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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

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IN THE MATTER OF: :  
DC Irish, LLC, : Fact Finding Hearing  
t/a Sign of the Whale : Case # 15-251-00158  
1825 M Street NW :  
License # 85120 :  
Retailer Class CT :  
ANC-2B :  
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Wednesday, February 3, 2016

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

1 CHAIRPERSON:

2 DONOVAN ANDERSON, Presiding

3

4 BOARD MEMBERS:

5 RUTHANNE MILLER

6 NICK ALBERTI

7 MICHAEL SILVERSTEIN

8 JAMES SHORT

9

10 ALSO PRESENT:

11 STEPHEN O'BRIEN, ESQ.

12 On behalf of the Licensee

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

2 [2:18 p.m.]

3 CHAIRMAN ANDERSON: All right. We're back on the  
4 record. The next case on our agenda is -- I'm sorry -- fact  
5 finding hearing for case number 15-251-00158, Sign of the  
6 Whale, license number 85120. It is -- it's 2:18, and the  
7 hearing was supposed to start at 1:30. Can you identify  
8 yourself for the record, please?

9 MR. O'BRIEN: Stephen O'Brien, counsel for the  
10 licensee. I do not have an explanation why the licensee is  
11 not here. This was rescheduled from, I think, the 14th of  
12 January at my request because I was out of town. I did  
13 notify him twice. I will note that he has always appeared  
14 in the past. He comes from New York for these hearings.  
15 I've tried to reach him by telephone, email, and text, and  
16 no results. So I just don't have an explanation as to why  
17 he's here. Why he's not here. Excuse me.

18 CHAIRMAN ANDERSON: You've -- you've -- thank you  
19 for your representation, because you have -- you -- I think  
20 you probably heard what I was about to say. So since you  
21 heard what I'm about to say --

22 MR. O'BRIEN: Actually, I didn't hear it.

1           CHAIRMAN ANDERSON: No. But I'm saying I'm very  
2           perturbed that the licensee is not here, because it's a  
3           fact-finding hearing and as the attorney you can only make  
4           representations on that. So we're -- the board is  
5           concerned. But since it's a fact -- because it's a  
6           fact-finding hearing, we need to find out from the licensee  
7           itself. However, we have Officer Merrill here.

8           LIEUTENANT MERRILL: Yes, sir.

9           CHAIRMAN ANDERSON: Identify yourself for the  
10          record, please.

11          LIEUTENANT MERRILL: Lieutenant Jerome Merrill,  
12          PSA208 --

13          CHAIRMAN ANDERSON: All right.

14          LIEUTENANT MERRILL: -- Metropolitan Police  
15          Department.

16          CHAIRMAN ANDERSON: Yeah. Thank you for --  
17          for -- and one of the reasons why we came out at 2:20, I was  
18          waiting to see if -- this was scheduled for 1:30 -- was  
19          waiting to see. So I -- we decided that this is not the way  
20          I want the hearing to proceed; but, because we have the  
21          lieutenant here, my hope is that Mr. -- I'm sorry. Mr --

22          MR. O'BRIEN: O'Brien.

1           CHAIRMAN ANDERSON:  -- O'Brien, that you can make  
2     some representation on behalf of your client.

3           (A discussion was held off the record.)

4           CHAIRMAN ANDERSON:  Lieutenant Merrill, since it  
5     appears that you're the only one that's here, are you -- are  
6     you able to provide the board any information on the  
7     incident that occurred at Sign of the Whale?

8           LIEUTENANT MERRILL:  Yes, I'm familiar with what  
9     the officer told me and from when I testified the first  
10    time.  Well, that was in reference to another incident, but  
11    I would need to see the paperwork to know specific names and  
12    anything like that.  But I know the -- I remember the  
13    overall situation there.

14          CHAIRMAN ANDERSON:  All right.  Then you can -- I  
15    don't necessarily need you to be specific, but you can just  
16    tell us about the overall situation.  You're here, and I  
17    don't want to postpone this or put this off to have to have  
18    you come back again.  So that's one of the reasons why.  
19    Just tell us what you can, and then I think I can get some  
20    representations from the attorney.

21          LIEUTENANT MERRILL:  From what I remember of the  
22    case, they -- an employee of the restaurant got into a fight

1 with a patron, some argument. I'm not exactly sure if the  
2 patron was hit in the head with a bottle or something like  
3 that, but there was some sort of significant injury that  
4 took place there. There was blood all over the place inside  
5 of the restaurant.

6 The officer who came and did the report on the  
7 incident, he said that the staff was not being cooperative  
8 with him. He couldn't get what he needed as far as, I  
9 believe, the video and the name of the employee that was  
10 involved with the altercation. So he didn't receive that, I  
11 believe, until an official arrived and some sort of other --  
12 it took awhile for the inform -- it wasn't forthcoming. So  
13 it was -- that was an incident at that time, because I do  
14 remember them calling a watch commander. I wasn't the watch  
15 commander that night, but I do remember them calling the  
16 watch commander.

17 CHAIRMAN ANDERSON: Thank you.

18 Mr. O'Brien, what -- what type of  
19 representations, if any, can you provide on behalf of the  
20 applicant? The allegation -- part of the allegation was  
21 that there was not -- the -- the licensee wasn't as  
22 compliant with the police as they should be. It's my

1 understanding there was some issues with the recording, how  
2 long the applicant, the licensee would have the matter  
3 recorded. I think -- it's my understanding that  
4 representations were made at a previous hearing, I think in  
5 July, by the licensee stating that how long they would keep  
6 the recordings available.

7           And I guess what I'm trying to find out from you,  
8 can you respond to that to say where -- where is the  
9 licensee -- where are they today in the sense of what type  
10 of recording system do they have, how long do they keep it,  
11 and that type of thing.

12           MR. O'BRIEN: I've got the same type of handicap  
13 here that the lieutenant has. I wasn't there. I wouldn't  
14 have any firsthand knowledge.

15           CHAIRMAN ANDERSON: I know you don't. But I'm  
16 just saying have you discussed it with your --

17           MR. O'BRIEN: I've read the investigative report,  
18 but I don't have any information beyond that. I can't say  
19 that the investigative report is entirely correct. I just  
20 plain don't know.

21           If this were a case where for some reason the  
22 licensee was not going to be here, I would have perhaps

1 inquired more, but I expected the licensee to be here to  
2 answer questions. I just don't want to make up answers for  
3 you. I don't know.

4 CHAIRMAN ANDERSON: Go ahead, Mr. Alberti.

5 MR. ALBERTI: I just -- just real quick, I mean,  
6 the Chairman referenced the previous hearing where there  
7 were statements made or commitments made about the recording  
8 devices. I believe it was September 16th of 2015 the --  
9 Mr. Sullivan --

10 Is that your client?

11 MR. O'BRIEN: Yes, sir.

12 MR. ALBERTI: Yeah. Mr. Sullivan said, "And we  
13 can certainly get a DVR that records 30 days." So what I --  
14 but that was after this incident, so I wouldn't expect there  
15 to have been a DVR recording this long ago, more than 14  
16 days. But I'd like to know currently what the recording is.

17 And maybe what I'm going to recommend is that we  
18 send an investigator out there to take a look at the  
19 recording device and see how long things have been recorded,  
20 and that we do that this week. And so Mr. -- if that's  
21 okay with the board, we could recommend doing that, and we  
22 could have Mr. O'Brien inform his client that that's going

1 to happen.

2 MR. O'BRIEN: Oh, I will.

3 MR. ALBERTI: So can we do that?

4 CHAIRMAN ANDERSON: What were you --

5 Hold on, Mr. Short. Are you responding to the  
6 request by Mr. Alberti, or you have a separate question?

7 MR. SHORT: I want to understand something.

8 CHAIRMAN ANDERSON: Go ahead, please.

9 MR. SHORT: I concur that we should send an  
10 investigator out, and also I think that we should, if  
11 possible, set another date, but after the investigators get  
12 back and give us a report on the camera situation there.

13 CHAIRMAN ANDERSON: Go ahead, Mr. Alberti.

14 MR. ALBERTI: So I -- you know, my recommendation  
15 on the following -- having the investigator follow up stands  
16 but -- I don't necessarily disagree with having another fact  
17 finding, but this case has been dragging on for a long time,  
18 and I think there's enough in this report to warrant sending  
19 it over to the OAG's office, specifically on the charge that  
20 technical charges operated license for disorderly purposes  
21 or -- I forget what that charge reads, but basically, you  
22 know, we had several punches thrown. We had security there

1 while several punches were thrown, somebody with a  
2 laceration, and nobody called 911, according to this report.  
3 I think that's enough to send this over to the OAG's office,  
4 and I'd like to see that happen.

5 CHAIRMAN ANDERSON: Is there any further  
6 discussion then? Is there -- is there someone who's willing  
7 to -- is there a second?

8 MR. ALBERTI: I would move that we send this to  
9 the OAG's office.

10 MR. SHORT: Second.

11 CHAIRMAN ANDERSON: The motion that was made by  
12 Mr. Alberti is that this matter be sent over to OAG. Is  
13 there a second?

14 MR. SHORT: Second.

15 CHAIRMAN ANDERSON: Mr. Short has seconded the  
16 motion. Those in favor say aye.

17 GROUP: Aye.

18 CHAIRMAN ANDERSON: Thank you. Five to zero vote  
19 to send this matter to the OAG for further action.

20 MR. ALBERTI: And can we request an investigator  
21 to go out and review the video system in the interim?

22 CHAIRMAN ANDERSON: Do we need to vote on that,

1 or is that --

2 MR. ALBERTI: I don't think we need to vote on  
3 it, but I need -- I mean, you're the Chair. It's only my  
4 recommendation.

5 CHAIRMAN ANDERSON: Then the recommendation is  
6 that an investigator should go to the establishment within  
7 the week to see whether or not -- what type of recording  
8 devices the Sign of the Whale currently has. And so with  
9 that said, Lieutenant Merrill, thank you for your patience.

10 Yes?

11 MR. O'BRIEN: No. It's on another matter that  
12 I --

13 CHAIRMAN ANDERSON: Yeah. Just hold on. Hold  
14 on.

15 MR. O'BRIEN: -- Lieutenant Merrill.

16 CHAIRMAN ANDERSON: Yeah. I'm gonna -- I just  
17 want to say, Lieutenant Merrill, thank you for your time to  
18 be here.

19 LIEUTENANT MERRILL: No problem, sir.

20 CHAIRMAN ANDERSON: Is wasn't as productive as we  
21 thought, but that's not your fault.

22 LIEUTENANT MERRILL: That's okay.

1           CHAIRMAN ANDERSON: Mr. O'Brien, thank you for  
2 being here and for your representations. I know it's  
3 limited, but please let the applicant know that -- the  
4 licensee know that the board was very concerned that he's  
5 not here and this was the third time that we have had a  
6 fact-finding hearing and that we're -- we're not pleased.  
7 Okay?

8           MR. O'BRIEN: Just for clarification, I believe  
9 this was continued just once, and that was at my personal  
10 request because I was out of town.

11          CHAIRMAN ANDERSON: I was told this was the third  
12 time. I don't know. I could be wrong.

13          MR. O'BRIEN: I don't think that's correct.

14          CHAIRMAN ANDERSON: Okay. Then the record will  
15 reflect if that's the incorrect information.

16          MR. ALBERTI: But it's -- and that may be the  
17 case, but it's still been -- it's been languishing out there  
18 for awhile. And so I think we need to move on with -- and  
19 that's why I recommended sending it over.

20          MR. O'BRIEN: I'm not arguing with you. I'm  
21 simply -- I didn't want --

22          MR. ALBERTI: Right.

1 MR. O'BRIEN: -- an impression to be that this  
2 has been stalled at the licensee's end. I don't think  
3 that's the case.

4 CHAIRMAN ANDERSON: No. Well, I'm aware that as  
5 your representation was based on your unavailability that it  
6 was asked -- it was continued to a different date, and  
7 that's professional courtesies that are granted to  
8 attorneys. So that's not taken against the -- at least as  
9 the Board Chair, I do not take that as a ding against the  
10 establishment. I want the record to reflect that.

11 Yes, Mr. Silverstein?

12 MR. SILVERSTEIN: This is to Lieutenant Merrill.  
13 PSA 208 has been plagued with a series of -- a growing  
14 series of burglaries recently.

15 LIEUTENANT MERRILL: Right.

16 MR. SILVERSTEIN: There have been a lot of  
17 videos. There have been a lot of news about it in the last  
18 two weeks. There have been arrests of several individuals  
19 involved in different series of these. And I'd like you to  
20 pass on to your people and to you thank you for your hard  
21 work. It's a difficult job.

22 LIEUTENANT MERRILL: Yes, sir.

1 MR. SILVERSTEIN: The weather's bad, and I've  
2 seen you guys out there late at night and early in the  
3 morning. Good job.

4 LIEUTENANT MERRILL: Thank you very much. We're  
5 really working hard on that.

6 CHAIRMAN ANDERSON: All right. Thank you. Thank  
7 you.

8 We -- I do not see the parties for the next case  
9 here scheduled for 2:30. So we will -- the board will be in  
10 recess until the applicant for the next case shows up.  
11 Thank you.

12 MR. ALBERTI: Mr. O'Brien, I did check our  
13 records. You're right. This was just one continuance in  
14 January.

15 CHAIRMAN ANDERSON: We'll be in recess for like  
16 three minutes. Give me a minute, please.

17 (Whereupon, the above-entitled matter concluded.)

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