

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF:

Hwang & Hyun O. Kim	
t/a D & B Deli Carryout	Show
3412 Georgia Avenue, NW	Cause
Retailer B - ANC-1A	Hearing
License No. 26649	
Case #14-CMP-00739	

(Sold Go-Cups)

June 17, 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
 HERMAN JONES, Member
 MIKE SILVERSTEIN, Member
 HECTOR RODRIGUEZ, Member
 JAMES SHORT, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG
 SHAWN TOWNSEND, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Government. 4
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WITNESS:
 Shawn Townsend 5

EXHIBITS	IDENTIFIED	RECEIVED
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GOVERNMENT		
1 - Heineken Beer/Cup	8	8

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

2 4:04 p.m.

3 CHAIRPERSON MILLER: Okay. The next
4 case is Case No. 14-CMP-00739, D & B Deli
5 Carryout located at 3412 Georgia Avenue, N.W.,
6 License No. 26649, in ANC-1A. This is a Show
7 Cause Hearing.

8 Okay. Would you all introduce
9 yourselves for the record, please?

10 MS. GEPHARDT: Chrissy Gephardt here
11 on behalf of the Office of the Attorney General
12 for the District of Columbia.

13 CHAIRPERSON MILLER: Okay. And, sir?

14 INTERPRETER YANG: Sung Yang, Korean
15 Interpreter.

16 CHAIRPERSON MILLER: You're the
17 Interpreter. Okay. Is Mr. Kim here from D & B
18 Deli Carryout who is the respondent? Okay.

19 This case was called for 3:30 p.m. and
20 it is 4:07, at this point.

21 So do you have any indication, Ms.
22 Gephardt, whether Mr. Kim is -- will be attending

1 this hearing?

2 MS. GEPHARDT: I have no indication
3 that he would be attending this hearing.

4 CHAIRPERSON MILLER: Okay. As we
5 haven't gotten any word that he is on his way or
6 anything of that sort, I would say that the
7 Interpreter could be excused at this point then.

8 Sorry for any inconvenience.

9 INTERPRETER YANG: No problem.

10 CHAIRPERSON MILLER: Okay.

11 INTERPRETER YANG: Thank you, Madam
12 Chair.

13 CHAIRPERSON MILLER: Thank you very
14 much.

15 MEMBER SILVERSTEIN: Thank you.

16 CHAIRPERSON MILLER: And, Ms.
17 Gephardt, are you prepared to proceed ex parte?

18 MS. GEPHARDT: Yes, I am prepared.

19 CHAIRPERSON MILLER: All right. Then
20 whenever you are ready.

21 MS. GEPHARDT: Okay. This is a case
22 of the service of go-cups by this licensee. The

1 Government will establish that on the afternoon
2 of December 2, 2014, a clerk from this
3 establishment served a go-cup when this
4 individual also served a beer and we will
5 establish that they served that.

6 And so I would now like to call my
7 Investigator to the stand, Shawn Townsend.

8 CHAIRPERSON MILLER: Okay. Good
9 afternoon.

10 Whereupon,

11 SHAWN TOWNSEND

12 was called as a witness by Counsel for the
13 Government, and having been first duly sworn,
14 assumed the witness stand and was examined and
15 testified as follows:

16 INVESTIGATOR TOWNSEND: Yes, I do.

17 CHAIRPERSON MILLER: Okay.

18 DIRECT EXAMINATION

19 MS. GEPHARDT: All right. Hi,
20 Investigator.

21 INVESTIGATOR TOWNSEND: How are you?

22 MS. GEPHARDT: Good. Can you, please,

1 state your name and spell it for the record?

2 INVESTIGATOR TOWNSEND: Shawn

3 Townsend, S-H-A-W-N T-O-W-N-S-E-N-D.

4 MS. GEPHARDT: And where do you work?

5 INVESTIGATOR TOWNSEND: The Alcoholic
6 Beverage Regulation Administration.

7 MS. GEPHARDT: And what is your title?

8 INVESTIGATOR TOWNSEND: Investigator.

9 MS. GEPHARDT: And what are your
10 responsibilities primarily as an Investigator?

11 INVESTIGATOR TOWNSEND: To conduct
12 inspections and investigations into licensed
13 establishments.

14 MS. GEPHARDT: And how long have you
15 been an Investigator?

16 INVESTIGATOR TOWNSEND: February 2014.

17 MS. GEPHARDT: Okay. And are you
18 familiar with a licensee by the name of D & B
19 Deli Carryout located at 3412 Georgia Avenue,
20 N.W., Washington, D.C.?

21 INVESTIGATOR TOWNSEND: Yes, I am.

22 MS. GEPHARDT: And did you have

1 occasion to visit this establishment on December
2 2, 2014 at approximately 4:00 p.m.?

3 INVESTIGATOR TOWNSEND: Yes.

4 MS. GEPHARDT: And what was the
5 purpose of your visit?

6 INVESTIGATOR TOWNSEND: We conducted
7 undercover operations at the establishment. I
8 went in and purchased a go-cup in an undercover
9 capacity. And the -- a female clerk sold me one
10 alcoholic beverage along with a cup with it. She
11 checked my -- she asked for my ID to check my
12 age. I provided her with my District of Columbia
13 issued driver's license and purchased a beer and
14 a cup with it.

15 MS. GEPHARDT: For clarification, you
16 said you went in to the establishment with the
17 purpose of buying a go-cup?

18 INVESTIGATOR TOWNSEND: That's
19 correct.

20 MS. GEPHARDT: So you went in to buy
21 a beer with the expectation that they would give
22 you a go-cup?

1 INVESTIGATOR TOWNSEND: Correct.

2 MS. GEPHARDT: They didn't charge you
3 separately, is that correct, for the cup?

4 INVESTIGATOR TOWNSEND: She charged me
5 .50 cents for that go-cup.

6 MS. GEPHARDT: Oh, okay, okay. And I
7 would now like to show you what I have marked as
8 Government Exhibit No. 1. I have copies for the
9 Board.

10 CHAIRPERSON MILLER: Okay.

11 MS. GEPHARDT: Okay. And,
12 Investigator, can you tell the Board what is
13 depicted in this picture?

14 INVESTIGATOR TOWNSEND: This is a 25
15 ounce can of Heineken and the styrofoam cup that
16 was purchased by myself on December 2, 2014 at D
17 & B Deli Carryout.

18 (Whereupon, the above-referred to
19 document was marked as Government
20 Exhibit No. 1 for identification.)

21 MS. GEPHARDT: And is this a true and
22 accurate representation of what you observed and

1 what you photographed on that date?

2 INVESTIGATOR TOWNSEND: Yes.

3 MS. GEPHARDT: Okay. The Government
4 would ask that Government Exhibit No. 1 be
5 admitted into evidence.

6 CHAIRPERSON MILLER: Okay. It's
7 admitted.

8 (Whereupon, the above-referred to
9 document was received into evidence as
10 Government Exhibit No. 1.)

11 MS. GEPHARDT: Investigator, I just
12 want to ask another question clarifying what
13 happened.

14 Did you ask to get the cup or did she
15 offer you the cup, the clerk?

16 INVESTIGATOR TOWNSEND: I asked for a
17 cup.

18 MS. GEPHARDT: Okay. Okay. And at
19 that point, did she tell you how much the cup
20 cost?

21 INVESTIGATOR TOWNSEND: Yes. She told
22 me the cup would be .50 cents at that point and I

1 agreed to it and she provided me the cup.

2 MS. GEPHARDT: Okay. And after the
3 sale occurred, did you have an opportunity to
4 speak to her about what had just occurred?

5 INVESTIGATOR TOWNSEND: I did not.
6 However, on the following day, Wednesday,
7 December 3rd, Investigator Jason Peru advised the
8 licensee, I believe his name is Hwang Jim, of the
9 violation that had occurred on December 2nd. He
10 attempted to issue a citation.

11 Actually, he did issue a citation in
12 the amount of \$250. However, the licensee
13 refused to sign the citation.

14 MS. GEPHARDT: Okay. And what -- just
15 to back up for just one second, before you
16 entered the establishment or when you first
17 entered the establishment, did you at any time
18 observe the clerk giving go-cups to other
19 customers?

20 INVESTIGATOR TOWNSEND: I did not, but
21 I do recall that the female clerk had a big tall
22 stack of cups behind her, directly behind her and

1 that's where she retrieved the cup from that she
2 sold me, the styrofoam cup.

3 MS. GEPHARDT: Okay. Okay. Thank
4 you. That's all I have for this witness.

5 CHAIRPERSON MILLER: Okay. Thank you.
6 Questions? Did this clerk speak English?

7 INVESTIGATOR TOWNSEND: Yes, she did.

8 CHAIRPERSON MILLER: Okay. So do you
9 recall how you phrased your request for the cup?

10 INVESTIGATOR TOWNSEND: I believe I
11 just asked for a cup.

12 CHAIRPERSON MILLER: Just asked for a
13 cup?

14 INVESTIGATOR TOWNSEND: Just asked for
15 a cup, yes, ma'am.

16 CHAIRPERSON MILLER: And do you know
17 when Mr. Peru came back the next day, did he
18 speak with her or the owner? What did you say?

19 INVESTIGATOR TOWNSEND: He told --
20 Investigator Peru mentioned to me that he spoke
21 to a male who said that he was the owner.

22 CHAIRPERSON MILLER: The owner. So

1 someone different.

2 INVESTIGATOR TOWNSEND: Yes, ma'am.

3 CHAIRPERSON MILLER: Okay. So did
4 that person speak English, do you know?

5 INVESTIGATOR TOWNSEND: I don't
6 recall. I don't recall if there was a language
7 barrier or not.

8 CHAIRPERSON MILLER: Okay. I ask
9 because we had an interpreter here for this
10 hearing.

11 Is the citation in English?

12 INVESTIGATOR TOWNSEND: Yes, ma'am.

13 CHAIRPERSON MILLER: Okay. Okay. No
14 other questions. Any other questions by Board
15 Members?

16 MEMBER SILVERSTEIN: No.

17 CHAIRPERSON MILLER: Okay. Any
18 follow-up questions?

19 MS. GEPHARDT: No.

20 CHAIRPERSON MILLER: Thank you very
21 much.

22 INVESTIGATOR TOWNSEND: Thank you.

1 MEMBER RODRIGUEZ: Thank you.

2 (Whereupon, the witness was excused.)

3 CHAIRPERSON MILLER: All right. Ms.
4 Gephardt, closing?

5 MS. GEPHARDT: Okay. I'm done with my
6 witnesses.

7 CHAIRPERSON MILLER: Okay.

8 MS. GEPHARDT: I close my side of the
9 questioning and calling of witnesses.

10 CHAIRPERSON MILLER: Okay. And you
11 are finished with your --

12 MS. GEPHARDT: So I'm ready to --

13 CHAIRPERSON MILLER: -- exhibits?

14 MS. GEPHARDT: -- say a closing
15 statement.

16 CHAIRPERSON MILLER: Okay. Okay.

17 MS. GEPHARDT: Board Members, what you
18 have heard here today is that the Government has
19 established that the licensee by a preponderance
20 of the evidence violated D.C. Code 25-741, which
21 basically does not allow the service of go-cups.

22 You heard here today from Investigator

1 Townsend that on December 2, 2014, he went in to
2 purchase an alcoholic beverage and while he was
3 doing that, he asked for a cup and the clerk
4 served him a cup and told him it was .50 cents
5 and he paid the .50 cents. He paid for the
6 alcoholic beverage. And that was it.

7 Therefore, we have established that
8 this act occurred and we would ask that the
9 licensee be fined \$500 for this violation.

10 MEMBER SILVERSTEIN: Thank you.

11 CHAIRPERSON MILLER: You don't have to
12 answer this, but just in case, the fine range is
13 \$250 to \$500. Is that correct?

14 MS. GEPHARDT: That's my belief,
15 right.

16 CHAIRPERSON MILLER: Is there any
17 reason in particular that you are recommending
18 the high end of the penalty?

19 MS. GEPHARDT: They didn't show up.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER SILVERSTEIN: Refused to sign.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER ALBERTI: May I ask a question
2 about that? By did not show up, are you
3 suggesting that they did not exhibit any remorse
4 for their actions here? Is that what you are
5 saying?

6 MS. GEPHARDT: I mean, I have no idea
7 what was going through their mind.

8 MEMBER ALBERTI: Well, I mean, that's
9 a signal to me.

10 MS. GEPHARDT: Well, I mean, it just
11 shows -- I mean, let's just put it this way.
12 They -- we know that they were served with the
13 notice. The notice provided them with two dates
14 in which to show up. I don't believe they showed
15 up at the Status Hearing.

16 MEMBER ALBERTI: The Status Hearing
17 either.

18 MS. GEPHARDT: And therefore, I can
19 only presume that they have chosen not to come
20 for whatever reason, I mean.

21 CHAIRPERSON MILLER: Okay.

22 MS. GEPHARDT: I don't know if it's a

1 language thing, but --

2 MEMBER ALBERTI: All right. Thank
3 you.

4 MS. GEPHARDT: -- I mean, this is --
5 yes.

6 MEMBER ALBERTI: Okay. Thank you.

7 CHAIRPERSON MILLER: Thank you. Thank
8 you.

9 MS. GEPHARDT: Yes, okay.

10 MEMBER SILVERSTEIN: Did the licensee
11 request the interpreter?

12 MS. GEPHARDT: I think. Okay. Let's
13 see how did that work? Because it was --

14 CHAIRPERSON MILLER: I think so.

15 MS. GEPHARDT: This happened when I
16 wasn't -- the status was done by somebody else.
17 You know, how we usually do.

18 MEMBER SILVERSTEIN: Very well.

19 MS. GEPHARDT: So that person asked
20 for the Interpreter at the time, but I don't know
21 how that came about.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER SILVERSTEIN: Thank you.

2 CHAIRPERSON MILLER: If you don't
3 know, that's okay.

4 MS. GEPHARDT: I don't know.

5 CHAIRPERSON MILLER: Okay.

6 MS. GEPHARDT: I don't know. I don't
7 know.

8 CHAIRPERSON MILLER: All right. Then,
9 Mr. Brooks?

10 MEMBER BROOKS: No. I was going to
11 ask the OAG do you have a proposed penalty that
12 you would recommend?

13 MS. GEPHARDT: \$500.

14 INVESTIGATOR TOWNSEND: She did.

15 MEMBER BROOKS: \$500. Okay. I didn't
16 hear that. I'm sorry.

17 MS. GEPHARDT: Yes.

18 MEMBER BROOKS: Thank you.

19 CHAIRPERSON MILLER: Okay. All right.
20 Thank you very much.

21 MS. GEPHARDT: All right.

22 CHAIRPERSON MILLER: Then that

1 completes this case, except for the Board's
2 voting on deliberating on this case in closed
3 session, I believe is what we are going to do.

4 MS. GEPHARDT: Okay. Thank you.

5 CHAIRPERSON MILLER: Okay. Thank you.

6 MS. GEPHARDT: Thank you.

7 CHAIRPERSON MILLER: Unless the Board
8 wants to vote right now? Let's see.

9 As Chairperson of the Alcoholic
10 Beverage Control Board for the District of
11 Columbia and in accordance with DC Official Code
12 Section 2-574(b) of the Open Meetings Act, I move
13 that the ABC Board hold a closed meeting for the
14 purpose of seeking legal advice from our counsel
15 on --

16 MEMBER RODRIGUEZ: Second it.

17 CHAIRPERSON MILLER: -- Case No. 14-
18 CMP-00739, D & B Deli Carryout, pursuant to DC
19 Official Code Section 2-574(b)(4) of the Open
20 Meetings Act and deliberating upon this case for
21 the reasons cited in DC Official Code Section 2-
22 574(b)(13) of the Open Meetings Act.

1 Is there a second?

2 MEMBER RODRIGUEZ: Second.

3 MEMBER SILVERSTEIN: Second.

4 CHAIRPERSON MILLER: Mr. Rodriguez

5 seconded the motion. I'll now take a roll call

6 vote on the motion before us now that it has been

7 seconded.

8 Mr. Brooks?

9 MEMBER BROOKS: I agree.

10 CHAIRPERSON MILLER: Mr. Alberti?

11 MEMBER ALBERTI: I agree.

12 CHAIRPERSON MILLER: Mr. Rodriguez?

13 MEMBER RODRIGUEZ: I agree.

14 CHAIRPERSON MILLER: Ms. Miller

15 agrees.

16 Mr. Silverstein?

17 MEMBER SILVERSTEIN: I agree.

18 CHAIRPERSON MILLER: Mr. Short?

19 MEMBER SHORT: I agree.

20 CHAIRPERSON MILLER: Mr. Jones?

21 MEMBER JONES: I agree.

22 CHAIRPERSON MILLER: It appears that

1 the motion has passed by a 7-0-0 vote.

2 I hereby give notice that the ABC
3 Board will hold this aforementioned closed
4 meeting in the ABC Board conference room pursuant
5 to DC Official Code Section 2-574(b) of the Open
6 Meetings Amendment Act and issue a decision
7 within 90 days.

8 Okay. Thank you. So that completes
9 our hearings for this afternoon.

10 And we will recess and return shortly
11 to do the Board's agendas.

12 (Whereupon, the Show Cause Hearing in
13 the above-entitled matter was concluded at 4:21
14 p.m.)

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