

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

IN THE MATTER OF:

Bistro, Inc.
t/a Bistro Bistro
1727 Connecticut Ave., NW
Retailer CT - ANC-2B
License No. 81479
Case #14-PRO-00100

Protest
Hearing
(Status)

(Substantial Change -
Sidewalk Cafe & Eight Seats)

April 22, 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

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

9:40 a.m.

CHAIRPERSON MILLER: Okay. Good morning, everyone. I want to welcome you to the regularly scheduled meeting of the District of Columbia's Alcoholic Beverage Control Board. Today is April 22, 2015.

My name is Ruthanne Miller. I'm the Chairperson. Joining me today to my far right is Mr. Donald Brooks and next to Mr. Brooks is Mr. Nick Alberti and next to Mr. Alberti and myself is Mr. Hector Rodriguez and to my left is Mr. James Short. So we have five Members in attendance for business this morning and three constitutes a quorum.

Copies of today's hearing calendar and agenda are available at the receptionist desk. Please be aware that these proceedings are being recorded by a court reporter. Accordingly, we must ask you to be mindful of disruptive noises or actions in the hearing room, so if you have electronic devices such as cell phones and pages,

1 please, make certain they are turned off.

2 When I call your case, please, come
3 forward and take a seat at the table in the
4 front. You will notice that there is a piece of
5 paper on each table for you to sign-in. This is
6 to ensure the correct spelling of your name for
7 the record.

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

17 Okay. That concludes my introductory
18 remarks and we can now turn to this morning's
19 calendar.

20 The first case on the morning calendar
21 is Case No. 14-PRO-00100, Bistro Bistro located
22 at 1727 Connecticut Avenue, N.W., License No.

1 81479, in ANC-2B.

2 So if the parties are here, could you
3 come forward, please?

4 MR. FELDSTEIN: Good morning.

5 CHAIRPERSON MILLER: Anybody else here
6 for the Protest Hearing on Bistro Bistro? So
7 after you sign-in, if you can identify yourselves
8 for the record?

9 MR. FELDSTEIN: Good morning. I'm
10 Mike Feldstein, ANC Commissioner for the Dupont
11 Circle area.

12 CHAIRPERSON MILLER: And your last
13 name is?

14 MR. FELDSTEIN: Feldstein, F, like in
15 Frank, E-L-D-S-T-E-I-N.

16 CHAIRPERSON MILLER: Okay. So are you
17 a designated representative for this case or for
18 this hearing?

19 MR. FELDSTEIN: Yes, yes.

20 CHAIRPERSON MILLER: For the whole
21 thing? For both the case and this hearing?

22 MR. FELDSTEIN: (No audible answer.)

1 CHAIRPERSON MILLER: Are you the
2 designated representative?

3 MR. FELDSTEIN: I'm the designated
4 representative for the Bistro Bistro Status
5 Hearing, yes.

6 CHAIRPERSON MILLER: Okay. I just had
7 in my notes Noah Smith, so I wanted to make sure.

8 MR. FELDSTEIN: It's me.

9 CHAIRPERSON MILLER: Okay. Let me
10 just ask you, I don't want to give you a hard
11 time, because I don't even see the other side
12 here yet, but did they by resolution or letter
13 designate you to be the representative?

14 MR. FELDSTEIN: I assume so, yes.

15 MEMBER ALBERTI: Ms. Miller?

16 CHAIRPERSON MILLER: Yes?

17 MEMBER ALBERTI: Our notes that I see
18 say designated representative, all Commissioners.

19 CHAIRPERSON MILLER: Oh, you have
20 that?

21 MEMBER ALBERTI: That's in the
22 briefing that I have in front of me, yes.

1 CHAIRPERSON MILLER: Okay. Okay. Oh,
2 okay. Thank you. All right. Well, whenever
3 anyone comes before the Board, we want to make
4 sure that they are authorized to represent
5 whatever body they are representing.

6 MR. FELDSTEIN: Well, wouldn't an ANC
7 Commissioner whose area would include that SMD be
8 automatically authorized or do I have to
9 authorize myself?

10 CHAIRPERSON MILLER: No. I -- you
11 know, I was on an ANC myself and I was also a
12 chair of an ANC and so was Mr. Alberti.

13 MEMBER ALBERTI: Right.

14 CHAIRPERSON MILLER: And I understood
15 from my ANC that the Commission as a whole would,
16 in my case, designate someone, otherwise it was
17 the Chair, but it's natural, it makes sense, it's
18 your SMD. I don't have a problem.

19 MR. FELDSTEIN: I believe the Bistro
20 Bistro case has been around for a while.

21 CHAIRPERSON MILLER: Okay.

22 MR. FELDSTEIN: And I have been the

1 representative on this for a while.

2 CHAIRPERSON MILLER: Okay. Good. So
3 do you happen to know where the representative
4 from Bistro Bistro is?

5 MR. FELDSTEIN: No.

6 CHAIRPERSON MILLER: No.

7 MR. FELDSTEIN: No idea. Nope.

8 CHAIRPERSON MILLER: Okay. And is
9 there anything else you want to report to the
10 Board with respect to the status of --

11 MR. FELDSTEIN: There are two issues,
12 I assume the Board knows. DDOT approved outside
13 space for Bistro Bistro. However, DDOT never
14 told us. When the issue came to us, we voted
15 against providing outside space and wrote DDOT
16 saying we recommend you rescind your approval.
17 And that was done a couple of weeks ago. Have
18 not heard from DDOT since.

19 CHAIRPERSON MILLER: Okay.

20 MR. FELDSTEIN: That's the --

21 CHAIRPERSON MILLER: I just --

22 MR. FELDSTEIN: -- so the ABRA issue

1 hasn't come up yet really. If they don't have
2 outside space, they are not going to serve
3 anything.

4 CHAIRPERSON MILLER: Okay. And I
5 assume you have gone to mediation? Have you all
6 gone to mediation?

7 MR. FELDSTEIN: Nope.

8 CHAIRPERSON MILLER: You haven't done
9 mediation?

10 MR. FELDSTEIN: No. Mediation on the
11 outside space? No, no.

12 CHAIRPERSON MILLER: Okay.

13 MR. FELDSTEIN: I think the bullet --

14 CHAIRPERSON MILLER: Because the
15 protest --

16 MR. FELDSTEIN: -- at this point, is
17 in DDOT's court.

18 CHAIRPERSON MILLER: Okay.

19 MR. FELDSTEIN: Or space.

20 CHAIRPERSON MILLER: As of now, we
21 have the Protest Hearing scheduled for May 6th at
22 1:30 p.m. There is a Protest Hearing scheduled.

1 MR. FELDSTEIN: Right, right.

2 CHAIRPERSON MILLER: Okay. However,
3 okay, so we are not going to go any further on
4 this status because the applicant is not here.
5 Now, it was called for 9:30. It's only 9:47, at
6 this point, so what we are going to ask is if you
7 can hang around a little bit longer, we want to
8 see if the applicant will show up.

9 MR. FELDSTEIN: The hearing is at 9:30
10 to start.

11 CHAIRPERSON MILLER: Yes, I understand
12 that. So --

13 MR. FELDSTEIN: May I ask a question?

14 CHAIRPERSON MILLER: -- they are all
15 called for 9:30. So often, it's our practice to
16 see if they are going to show up. If this were
17 called at 10:00 and they weren't here, then we
18 would say, you know, obviously it's already
19 10:00. So if you can --

20 MEMBER ALBERTI: Ms. Miller, may I
21 mention something to Mr. Feldstein?

22 CHAIRPERSON MILLER: Sure.

1 MEMBER ALBERTI: Mr. Feldstein, we are
2 going to give the applicant some time to show.

3 MR. FELDSTEIN: Okay.

4 MEMBER ALBERTI: If they do not show,
5 this Board may dismiss the application, so that's
6 a possibility, but we do want to give the
7 applicant a fair chance to show up.

8 MR. FELDSTEIN: Until 10:00?

9 CHAIRPERSON MILLER: No. What --

10 MEMBER ALBERTI: Well --

11 CHAIRPERSON MILLER: -- we do is we go
12 through the --

13 MEMBER ALBERTI: -- I'll let the Chair
14 decide on how long to give them.

15 CHAIRPERSON MILLER: We go through the
16 statuses that are all called for 9:30 and then we
17 will get back to you. So will you let us know if
18 he -- it's usually -- now we are already at 9:50,
19 but it may be a little bit after 10:00, it may be
20 around 10:00.

21 MR. FELDSTEIN: Can I ask one question
22 though? If DDOT decides not to grant them the

1 outside permit, what happens to this hearing?

2 What happens to the whole case with ABRA?

3 CHAIRPERSON MILLER: I mean, I don't
4 want to opine on it, but I mean, it's basically
5 that, you know, as you said, if they don't have
6 the space, I don't know how they would have the
7 restaurant serving area.

8 MR. FELDSTEIN: Okay. Fine. All
9 right.

10 MEMBER ALBERTI: I will just say if
11 they don't have the space, I guess we will ask
12 them if they want to withdraw their application.
13 I mean, they would have to withdraw their
14 application. But it seems to be logical that
15 they would withdraw their application --

16 CHAIRPERSON MILLER: Without a space.

17 MEMBER ALBERTI: -- if it becomes
18 moot.

19 MR. FELDSTEIN: All right.

20 MEMBER ALBERTI: So I know. We can't
21 tell them to withdraw.

22 MR. FELDSTEIN: I understand that.

1 MEMBER ALBERTI: But if DDOT tells
2 them they can't have the space, then we will
3 approach them, staff will approach them and ask
4 them if they want to withdraw.

5 MR. FELDSTEIN: If they don't
6 withdraw, we are going to have a hearing on May 6
7 or something or other on -- if DDOT says no,
8 right, we are not going to grant you the outside
9 space, are you still going to go ahead with the
10 scheduled meeting on May 6th?

11 CHAIRPERSON MILLER: Let me say it's
12 unlikely and any party can ask for it to be
13 dismissed.

14 MR. FELDSTEIN: Okay.

15 CHAIRPERSON MILLER: You know, so
16 that's why we kind of want to see where things
17 are at.

18 MR. FELDSTEIN: Okay.

19 CHAIRPERSON MILLER: So it looks like
20 it's unlikely, but, you know, it would be good to
21 have the applicant here to see what they have to
22 say.

1 MR. FELDSTEIN: Okay.

2 CHAIRPERSON MILLER: All right.

3 MR. FELDSTEIN: Good.

4 MEMBER ALBERTI: May I ask a question?

5 CHAIRPERSON MILLER: Thank you.

6 MEMBER ALBERTI: Mr. Feldstein, just
7 while you're here, when is DDOT meeting on this?
8 Do you know when the public space hearing is on
9 this?

10 MR. FELDSTEIN: I don't know when. We
11 have contacted them numerable times to deal with
12 this issue.

13 MEMBER ALBERTI: Okay. Thank you. I
14 understand.

15 MR. FELDSTEIN: They are not as
16 efficient as ABRA.

17 MEMBER ALBERTI: I understand.

18 CHAIRPERSON MILLER: Oh, okay. That's
19 good to hear. All right. Thank you for your
20 patience.

21 (Whereupon, the above-entitled matter
22 went off the record at 9:50 a.m. and resumed at

1 10:04 a.m.)

2 CHAIRPERSON MILLER: Mr. Feldstein,
3 I'm going to call your case now, because we're at
4 the end of the status cases.

5 I'm going to recall Bistro Bistro,
6 Case No. 14-PRO-00100. Okay. So if you will
7 have a seat, this is Bistro Bistro Protest
8 Hearing, Case No. 14-PRO-00100.

9 We had said that we would recall the
10 case at the end of the statuses to give time in
11 the event that the applicant was running late.
12 And I assume the applicant is not here for Bistro
13 Bistro and we have not had any phone calls to the
14 office as to their coming late.

15 So we are at the point where Mr.
16 Alberti made reference to a procedural rule that
17 we have where a failure to appear can result in a
18 dismissal of the application.

19 So 1603.3 says "Failure to appear in
20 person or through a designated representative may
21 result in denial of the license application or
22 dismissal of a protest unless, in the discretion

1 of the Board, good cause is shown for the failure
2 to appear.

3 A request for reinstatement with the
4 Board must be filed within 10 days of this
5 dismissal or denial date."

6 And this is under the Status Hearing
7 Rules. So given that the applicant has failed to
8 appear and we don't have any good cause shown to
9 us for that failure to appear, I would move that
10 we deny the license application.

11 MEMBER RODRIGUEZ: Second.

12 MR. FELDSTEIN: I'm sorry, I didn't
13 hear the last four words. Deny?

14 CHAIRPERSON MILLER: Deny the license
15 application.

16 MR. FELDSTEIN: Okay.

17 MEMBER RODRIGUEZ: Second.

18 CHAIRPERSON MILLER: Mr. Rodriguez has
19 seconded the motion. Any comments? My only
20 comment is that the applicant will have an
21 opportunity to request reinstatement with the
22 Board within 10 days of the written order that

1 will be served on him. Okay.

2 All those in favor of the motion to
3 deny the license say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? The motion
7 passes then 5-0-0. Okay.

8 MR. FELDSTEIN: Thank you.

9 CHAIRPERSON MILLER: Thank you very
10 much.

11 (Whereupon, the Protest (Status)
12 Hearing in the above-entitled matter was
13 concluded at 10:07 a.m.)

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<p style="text-align: center;">A</p> <p>a.m 2:2 13:22 14:1 16:13</p> <p>above-entitled 13:21 16:12</p> <p>ABRA 7:22 11:2 13:16</p> <p>abstaining 16:6</p> <p>Act 3:8,11</p> <p>actions 2:21</p> <p>adjudication 3:15</p> <p>advice 3:14</p> <p>agenda 2:17</p> <p>ago 7:17</p> <p>agreements 3:14</p> <p>ahead 12:9</p> <p>Alberti 1:17 2:11,11 5:15,17,21 6:12,13 9:20 10:1,4,10,13 11:10,17,20 12:1 13:4 13:6,13,17 14:16</p> <p>Alcoholic 1:2,12,13 2:6</p> <p>ANC 4:10 6:6,11,12,15</p> <p>ANC-2B 1:7 4:1</p> <p>answer 4:22</p> <p>Anybody 4:5</p> <p>appear 14:17,19 15:2,8 15:9</p> <p>applicant 9:4,8 10:2,7 12:21 14:11,12 15:7 15:20</p> <p>application 10:5 11:12 11:14,15 14:18,21 15:10,15</p> <p>approach 12:3,3</p> <p>approval 7:16</p> <p>approved 7:12</p> <p>April 1:11 2:7</p> <p>area 4:11 6:7 11:7</p> <p>assume 5:14 7:12 8:5 14:12</p> <p>attendance 2:14</p> <p>attorney 3:13</p> <p>audible 4:22</p> <p>authorize 6:9</p> <p>authorized 6:4,8</p> <p>automatically 6:8</p> <p>available 2:17</p> <p>Ave 1:7</p> <p>Avenue 3:22</p> <p>aware 2:18</p> <p>aye 16:3,4</p>	<p>4:6,6 5:4,4 6:19,20 7:4,4,13,13 14:5,5,7,7 14:12,13</p> <p>bit 9:7 10:19</p> <p>Board 1:2,12 2:6 3:10 6:3 7:10,12 10:5 15:1 15:4,22</p> <p>body 6:5</p> <p>briefing 5:22</p> <p>Brooks 1:17 2:10,10</p> <p>Building 1:13</p> <p>bullet 8:13</p> <p>business 2:14</p>	<p>Control 1:2,12,13 2:6</p> <p>Copies 2:16</p> <p>correct 3:6</p> <p>couple 7:17</p> <p>court 2:19 8:17</p> <p>CT 1:7</p>	<p>10:21 11:8,19,22 12:5 12:14,18 13:1,3,6,10 13:15 14:2 15:12,16 16:8</p> <p>filed 15:4</p> <p>Fine 11:8</p> <p>first 3:20</p> <p>five 2:13</p> <p>forward 3:3 4:3</p> <p>four 15:13</p> <p>Frank 4:15</p> <p>front 3:4 5:22</p> <p>further 9:3</p>
<p style="text-align: center;">B</p> <p>back 10:17</p> <p>basically 11:4</p> <p>believe 6:19</p> <p>Beverage 1:2,12,13 2:6</p> <p>Bistro 1:6,6,6 3:21,21</p>	<p style="text-align: center;">C</p> <p>Cafe 1:10</p> <p>calendar 2:16 3:19,20</p> <p>call 3:2 14:3</p> <p>called 9:5,15,17 10:16</p> <p>calls 14:13</p> <p>case 1:8 3:2,9,13,20,21 4:17,21 6:16,20 11:2 14:3,6,8,10</p> <p>cases 14:4</p> <p>cause 15:1,8</p> <p>cell 2:22</p> <p>certain 3:1</p> <p>chair 6:12,17 10:13</p> <p>Chairperson 1:14,16 2:3,9 4:5,12,16,20 5:1 5:6,9,16,19 6:1,10,14 6:21 7:2,6,8,19,21 8:4 8:8,12,14,18,20 9:2 9:11,14,22 10:9,11,15 11:3,16 12:11,15,19 13:2,5,18 14:2 15:14 15:18 16:5,9</p> <p>chance 10:7</p> <p>Change 1:9</p> <p>Circle 4:11</p> <p>closed 3:11</p> <p>COLUMBIA 1:1</p> <p>Columbia's 2:6</p> <p>come 3:2 4:3 8:1</p> <p>comes 6:3</p> <p>coming 14:14</p> <p>comment 15:20</p> <p>comments 15:19</p> <p>Commission 6:15</p> <p>Commissioner 4:10 6:7</p> <p>Commissioners 5:18</p> <p>concluded 16:13</p> <p>concludes 3:17</p> <p>Connecticut 1:7 3:22</p> <p>consistent 3:10</p> <p>constitutes 2:15</p> <p>consult 3:13</p> <p>contacted 13:11</p>	<p style="text-align: center;">D</p> <p>D.C 1:14</p> <p>date 15:5</p> <p>days 15:4,22</p> <p>DDOT 7:12,13,15,18 10:22 12:1,7 13:7</p> <p>DDOT's 8:17</p> <p>deal 13:11</p> <p>decide 10:14</p> <p>decides 10:22</p> <p>decision 3:15</p> <p>deliberate 3:15</p> <p>denial 14:21 15:5</p> <p>deny 15:10,13,14 16:3</p> <p>designate 5:13</p> <p>designated 4:17 5:2,3 5:18 6:16 14:20</p> <p>desk 2:17</p> <p>devices 2:22</p> <p>discretion 14:22</p> <p>discuss 3:14</p> <p>dismiss 10:5</p> <p>dismissal 14:18,22 15:5</p> <p>dismissed 12:13</p> <p>disruptive 2:20</p> <p>District 1:1 2:5</p> <p>Donald 1:17 2:10</p> <p>Dupont 4:10</p>	<p style="text-align: center;">G</p> <p>give 5:10 10:2,6,14 14:10</p> <p>given 15:7</p> <p>go 9:3 10:11,15 12:9</p> <p>going 8:2 9:3,6,16 10:2 12:6,8,9 14:3,5</p> <p>good 2:3 4:4,9 7:2 12:20 13:3,19 15:1,8</p> <p>grant 10:22 12:8</p> <p>guess 11:11</p>
<p style="text-align: center;">B</p> <p>back 10:17</p> <p>basically 11:4</p> <p>believe 6:19</p> <p>Beverage 1:2,12,13 2:6</p> <p>Bistro 1:6,6,6 3:21,21</p>	<p style="text-align: center;">E</p> <p>E-L-D-S-T-E-I-N 4:15</p> <p>efficient 13:16</p> <p>Eight 1:10</p> <p>electronic 2:22</p> <p>ensure 3:6</p> <p>enter 3:11</p> <p>event 14:11</p>	<p style="text-align: center;">F</p> <p>F 4:14</p> <p>failed 15:7</p> <p>failure 14:17,19 15:1,9</p> <p>fair 10:7</p> <p>far 2:9</p> <p>favor 16:2</p> <p>Feldstein 4:4,9,10,14 4:14,19,22 5:3,8,14 6:6,19,22 7:5,7,11,20 7:22 8:7,10,13,16,19 9:1,9,13,21 10:1,3,8</p>	<p style="text-align: center;">H</p> <p>hang 9:7</p> <p>happen 7:3</p> <p>happens 11:1,2</p> <p>hard 5:10</p> <p>hear 13:19 15:13</p> <p>heard 7:18</p> <p>hearing 1:7,13 2:16,21 3:9,12 4:6,18,21 5:5 8:21,22 9:9 11:1 12:6 13:8 14:8 15:6 16:12</p> <p>Hector 1:18 2:12</p>
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