

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF: :

The Bodega, Inc. :

t/a The Cupboard : Show

1504 East Capitol Street, NE : Cause

Retailer B - ANC-6A : Hearing

License No. 86607 :

Case #14-CMP-00380 :

(Sold Go-Cups) :

January 21, 2015

The Alcoholic Beverage Control Board
 met in the Alcoholic Beverage Control Hearing
 Room, Reeves Building, 2000 14th Street, N.W.,
 Suite 400S, Washington, D.C. 20009, Chairperson
 Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
 NICK ALBERTI, Member
 DONALD BROOKS, Member
 HECTOR RODRIGUEZ, Member
 JAMES SHORT, Member

ALSO PRESENT:

AMY SCHMIDT, OAG
 SHAWN TOWNSEND, ABRA Investigator

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

2 1:50 p.m.

3 CHAIRPERSON MILLER: Okay. We are
4 back on the record for our afternoon hearings.

5 The first case we are going to hear is
6 Case No. 14-CMP-00380, The Cupboard located at
7 1504 East Capitol Street, N.E., License No.
8 86607, in ANC-6A.

9 And then we should probably move on
10 to after that one to the pub crawl, your case.

11 All right. So we have now called The
12 Cupboard. Are the parties here?

13 MS. SCHMIDT: Good afternoon, Amy
14 Schmidt, Assistant Attorney General on behalf of
15 the District of Columbia.

16 CHAIRPERSON MILLER: Okay. I'm not
17 seeing or hearing from anyone from The Cupboard.
18 And our staff has checked to see if anyone has
19 called and no one has called.

20 So I also want to note that notice was
21 served on November 6, 2014 for this hearing.

22 Ms. Schmidt, are you prepared to go

1 forward ex parte?

2 MS. SCHMIDT: Yes, I am.

3 CHAIRPERSON MILLER: All right.

4 MS. SCHMIDT: Yes, the Government will
5 waive its opening statement and call Investigator
6 Shawn Townsend.

7 Whereupon,

8 INVESTIGATOR SHAWN TOWNSEND
9 was called as a witness by Counsel for the
10 Government, and having been first duly sworn,
11 assumed the witness stand and was examined and
12 testified as follows:

13 INVESTIGATOR TOWNSEND: I do.

14 CHAIRPERSON MILLER: Thank you.

15 DIRECT EXAMINATION

16 MS. SCHMIDT: Good afternoon.

17 Investigator Townsend, could you, please, state
18 your full name for the record?

19 INVESTIGATOR TOWNSEND: Shawn
20 Townsend.

21 MS. SCHMIDT: And by whom are you
22 employed?

1 INVESTIGATOR TOWNSEND: ABRA.

2 MS. SCHMIDT: And what do you do for
3 them?

4 INVESTIGATOR TOWNSEND: Investigate
5 and enforce alcoholic establishments in the city.

6 MS. SCHMIDT: And how long have you
7 been with ABRA?

8 INVESTIGATOR TOWNSEND: Since February
9 2014.

10 MS. SCHMIDT: Drawing your attention
11 to May 5, 2014, were you at -- were you
12 conducting an investigation at The Cupboard
13 located at 1504 East Capitol Street, N.E., in the
14 District of Columbia?

15 INVESTIGATOR TOWNSEND: Yes.

16 MS. SCHMIDT: And why were you -- and
17 were you there around 12:50 p.m.?

18 INVESTIGATOR TOWNSEND: Yes.

19 MS. SCHMIDT: And why were you there?

20 INVESTIGATOR TOWNSEND: We were
21 conducting a compliance check, which would be our
22 go-cup investigations.

1 MS. SCHMIDT: So how did you conduct
2 this investigation?

3 INVESTIGATOR TOWNSEND: I went into
4 the establishment in an undercover capacity and
5 attempted to purchase an alcoholic beverage as
6 well as a cup to go with the alcoholic beverage.

7 MS. SCHMIDT: Now, let's break that
8 down. So did you actually purchase an alcoholic
9 beverage?

10 INVESTIGATOR TOWNSEND: Yes, I did.

11 MS. SCHMIDT: What did you purchase?

12 INVESTIGATOR TOWNSEND: I purchased a
13 two-pack of Miller Lite Genuine Draft cans.

14 MS. SCHMIDT: And what about the --
15 can you tell us about the cup?

16 INVESTIGATOR TOWNSEND: When I --
17 while I was purchasing the cup -- I mean, the
18 alcoholic beverages, I asked the male clerk if I
19 could purchase a cup as well for the beer. I
20 specifically asked him for the cup for the beer
21 and he told me that I could have a coffee cup for
22 the use of the beer. He didn't charge me for it.

1 He told me he would not charge me for the cup. I
2 paid for the beer. He pointed in the direction
3 of where the coffee cups were. I grabbed a cup
4 and exited the establishment.

5 MS. SCHMIDT: And I'm sorry, and you
6 paid -- did you pay for it when you paid for --
7 you handed the clerk money?

8 INVESTIGATOR TOWNSEND: Yes.

9 MS. SCHMIDT: And how much was it, do
10 you remember?

11 INVESTIGATOR TOWNSEND: It was \$3.49.
12 I have the clerk a \$5 bill. He gave me back
13 \$1.51 in change.

14 MS. SCHMIDT: Okay. And I now direct
15 you to what has been marked as Exhibit 1 in the
16 file. It's appended to the investigative report,
17 which would be in the Board file. What's that a
18 picture of?

19 INVESTIGATOR TOWNSEND: It's a picture
20 of two cans of Miller Genuine Draft and the
21 coffee cup purchased at The Cupboard.

22 (Whereupon, the above-referred to

1 document was marked as Government
2 Exhibit No. 1 for identification.)

3 MS. SCHMIDT: And who took that
4 picture?

5 INVESTIGATOR TOWNSEND: I did.

6 MS. SCHMIDT: And does it accurately
7 reflect what you saw that day?

8 INVESTIGATOR TOWNSEND: Yes.

9 MS. SCHMIDT: No further questions of
10 this witness.

11 CHAIRPERSON MILLER: Are there any
12 Board questions? Ms. Schmidt?

13 MS. SCHMIDT: Yes?

14 CHAIRPERSON MILLER: Could we see a
15 copy of that exhibit you just showed Mr.
16 Townsend? I don't see it in my file, so --

17 MS. SCHMIDT: It should be -- okay.
18 I will pass this up to the Board. We have two
19 copies here.

20 CHAIRPERSON MILLER: Do you have an
21 extra copy?

22 MS. SCHMIDT: Yes.

1 CHAIRPERSON MILLER: I heard you say
2 that it is attached to the Exhibit 1, the
3 investigative report?

4 MS. SCHMIDT: Yes, it's
5 investigative -- is that the owner walking in
6 right now? It's Investigative Report 14-CMP-
7 00226. There is a supplemental also. I think
8 it's a little confusing, because I only got -- I
9 have the supplemental and I was pointed out to
10 the 0226 today.

11 CHAIRPERSON MILLER: Okay. Could you
12 repeat that?

13 MS. SCHMIDT: I think what happened
14 was I'll be --

15 CHAIRPERSON MILLER: Okay.

16 MS. SCHMIDT: Investigator Townsend
17 handed me -- I had Report No. 14-CMP-00380, which
18 I think is a supplemental report, but yet
19 Investigator Townsend today gave me 14-CMP-00226.

20 INVESTIGATOR TOWNSEND: So the
21 original report number is the 00226. A
22 supplemental report was written on June 3rd.

1 CHAIRPERSON MILLER: Yes.

2 INVESTIGATOR TOWNSEND: And that one
3 is 00380. And that explains the discrepancy in
4 the citation amount.

5 CHAIRPERSON MILLER: Okay. So I have
6 in my file, I'm not sure about everybody else,
7 but, 00380. And it doesn't have an Exhibit 1 to
8 it of a photo reflecting this picture that I have
9 just been handed as Exhibit No. 1. Was that
10 attached to the other report?

11 INVESTIGATOR TOWNSEND: Yes, ma'am.

12 CHAIRPERSON MILLER: 0026?

13 INVESTIGATOR TOWNSEND: 226.

14 CHAIRPERSON MILLER: 226.

15 INVESTIGATOR TOWNSEND: Yes.

16 CHAIRPERSON MILLER: And did you --
17 Ms. Schmidt, are you going to be making 00226 a
18 part of the record as well?

19 MS. SCHMIDT: Yes, I will. As I said
20 before, I was just handed this today when I was
21 going over with Investigator Townsend. This is
22 the first -- this is when I heard -- I had seen

1 the picture.

2 To be quite blunt, I had seen the
3 picture before because I had emailed Investigator
4 Townsend. I wanted some proof and he had sent it
5 back to me when I was preparing this case, but I
6 didn't realize there were two cases numbers until
7 today.

8 CHAIRPERSON MILLER: Do you have a
9 copy of 00226?

10 MS. SCHMIDT: Yes, I do have a copy.

11 CHAIRPERSON MILLER: Okay.

12 MS. SCHMIDT: I'll give to Ms. Jenkins
13 right now. That's 226, that's for this case,
14 too.

15 CHAIRPERSON MILLER: Okay.

16 MS. JENKINS: Okay. What am I doing
17 with them?

18 MS. SCHMIDT: You are giving them to
19 the Board.

20 CHAIRPERSON MILLER: We don't seem to
21 have a copy in your file. Okay. Great. This is
22 the photograph in case you want to see it. Okay.

1 Did you all see it?

2 MEMBER BROOKS: Oh, yes, I saw that.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER BROOKS: Everybody else did at
5 break.

6 CHAIRPERSON MILLER: Okay. Are there
7 any Board questions?

8 MEMBER RODRIGUEZ: I don't have any.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER ALBERTI: All right. Can I ask
11 just an administrative question?

12 CHAIRPERSON MILLER: Yes.

13 COURT REPORTER: Is your microphone
14 on?

15 MEMBER ALBERTI: This is an
16 administrative question. So why do we have two
17 investigative reports, Mr. Townsend? And I'm
18 asking you because I think you are the person who
19 has the most knowledge of this.

20 INVESTIGATOR TOWNSEND: So 00226 is my
21 original report. That should include the exhibit
22 for the -- the picture of the beer and the cup.

1 MEMBER ALBERTI: Right. And it has a
2 bit more detail on it. It describes -- I read
3 both that and the investigative report that ends
4 in 380.

5 INVESTIGATOR TOWNSEND: Now, 380 -- so
6 after --

7 MEMBER ALBERTI: So why the second
8 report? And why didn't this -- why the second
9 report?

10 INVESTIGATOR TOWNSEND: So 382 -- 380,
11 I was instructed to write a supplemental report
12 to explain the discrepancy in the citation amount
13 of the ticket that was issued to the
14 establishment, which was originally \$750.

15 MS. SCHMIDT: 226(a).

16 MEMBER ALBERTI: Right, right. Okay.
17 Okay. So the confusion here is just typically
18 what ends up happening and you may want to talk
19 with your supervisor about this, but typically
20 what happens when you do a supplemental report--

21 INVESTIGATOR TOWNSEND: Yes.

22 MEMBER ALBERTI: -- it retains the

1 number of the original report and then gets
2 labeled (a) or (b) or (c), depending on how many
3 supplements you do. So we would have expected to
4 see --

5 INVESTIGATOR TOWNSEND: 226(a).

6 MEMBER ALBERTI: -- 226(a). So that's
7 the confusion. All right?

8 INVESTIGATOR TOWNSEND: Okay.

9 MEMBER ALBERTI: Do we know if the
10 licensee is aware of both of these reports? Ms.
11 Schmidt?

12 MS. SCHMIDT: I do not have any -- I
13 do not have knowledge of that.

14 MEMBER ALBERTI: Just one moment,
15 please.

16 CHAIRPERSON MILLER: Do you have 226?

17 MEMBER ALBERTI: Okay. Ms. Schmidt,
18 I've been told that our service form indicates
19 that we served the investigative report of 380 --
20 that ends in 380.

21 MS. SCHMIDT: Yes.

22 MEMBER ALBERTI: So you are the

1 prosecuting attorney. I will just give you that
2 information and let you deal with it however you
3 think best.

4 MS. SCHMIDT: Okay. She did receive
5 a citation.

6 CHAIRPERSON MILLER: Thank you.

7 MS. SCHMIDT: She did receive a
8 citation on the date in question for May 5, 2014
9 for the violation. Yes, she did receive that.

10 MEMBER ALBERTI: Well, and when she
11 received that -- okay, she received that
12 citation. Okay. Fine.

13 MS. SCHMIDT: Yes.

14 MEMBER ALBERTI: But has she seen both
15 reports?

16 MS. SCHMIDT: 380, I can just
17 prosecute. There is sufficient information on
18 380 that she did receive that and it does contain
19 the facts that the go-cup was given that day.

20 MEMBER ALBERTI: Okay. And so you are
21 going to prosecute 380 and you are going to
22 present the pictures as evidence, but not as part

1 of the report?

2 MS. SCHMIDT: I'll just use that
3 separately.

4 MEMBER ALBERTI: You're going to --
5 they are going to be independent exhibits?

6 MS. SCHMIDT: Yes, they will.

7 MEMBER ALBERTI: Independent of
8 another report.

9 MS. SCHMIDT: Yes.

10 MEMBER ALBERTI: Is that what is going
11 on?

12 MS. SCHMIDT: Yes.

13 MEMBER ALBERTI: Okay.

14 MS. SCHMIDT: And I --

15 MEMBER ALBERTI: So --

16 MS. SCHMIDT: -- has established
17 foundation.

18 MEMBER ALBERTI: -- go ahead, move
19 forward.

20 MS. SCHMIDT: I have established a
21 foundation that he did take the picture and
22 accurately depicts --

1 MEMBER ALBERTI: Thank you.

2 MS. SCHMIDT: -- and I would move that
3 they be moved into evidence.

4 MEMBER ALBERTI: Great. Thank you so
5 much.

6 MS. SCHMIDT: Okay.

7 CHAIRPERSON MILLER: Ms. Schmidt, I'm
8 not clear what you said about Exhibit 1, the
9 photo, which I believe was attached to
10 Investigation Report 00226, correct?

11 MS. SCHMIDT: We're going to move that
12 into evidence today.

13 CHAIRPERSON MILLER: You're going to
14 move it into evidence.

15 MEMBER ALBERTI: Move what into
16 evidence?

17 MS. SCHMIDT: The photograph, Exhibit
18 1.

19 MEMBER ALBERTI: The exhibits?

20 MS. SCHMIDT: Yes, yes, the
21 photograph.

22 MEMBER ALBERTI: The photographs.

1 Okay.

2 CHAIRPERSON MILLER: And could you say
3 again for the record, for me, what is -- with
4 respect to service? Are you -- is there a
5 service issue --

6 MS. SCHMIDT: No, there is no service
7 issue.

8 CHAIRPERSON MILLER: -- with respect
9 to these reports?

10 MS. SCHMIDT: For 00380, there is no
11 service issue.

12 CHAIRPERSON MILLER: No service issue
13 on 380?

14 MS. SCHMIDT: Right. That is -- and
15 the text of that report is basically the -- the
16 allegations are the same as in the other report.

17 CHAIRPERSON MILLER: I see. Okay.

18 MS. SCHMIDT: The go-cup was provided.
19 That a go-cup was provided with the purchase of
20 an alcoholic beverage. There is no --

21 CHAIRPERSON MILLER: Okay. Okay. Got
22 it. So you are asking that this photo be

1 admitted independent from the report.

2 MS. SCHMIDT: Yes.

3 CHAIRPERSON MILLER: Because --

4 MS. SCHMIDT: Yes.

5 CHAIRPERSON MILLER: -- he laid the
6 foundation and you are --

7 MS. SCHMIDT: Yes.

8 CHAIRPERSON MILLER: -- all right.

9 Fine. Got it.

10 MS. SCHMIDT: So I move that it be--

11 CHAIRPERSON MILLER: The photo?

12 MS. SCHMIDT: The photo, yes.

13 CHAIRPERSON MILLER: That the photo be
14 admitted as Government's Exhibit No. 1.

15 MS. SCHMIDT: Yes.

16 CHAIRPERSON MILLER: Before I do that,
17 I just want to -- it's Board questions time and I
18 just wanted to ask a couple of questions related
19 to this photo.

20 Okay. Did you take this photo?

21 INVESTIGATOR TOWNSEND: Yes.

22 CHAIRPERSON MILLER: And when did you

1 take it?

2 INVESTIGATOR TOWNSEND: I took it on
3 May the 6th.

4 CHAIRPERSON MILLER: May 6, okay.

5 INVESTIGATOR TOWNSEND: 2014.

6 MEMBER ALBERTI: On May 6, 2014?

7 INVESTIGATOR TOWNSEND: Yes. Yes,
8 sir.

9 CHAIRPERSON MILLER: And where did you
10 take it?

11 INVESTIGATOR TOWNSEND: In the office
12 here at ABRA.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: Okay. So,
15 Investigator, could you, for me, please, take a
16 look at Investigative Report 380 and see if that
17 refreshes your memory?

18 INVESTIGATOR TOWNSEND: I'm not -- are
19 you asking --

20 MEMBER ALBERTI: So what -- when did
21 you take this picture?

22 INVESTIGATOR TOWNSEND: I took the

1 picture of the beer on May 6 when it was entered
2 into evidence.

3 MEMBER ALBERTI: Oh, when it was
4 entered into evidence?

5 INVESTIGATOR TOWNSEND: Yes.

6 MEMBER ALBERTI: Okay. Thank you.
7 Thank you.

8 INVESTIGATOR TOWNSEND: Yes.

9 CHAIRPERSON MILLER: Any other
10 questions?

11 MEMBER ALBERTI: Yes. Just so that we
12 -- I'm just sort of making sure we have all the
13 I's dotted. So you purchased two cans of beer,
14 right? And then what did you do with those two
15 cans of beer after you left?

16 INVESTIGATOR TOWNSEND: After I left
17 the establishment?

18 MEMBER ALBERTI: Right.

19 INVESTIGATOR TOWNSEND: I brought it
20 back to ABRA. When I returned, you know, the
21 procedure is we submit it into evidence to our
22 Chief Investigator. At the time, he wasn't in

1 the office. And I usually lock it up in my
2 drawer until I see him again. In this case, it
3 was the very next day.

4 MEMBER ALBERTI: That you saw your
5 investigator -- that you saw the Chief --

6 INVESTIGATOR TOWNSEND: Yes, sir.

7 MEMBER ALBERTI: -- Investigator?

8 INVESTIGATOR TOWNSEND: Yes, sir.

9 MEMBER ALBERTI: Or your supervisor.

10 And that's when you took the picture?

11 INVESTIGATOR TOWNSEND: Yes, sir.

12 MEMBER ALBERTI: Okay. So did you
13 come directly back here with the evidence?

14 INVESTIGATOR TOWNSEND: Yes, sir.

15 MEMBER ALBERTI: Okay. Great. Very
16 good. So those are the two cans that you
17 purchased from the establishment. Is that
18 correct?

19 INVESTIGATOR TOWNSEND: Correct.

20 MEMBER ALBERTI: Okay. Great. Thank
21 you. I have no further questions.

22 INVESTIGATOR TOWNSEND: Yes.

1 CHAIRPERSON MILLER: I just have one
2 question. Just out of curiosity and looking at
3 this picture, the cup looks kind of big to me.
4 Is this like an extra large coffee cup or is it
5 just the way it looks in the picture?

6 INVESTIGATOR TOWNSEND: It's probably
7 about a medium-sized coffee cup.

8 CHAIRPERSON MILLER: Okay. And did
9 they have other sizes there or that was the only
10 one you could have taken?

11 INVESTIGATOR TOWNSEND: I believe --
12 you know what, I don't recall.

13 CHAIRPERSON MILLER: Okay. Stumped
14 the witness. Okay. All right. Any other
15 questions? All right. Thank you very much.

16 INVESTIGATOR TOWNSEND: Thank you.

17 CHAIRPERSON MILLER: Appreciate your
18 testimony.

19 INVESTIGATOR TOWNSEND: Sorry for the
20 confusion.

21 CHAIRPERSON MILLER: Is there any
22 questions on Board questions?

1 MS. SCHMIDT: No, no more questions.

2 CHAIRPERSON MILLER: Okay. Anything
3 else you want to offer into evidence?

4 MS. SCHMIDT: Nothing else. No
5 thanks.

6 CHAIRPERSON MILLER: Okay. So we just
7 have the case reports are in the record as part
8 of the --

9 MS. SCHMIDT: And I move in the photo
10 into evidence.

11 CHAIRPERSON MILLER: Right. Okay.
12 And I'll admit the photo as Government Exhibit
13 No. 1.

14 (Whereupon, the above-referred to
15 document was received into evidence as
16 Government Exhibit No. 1.)

17 CHAIRPERSON MILLER: Okay. Closing?

18 MS. SCHMIDT: Yes, just very briefly.
19 Clearly the licensee on May 5, 2014 violated D.C.
20 Official Code 25-741, which for -- for providing
21 a go-cup, for providing a cup with purchase of
22 beer. And that especially since the Investigator

1 testified he specifically asked for a cup for the
2 beer, not for water, not for coffee, but for beer
3 and he was not -- and he also was not charged for
4 a cup. He was given that, he was provided that
5 cup for -- by the licensee.

6 And therefore, this Board should hold
7 the licensee in violation of 20 -- of D.C.
8 Official Code 25-741.

9 CHAIRPERSON MILLER: Okay. Thank you.
10 So if there is no other evidence you are seeking
11 to put in to the record, I'm going to close the
12 record at this time and ask you if you want to
13 file proposed findings of facts and conclusions
14 of law or waive your right to do so?

15 MS. SCHMIDT: No, thank you.

16 CHAIRPERSON MILLER: Okay. All right.
17 Then the Board will consider this matter in
18 closed session and issue an order within 90 days.

19 And I will take the roll call vote of
20 the Board to deliberate this in closed session.

21 As Chairperson of the Alcoholic
22 Beverage Control Board for the District of

1 Columbia and in accordance with Section 405 of
2 the Open Meetings Amendment Act of 2010, I move
3 that the ABC Board hold a closed meeting for the
4 purpose of seeking legal advice from our counsel
5 on Case No. 14-CMP-00380, The Cupboard, per
6 Section 405(b)(4) of the Open Meetings Amendment
7 Act of 2010, and deliberating upon this case for
8 the reasons cited in Section 405(b)(13) of the
9 Open Meetings Amendment Act of 2010.

10 Is there a second?

11 MEMBER SHORT: Second.

12 CHAIRPERSON MILLER: Mr. Short has
13 seconded the motion. I'll now take a roll call
14 vote now that the motion before us has been
15 seconded.

16 Mr. Brooks?

17 MEMBER BROOKS: I agree.

18 CHAIRPERSON MILLER: Mr. Alberti?

19 MEMBER ALBERTI: I agree.

20 CHAIRPERSON MILLER: Mr. Rodriguez?

21 MEMBER RODRIGUEZ: I agree.

22 CHAIRPERSON MILLER: Ms. Miller

1 agrees.

2 Mr. Short?

3 MEMBER SHORT: I agree.

4 CHAIRPERSON MILLER: It appears that
5 the motion has passed by a 5-0-0 vote.

6 I hereby give notice that the ABC
7 Board will hold this aforementioned closed
8 meeting in the ABC Board conference room pursuant
9 to the Open Meetings Amendment Act of 2010 and
10 issue a written decision within 90 days.

11 Okay. That concludes this case.

12 (Whereupon, the Show Cause Hearing in
13 the above-entitled matter was concluded at 2:10
14 p.m.)

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