

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Micherie, LLC
t/a Cheerz
7303 Georgia Avenue, NW
Retailer CR - ANC-4B
License No. 95178
Case #14-PRO-00051

Protest
Hearing
(Status)

(Application to Renew the
License)

September 10, 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

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(10:01 a.m.)

CHAIRPERSON MILLER: Okay. I'm going to call the Cheerz case now. We have gone through all of our statuses, other than those three that I pointed out at the beginning.

So the Cheerz Case is No. 14-PRO-00051 located at 7303 Georgia Avenue, N.W., License No. 95178, in ANC-4B.

MR. BURCHELL: I apologize, I had stepped away to use the restroom. Kelly Burchell on behalf of Micherie, LLC doing business as Cheerz.

CHAIRPERSON MILLER: Okay.

MS. GREEN: I'm Sara Green representing ANC-4B.

CHAIRPERSON MILLER: Okay. Good.

MR. AUSTIN: Ron Austin, 4B Chair.

CHAIRPERSON MILLER: You're representing 4B, too?

MR. AUSTIN: Yes.

1 CHAIRPERSON MILLER: Okay. You're
2 different parties or you are just --

3 MS. GREEN: Well, the ANC has
4 designated me and --

5 CHAIRPERSON MILLER: Okay.

6 MS. GREEN: -- Mr. Austin is
7 Chair.

8 CHAIRPERSON MILLER: Okay.

9 MR. AUSTIN: I'm the Chair.

10 CHAIRPERSON MILLER: Okay.

11 MR. AUSTIN: I was here on the
12 first Roll Call Hearing also.

13 CHAIRPERSON MILLER: I'm sorry
14 what?

15 MR. AUSTIN: I was here on the
16 first -- when we had the first hearing, Roll
17 Call Hearing.

18 MEMBER RODRIGUEZ: Which case is
19 this?

20 CHAIRPERSON MILLER: Cheerz.

21 MEMBER RODRIGUEZ: Cheerz.

22 CHAIRPERSON MILLER: You were here

1 on the first Roll Call?

2 MR. AUSTIN: Yes.

3 CHAIRPERSON MILLER: Okay. Did I
4 miss somebody? Oh, you are the --

5 MS. SUGGS: Hi, Shirley Suggs,
6 Cheerz, business manager.

7 CHAIRPERSON MILLER: Okay. Okay.
8 This is just a Protest (Status) Hearing, but
9 there is an issue that you want to bring to
10 our attention and you can. I know there is
11 another proceeding going on with respect to
12 the settlement agreement and there is going to
13 be a Fact-Finding Hearing on that.

14 So is there any issues with
15 respect to this renewal, which this is about?

16 MR. BURCHELL: It's -- we had a
17 mediation. We worked out a settlement
18 agreement. It's my understanding that it is
19 going to be subject to a Commission vote,
20 which is scheduled on the 22nd. If that, in
21 fact, happens, then we are good to go.

22 CHAIRPERSON MILLER: Okay. Good.

1 All right.

2 MS. GREEN: I would like to note
3 for the record that I could not participate in
4 the mediation, because my husband was in the
5 hospital. I asked for a delay, so that I
6 could participate and that did not happen.
7 And a representative from the ANC-4B attended
8 the settlement conference, who is unfamiliar
9 with the issues, had never talked to any of
10 the residents and so this, I don't think,
11 happened appropriately.

12 I would be more than willing to
13 sit down and talk to Cheerz, so that we can
14 look at the settlement agreement again. I
15 would be more than happy to do that, if
16 Cheerz, you know, would like to do that.

17 I mean, I understand this is a
18 two-way street.

19 CHAIRPERSON MILLER: Okay. Let me
20 just say this. We don't get involved with
21 settlement discussions or --

22 MS. GREEN: Oh, I understand.

1 CHAIRPERSON MILLER: -- who in the
2 ANC is versus --

3 MS. GREEN: I understand.

4 CHAIRPERSON MILLER: Okay. So I
5 just --

6 MS. GREEN: I do understand.

7 CHAIRPERSON MILLER: Okay. So
8 what I hear then is basically though there is
9 a settlement agreement out there and you all
10 may be working it out.

11 MS. GREEN: Yes.

12 CHAIRPERSON MILLER: And that's
13 really all that I think that this Board can
14 get into, at this point.

15 MS. GREEN: Correct.

16 CHAIRPERSON MILLER: Okay.

17 MS. GREEN: Correct. I understand
18 that.

19 CHAIRPERSON MILLER: And let me
20 just ask you this though, if there is a
21 settlement agreement, just for my information,
22 does that affect the Fact-Finding Hearing that

1 we are intending to hold on the previous
2 settlement agreement? You know, the
3 objections to the Board's decision to nullify
4 the previous settlement agreement? Do you
5 know what I'm talking about?

6 MR. BURCHELL: That's -- yes, I
7 know exactly what you are talking about. And
8 that's a good question. The issue is that the
9 ANC was not part of that settlement agreement.

10 CHAIRPERSON MILLER: Okay.

11 MR. BURCHELL: It was with a
12 neighborhood advisory group.

13 CHAIRPERSON MILLER: Okay.

14 MR. BURCHELL: And there is a lot
15 of issues with regards to if that settlement
16 agreement is upheld, then there is a question
17 of having two settlement agreements at the
18 same time.

19 CHAIRPERSON MILLER: Okay.

20 MR. BURCHELL: A lot of issues.

21 CHAIRPERSON MILLER: Yes, okay.

22 MS. GREEN: May I ask, as far as

1 I'm concerned, our ANC has never dealt with
2 the question of that earlier settlement
3 agreement, because we weren't party to it.

4 CHAIRPERSON MILLER: Correct.
5 Okay.

6 MS. GREEN: So as far as I'm
7 concerned, they are two separate issues.

8 CHAIRPERSON MILLER: Okay.

9 MS. GREEN: But could I ask a
10 quick question?

11 CHAIRPERSON MILLER: Yes.

12 MS. GREEN: The discussion about
13 the motions on that earlier settlement
14 agreement, are these taking place today?

15 CHAIRPERSON MILLER: No.

16 MS. GREEN: No? So you are going
17 to notify us when there might be a hearing on
18 that?

19 CHAIRPERSON MILLER: Yes.

20 MS. GREEN: Okay.

21 CHAIRPERSON MILLER: Exactly.

22 MS. GREEN: This is the only

1 discussion of Cheerz is right now?

2 CHAIRPERSON MILLER: The only
3 discussion is basically on the renewal, but
4 since you are all, I think most of the
5 parties, here, as far as I know. I just
6 wanted to just get your input on how this
7 settlement agreement -- what you are doing,
8 what your view was and how it might affect the
9 other.

10 I do know that we do have on our
11 agenda for later this afternoon to rule on --
12 there is a Motion for Enlargement of Time to
13 object to the objections or something. And I
14 note that there was no objection to that
15 motion filed and the time has passed for that.

16 So you can expect that the Board
17 will probably grant that motion.

18 MR. BURCHELL: Thank you.

19 CHAIRPERSON MILLER: All right.
20 All right. So if there aren't any other
21 questions or issues particularly related to
22 this renewal, I'm going to give you your

1 protest date.

2 MR. BURCHELL: I thought one was
3 already assigned on the 15th of October?

4 CHAIRPERSON MILLER: I have a
5 Protest Hearing date in my records of October
6 22nd. You have a different date?

7 MR. BURCHELL: Hold on. Okay. I
8 misspoke. I apologize. Yes, it was the 22nd.

9 CHAIRPERSON MILLER: Okay. At
10 1:30 p.m.

11 MR. BURCHELL: Okay.

12 CHAIRPERSON MILLER: I also need
13 to put on the record if you go to a protest,
14 if that settlement agreement, you know, falls
15 through, I don't know if you were listening
16 earlier, that you will have forms that will be
17 given to you ahead of time, a Protest
18 Information Form, also known as a PIF, and an
19 Exhibit Form in which you will need to fill
20 out and serve on the parties and provide to
21 the Board seven days ahead of the hearing.

22 And the Protest Information Form

1 identifies the issues at that point that you
2 will be actually litigating at the hearing,
3 which are often narrowed, you know, from when
4 you start.

5 And it is required that you file
6 that form and if you don't, and serve it on
7 the other parties, within seven days, you
8 could have your protest dismissed or your
9 application dismissed. So pay attention to
10 that hearing. We don't like to do that.

11 The Exhibit Form needs to list the
12 exhibits and attach the exhibits and serve
13 them on the Board and the parties. In the PIF
14 form you would list the witnesses and the
15 issues. If you don't identify an exhibit or
16 a witness, it's possible they will be excluded
17 at the hearing, but the Board will entertain
18 if there is good cause, you know, that you
19 couldn't do it earlier or the other side won't
20 be prejudiced. But if you would try to do
21 that.

22 And when that all happens, then

1 everybody is on notice and there are no
2 surprises in these hearings and then they can
3 go more smoothly and efficiently. Okay.

4 If you have any questions between
5 now and then, you can contact Martha Jenkins
6 or Janea Raines in our General Counsel's
7 office. And you will be hearing from us with
8 respect to that other proceeding involving the
9 nullification of that other settlement
10 agreement.

11 MS. GREEN: May I ask one
12 question? The discussion you are having this
13 afternoon about the motion, is that a public
14 hearing?

15 CHAIRPERSON MILLER: Yes.

16 MS. GREEN: That is public, so I
17 could -- okay.

18 CHAIRPERSON MILLER: Yes. But I
19 think, I have to look at the agenda, but we
20 are not going to rule on the motion until we
21 have the hearing on the Fact-Finding.

22 MS. GREEN: No. I understand.

1 CHAIRPERSON MILLER: Oh, okay.

2 MS. GREEN: My --

3 CHAIRPERSON MILLER: Just the
4 enlargement of time to oppose it.

5 MS. GREEN: Right.

6 CHAIRPERSON MILLER: Yes.

7 MS. GREEN: Right. But that
8 discussion will be in public?

9 CHAIRPERSON MILLER: Yes.

10 MS. GREEN: Granting the
11 enlargement time? Okay. Thank you.

12 CHAIRPERSON MILLER: Okay. You're
13 welcome. Yes?

14 MR. BURCHELL: About what time
15 will that be?

16 CHAIRPERSON MILLER: I don't know.

17 MR. BURCHELL: Is that in the
18 afternoon session?

19 MS. GREEN: It's called our
20 agenda.

21 MR. BURCHELL: Okay.

22 CHAIRPERSON MILLER: And we have

1 an afternoon protest and so it just depends.
2 We kind of feel it will probably be -- it
3 could be after the protest, which would be
4 pretty late.

5 You know what, I think -- hold on
6 one second. Okay. You know what, I'm just
7 going to do it now.

8 MR. BURCHELL: Okay. Great.

9 CHAIRPERSON MILLER: Because there
10 -- I'm not sure if I have it in front of me.

11 MEMBER ALBERTI: Do we have the
12 motions?

13 CHAIRPERSON MILLER: There is a
14 motion just -- the only motion I would propose
15 that we do right now, I think that we are
16 intending to do right now, is --

17 MR. BURCHELL: Yes.

18 CHAIRPERSON MILLER: -- a Motion
19 for an Enlargement of Time to respond to the
20 objections --

21 MR. BURCHELL: Yes.

22 CHAIRPERSON MILLER: -- that were

1 made to the Board's intent to nullify the
2 order. Since I don't know what time we are
3 going to be discussing it later, I think it
4 just makes sense to do it right now.

5 And I would move that we grant
6 that motion, because --

7 MEMBER ALBERTI: Do we have the
8 motion? Can you share the motion?

9 CHAIRPERSON MILLER: All right.
10 Let me take a minute.

11 MEMBER ALBERTI: Because I wasn't
12 prepared and so I would just like to --

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: -- you know,
15 there is a lot of documents before us, so I
16 have to refresh my memory who is even making
17 the motion.

18 MR. BURCHELL: If you would like,
19 I can --

20 MEMBER ALBERTI: Well, somebody
21 needs to do it.

22 CHAIRPERSON MILLER: I can --

1 MEMBER ALBERTI: But I'll let the
2 Chair run this.

3 CHAIRPERSON MILLER: If you give
4 me a minute, I'm pretty sure I can put my
5 hands on that motion. Okay. I'm sorry for
6 that. We were intending to -- it's on our
7 agenda for this afternoon, but it just seems
8 to me that it makes sense, all the parties are
9 here, this is a pretty simple motion. You
10 would like to hear it. We don't know exactly
11 what time. We have a big agenda.

12 Okay. So the licensee filed a
13 motion for enlargement of time to file in
14 opposition.

15 MEMBER ALBERTI: To?

16 CHAIRPERSON MILLER: It's in
17 opposition to the objections that were filed
18 to the Board's Order of its intent to nullify,
19 wait hold it, let me get it exactly, the
20 Board's Order entitled "Notice of Intent to
21 Nullify and Void Settlement Agreement and Stay
22 of Enforcement of Settlement Agreement."

1 There was no opposition filed to
2 the Motion for Enlargement of Time to file,
3 this enlargement of time, their opposition.

4 MEMBER ALBERTI: So we have a
5 motion from the -- we have a motion from whom?
6 The original motion to -- in opposition of our
7 order was from whom?

8 MS. GREEN: It's my understanding
9 to residents --

10 CHAIRPERSON MILLER: Wait.
11 Objections were filed by Alpha McPherson,
12 President of GFEDDS on August 4, 2014 and by
13 Gina Masterson, a community member, and that
14 was undated, and Sara Green in her capacity as
15 SMD.

16 MEMBER ALBERTI: And they were
17 served on the licensee? Is that correct?

18 CHAIRPERSON MILLER: They were not
19 served on the licensee and that is why they
20 are asking for an enlargement of time to file
21 their objections, opposition to their
22 objections.

1 MEMBER ALBERTI: Okay. Okay. So
2 now I understand the issue. So the licensee
3 wasn't served and so they are asking for an
4 enlargement of time.

5 CHAIRPERSON MILLER: Correct. And
6 they got notice from --

7 MEMBER ALBERTI: You oppose the
8 motion, the original motion?

9 CHAIRPERSON MILLER: There are
10 oppositions to our Board Order.

11 MEMBER ALBERTI: The original
12 motion is the opposition to our Board Order.
13 And the licensee now would like an extension
14 of the time to oppose that motion, to file an
15 opposition to that motion.

16 CHAIRPERSON MILLER: To file an
17 opposition to their objections to our Board
18 Order.

19 MEMBER ALBERTI: Right, right.

20 CHAIRPERSON MILLER: Yes.

21 MEMBER ALBERTI: I understand
22 that.

1 CHAIRPERSON MILLER: Okay.

2 MEMBER ALBERTI: Okay. Thank you.

3 CHAIRPERSON MILLER: Is that
4 understood? So I would move that we grant it
5 because they weren't served with the
6 objections.

7 MEMBER ALBERTI: Okay. Thank you.
8 Now, I understand.

9 CHAIRPERSON MILLER: Yes.

10 MEMBER RODRIGUEZ: I second that
11 motion, Madam Chair.

12 CHAIRPERSON MILLER: Okay. Are
13 there questions or comments? Okay. Then
14 there is a motion pending that has been
15 seconded to grant the enlargement of time.

16 All those in favor say aye.

17 ALL: Aye.

18 CHAIRPERSON MILLER: All those
19 opposed? All those abstaining? Okay. The
20 motion passes then by a vote of 6-0-0.

21 Okay. So you don't have to come
22 back later.

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MR. BURCHELL: Thank you.

CHAIRPERSON MILLER: All right.

MS. GREEN: Thank you.

CHAIRPERSON MILLER: Thank you.

All right.

(Whereupon, the Protest (Status)

Hearing in the above-entitled matter was
concluded at 10:17 a.m.)

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