DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD
MEETING

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IN THE MATTER OF: :
DC Live, LLC, :
t/a Elevate :
15 K Street, NE : Summary Suspension
Retailer CT - ANC 6C : Hearing
License No. 100316 :
Case #20-CMP-00091 :

(ABC Board Closure - :
August 14, 2020) :
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Wednesday
August 26, 2020

The Alcoholic Beverage Control Board
met via WebEx videoconference, Chairperson
Donovan W. Anderson, presiding.

PRESENT:
DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
EDWARD S. GRANDIS, Member
JENI HANSEN, Member
JAMES SHORT, JR., Member
REMA WAHABZADAH, Member
ALSO PRESENT:
ERMIYAS ASFAW, Licensee
WALTER ADAMS, OAG
10:38 a.m.

CHAIRPERSON ANDERSON: Good morning, everyone. As Chairperson of the Alcoholic Beverage Control Board for the District of Columbia in accordance with D.C. Official Code Section 25764 of the Open Meetings Act, I am welcoming you to an emergency meeting of the Alcoholic Beverage Control Board. This meeting is being conducted pursuant to guidance made available by the District of Columbia's Office of Open Government regarding electronic meetings held by public bodies during the public health emergency.

Pursuant to the guidance, notice of today's meeting was provided 48 hours in advance of the meeting on ABRA's website and on the District's central meeting calendar. The notice includes the time, date, agenda, and call-in or log-in information for public participation. This electronic meeting is being hosted by a Webex account provided by the District of Columbia government. Please address any questions or complaints to the OOG at opengovoffice@dc.gov.
My name is Donovan Anderson and I'm Chairman of the Board. I would like to introduce the other members of the Board -- ABC Board who are all participating electronically pursuant to Mayor's Order 2020-054. Please respond when I announce your name. Mr. James Short?

MEMBER SHORT: Mr. James Short.

CHAIRPERSON ANDERSON: Mr. Bobby Cato?

MEMBER CATO: Bobby Cato, present.

CHAIRPERSON ANDERSON: Ms. Rema Wahabzadah?

MEMBER WAHABZADAH: Rema Wahabzadah, present.

CHAIRPERSON ANDERSON: Ms. Rafi Crockett?

MEMBER CROCKETT: Rafi Crockett, present.

CHAIRPERSON ANDERSON: Ms. Jeni Hansen?

MEMBER HANSEN: Jeni Hansen, present.

CHAIRPERSON ANDERSON: Mr. Ed Grandis?

MEMBER GRANDIS: Ed Grandis, present.

CHAIRPERSON ANDERSON: The Board has seven members for the attendance -- in attendance for the conduct of business today, and that
constitutes a quorum. Our first order of business today, it is a summary suspension hearing, Case No. 20-CMP-00091, Elevate, License No. 100316. Would the parties please introduce themselves for the record starting with the Government.

MR. ADAMS: Good morning, Mr. Chairman and members of the Board. I'm Walter Adams. I'm representing the District of Columbia.

CHAIRPERSON ANDERSON: Good morning, Mr. Adams.

MR. ASFAW: Good morning, Chairman and the Board members. My name is Ermiyas Asfaw. I'm representing Elevate, DC Live, LLC, Elevate.

CHAIRPERSON ANDERSON: Good morning, Mr. Asfaw. Are you the owner of the establishment, sir?

(No audible response.)

CHAIRPERSON ANDERSON: I'm sorry. Yes? I didn't hear your answer, sir.

MR. ASFAW: Yes, sir.

CHAIRPERSON ANDERSON: Okay.

MR. ASFAW: Do you hear now?

CHAIRPERSON ANDERSON: Yes. Thank you. Mr. Adams, are there any preliminary
matters in this case?

MR. ADAMS: There are no preliminary matters in this case, Mr. Chairman. This case -- this hearing is before the Board on a summary -- for a summary suspension hearing. The parties have discussed this matter and have -- are proposing an offer in compromise to resolve the summary suspension that was issued by the Board on August 14 of this year.

CHAIRPERSON ANDERSON: And what is the offer that's been presented?

MR. ADAMS: Mr. Chairman, the parties did send to the Board a written proposal, and I'm more than willing to read the terms of that proposal into the record.

CHAIRPERSON ANDERSON: Yes, Mr. Adams. I need you to read the terms into the record, please.

MR. ADAMS: Thank you very much, Mr. Chairman. The terms of the offer in compromise are as follows. Number one, that there will be a suspension of the establishment, that the respondent that will serve a 14-day suspension of its ABC license. The date of the 14-day suspension shall be Friday, August 14, 2020
through Thursday, August 27, 2020 which includes
time served during the summary suspension period.
The ABC license suspension shall be lifted at
8:00 a.m. on Friday, August 28, provided other
requirements in this offer have been satisfied by
the respondent.

Number two, that respondent shall pay
a 1,000-dollar fine for the citation previously
issued to the establishment, Case No. 20-CIT-
00188 within 90 days. Third requirement is
regarding masks. Except when eating or drinking
while seated, during the health emergency,
respondents shall required that all owners and
employees of the establishment where a mask or a
face covering while present on the licensed
premises regardless of whether they are on duty.
Respondent shall also require patrons during the
public health emergency to wear masks or face
coverings prior to entering or while waiting in
line outside of the license establishment, while
traveling to use a restroom, or until they are
seated and eating or drinking.

Fourth, Music Entertainment.
Respondent shall not offer live music or
entertainment, including disc jockeys, while the
District of Columbia remains subject to Mayor's Order 2020-067 and Mayor's Order 2020-075 in accordance with the Board's Notice of Fifth Emergency Rulemaking. The respondent shall only offer recorded or background music that is played at conversational level that is not heard in the homes of District residents.

Fifth, Operating Hours. Respondent shall not operate either inside or outside or sell, serve or permit the consumption of alcoholic beverages past midnight during any day of the week while the District of Columbia remains subject to Mayor's Order 2020-067 and Mayor's Order 2020-075 in accordance with the Board's rulemaking.

Six, Dining Activities. Respondent shall only serve food and alcoholic beverages to patrons seated at tables while the District of Columbia remains subject to Mayor's Order 2020-067 and Mayor's Order 2020-075 in accordance with the Board's rulemaking. Tables shall be placed so that patrons in different parties are placed at least six feet apart from one another. Respondent shall have a menu in use containing a minimum of three prepared food items available
for purchase and shall require patrons to
purchase one or more prepared food items per
table. Patrons shall not be permitted to walk
around the establishment with food or alcoholic
beverages.

Seven, Bar Activities. Respondent
shall not seat patrons at indoor or outdoor bars
that are being staffed or utilized by a
bartender. Patrons shall not be permitted to
stand at an outdoor or indoor bar to order food
or alcoholic beverages.

Eight, Contract Tracing System.
Respondent shall implement a reservation system
by phone, online, or onsite and keep customer
logs to facilitate contact tracing by DC Health.

Nine, Outside Promoters. If respondent uses
outside promoters, both respondent and promoters
shall comply with all applicable laws and
regulations, including Mayor's Order 2020-067,
Mayor's Order 2020-075 and the Board's
rulemaking.

Sparklers. Respondent shall not sell
or serve alcoholic beverages with sparklers
inside or outside the licensed establishment.

Eleven, Social Distancing Walk-through. Prior to
lifting the suspension of the establishment's alcoholic beverage license, and investigator shall conduct a walk-through of the licensed establish with respondent to evaluate the establishment's compliance with the District's social distancing requirements.

This evaluation shall include an assessment of the respondent's compliance with Mayor's Order 2020-075, Mayor's Order 2020-080, and 23 DCMR Section 810.2. And lastly, Show Cause. This matter will be referred to the Office of the Attorney General for possible Show Cause proceeding.

***10:45:31 Mr. Chairman, I met that last week, I believe on Saturday, relating to the requirement for a social distance walk-through. It is our understanding that ABRA staff or an ABRA investigator, I believe it's specifically Supervisor Investigator John Fiorentine did conduct a walk-through and determined that the establishment was in compliance the Mayor's Orders and the regulations as stated within the offer in compromise. With that said, Your Honor, that is -- Mr. Chairman, those are the terms of the offer and we submit to the Board for
approval.

CHAIRPERSON ANDERSON: And Mr. Adams, so you believe that based on the nature of the violation that -- the nature of the infraction that this is an appropriate offer that protects the residents of District of Columbia?

MR. ADAMS: Yes. Yes, Mr. Chairman. We believe that the provisions that are stated does protect the residents of the District of Columbia. Essentially what this offer does is that it ensures that the owner or the establishment is aware of all the requirements that are part of the Mayor's Orders adjoined to the pandemic and to continue the operation during this Phase Two period.

And furthermore, it ensures that ABRA has made sure that the physical spacing of -- at least in terms of the equipment and tables are already there. So in a nutshell, we do believe that based upon the terms, it addresses the actual problems that were observed prior to the summary suspension and provides a reasonable ***10:47:34 to allow this establishment to be able to operate and continue to operate while ensuring that the Board knows and that the owner
knows what his requirements are. So I believe that this does satisfies the requirements of ensuring that the public safety is protected.

CHAIRPERSON ANDERSON: Thank you, Mr. Adams. Mr. Asfaw, it's my understanding that there is an offer in compromise. Have you seen this offer in compromise? You need to turn your mic -- open your phone, sir.

MR. ASFAW: Sorry. It would have feedback. That's why I shut it off right away. Yes, Chairman, I did. Yes, yes, yes.

CHAIRPERSON ANDERSON: And do you understand that by accepting an offer in compromise that you're waiving your right to a hearing?

MR. ASFAW: Yes, Chairman, yes.

CHAIRPERSON ANDERSON: And do you also -- are you also under the understanding that if you accept this offer in compromise that you are also waiving your right to appeal this matter?

MR. ASFAW: Yes, Chairman. So technically, me and Mr. Adams already had a discussion about it. Everything that was offered to me seems fair. And of course, the Mayor's Order has to be respected for all of us. And I'm
willing to go with the offer, and I don't have any complaint.

The only complaint I had, I want the whole Board members to hear me about is that when the report was written, it was extremely exaggerated, especially the fact that it was written the sound was heard two blocks down the road. That was inappropriately written because two blocks down the road from the establishment is 2nd and K, and the investigator actually parked his car on 1st and K. So that makes it half a block.

And then also other inappropriate writings were there. I'm just speaking from the honest truth here and that I felt like it was an attack. But the offer that was given to me sounds fair.

CHAIRPERSON ANDERSON: All right. Thank you, Mr. Asfaw. Are there any questions by any Board members?

(No audible response.)

CHAIRPERSON ANDERSON: All right. What I'm going to do is that we're going to move into executive session to discuss the OIC. And what we're going to do, I'm going to say for ten
minutes. So it's 10:50. We're going to come back to this public hearing at 11:00 o'clock.

So I'm going to close this in a couple of minutes and then we'll come back at 11:00 o'clock with a decision. Okay? So I just wanted to let everyone know the process that we'll be following to discuss this OIC. So hold on one minute.

MR. ADAMS: Thank you, Mr. Chairman, for the explanation.

CHAIRPERSON ANDERSON: All right. So as Chairperson of the Alcoholic Beverage Control Board for the District of Columbia in accordance with D.C. Official Code Section 2574(b) of the Open Meetings Act, I move that ABC Board hold a closed meeting for the purpose of seeking legal advice from our counsel on Case No. 20-CMP-00091, Elevate, pursuant to D.C. Official Code Section 2574(b)(4) of the Open Meetings Act and deliberating upon Case No. 20-CMP-00091, Elevate, for the reasons cited in D.C. Official Code Section 2574(b)(13) of the Opening Meetings Act. Is there a second?

MEMBER SHORT: Mr. Short. I'll second.
CHAIRPERSON ANDERSON: Mr. Short has seconded the motion. I will now take a roll call vote on the motion before us that has been seconded. Mr. Short?

MEMBER SHORT: Mr. Short. I agree.

CHAIRPERSON ANDERSON: Mr. Cato?

MEMBER CATO: Bobby Cato. I agree.

CHAIRPERSON ANDERSON: Ms. Crockett?

MEMBER CROCKETT: Rafi Crockett. I agree.

CHAIRPERSON ANDERSON: Ms. Wahabzadah?

MEMBER WAHABZADAH: Rema Wahabzadah. I agree.

CHAIRPERSON ANDERSON: Ms. Hansen?

MEMBER HANSEN: Jeni Hansen. I agree.

CHAIRPERSON ANDERSON: Mr. Grandis?

MEMBER GRANDIS: Ed Grandis. I agree.

CHAIRPERSON ANDERSON: And Mr. Anderson. I agree. As it appears that the motion has passed, I hereby give notice that the ABC Board will recess this proceeding to hold a closed meeting in the ABC Board conference room pursuant to Section 2574(b) of the Open Meetings Act. It is 10:58 a.m., and we'll come back.

And this is just for the court
reporter. I'll try to come back at 11:00 o'clock. If it takes longer for us to discuss this, please bear with us. But just give us till 11:00 o'clock for us to come back to this public session to make a decision. All right. Thank you. So see you back on the record at 11:00 o'clock. The Board will now move to executive session. Thank you.

(Whereupon, the above-entitled matter went off the record at 10:53 a.m. and resumed at 11:03 a.m.)

CHAIRPERSON ANDERSON: I want to thank the Board members. We've been having hearings through COVID-19, but this is actually the first hearing that we have had where we have switched between the public and -- the executive and public session. And it was smooth this morning, so I want to thank all the Board members and all the parties for being back on for us to close the public, go into executive, and come back to the public session. And it has been without any issues. So I want to thank everyone for their participation in that matter.

All right. So the Board went to do executive session to discuss the OIC. And I am
going to make a motion to -- this is the OIC. The terms of the OIC that was present is that there was a suspension.

It's a long OIC. But there's a 14-day suspension that started on August 14th, 2020 and then through August 27, 2020. The ABC license shall be lifted at 8:00 a.m. on Friday, August 28th. The second term of the OIC is that the respondent shall pay a fine of 1,000 dollars for the citation previously issued in Case No. 20-CIT-00188 within 20 days that the licensee will comply with the mask provisions of the Mayor's Order, that the licensee will also -- regarding music and entertainment that the respondent shall not offer -- I'm sorry, the licensee shall not offer live music or entertainment including disc jockey while the District of Columbia remains subject to Mayor's Order 2020-067 which was issued on May 27, 2020, and the Mayor's Order 2020-075 which was issued on June 19, 2020 in accordance with the District's Notice of Fifth Emergency Rulemaking.

Number five is the operating hours. The respondent shall not operate even inside or outside or sell, serve or permit the consumption
of alcoholic beverages past midnight during any
day of the week while the District of Columbia
remains subject to Mayor's Order 2020-067 and
Mayor's Order 2020-075 in accordance with the
Board's rulemaking.

Dining -- number six, Dining
Activities. Respondent shall only serve food and
alcoholic beverages to patrons seated at tables
with the District of Columbia remains subject to
the Mayor's Order 2020-067 and Mayor's Order
2020-075 in accordance with the rulemaking.
Respondent shall have a menu in use containing a
minimum three prepared food items available for
purchase and shall require patrons to purchase
one or more prepared food items per table.
Patrons shall not be permitted to walk around the
establishment with food or alcoholic beverages.

Number seven, Bar Activities.
Respondent shall not seat patrons at indoor or
outdoor bars that are being staffed or utilized
by a bartender. Patrons shall not be permitted
to stand at an indoor or outdoor bar to order
food or alcoholic beverages.

Number eight, Contract Tracing.
Respondent shall implement a reservation system
by phone, online, or onsite and keep customer logs to facilitate contract tracing by DC Health.

Number nine, Outside Promoters. If respondent uses outside promoters, both the respondent and promoters shall comply with all applicable laws and regulations, including Mayor's Order 2020-067, Mayor's Order 2020-075 and the Board's rulemaking.

Number ten, Sparklers. Respondent shall not sell or serve alcoholic beverages with sparklers inside or outside of the licensed establishment. Number eleven, Social Distancing Walk-through. Prior to lifting the suspension of the establishment's alcoholic beverage license, an ABRA investigator shall conduct a walk-through of the licensed establishment with respondent to evaluate the establishment's compliance with the District's social distancing requirements.

This evaluation shall included an assessment of respondent's compliance with the Mayor's Order 2020-075, Mayor's Order 2020-080, and 23 DCMR Section 810.2. And Show Cause. This matter shall be referred to the Office of the Attorney General for a possible Show Cause hearing. Yes, Mr. Adams?
MR. ADAMS: Mr. Chairman, in terms of the fine, I believe you read it as the fine was to be paid in 20 days. I believe the --

CHAIRPERSON ANDERSON: I apologize. Within 90 days. I apologize. The fine will be paid within 90 days from the date of the acceptance of the OIC. I do apologize. So I'll to correct the record for that. And so I then will make a motion that we second this. I make a motion that the OIC be accepted. Is there a second?

MEMBER SHORT: Mr. Short. I second.

CHAIRPERSON ANDERSON: Mr. Short has accepted the -- has seconded the motion, and we will now have a roll call vote and a motion that has been properly seconded by Mr. Short. Mr. Short?

MEMBER SHORT: Mr. Short. I agree.

CHAIRPERSON ANDERSON: Mr. Cato?

MEMBER CATO: Bobby Cato. I agree.

CHAIRPERSON ANDERSON: Ms. Crockett?

MEMBER CROCKETT: Rafi Crockett. I agree.

CHAIRPERSON ANDERSON: Ms. Wahabzadah?

MEMBER WAHABZADAH: Rema Wahabzadah.
I agree.

CHAIRPERSON ANDERSON: Ms. Hansen?

MEMBER HANSEN: Jeni Hansen. I agree.

CHAIRPERSON ANDERSON: Mr. Grandis?

MEMBER GRANDIS: Ed Grandis. I agree.

CHAIRPERSON ANDERSON: Mr. Anderson.

I agree. The matter therefore passes 7-0-0. I would like to thank the parties for their participation today and also thank the Government and you, Mr. Asfaw, for agreeing to an OIC. And I do hope that, as I said, the OIC that based on the Board accepting this offer in compromise, the suspension will be lifted at 8:00 a.m. on this Friday. Thank you very much and have a good day.

(Whereupon, the above-entitled matter went off the record at 11:09 a.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Elevate

Before: DCABRA

Date: 08-26-21

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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Court Reporter