

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD
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6 IN THE MATTER OF: :
7 Miller's Spring Valley, LLC :
8 t/a Millie's : Case #15-PRO-00100
9 4866 Massachusetts Avenue NW : Protest Hearing
10 License #100214, Retailer CR : (status)
11 ANC 3D :
12 Application for a New License:

13 - - - - -X

14

15 Wednesday, November 18, 2015

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17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

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1 CHAIRPERSON:

2 DONOVAN W. ANDERSON, Presiding

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4 BOARD MEMBERS:

5 RUTHANNE MILLER

6 NICK ALBERTI

7 MICHAEL SILVERSTEIN

8 JAMES SHORT

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10 ALSO PRESENT:

11 ANDREW KLINE, ESQ., on behalf of the Applicant

12 JEFFREY KRASKIN, on behalf of Group of 30

13 TOM SMITH, Chair of ANC-3D

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

2 [9:33 a.m.]

3 CHAIRMAN ANDERSON: Good morning,
4 everyone. I'd like to welcome you to the regular
5 scheduled meeting of the District of Columbia
6 Alcoholic Beverage Control Board. Today is
7 November the 18th, 2015.

8 My name is Donovan Anderson, and I am the
9 Chairperson. Joining me today, from my far
10 right, is Ms. Ruthanne Miller. To her immediate
11 left is Mr. Nick Alberti. To my immediate left
12 is Mr. James Short, and to his far left is Mr.
13 Silverstein.

14 The Board has five members in attendance
15 for the conduction of business today, with three
16 constituting a quorum.

17 Before we have our formal hearing today,
18 I would like to thank publicly Ms. Ruthanne
19 Miller for her service to the Board as Chair for
20 the last 4 years. I know that she has worked
21 diligently on behalf of the residents of the
22 District of Columbia.

1 I have been on this Board for -- this is
2 my second meeting -- for a couple of weeks, and
3 she has been very helpful with me in just showing
4 me the rope, and I do look forward -- I thank her
5 for her service, and I look forward to working
6 with her and the rest of the Board members to
7 ensure that this agency continues to run as
8 efficiently as it has over the last several years
9 under her leadership and now under new
10 leadership. But, again, I just want to publicly
11 thank her for her service, and again, thank you
12 very much.

13 MS. MILLER: Thank you.

14 [Applause.]

15 MS. MILLER: If I could just also just
16 welcome you to the Board and just express my
17 appreciation to Mayor Gray for having given me
18 the honor and privilege of serving the District
19 of Columbia in this capacity.

20 And I recognize a lot of familiar faces
21 in the audience, and I'll still be on the Board
22 as a member for a while. I just want to say I

1 tried my best to conduct these hearings fairly,
2 transparently, and knowledgeably in treating
3 everybody with the respect that I think you all
4 deserve, and I look forward to serving you in
5 this new role.

6 Thank you.

7 CHAIRMAN ANDERSON: Thank you.

8 All right. Copies of today's hearing
9 agenda, calendar and agenda are available at the
10 receptionist desk. Please be aware that these
11 proceedings are being recorded by the court
12 recorder. Accordingly, we must ask you to
13 refrain from any disruptive noises or actions in
14 the hearing room.

15 If you have any electronic devices,
16 pagers, cell phones or such, please make certain
17 they are turned off to avoid any disruption of
18 the proceedings.

19 When I call your case, please come
20 forward and take a seat at one of the tables in
21 front of you. You will note that there is a
22 piece of paper on each table for you to sign in.

1 This is to ensure the correct spelling of your
2 name for the record.

3 The Open Meetings Act requires that the
4 public hearing on each case be open to the
5 public. The Board may, consistent with Section
6 405(b) of the Open Meetings Act, enter a closed
7 meeting during or after the public hearing on a
8 case to consult with an attorney to obtain legal
9 advice, discuss settlement agreements, or
10 deliberate upon a decision in an adjudication
11 proceeding.

12 Several Show Cause hearing status cases
13 are scheduled for this morning's calendar at 9:30
14 a.m.

15 The following instructions are pertinent
16 to all those cases. The purpose of a Status
17 Conference is to entertain any preliminary
18 matters of the parties and to provide the parties
19 with the date and time of the hearing on the
20 merits of the case if the case proceeds to a
21 hearing.

22 Preliminary matters include any proposed

1 arrangements, agreements of the parties to settle
2 the case for the Board's consideration, known as
3 Offer in Compromise, and motions or questions
4 regarding procedural matters, including schedule
5 or dismissal of a case or a party for failure to
6 comply with legal requirements.

7 The Board will assume that the Applicant
8 or the Respondent had notice of this hearing by
9 his or her presence or the presence of an
10 authorized agent. However, if you have any issue
11 regarding to the adequacy of your notice, you may
12 raise that with the Board when you case is
13 called.

14 Instructions pertinent to the Protest
15 Status hearing cases will be provided to each
16 case.

17 We will not turn to this morning's
18 calendar.

19 The next case is Millie's Spring Valley,
20 LLC, Retailer's License No. 15 -- I'm sorry --
21 15-PRO-00100 -- no, I'm sorry. I apologize for
22 this. License No. 100214.

1 Would the parties, please, of course --
2 the parties are familiar, that they are here, so
3 thank you for -- thank you for being here.

4 All right.

5 MR. SILVERSTEIN: Identify?

6 CHAIRMAN ANDERSON: All right, yeah. So
7 can the parties please identify themselves for
8 the record, please.

9 MR. KLINE: Yes. Good morning, Mr.
10 Chair. Andrew Kline on behalf of the Applicant.

11 And I would also like to echo your thanks
12 to Ms. Miller for her service as Chair and
13 welcome you as the new Chair.

14 I am here on behalf of the Applicant.

15 CHAIRMAN ANDERSON: Thank you.

16 DR. KRASKIN: Good morning. I'm Dr. Jeff
17 Kraskin. I am here representing the Group of 30
18 that had signed the protest.

19 MR. SMITH: And my name is Tom Smith, and
20 I am the Chair of ANC-3D, here on behalf of
21 ANC-3D.

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1 CHAIRMAN ANDERSON: All right. Thank
2 you.

3 Are there any preliminary matters?

4 MR. KLINE: There aren't at this time.
5 The parties have had mediation. We are making
6 progress. We're not quite there yet but look
7 forward to continuing to work together to see if
8 we can get this resolved. Otherwise, of course,
9 the matter will proceed to hearing.

10 MR. SMITH: I would second Mr. Kline's
11 comments. We're working in good faith to try to
12 reach an agreement among all three parties. The
13 ANC, however, has filed a request for continuance
14 because of the timing of the filing in case we're
15 unable to reach an agreement. Our ANC meeting,
16 our next ANC meeting is actually the 2nd of
17 December, and so we would not be able to file the
18 required paperwork the week in advance of the
19 protest hearing. We would be making our final
20 decision at night. We've looked at scheduling a
21 special meeting and aren't able to do it because
22 of the holiday, because of the Thanksgiving

1 holiday. We would not be able to quorum, so --

2 CHAIRMAN ANDERSON: Now, Mr. Kline --

3 MR. SMITH: But, otherwise, we are
4 working very -- you know, we're trying to reach
5 an agreement.

6 MR KLINE: Mr. Chair, we have treated
7 their letter requesting a continuance as a
8 motion. We have -- the time has not yet run for
9 us to respond to it, and we haven't made a
10 decision yet as to what our response will be, so
11 we would reserve our right to respond to the
12 motion and request that you reserve on the issue
13 until we've had an opportunity to respond.

14 CHAIRMAN ANDERSON: That's fine.

15 Now, the parties are already aware of the
16 hearing date of the protesting hearing is
17 scheduled for December 9th, 2015, at 1:30 p.m.

18 MR. SMITH: Yes.

19 [Pause.]

20 MR. ALBERTI: The Chair is looking for
21 instructions for the protest.

22 [Laughter.]

1 CHAIRMAN ANDERSON: I thought they were

2 --

3 MR. ALBERTI: They are quite lengthy, so

4 --

5 CHAIRMAN ANDERSON: I have them. I
6 apologize, but I thought I had -- I was all
7 organized, but you'll find that as time goes by,
8 it will go better.

9 As defined in 23 DCMR 13 -- 1603.1, a
10 protest status hearing is a proceeding held by
11 the Board at which the parties inform the Board
12 of their progress in reaching an voluntary
13 agreement or alternative settlement. If the
14 parties have not reached a settlement, the Board
15 will schedule the matter for the protest hearing.

16 Pursuant to 23 DCMR 1606, a protest
17 hearing is an adjudicatory proceeding held for
18 the purpose of receiving evidence and testimony
19 regarding the appropriateness of the license and
20 action.

21 At the protest hearing, an Applicant or
22 Licensee may give a brief opening statement

1 summarizing the evidence and testimony he or she
2 intends to produce regarding the appropriateness
3 of the application or license at issue.

4 Therefore, the Protestant -- therefore,
5 the Protestant may give a brief opening statement
6 summarizing the evidence he or she intends to
7 rebut or overcome the evidence and argument
8 presented by the Applicant or Licensee. At the
9 conclusion of the opening statement, the Board
10 will call its witness, an ABRA investigator who
11 will testify.

12 As you know, we have now set the hearing.
13 So now that we have set the matter for a protest
14 hearing, there are a few things that I would like
15 to instruct the Applicant and the Protestant
16 about it. So the protest hearing is focused and
17 addresses only those issues that are being
18 protested. The Board does not intend to hear
19 testimony on matters that are not relevant to
20 that case, and I -- that's something that is a
21 pet peeve for me, although I'm new to this. So I
22 want it to be clear, especially for the ANC, that

1 you know what the issues are, and when you come
2 to address the issues, you address those issues
3 that are pertinent.

4 I'm aware that there might be other
5 issues that are also brewing, but I just want to
6 make sure that you focus on the issue of the
7 protest, the issue at hand.

8 As I said, the Board does not intend to
9 hear testimony on matters that are not relevant
10 to this case. You should have received by
11 electronic mail, well in advance of the hearing,
12 a letter explaining the protest process, a copy
13 of the protest information form, and a copy of
14 the exhibit form. It is important that you
15 review the rules closely and they are to present
16 prior, before, and during the protest hearing.

17 You are also required -- also required to
18 complete and submit the protest information form,
19 PIP, and the exhibit form 7 days before the date
20 of the hearing. And again, I want to let you
21 know that the timeline is 7 days before the
22 hearing that I know Mr. Kline -- as an attorney,

1 I know he knows the rules, but non-attorneys
2 would not normally know the rules, but we're
3 going to hold you to, as an attorney, so just to
4 make sure that you know that 7 days prior, you're
5 supposed to do that.

6 These two forms and accompanying
7 documents need to be submitted to our legal
8 counsel on behalf of the Board and all of the
9 parties in this matter.

10 If we do not receive a copy of your
11 protest information form, your application and
12 your protest, whichever side you're representing
13 may be subject to dismissal. And, as I said
14 before, I don't want that to happen because you
15 worked very hard, and so the matter should never
16 be dismissed in a procedural matter, so that's
17 why it's important that you follow the rules and
18 regulations.

19 Likewise, if we do not receive a copy of
20 the exhibit form and the exhibits themselves,
21 your exhibits may be excluded from the record on
22 a finding that the opposing party has been

1 prejudiced or no good cause for the failure to
2 submit has been shown.

3 Likewise, witnesses, other than the
4 party, may also be subject to exclusion if not
5 identified on the protest information form.

6 Accordingly, these forms are very
7 important. They greatly assist the Board in
8 narrowing the protest issues facilitate in the
9 process and keeping the parties on point during
10 the hearing, then likewise provide notice to
11 opposing parties, enabling them to benefit for
12 the hearing.

13 Thank you for your cooperation. If you
14 have any questions today or anytime leading up to
15 this hearing, please do not hesitate to contact
16 our legal counsel.

17 Thank you, and good luck in your
18 negotiations.

19 [Whereupon, at 9:47 a.m., the
20 above-entitled matter concluded.]

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