

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

Jim Dolan's, Inc.	
t/a Kelly's Irish Times	Show Cause
14 F Street, NW	Hearing
Retailer CR - ANC-6C	(Status)
License No. 939	
Case #13-CC-00062	

(Sale to Minor, Failed to
Take Steps Necessary to
Ascertain Legal Drinking
Age, Permitted the Sale or
Delivery of Alcohol to
Intoxicated Persons)

March 5, 2014

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
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

WALTER ADAMS, OAG

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

(10:05 a.m.)

CHAIRPERSON MILLER: Okay. Next on the calendar is a Show Cause Hearing (Status). It's Case No. 13-CC-00062, Irish Times located at 14 F Street, N.W., License No. 939, in ANC-6C.

MR. ADAMS: Good morning, Madam Chairman. Walter Adams. I represent the District of Columbia.

CHAIRPERSON MILLER: Good morning.

MR. FARMER: Jonathan Farmer on behalf of the Irish Times.

MR. KELLY: Brendan Kelly, owner of the Irish Times.

CHAIRPERSON MILLER: Okay. Are there any preliminary issues?

MR. ADAMS: Yes. This matter is here for a status regarding this case. There is a preliminary matter. The parties have discussed in this case and have negotiated an offer in compromise which it has to propose to

1 the Board.

2 Specifically in terms of it, there
3 are several charges here. This extends from
4 an incident where it seems that several
5 underage persons were able to get into the
6 establishment and receive alcohol.

7 So what we are willing to offer
8 for -- in total is for a fine of \$8,000.
9 Sorry, \$5,000 to be paid within 60 days, a 10-
10 day suspension, all days stayed for a period
11 of one year provided that the establishment
12 has no further ABC violations, and Alcohol
13 Awareness Training for all employees.

14 And the way this would go in terms
15 of breaking down this, I guess as my colleague
16 put this case together, in terms of charges,
17 it looks like I through X, that would be we
18 would keep that, and that would be a fine of
19 \$3,000 and a five-day suspension, all days
20 stayed. The District would propose as well to
21 dismiss Charges XI through XX.

22 But then for Charges XXI through--

1 MEMBER ALBERTI: Can you just hold
2 one moment? And I hate to interrupt you, but
3 we are a little confused because our notes
4 aren't reflecting this whole litany of
5 charges. So can you just hold? Just one
6 moment. Do we have a charging document? We
7 are going to get the charging document so we
8 can follow you.

9 MR. ADAMS: Yes.

10 MEMBER ALBERTI: Okay. Our notes,
11 our crib notes that we get for these hearings
12 are different, so want --

13 MR. ADAMS: Yes, sir.

14 MEMBER ALBERTI: -- to have the
15 charging document in front of us.

16 CHAIRPERSON MILLER: While we are
17 doing that, as this is a Show Cause (Status)
18 Hearing, I need to ask, Mr. Kelly, if you
19 received notice of this hearing?

20 MR. KELLY: Yes, I received notice
21 of the hearing.

22 CHAIRPERSON MILLER: Did you

1 receive notice of the hearing?

2 MR. KELLY: Yes, ma'am.

3 CHAIRPERSON MILLER: And you read
4 it and understood it?

5 MR. KELLY: Yes, ma'am.

6 CHAIRPERSON MILLER: Okay. So
7 that notice will be part of the record.

8 (Whereupon, the document was
9 marked as Exhibit 1 for
10 identification.)

11 CHAIRPERSON MILLER: All right.

12 Thank you.

13 MEMBER ALBERTI: Madam Chair?

14 CHAIRPERSON MILLER: What?

15 MEMBER ALBERTI: May I ask a
16 question?

17 CHAIRPERSON MILLER: Yes.

18 MEMBER ALBERTI: Mr. Adams, I have
19 sort of never seen a charging document like
20 this, so maybe you can clarify. This says
21 Charge I through X. Is that correct? I mean,
22 do we actually -- are we pleading to -- I

1 mean, are you -- what I'm hearing is that the
2 offer in compromise is that they are accepting
3 liability on ten charges? I mean, I'm kind of
4 kretching it here, because I don't really
5 think that that's the case.

6 MR. ADAMS: Well, I'll be blunt
7 with you, Mr. Alberti. I did not actually
8 prepare the charges and that would not be the
9 way I would charge it. Essentially, the way
10 I look at this, if it were -- and I think
11 based upon the cases that we normally deal
12 with for our office, this is really three
13 charges.

14 When it comes right down to it,
15 it's three charges. But the reason I read it
16 off the way it is, I just wanted to be literal
17 based upon what was in the charging document.

18 MEMBER ALBERTI: Okay. Because
19 there are several individuals involved --

20 MR. ADAMS: There are several
21 individuals in this case.

22 MEMBER ALBERTI: -- in the

1 violation. I got it now.

2 MR. ADAMS: Right. This case took
3 the console charge of each person, because
4 there were 10 people that were counted, they
5 made it a charge for each person that was
6 found.

7 MEMBER ALBERTI: So please start
8 from the beginning, because now I have got
9 something I can follow and I'm less confused.

10 MR. ADAMS: Okay.

11 MEMBER ALBERTI: I apologize.
12 Thank you very much.

13 MR. ADAMS: No problem. No
14 problem. Again, what we are offering the
15 Board is, in terms of breaking this down, what
16 is marked as Charges I through X, which I
17 think formally we can call Charge I is a fine
18 of \$3,000 and a suspension of five-days for
19 all those days being stayed.

20 What is listed in the notice as
21 Charges XI through XX, which I formally will
22 call Charge II, the District is moving to

1 dismiss that charge as part of this deal.

2 In terms of Charges XXI, what is
3 listed as Charge XXI through XXII, which
4 formally we call Charge III, the District is
5 again asking for a \$2,000 fine with a five-day
6 -- I'm sorry, a \$2,000 fine with five-days
7 stayed for one year pending no issues.

8 And also for this last charge,
9 that's where we will include the Alcohol
10 Awareness Training for all employees that
11 serve alcoholic beverages.

12 In this case, this establishment,
13 they have not had any primary -- any other
14 primary or secondary charges in a two year
15 period. It looks like actually not since 2010
16 or so or actually, they haven't had any
17 charges at all for a while. And that's how we
18 have reached this potential proposal. And I
19 have nothing further, at this point.

20 MEMBER ALBERTI: Thank you. It
21 really was because we didn't have the charging
22 document in front of us. It was very

1 confusing.

2 MR. ADAMS: Understood.

3 MEMBER ALBERTI: Thank you.

4 CHAIRPERSON MILLER: Let me ask
5 the licensee if you are agreeable to the offer
6 in compromise? And I'm going to try to
7 articulate that. That would be Charge I, a
8 \$3,000 penalty to be paid within 60 days. The
9 license suspended for five days, but that
10 would be stayed for a year pending no further
11 violations during that year.

12 And the second charge is
13 dismissed.

14 The third charge is a \$2,000
15 penalty, five days license suspended, which
16 would be stayed pending no further violations
17 for one year. And Alcohol Awareness Training
18 for all employees.

19 Do you agree to that?

20 MR. KELLY: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay. And do
22 you understand that your right to a hearing is

1 waived by agreeing to the offer in compromise?

2 MR. KELLY: Yes, ma'am. I have
3 dealt with this for almost a year. I would
4 like to put it to bed.

5 CHAIRPERSON MILLER: Okay. Are
6 there questions by Board Members?

7 MEMBER ALBERTI: Yes, just for
8 clarity. And I'm being a bit of a nerd and
9 very literal here. So as I understand it,
10 really charges in the charging document, and
11 this is just for the record, the charges in
12 the charging document, Charges II through X in
13 the charging document are being dropped by the
14 Government. Is that correct?

15 You know, we have this -- Mr.
16 Adams, here is my problem. We have this
17 charging document and I just want to make sure
18 things are cleaned up.

19 MR. ADAMS: Okay. I understand
20 what you are saying.

21 MEMBER ALBERTI: And I don't know
22 what is -- you are the legal mind. I don't

1 know what is necessary.

2 MR. ADAMS: I'll take the
3 unilateral action doing this. Essentially
4 what we are doing, we are going to dismiss
5 Charges II through X, if that makes it easier
6 for the Board.

7 MEMBER ALBERTI: Okay.

8 MR. ADAMS: We will maintain
9 Charge I. We will -- the District will move
10 to dismiss Charges II through X. We will move
11 to dismiss Charges XI through XX and we will
12 also move to dismiss Charge XXII.

13 MEMBER ALBERTI: Yes, that's --

14 MR. ADAMS: And that will bring it
15 down to two charges remaining.

16 MEMBER ALBERTI: -- my
17 understanding from the offer in compromise
18 that was read, yes.

19 MR. ADAMS: Yes.

20 MEMBER ALBERTI: Thank you very
21 much.

22 MR. ADAMS: No problem.

1 CHAIRPERSON MILLER: Okay. So you
2 know, I read it differently based on Charges
3 1, 2 and 3. So now I am --

4 MR. ADAMS: I'm sorry.

5 CHAIRPERSON MILLER: I'm not sure
6 if -- I'm confused.

7 MEMBER ALBERTI: I just don't want
8 there to be any confusion with it, because we
9 have this charging document in our records.

10 CHAIRPERSON MILLER: Well, I am
11 confused. Do you want to explain?

12 MEMBER ALBERTI: Do you want me to
13 reiterate it for you?

14 CHAIRPERSON MILLER: Yes. I would
15 like to understand what is, yeah, being
16 dismissed.

17 MEMBER ALBERTI: All right. All
18 right.

19 CHAIRPERSON MILLER: Well, could
20 you go through it again and I'll ask you
21 questions?

22 MR. ADAMS: So you want me to put

1 -- say it again?

2 CHAIRPERSON MILLER: Questions as
3 I need to, because I was following 1, 2, 3, so
4 now I'm --

5 MR. ADAMS: I understand. And
6 I'll discuss this and --

7 CHAIRPERSON MILLER: Okay.

8 MEMBER ALBERTI: May I make a
9 suggestion? Why doesn't Mr. Adams just start
10 from the beginning?

11 MR. ADAMS: Sure, no problem. To
12 start from the beginning, this would be --
13 breaking down this charge would be that for
14 Charge I, we will accept a \$3,000 fine to be
15 paid within 60 days and five days stayed
16 pending no further violations for a period of
17 one year.

18 The District will dismiss Charges
19 II through X. In addition, the District will
20 dismiss Charges XI through XX. In terms of
21 Charge XXI, the District will accept a \$2,000
22 fine with five -- to be paid within 60 days,

1 five days stayed for a period of one year with
2 the condition that there is no further ABC
3 violations. And that the establishment will
4 also complete Alcohol Awareness Training
5 within a three month period.

6 CHAIRPERSON MILLER: Within three
7 months.

8 MR. ADAMS: Three months. Sorry,
9 I apologize. Did I say two months? Two
10 months period. And the further charge, which
11 is a last pending charge, which is Charge
12 XXII, for clarity, the District would be
13 agreeable to dismiss that charge as well.

14 And please pardon the lack of
15 clarity.

16 MEMBER ALBERTI: I know it's not
17 your fault, so you didn't construct this
18 charging document.

19 CHAIRPERSON MILLER: Okay. All
20 right. Okay. Mr. Adams, so I am having
21 trouble following on my -- on this charging
22 document, because I see it says Charge I

1 through X and then it describes what those
2 charges are. So I don't know what Charge I
3 is.

4 MR. ADAMS: Okay. Charge -- and
5 just to make it clear, it seems as though --
6 and the Board can have discretion in terms of
7 how you want to characterize it. Charge I
8 through X apply to, I guess there are, 10
9 minors that were involved in the situation.

10 CHAIRPERSON MILLER: Um-hum.

11 MR. ADAMS: So essentially, it's
12 categorized, I guess, the same as we would
13 normally do for a single charge, at least I
14 would.

15 CHAIRPERSON MILLER: Right.

16 MR. ADAMS: So what I guess we are
17 trying to do is to make it seem as though
18 there is only two charges as opposed to there
19 being XXII charges. Essentially for I through
20 X, I'm just maintaining Charge I.

21 CHAIRPERSON MILLER: Okay.

22 MR. ADAMS: And then II through X,

1 I guess, would be -- I guess in this case
2 would be applying to the other nine persons.

3 CHAIRPERSON MILLER: The other
4 people. Okay.

5 MR. ADAMS: Essentially, what we
6 are saying is that Charge I all goes to that
7 one individual.

8 CHAIRPERSON MILLER: Okay.

9 MR. ADAMS: And then the same --
10 well, Charge XXI -- say XI through -- sorry.
11 The second paragraph --

12 CHAIRPERSON MILLER: Got it. I
13 got it.

14 MR. ADAMS: Right.

15 CHAIRPERSON MILLER: Okay. That's
16 all dismissed.

17 MR. ADAMS: Is dismissing that.

18 CHAIRPERSON MILLER: Right.

19 MR. ADAMS: And then where it
20 reaches obtaining the first -- in terms of
21 these intoxicated persons, which would
22 normally be the third paragraph, we are just

1 going to retain one.

2 CHAIRPERSON MILLER: Okay.

3 MR. ADAMS: And drop the others.

4 CHAIRPERSON MILLER: So you are
5 retaining --

6 MR. ADAMS: In the end, we are
7 retaining two charges.

8 CHAIRPERSON MILLER: No. XXI,
9 okay.

10 MR. ADAMS: XXI and Charge I.

11 CHAIRPERSON MILLER: And the rest
12 are dismissed?

13 MR. ADAMS: And the rest are
14 dismissed.

15 CHAIRPERSON MILLER: Okay. Got
16 it. All right. I understand.

17 MR. ADAMS: XXI and I or I and
18 XXI.

19 CHAIRPERSON MILLER: Everybody got
20 it? Okay. Thank you very much.

21 MR. ADAMS: No problem.

22 CHAIRPERSON MILLER: Any other

1 questions? Okay. Yes, oh you do? Okay.

2 Okay. I have a request that the Board just go
3 into Executive Session for -- briefly to
4 discuss this. Okay.

5 Okay. As Chairperson of the
6 Alcoholic Beverage Control Board for the
7 District of Columbia and in accordance with
8 Section 405 of the Open Meetings Amendment Act
9 of 2010, I move that the ABC Board hold a
10 closed meeting for the purpose of consulting
11 with counsel on Case No. 13-CC-00062, Kelly's
12 Irish Times, per Section 405(b)(4) of the Open
13 Meetings Amendment Act of 2010.

14 Is there a second?

15 MEMBER SHORT: Second.

16 CHAIRPERSON MILLER: Mr. Short has
17 seconded the motion. I'll now take a roll
18 call vote on this motion.

19 Mr. Brooks?

20 MEMBER BROOKS: I agree.

21 CHAIRPERSON MILLER: Mr. Alberti?

22 MEMBER ALBERTI: I agree.

1 CHAIRPERSON MILLER: Mr.

2 Rodriguez?

3 MEMBER RODRIGUEZ: I agree.

4 CHAIRPERSON MILLER: Ms. Miller
5 agrees.

6 Mr. Silverstein?

7 MEMBER SILVERSTEIN: I agree.

8 CHAIRPERSON MILLER: Mr. Short?

9 MEMBER SHORT: I agree.

10 CHAIRPERSON MILLER: It appears
11 that the motion has passed by a 6-0-0 vote, so
12 we will convene for discussion with counsel on
13 this offer in compromise and return shortly.
14 Thank you.

15 (Whereupon, at 10:20 a.m. a recess
16 until 10:26 a.m.)

17 CHAIRPERSON MILLER: Okay. The
18 Board is back on the record from having
19 discussed the offer in compromise that was
20 proposed, having discussed that with counsel,
21 and we are now prepared to go forward on that
22 offer in compromise.

1 So I would like to make a motion
2 that we approve the offer in compromise.

3 MEMBER ALBERTI: Just --

4 CHAIRPERSON MILLER: A penalty of
5 \$3,000 for Charge I payable within 60 days,
6 five days suspension of the license stayed
7 pending no further violations within one year.
8 Dismiss Charges II through X. Dismiss Charges
9 XI through XX. And for Charge XXI, a fine of
10 \$2,000 to be paid within 60 days. And Alcohol
11 Awareness Training within two months. And
12 five days suspension of the license stayed
13 pending no further violations within a year.

14 I think I said that was XXI. And
15 then XXII would be dismissed. Any corrections
16 to that motion? This was a little
17 complicated, so if I said anything wrong,
18 please, correct me. Okay. All right. Sound
19 right to you all?

20 MR. ADAMS: Sounds right to me.

21 CHAIRPERSON MILLER: Okay. Then
22 that is the motion. Do I have a second?

1 MEMBER ALBERTI: Second.

2 CHAIRPERSON MILLER: Mr. Alberti
3 has seconded the motion. Any comments on the
4 motion? Okay.

5 MEMBER SILVERSTEIN: I would like
6 to reserve my comments until after the vote.

7 CHAIRPERSON MILLER: Until after
8 the vote? Okay. Then I'll call the vote.

9 All those in favor of the motion
10 that has been seconded by Mr. Alberti say aye.

11 MEMBER ALBERTI: Aye.

12 CHAIRPERSON MILLER: Aye.

13 MEMBER RODRIGUEZ: Aye.

14 MEMBER SHORT: Aye.

15 CHAIRPERSON MILLER: All those
16 opposed?

17 MEMBER BROOKS: No.

18 CHAIRPERSON MILLER: Mr. Brooks is
19 opposed. So --

20 MEMBER SILVERSTEIN: I'm opposed
21 as well.

22 CHAIRPERSON MILLER: Mr.

1 Silverstein is opposed. So the vote is 4-2-0
2 to accept the offer in compromise.

3 MEMBER ALBERTI: May I just speak
4 really briefly, very briefly?

5 CHAIRPERSON MILLER: Mr.
6 Silverstein wanted to speak also.

7 MEMBER ALBERTI: Yeah, and I know.
8 And I --

9 MEMBER SILVERSTEIN: I defer to my
10 colleague.

11 MEMBER ALBERTI: All right. Since
12 I voted in favor of this, I'm very concerned.
13 It was pointed out to me there were 10 people
14 found under age inside and someone stone drunk
15 outside.

16 MR. KELLY: Yes, sir.

17 MEMBER ALBERTI: I mean --

18 MR. KELLY: I can give you --

19 MEMBER ALBERTI: -- it's the last
20 time I'll give you that kind of leniency. I'm
21 just saying that. And you don't need to
22 respond.

1 MR. KELLY: Yes, sir.

2 MEMBER ALBERTI: Just take note.

3 MR. KELLY: Yes, sir.

4 MEMBER SILVERSTEIN: I actually --

5 CHAIRPERSON MILLER: Mr.

6 Silverstein? Yeah.

7 MEMBER SILVERSTEIN: I am also
8 concerned. I am somewhat comforted by the
9 fact you have an excellent record prior to
10 this event. And perhaps it would help if we
11 did have a little what happened?

12 MR. KELLY: There was a lapse in
13 security that we found out after the fact with
14 some older people that came in that someone
15 let -- an of age person came in, let the
16 emergency exit door on the main level and let
17 these people in through the building and down.

18 MEMBER SILVERSTEIN: Oh.

19 MR. KELLY: What I did in the
20 meantime is I have submitted a new security
21 plan with you guys months ago with a diagram
22 with a security person at that side door

1 during -- I wrote in in the season, August and
2 stuff when it is very slow. It is usually
3 monitored with a manager on duty and stuff.

4 We have never had a problem with
5 that door. It's an alley door between the
6 Dubliner and us, so we have never had a
7 problem with that door before. It usually
8 makes a very loud noise when it closes when
9 it's during the day and stuff. There was a
10 good amount of people in the building and
11 that's where our lapse was.

12 And I can guarantee there won't be
13 a lapse of that door any more.

14 MEMBER SILVERSTEIN: I feel a lot
15 better hearing that. I wish you well. The
16 optics are horrific. You know, our primary
17 function here above all else is to ensure that
18 nobody gets hurt.

19 MR. KELLY: Absolutely, sir.

20 MEMBER SILVERSTEIN: And --

21 MR. KELLY: We had a long run and
22 I tend to have a long run again. It's a hard

1 job and -- but stuff like that, you know,
2 that's something that has been addressed and
3 I'll move on. And I thank you guys very much.

4 MEMBER SILVERSTEIN: It is a hard
5 run and we sure understand that. I mean, we
6 have seen places where people come in and tell
7 us they have a giant box full of IDs with more
8 than 1,000 fake IDs in them. There are
9 gentlemen in Adams Morgan who confiscates
10 them. And we know that, you know, this is
11 something that you guys have to face all the
12 time.

13 And you know, it is comforting to
14 know that this was -- you know, your side of
15 the story certainly makes me feel a whole lot
16 better.

17 MR. KELLY: I also bought a
18 scanner the next day not knowing the side door
19 thing, at the time, out of scaredness,
20 scaredness is not a proper word, but out of --
21 I'm trying to figure out this problem. We
22 used the scanner. Also, I also already have

1 the 2014 books at the door also every night.

2 So I definitely have tightened up
3 our game on both sides.

4 MEMBER SILVERSTEIN: Well, good
5 luck and here is hoping you make back a lot of
6 that on St. Patrick's Day.

7 MR. KELLY: Thank you.

8 MEMBER SILVERSTEIN: And pay the
9 fine quickly and let's move forward.

10 MEMBER ALBERTI: Ms. Miller, may I
11 make one more brief comment?

12 CHAIRPERSON MILLER: Sure. Yes,
13 Mr. Alberti has something else, too.

14 MEMBER ALBERTI: Mr. Kelly, after
15 having heard that explanation, I'm not sure
16 how comforted I am. Your servers served these
17 people.

18 MR. KELLY: Right.

19 MEMBER ALBERTI: Okay. They may
20 have snuck in, but your servers served them.
21 The buck stops with you.

22 MR. KELLY: Yes, sir, it does.

1 MEMBER ALBERTI: All right. So I
2 see this alcohol -- you have agreed to do
3 Alcohol Beverage Training for all your
4 servers. All right. But you have to make
5 sure that they are adhering to the best
6 practices. And it is your responsibility. I
7 hope not to see you here again under these
8 circumstances.

9 MR. KELLY: Yes, sir.

10 MEMBER ALBERTI: Thank you.

11 MR. KELLY: Yes, sir.

12 MEMBER SILVERSTEIN: I would like
13 to thank my colleague as well. Thank you, Mr.
14 Alberti.

15 MEMBER ALBERTI: You're welcome.

16 CHAIRPERSON MILLER: Okay. Thank
17 you very much.

18 MR. KELLY: Thank you.

19 MEMBER SILVERSTEIN: Thank you,
20 Mr. Adams.

21 MR. ADAMS: No problem. Thank
22 you.

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(Whereupon, the Show Cause
(Status) Hearing in the above-entitled matter
was concluded at 10:32 a.m.)

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