. Frankly, or motion can be all  
3 decided in writing. I don't think there's  
4 really, well, it's ultimately the Board to  
5 decide if they actually needs to have a  
6 motions hearing.

7 MS. MILLER: That's correct. So  
8 what I, let's, what I would suggest to the  
9 Board is that when we receive, if we  
10 receive, which I expect we will, a motion  
11 from the licensee, we can determine then  
12 whether to change the hearing date to a  
13 motions date.

14 MR. LAFANDE: Thank you, ma'am.

15 MS. MILLER: Okay.

16 MR. ALBERTI: Or we can decide to  
17 schedule separate motions hearing.

18 MS. MILLER: Right.

19 MR. ALBERTI: There are many  
20 options available to us.

21 MS. MILLER: Right. Okay.

22 Anything else?



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