

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Hak, LLC	
t/a Midtown	Show Cause
1219 Connecticut Ave, NW	Hearing
Retailer CN	(Status)
License No. 72087	
Case No. 14-CC-00036	
Sale to minor	

October 29, 2014

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

PRESENT

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
MICHAEL SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

CHRISSEY GEPHARDT, OAG

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

(10:54 a.m.)

CHAIR MILLER: Okay, next case is Case Number 14-CC-00036, Midtown located at 1219 Connecticut Avenue, Northwest. License Number 72087 in ANC 2B.

You're early, you're early. Are you ready?

(Off record comments.)

CHAIR MILLER: Is everybody here so we can start? Five minutes early, four minutes early.

MEMBER RODRIGUEZ: And we did except your apologies. It's on the record.

CHAIR MILLER: Okay. So sign in and --

MR. KLINE: Did you --

CHAIR MILLER: What?

MR. KLINE: Did you call the case?

CHAIR MILLER: I did call the case, yes.

MR. KLINE: Okay.

1 MS. GEPHARDT: Okay, I am Chrissy
2 Gephardt and I am here on behalf of the
3 District of Columbia.

4 MR. KLINE: And I'm Andrew Kline,
5 I'm here on behalf of the Licensee.

6 MR. REHMAN: Michael Rehman.

7 MR. KLINE: Principle of the
8 Licensee.

9 CHAIR MILLER: Okay. So you are
10 here for a show cause hearing. Is everybody
11 here? I mean I did call it a little early.

12 MR. KLINE: Yes, we're here.

13 CHAIR MILLER: Everybody's here,
14 okay.

15 MR. KLINE: We're here.

16 CHAIR MILLER: Good. All right,
17 are there any preliminary matters?

18 MS. GEPHARDT: Yes --

19 CHAIR MILLER: Okay.

20 MS. GEPHARDT: -- there is a
21 preliminary matter. In this case we have, I
22 believe it's one, two, three, four, four open

1 cases for Midtown. The one we are here for
2 today is the 14-CC-00036.

3 In the interest of trying to come
4 up with a, instead of taking this case by case
5 since a lot of these charges are similar in
6 terms of the nature of them, which is sale to
7 minor, we thought it would be most efficient
8 and best handled by looking at them as a whole
9 and combining the penalty so as to make sure
10 that we cover all of the different cases.

11 The cases that I'm referring to
12 are, as I said, 14-CC-00036. The second case
13 is 12-CMP-00688 and then the other two cases
14 are 14-251-00050 and 14-251-00054.

15 MR. KLINE: Madam, that's our
16 understanding as well in terms of the cases
17 that we wish to present an Offer-In-Compromise
18 on.

19 CHAIR MILLER: Okay. So, you know

20 --

21 MS. GEPHARDT: Go ahead.

22 CHAIR MILLER: -- we'll hear you.

1 I don't know if you have anything in writing
2 or not or you're just going to present but --

3 MS. GEPHARDT: I don't have
4 anything in writing. I mean if --

5 CHAIR MILLER: Okay.

6 MS. GEPHARDT: -- the Board would
7 prefer that I --

8 CHAIR MILLER: Well I don't know
9 how complicated it is, all I'm going to say
10 is, you know, I called 00036 so I was a little
11 surprised to hear that there were more cases.
12 So you, we --

13 MR. KLINE: Madam Chair, if I may?

14 CHAIR MILLER: -- till now.

15 MR. KLINE: There was a case
16 scheduled for two weeks ago --

17 CHAIR MILLER: Okay.

18 MR. KLINE: -- which I got engaged
19 upon a day or two before, we asked that it be
20 continued so that I could get up to speed.
21 That was continued, I think, to the 12th.
22 There's one today and I think there's one next

1 week and there's another one in January.

2 Our goal, for the Licensee, is
3 we'd like to get these resolved. We'd like
4 for them to have a clean slate and an
5 opportunity to right the ship because there
6 are a number of issues here.

7 There are a couple of cases that
8 involve sale to minors, a couple cases that
9 involve some other things. And we also have
10 defenses in these cases.

11 So we're not saying, oh gee, you
12 have us dead to rights we, you know, we admit
13 everything. So this was, what you'll hear is
14 a negotiated settlement that Ms. Gephardt and
15 I worked together on and our position is, you
16 know, let's get it all straightened out.

17 We know and we expect that when
18 there are multiple violations like this, the
19 Lord may and probably will send investigators
20 in to make sure that things are running right.
21 And we want to do that with a clean slate and
22 the ability to retrain, which is part of the

1 offer you'll hear.

2 CHAIR MILLER: Yes.

3 MR. KLINE: And I can speak to
4 that more after the offer.

5 CHAIR MILLER: Okay.

6 MR. KLINE: But I just wanted to
7 give you sort of that background.

8 CHAIR MILLER: Okay.

9 MS. GEPHARDT: Okay, so as I was
10 saying, the Offer-In-Compromise that we have
11 worked out that we would like to present to
12 the Board today is a, and I'm going to take
13 each case, case by case.

14 So the subject of this case today
15 is 14-CC-00036. In this case we have a, we
16 are proposing a \$5,000 fine, a ten day
17 suspension with six days served and four days
18 stayed for one year.

19 The breakdown is, Charge 1
20 includes a \$3,000 fine and three days served
21 and two days stayed.

22 Charge 2 would be a \$2,000 fine

1 plus three days served and two days stayed.

2 The next case is 12-CMP-00688.

3 This is also a sale to minor case. The fine
4 on this would be a total of \$7,000 with a 15
5 day suspension, ten days served, five days
6 stayed for one year.

7 Charge 1 would be a \$5,000 fine
8 and a ten days suspension with seven days
9 served and three days stayed for one year.

10 Charge 2 would include a \$2,000
11 fine with three days served and two days
12 stayed for one year.

13 In addition to alcohol training
14 for all existing employees, and of course, new
15 hires as well. On this case --

16 CHAIR MILLER: That's for this
17 charge?

18 MS. GEPHARDT: I'm sorry?

19 CHAIR MILLER: For this case?
20 Just for this case? The second case.

21 MS. GEPHARDT: I mean, I think at
22 this point it would be for --

1 CHAIR MILLER: For the
2 establishment, okay.

3 MS. GEPHARDT: -- all cases going
4 forward here, from here on out.

5 CHAIR MILLER: Okay.

6 MS. GEPHARDT: And on this case
7 there would be five additional suspension days
8 that would trigger and need to be served from
9 Case 11-251-00066.

10 The Government will drop Case's
11 14-251-00050 and 14-251-00054. Those are
12 security plan cases.

13 As such, the total penalty would
14 be a \$12,000 fine with a 30 day suspension,
15 with a total of 21 days served, nine days
16 stayed for one year. And of course alcohol
17 awareness training for all employees, current
18 employees, and all future new hires.

19 And that is the sum of the OIC
20 that we have agreed upon.

21 MR. KLINE: If I could flesh out
22 just a couple of details that I think are

1 important? One is, in terms of the payment of
2 the \$12,000 we would propose 30 days to pay
3 the \$12,000.

4 Second is on the training. Just
5 to clarify, so we're all crystal clear, is
6 that all current employees would be trained
7 within 30 days and then any new hires would be
8 trained within 30 days of hiring.

9 If the Board wants to put that in
10 an order, we don't have any objection to that,
11 but we wanted to be clear in terms of the time
12 parameters because we think that's important.

13 In terms of serving the dates to
14 be served, and Ms. Gephardt and I have not
15 previously spoken about this, but we would
16 propose January 1st through the 20, I got a
17 couple days, through the 20th, I think. But
18 I'll count and make sure that is right.

19 MS. GEPHARDT: 21st.

20 MR. KLINE: 21st, okay. Okay.

21 And with that the offer is acceptable to the
22 Applicant. If it's accepted by the Board we

1 waive our right to hearing, waive our right to
2 appeal.

3 As I said earlier, not to repeat
4 what I said but just to flesh it out a little
5 bit, this does represent a compromise of cases
6 that would otherwise be disputed and would
7 otherwise result in four hearings and
8 potentially four appeals. Because we see some
9 other issues there.

10 But in an effort to get it
11 resolved, and I say that for the Board because
12 I know at the outset the Board reads reports,
13 that's what they see. But there's always
14 another side. We are waiving our right to
15 present that other side if this is accepted.

16 But I want the Board to know that
17 as they consider this offer because we think,
18 not only from a fairness standpoint but also
19 from an administrative economy standpoint, in
20 terms of disposing the four cases at the same
21 time, it makes a lot of sense for all Parties
22 concerned.

1 CHAIR MILLER: Okay. The two
2 cases that are being dropped deal with
3 security plans?

4 MR. KLINE: Alleged security --

5 CHAIR MILLER: What did you say?

6 MR. KLINE: -- plan violations.

7 CHAIR MILLER: Security plan
8 violations?

9 MR. KLINE: Correct.

10 CHAIR MILLER: Okay.

11 (Off record comments.)

12 CHAIR MILLER: Okay, I think it's
13 a consensus of the Board that we want to look
14 at the reports that at least, that we, for the
15 cases that we would be voting on.

16 MS. GEPHARDT: Understandable.

17 CHAIR MILLER: We only had before
18 us the first one so we're a little bit
19 surprised. Not to say that it might make
20 sense to have this global OIC, it's just we
21 want to be more knowledgeable about it.

22 So we are going to take a short

1 recess and look at the investigative reports

2 --

3 MS. GEPHARDT: Okay.

4 CHAIR MILLER: -- and --

5 MS. GEPHARDT: And one final
6 thing, and that is that if they, fine is not
7 paid within 30 days there would be an
8 immediate suspension of the license.

9 MR. KLINE: Right. Thank you.

10 MEMBER ALBERTI: So before we go
11 back, I'm just trying to understand where
12 we're out with, because our understanding was
13 with the two Parties, this is a global, so if
14 the Board were not to accept it, so it's your
15 understanding, you're not offering this up in
16 any piecemeal manner?

17 MR. KLINE: No.

18 MEMBER ALBERTI: Got you.

19 CHAIR MILLER: It's all or
20 nothing.

21 MS. GEPHARDT: It's case by case.

22 MEMBER ALBERTI: Okay. It's all

1 or nothing in terms of your understanding --

2 MR. KLINE: We try four cases and
3 then we file four appeals.

4 MEMBER ALBERTI: Okay, great.

5 MR. KLINE: Potentially.

6 MEMBER ALBERTI: I understand.

7 I'm just asking so we know where we're going.

8 MR. KLINE: No, I understand.

9 CHAIR MILLER: Yes.

10 MR. KLINE: It's a hurray process.

11 CHAIR MILLER: Okay. As

12 Chairperson of the Alcoholic Beverage Control
13 Board for the District of Columbia and in
14 accordance with Section 405 of the Open
15 Meetings Amendment Act of 2010, I move that
16 the ABC Board hold a closed meeting for the
17 purpose of seeking legal advice from our
18 Counsel on Case Number 14-CC-00036, 003, let's
19 see, well, all right and the other cases
20 really that were just mentioned in these
21 preceding, per Section 405(b)(4) of the Open
22 Meetings Act of 2010 and deliberating upon

1 them for the reason cited in Section
2 405(b)(13) of the open meetings amendment act
3 of 2010. Is there a second?

4 MEMBER ALBERTI: Second.

5 CHAIR MILLER: Mr. Alberti
6 seconded the motion. I'll now take a roll
7 call vote. Mr. Alberti?

8 MEMBER ALBERTI: I agree.

9 CHAIR MILLER: Mr. Rodriguez?

10 MEMBER RODRIGUEZ: I agree.

11 CHAIR MILLER: Ms. Miller agrees.

12 And Mr. Silverstein?

13 MEMBER SILVERSTEIN: I agree.

14 CHAIR MILLER: Mr. Short?

15 MEMBER SHORT: I agree.

16 CHAIR MILLER: Okay, as the motion
17 is passed by 5-0-0 vote, so the ABC Group will
18 now recess and hold this closed meeting and
19 return shortly. Thank you.

20 MS. GEPHARDT: Thank you.

21 (Whereupon, the above-entitled
22 matter went off the record at 11:09 a.m. and

1 resumed at 11:51 a.m.)

2 CHAIR MILLER: Okay, we're back on
3 the record. The Board had convened in closed
4 session in order to review the investigative
5 reports of cases that we were being asked to
6 consider in a global Offer-In-Compromise with
7 Case Number 00036, which was on our agenda
8 today. So the Board did that in order to
9 assess whether this might be a fair and
10 appropriate Offer-In-Compromise.

11 And having done that I'm going to
12 move that we approve this Offer-In-Compromise
13 and I'm going to restate it, generally, and if
14 I err in anyway feel free to correct me.

15 It's an Offer-In-Compromise for
16 four cases, two of them are sell to minor
17 cases. The first is the one scheduled for
18 today, 00036, the second is 12-CMP-00688 and
19 the other two deal with violations of security
20 plan.

21 MS. GEPHARDT: That's correct.

22 CHAIR MILLER: And they are 14-

1 251-00050, 14-251-00054. For the sale to
2 minor cases, the total fine is \$12,000 to be
3 paid within 30 days and if it's not paid
4 within 30 days the license will be suspended.

5 It's 30 days suspension of the
6 license, 21 days served on days 29, I mean
7 January 1 through 21. And five of these days
8 are triggered by a pervious case and I believe
9 that's Case 00066.

10 And the Licensee will also have
11 all employees undergo alcohol awareness
12 training within 30 days. And all new
13 employees will have alcohol awareness within,
14 training within 30 days of hire.

15 And the other two cases, which
16 deal security plan, charges related to those
17 cases will be dropped. Is that correct?

18 MR. KLINE: Will be what? Dropped

19 --

20 CHAIR MILLER: Dropped.

21 MR. KLINE: -- yes.

22 CHAIR MILLER: Okay. So that, all

1 the details of individual charges were
2 articulated earlier by Ms. Gephardt, so if
3 that's correct then I will move to approve,
4 wait, let me just ask, did I ask the Licensee
5 whether he knows by accepting this Offer-In-
6 Compromise he waives his right to a hearing
7 and --

8 MR. KLINE: Yes, we conceded that
9 --

10 CHAIR MILLER: Okay.

11 MR. KLINE: -- previously on the
12 record.

13 CHAIR MILLER: Thank you. Okay.

14 MR. KLINE: We waive our right to
15 hearing, waive our right to appeal --

16 CHAIR MILLER: Great, okay.

17 MR. SHORT: Madam Chair?

18 CHAIR MILLER: Yes, Mr. Short?

19 MR. SHORT: I just have one
20 question --

21 CHAIR MILLER: Yes.

22 MR. SHORT: -- before we go onto

1 vote.

2 CHAIR MILLER: Okay.

3 MR. SHORT: Maybe Mr. Kline can
4 answer this question. Is there a current up
5 to date security plan for this establishment?

6 MR. KLINE: That's a good
7 question. Our office is looking at their
8 security plan and is going to be revising it.
9 So I'm not in a position to say at this moment
10 whether the one that's here, let me give you
11 a better response.

12 (Off record comments.)

13 MR. KLINE: Yes, I mean, and the
14 answers I don't have. So why don't we agree
15 that we will, within 30 days, file an updated
16 security plan, if that's deemed necessary.

17 MR. SHORT: Okay. And we would
18 appreciate that. All the Board Members will
19 appreciate that.

20 MR. KLINE: Absolutely, no
21 problem.

22 MR. SHORT: That's going to

1 inclusive of cameras and all of those
2 necessary things?

3 MR. KLINE: Whatever is required
4 by the statute. What we do is we, we're
5 getting far afield here, is we work with the
6 Licensee and we take their security plan, we
7 make sure that it's legally sufficient. So
8 yes, it will be legally sufficient.

9 CHAIR MILLER: No problem.

10 MEMBER ALBERTI: All right, Mr.
11 Kline, it would be helpful, I'm looking at
12 your 2013 security plan, it would be helpful
13 if we had a layout of the cameras.

14 MR. KLINE: Sure. I mean if there
15 are cameras that's required with statutes,
16 absolutely.

17 MEMBER ALBERTI: Well I'll have to
18 check our records because we don't have one in
19 the plan that we have.

20 MR. KLINE: As I said, I don't
21 know the answer to it, but I'm pledging to you

22 --

1 MEMBER ALBERTI: I understand.

2 MR. KLINE: -- we'll fix it --

3 MEMBER ALBERTI: I understand.

4 MR. KLINE: -- if it's a problem.

5 MR. SHORT: Within 30 days you're
6 saying?

7 MR. KLINE: Yes, sir.

8 MR. SHORT: Okay.

9 CHAIR MILLER: Okay, any, did I
10 have a second on my motion? Do I have a
11 second?

12 MEMBER SILVERSTEIN: Second.

13 CHAIR MILLER: Mr. Silverstein
14 seconded the motion. Any other comments
15 before we vote? All right then, all those in
16 favor say aye?

17 (Chorus of ayes.)

18 CHAIR MILLER: All those opposed?

19 MEMBER ALBERTI: I oppose this --

20 CHAIR MILLER: Okay.

21 MEMBER ALBERTI: -- I have serious
22 concerns about insensitivity to sexual assault

1 and --

2 CHAIR MILLER: Okay, can I finish
3 the vote?

4 MEMBER ALBERTI: Can I finish my,
5 finish please? And apparently
6 irresponsibility of this Licensee in one the
7 charges that was dropped. I would like
8 permission to ask some questions after the
9 vote is taken of the Licensee?

10 CHAIR MILLER: Sure, I was just
11 trying to finish the vote. The vote.

12 MEMBER ALBERTI: I am, I'm letting
13 you finish it now. Go ahead.

14 CHAIR MILLER: Thank you. Okay,
15 so the vote, as I understand it, is 4-1-0,
16 with Mr. Alberti dissenting, to approve the
17 Offer-In-Compromise. Okay. Go ahead.

18 MEMBER ALBERTI: Okay. So with
19 respect to cameras, we have here, in 005, 14-
20 251-00054, that report. We have, in our
21 report, Investigator Brashears tells us that
22 the manager, Ramon Ramirez, stated that

1 Midtown never got around to installing cameras
2 on that level. He's referring to the rooftop
3 level, all right.

4 You know, the security plan says
5 that all bars, is there a bar on the rooftop?

6 MR. REHMAN: Yes, sir.

7 MEMBER ALBERTI: All right, so the
8 security plan says there should cameras on all
9 bars so that bothers me right there --

10 MR. REHMAN: We have --

11 (Crosstalk.)

12 MEMBER ALBERTI: Let me just
13 finish, all right?

14 MR. REHMAN: I'm sorry.

15 MEMBER ALBERTI: So, and in this
16 report we have someone reporting to security
17 that they were sexually assaulted. That they
18 were slapped on the butt and someone grabbed
19 them and dragged them to the bar and, what do
20 we have, we just separate the parties.

21 I mean these seem to be
22 indisputable facts. We separate the parties

1 and off they go.

2 So, you know, I can't assign
3 responsibility here because I don't have all
4 of the facts, but it's pretty indisputable, no
5 one is disputing the fact that she was in an
6 argument with a male, they threw drinks on
7 each other and that she reported that, you
8 know, she felt that she was assaulted. She
9 goes to leave and she tells the police.

10 I think these are facts that are
11 indisputable. Just that level of
12 insensitivity just is troublesome to me.

13 And this remarks of, we just
14 didn't get around to having cameras on the
15 roof in an establishment that we know, whether
16 the establishment can prevent this or not, we
17 know we have patrons acting badly from time to
18 time. And they're not responsible enough to
19 put cameras on the rooftop level, I just, that
20 is why I voted no. I just, you don't even
21 have to respond, but now you know my feelings.

22 MR. REHMAN: Well I'm just saying

1 we have put cameras on the rooftop now.

2 MEMBER ALBERTI: Well that's good.

3 MR. REHMAN: That level has
4 cameras.

5 CHAIR MILLER: That's good.

6 MEMBER ALBERTI: You know after
7 something happens you do it, you need to be
8 proactive.

9 MR. REHMAN: And we put in really
10 expensive cameras.

11 MEMBER ALBERTI: It's the cost of
12 doing business. Probably cheaper than the
13 \$12,000 that you just paid.

14 MR. REHMAN: Everything adds up,
15 trust me.

16 MEMBER ALBERTI: I understand.

17 MR. REHMAN: It's not easy.

18 MEMBER ALBERTI: I understand.

19 MR. REHMAN: It's not.

20 CHAIR MILLER: Okay, anything
21 else? Yes, Mr. Silverstein?

22 MEMBER SILVERSTEIN: Yes, I voted

1 for this but I would like to underscore, and
2 I think I can safely speak for the Board that
3 all of us are deeply concerned with the way
4 that the sexual assault case appears to have
5 handled. That there could have been much more
6 concern for the complaint and safety of the
7 woman involved. And that we're accepting this
8 as a Board, but it does not mean that we're
9 comfortable.

10 MR. KLINE: We understand. We
11 read the reports and we understand that.

12 MR. SHORT: If I could just --

13 CHAIR MILLER: Okay.

14 MR. SHORT: And again, Mr. Kline,
15 my too, I feel the same way Board Member
16 Silverstein feels. This is a very, this
17 location is in the heart of our tourism
18 section isn't it? And the image kind of
19 reflects our city and ABC establishments.

20 I'm just saying as a Board Member,
21 I hope this does not happen again and I hope
22 that we don't have to worry about any more

1 OICs for this establishment. Because we will
2 be watching you.

3 MR. KLINE: We understand. We
4 appreciate that.

5 MR. SHORT: Thank you.

6 MR. KLINE: And as I said at the
7 outset, I mean our intent here is to get this
8 establishment a clean slate, which it's sloppy
9 clean because they still have primary care
10 violations and we all know what happens with
11 successive primary tiers.

12 And I said at the outset, and we
13 understand and we expect that the Agency will
14 be watching out and I've discussed that with
15 Licensee. So we understand.

16 MR. SHORT: Okay. This is the
17 owner, correct?

18 MR. KLINE: That is correct.

19 MR. SHORT: Okay. Very nice to
20 meet you, sir. Very nice to meet you.

21 CHAIR MILLER: Okay, well thank
22 you very much.

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MR. KLINE: Thank you.

CHAIR MILLER: Have a good
afternoon.

MR. KLINE: You too.

(Whereupon, the above-entitled
matter went off the record at 12:03 p.m.)

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