

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

2 9:40 a.m.

3 CHAIRPERSON MILLER: Good morning,
4 ladies and gentlemen. I'd like to welcome you
5 to the regularly scheduled meeting of the
6 District of Columbia Alcoholic Beverage
7 Control Board. Today is November 28th, 2012.

8 My name is Ruthanne Miller. I'm
9 the Chairperson. Joining me today to my far
10 right is Mr. Donald Brooks and to my immediate
11 right is Mr. Nick Alberti. Other members may
12 be joining us shortly this morning. The Board
13 has three members in attendance for the
14 conduct of business today and three
15 constitutes a quorum.

16 Copies of today's hearing calendar
17 and agenda are available at the receptionist's
18 desk.

19 Please be aware that these
20 proceedings are being recorded by a court
21 reporter. Accordingly, we must ask you to
22 refrain from any disruptive noises or actions

1 in the hearing room. If you have any
2 electronic devices; pagers, cell phone or
3 such, please make certain that they're turned
4 off to avoid any interruption of the
5 proceedings.

6 Please note when you come forward
7 you'll find a piece of paper on each table.
8 Please take a seat at the table and sign in.
9 This will ensure the correct spelling of your
10 name for the record.

11 The Open Meetings Act requires
12 that the public hearing on each case be open
13 to the public. The Board may, consistent with
14 Section 405(b) of the Open Meetings Act, enter
15 a closed meeting during or after the public
16 hearing on a case to consult with an attorney
17 to obtain legal advice, discuss settlement
18 agreements or deliberate upon a decision in an
19 adjudication proceeding.

20 Board's calendar includes show
21 cause status hearings, show cause hearings and
22 protest status hearings.

1 So we'll now turn to the first
2 case on our morning calendar, and that is
3 Costa Brava. And I have a note before me
4 saying that Protestants are running late in
5 that case. It's Case No. 12-PRO-00079.
6 Unless you're here --

7 MR. KLINE: We're here. One of
8 the Protestants isn't here.

9 CHAIRPERSON MILLER: All right.
10 Do you want to come forward then and let me
11 know the status? This is for Costa Brava
12 located at 1837 1st Street, N.W., License No.
13 90223.

14 MR. KLINE: Good morning. Andrew
15 Kline here on behalf of the Applicant.

16 MR. HOLDEN: I'm Larry Holden.
17 I'm here as the owner of Costa Brava
18 Restaurant.

19 CHAIRPERSON MILLER: Okay.

20 MS. RIZZO: And I'm Victoria
21 Rizzo. I am one of the abutting neighbors.

22 CHAIRPERSON MILLER: Okay. This

1 is a status hearing. Do you have an issue
2 with moving this case a little bit later in
3 the morning, waiting for the other Protestants
4 to arrive? Is there some reason we should not
5 do that?

6 MR. KLINE: We'd prefer to move
7 through it. It's a status and we're going to
8 report the status and I don't think that's
9 going to change between now and later in the
10 morning.

11 CHAIRPERSON MILLER: Okay. Do you
12 have a --

13 MR. KLINE: But we'll defer to the
14 Board on that.

15 CHAIRPERSON MILLER: Is there
16 something that -- it's Ms. Rizzo?

17 MS. RIZZO: Yes.

18 CHAIRPERSON MILLER: Okay. Do you
19 have a comment on that?

20 MS. RIZZO: I'm fine with moving
21 forward without the other people.

22 CHAIRPERSON MILLER: Okay. Do

1 Board Members have a problem with that?

2 MEMBER ALBERTI: Well, I'm
3 concerned. We have a pretty standard policy
4 that the Protestants must appear at the status
5 hearing. And so we have two Protestants
6 listed here who aren't here, so I don't know
7 what we do about --

8 CHAIRPERSON MILLER: True.

9 MEMBER ALBERTI: -- verifying
10 whether or not they appear this morning.

11 CHAIRPERSON MILLER: Right, that
12 is our policy. I understand -- I mean, the
13 note that I have indicates that they're
14 running late, so that means that I assume
15 they're on their way. So I think that it
16 would be a good policy to just pass this case
17 until they get here. I won't put you at the
18 end.

19 MR. KLINE: Right.

20 CHAIRPERSON MILLER: So why don't
21 -- somebody could signal us that they're here
22 and then we'll take you.

1 MR. KLINE: We'll send a flare.

2 CHAIRPERSON MILLER: All right.

3 Okay. Thank you.

4 MR. KLINE: Thank you.

5 (Whereupon, at 9:44 a.m. off the
6 record until 9:54 a.m.)

7 CHAIRPERSON MILLER: And I gather
8 the Protestants haven't come yet for Costa
9 Brava?

10 I just want to ask one of the
11 parties in the Costa Brava case if you'd come
12 forward for a minute. I just want to ask, are
13 you in touch with any of the other Protestants
14 to know if they are in fact very close by?

15 MS. RIZZO: One of them, Larry,
16 the other abutting neighbor on the other side,
17 he was in a -- Larry Perry, Lawrence Perry --
18 he was in a car accident this morning, so I
19 know he's not coming, but he apparently called
20 and told somebody this. But the other person,
21 no, I'm not in touch with her. I don't know,
22 and I don't actually even have her number to

1 call her. I have his -- he left me a
2 voicemail.

3 MR. KLINE: Who have we heard
4 from, if I may inquire?

5 CHAIRPERSON MILLER: I only have
6 heard that a Protestant called and said they
7 were 10 minutes out, but that was awhile ago.
8 I assume it wasn't Mr. Perry. This is the
9 first that I've heard about Mr. Perry being in
10 a car accident.

11 Ah, someone has arrived.

12 MR. PERRY: Hi.

13 CHAIRPERSON MILLER: Okay. We are
14 -- just for the record this is Case No. 12-
15 PRO-00079, Costa Brava, 1837 1st Street, N.W.,
16 License No. 90223 in ANC 5C.

17 And could you identify yourself,
18 sir, for the record?

19 MR. PERRY: Yes, my name's
20 Lawrence Perry. I'm at 1835 1st Street, N.W.

21 CHAIRPERSON MILLER: Okay. We're
22 trying to just determine whether anyone else

1 is on their way. Did you happen to call the
2 office to say you were running late?

3 MR. PERRY: Yes.

4 CHAIRPERSON MILLER: That was you?

5 MR. PERRY: Yes, that was me.

6 CHAIRPERSON MILLER: Okay.

7 MR. PERRY: Okay. So we haven't
8 heard from the group of five or more
9 individuals. Okay. So then I would gather
10 that we should proceed because we don't have
11 any indication they're on their way and the
12 case was called for --

13 MEMBER ALBERTI: They have 10 days
14 to reinstate.

15 CHAIRPERSON MILLER: Right. Okay.
16 All right. So why don't we hear the status of
17 the case? Is there anything -- do you want
18 to --

19 MR. KLINE: We have been talking,
20 negotiating. We made be close, but as the
21 Board knows, close doesn't count until you
22 have a signed voluntary agreement.

1 CHAIRPERSON MILLER: Okay.

2 MR. KLINE: So we hope to get
3 there. We don't know that we will. We're
4 optimistic that we will, but we would ask that
5 the process proceed. And if we get a result
6 before the scheduled protest hearing, then
7 obviously the hearing could be postponed.

8 CHAIRPERSON MILLER: Okay. And is
9 there's anything the Protestants want to add?

10 MR. PERRY: No, I think that
11 was --

12 CHAIRPERSON MILLER: Okay. We
13 have a policy. I believe that if a party does
14 not show up for this hearing, they will be
15 dismissed and they will have a right to apply
16 for reinstatement.

17 Accordingly, I guess I would move
18 to dismiss the group of five or more
19 individuals for failure to appear at the
20 status. Do I have a second?

21 MEMBER BROOKS: Second.

22 CHAIRPERSON MILLER: Any comments?

1 (No audible response.)

2 CHAIRPERSON MILLER: All those in
3 favor, say aye?

4 (Chorus of ayes.)

5 CHAIRPERSON MILLER: All those
6 opposed?

7 (No audible response.)

8 CHAIRPERSON MILLER: All those
9 abstaining?

10 (No audible response.)

11 CHAIRPERSON MILLER: The vote is
12 3-0-0 to dismiss the group of five.

13 Okay. Then the only other thing I
14 want to do is just read some instructions.

15 MEMBER ALBERTI: Do you want to
16 tell them about reinstatement so that they --

17 CHAIRPERSON MILLER: Okay. I
18 thought I did that, but --

19 MEMBER ALBERTI: Well, I missed
20 it. I'm sorry.

21 CHAIRPERSON MILLER: Okay. But in
22 general --

1 MEMBER ALBERTI: I missed it.

2 CHAIRPERSON MILLER: Okay. They
3 can apply for reinstatement.

4 So the last thing I want to just
5 do is just read some general guidelines for --
6 are you here on Costa Brava by any chance?

7 MS. HOLIDAY: I'm Bertha Holiday.

8 CHAIRPERSON MILLER: You're here
9 for Costa Brava?

10 MS. HOLIDAY: Bertha Holiday.

11 CHAIRPERSON MILLER: Bertha
12 Holiday.

13 MR. PERRY: She's the party of
14 five.

15 CHAIRPERSON MILLER: Okay. We
16 just moved to dismiss you as a party because
17 you weren't here, but I would like to move to
18 rescind that motion since she has appeared.
19 Do I have a second.

20 MEMBER ALBERTI: Well, I --

21 CHAIRPERSON MILLER: Yes?

22 MEMBER ALBERTI: Ms. Holiday?

1 MS. HOLIDAY: Yes?

2 MEMBER ALBERTI: It's almost
3 10:00. It was scheduled for 9:30. Can I ask
4 why you're so tardy?

5 MS. HOLIDAY: Well, I didn't know
6 exactly what time it was.

7 MEMBER ALBERTI: All right. Well,
8 in the future we really do expect parties to
9 be here on time, just so you know.

10 MS. HOLIDAY: I understand.

11 MEMBER ALBERTI: Thank you. Okay.
12 I will agree to it.

13 CHAIRPERSON MILLER: Okay. So
14 there's a motion to rescind the motion to
15 dismiss the party of five as a party. Is
16 there a second?

17 MEMBER BROOKS: Second.

18 CHAIRPERSON MILLER: Okay. It's
19 been seconded by Mr. Brooks. All those in
20 favor, say aye?

21 (Chorus of ayes.)

22 CHAIRPERSON MILLER: All those

1 opposed?

2 (No audible response.)

3 CHAIRPERSON MILLER: All those
4 abstaining?

5 (No audible response.)

6 CHAIRPERSON MILLER: Okay. That
7 motion passes 3-0-0.

8 Okay. So, Ms. Holiday -- Ms.
9 Holiday? So you appeared just in the nick of
10 time. And at this point we had discussed
11 whether there were any preliminary issues, and
12 I understand that there is, you know,
13 negotiations going on, and that's where you
14 all are.

15 So I'm going to set this for
16 hearing January 10th, 2013 at 4:00. And I'm
17 going to just read a few instructions for you
18 and then if you have any questions, you can
19 follow up later with Sarah Fashbaugh.

20 You should have received in a
21 mailing from Adjudication Assistant Sarah
22 Fashbaugh a letter explaining the protest

1 process and a copy of the Protest Information
2 Form, also known as the PIF. If you do not
3 have these documents, please see Ms. Fashbaugh
4 at the conclusion of this hearing. It's
5 imperative that you review the rules closely
6 and adhere to them before and during the
7 protest hearing.

8 You're also required to complete
9 and submit the Protest Information Form seven
10 days before the date of the hearing. This
11 document needs to be submitted to ABRA and to
12 the opposing parties in this matter. If we do
13 not receive a copy of your PIF, your
14 application or your protest, whichever side
15 you're on, may be subject to dismissal. So
16 it's very important that you pay attention to
17 that time frame. This form is important in
18 assisting the Board in narrowing the protest
19 issues, facilitating the process and keeping
20 the parties on point during the hearing.

21 So pay attention to those
22 deadlines and get that form in. And if you

1 have any other questions before the hearing,
2 contact Ms. Fashbaugh at (202) 397-3971 if
3 there is a hearing. Maybe you'll reach
4 agreement before that.

5 Okay. Yes, you have a question?

6 MS. HOLIDAY: Ms. Fash --

7 CHAIRPERSON MILLER: Fashbaugh,
8 yes.

9 MS. HOLIDAY: Is she the one who
10 also gives you the form, because I haven't
11 received --

12 CHAIRPERSON MILLER: Yes, so check
13 with her. You should receive the form. Go
14 see her after this hearing and get it, yes.
15 Okay? All right.

16 MR. PERRY: And that was at 4:30?

17 CHAIRPERSON MILLER: No, at 4:00.

18 MR. PERRY: Oh, at 4:00? Okay.

19 CHAIRPERSON MILLER: January 10th,
20 4:00. Okay.

21 MR. KLINE: Great. Thank you.

22 CHAIRPERSON MILLER: Thank you.

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(Whereupon, the hearing was
concluded at 10:02 a.m.)

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