

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
 2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
 3 ALCOHOLIC BEVERAGE CONTROL BOARD

4 - - - - -X

5 IN THE MATTER OF: :
 6 Daci Enterprises, LLC. :
 7 t/a Dacha Beer Garden :
 8 1600 7th Street N.W. : Case 15-CMP-00251
 9 License #92773 : Show Cause Hearing
 10 Retailer DT :
 11 ANC 6E, :
 12 Substantial Change in :
 13 Operation without Board's :
 14 Approval, Violation of :
 15 Settlement Agreement, :
 16 Substantial Change in :
 17 Operation (No Summer Garden :
 18 Endorsement) :

19 - - - - -X

20 Wednesday, November 4, 2015

21

22

1 Whereupon, the above-referenced matter
2 came on for hearing at the Alcoholic Beverage
3 Control Board, Reeves Center, 2000 14th Street,
4 N.W., Suite 400S, Washington, D.C. 20009.

5

6

7 CHAIRPERSON:

8 DONOVAN W. ANDERSON, Presiding

9

10 BOARD MEMBERS:

11 JAMES SHORT

12 MICHAEL SILVERSTEIN

13 RUTHANNE MILLER

14

15

16 ALSO PRESENT:

17 AMY SCHMIDT

18 On Behalf of the District of Columbia

19 ANDREW KLINE

20 On Behalf of the Licensee

21 ILYA ALTER

22 Licensee

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

2 [12:24 p.m.]

3 MS. MILLER: Okay. I'm going to call
4 Case No. 15-CMP-00251, Dacha Beer Garden, 1600
5 7th Street Northwest, License No. 92773 in ANC
6 6E.

7 Would the parties introduce themselves
8 for the record, please?

9 MS. SCHMIDT: Good morning. Amy Schmidt,
10 Assistant Attorney General on behalf of the
11 District of Columbia.

12 MR. KLINE: Good morning. Andrew Kline
13 on behalf of the licensee.

14 MR. ALTER: Ilya Alter, licensee.

15 MS. MILLER: Okay. So you're here for a
16 show cause hearing. Are there some preliminary
17 matters?

18 MS. SCHMIDT: Yes, there is. Today we
19 are presenting a global settlement of all the
20 Dacha Cases that are presently before the Board
21 that have been investigated by ABRA. And in
22 summary I will go through each case individually.

1 However in summary we are seeking a fine of
2 \$42,500 payable within 30 days, a 40 day
3 suspension with 21 days served, and 19 days
4 stayed for one year. And we'll give specific
5 dates and fines.

6 And also as part of the
7 (indiscernible)**1:14 to these charges the
8 licensee and the OIC is being credited with being
9 -- with violating three primary -- of being
10 guilty of three primary (indiscernible)**1:29
11 violations.

12 MR. KLINE: Admitting liability to three
13 primary violations.

14 MS. SCHMIDT: And also the licensee must
15 pick up a summer garden endorsement from ABRA
16 within three business days.

17 And now to get specific, there are three
18 -- we have divided these violations in three
19 cases. The first case consists of 15-CMP-00221,
20 which occurred on April 2nd, 2015. Charge 1, a
21 \$2,000 fine and two days served, and one day
22 stayed. Charge 2, a fine of \$500. And Charge 3

1 will be dismissed.

2 The second case in this grouping is 15-
3 CMP-00222, April 17th, 2015. Charge 1, a
4 substantial -- I'm sorry, \$2,000 fine, two days
5 served, and one day stayed. Charge 2, a fine of
6 \$500. And Charge 3 will be dismissed.

7 And the last case in this grouping is 15-
8 CMP-00223, which occurred on April 18th, 2015.
9 Charge 1, \$2,000 three days served. Charge 2 and
10 Charge 3 dismissed.

11 And in summary for this first grouping of
12 cases the OIC consists of one primary and two
13 secondary tier violations. The fine is \$7,000,
14 payable within 30 days, and seven days suspension
15 to start Monday, November 23rd, through Sunday,
16 November 29th, and two suspension days are
17 stayed.

18 With respect to the second grouping of
19 cases, the first case is 15-CMP-00249, which
20 happened on April 10th, 2015. Charge 1, \$2,000
21 fine, two days served, and two days stayed for
22 one year, and Charges 2 and 3 dismissed.

1 Second case, 15-CMP-00250, which occurred
2 on April 11th, 2015. Charge 1, \$2,000 fine and
3 two days stayed for one year. And Charge 2, \$500
4 fine.

5 The third case in this grouping, 15-CMP-
6 00251, which occurred on April 24th, 2015.
7 Charge 1, \$2,000 fine, one day served, and two
8 days stayed for one year. And Charge 2 and 3
9 dismissed.

10 And the last case in this grouping, 15-
11 CMP-00338, which occurred on May 30th, 2015,
12 Charge 1, \$2,000 fine, three days served, and two
13 days stayed for one year. And Charge 2 -- I'm
14 sorry. Charge 2, a fine of \$500.

15 And in sum, the OIC consists of one
16 primary and two secondary violations. The fine
17 is \$9,000, payable within 30 days and seven days
18 suspension to be served on Tuesday, March 1st,
19 2016 through Monday, March 7th, 2016. And eight
20 suspension days are stayed for one year.

21 The final grouping consists of 15-CMP-
22 00339, May 29th, 2015. Charge 1, \$2,000 fine,

1 three days served. Charge 2, \$500 fine. And
2 Charge 3 dismissed.

3 15-CMP-00353, Charge 1, \$2,000. Charge
4 2, \$500, two days served and two days stayed for
5 one year.

6 15-CMP-00439, charge 1, \$2,000 and two
7 days served and two days stayed for one year.

8 15-CMP-00503, A \$2,000 fine.

9 15-CMP-00576, Charge 1, \$2,000 and Charge
10 2, \$500.

11 15-CMP-00521, Charge 1, \$2,000.

12 15-CMP-00577, Charge 1, \$2,000. Charge
13 2, \$500 and two days stayed for one year.

14 15-CMP-00529, Charge 1, \$2,000.

15 And 15-CMP-00512, \$2,000.

16 15-CMP-00410, Charge 1, \$2,000.

17 And 15-CMP-00536 will be dismissed.

18 And 15-CMP-00667, Charge 1, \$2,000,
19 Charge 2, \$500, two days stayed for one year.

20 And 15-CMP-00693, Charge 1, \$2,000.

21 So the OIC consists of one primary and
22 five secondary tier violations. The fine is

1 \$26,500 payable within 30 days and a seven day
2 suspension to be served Monday, April 4th, 2016
3 through Sunday, April 10th, 2016 with nine
4 suspension days stayed for one year.

5 MS. MILLER: Okay. So we have a written
6 copy of the offer and compromise before us. And
7 it also -- maybe you said this before, but it
8 also goes on to state that the total fines are
9 \$42,000, \$500 payable within 30 days, 40 days
10 suspension with 21 days served and 19 days stayed
11 for one year. And I believe you already stated
12 that the licensee admits under this OIC, to
13 liability for three primary tier violations. And
14 the other thing I see on this offer and
15 compromise, which I didn't hear you say was that
16 the licensee must pick up a summer garden
17 endorsement from ABRA within three business days.

18 MS. SCHMIDT: Yes.

19 MS. MILLER: Okay. And, Mr. Kline, is
20 that your understanding of the offer and
21 compromise as stated by Ms. Schmidt and made
22 subsequently?

1 MR. KLINE: With one clarification.

2 MS. MILLER: Okay.

3 MR. KLINE: For the record. The intent
4 here is for this licensee to have a fresh start.
5 So the intent is that this rolls in anything
6 that's been investigated through today.
7 Certainly if there's facts that give rise to a
8 violation tomorrow or the day after, then that
9 certainly is not covered by this OIC. But
10 anything that's been investigated through today,
11 it's the intent of the parties that this OIC
12 cover that.

13 So if we've missed something that's in
14 the pipeline, or there's a report, or what have
15 you, I just want to make it crystal clear that
16 with this what we believe is an unprecedented
17 fine, at least in my experience, that everything
18 was rolled in and everything was taken care of.

19 MS. MILLER: Ms. Schmidt, is that your
20 understanding?

21 MS. SCHMIDT: Yes, it is. And we did
22 just confer with a supervising investigator

1 Stuart and to his knowledge nothing else is in
2 the pipeline.

3 MS. MILLER: Okay.

4 MS. SCHMIDT: And also --

5 MR. SILVERSTEIN: So, Mr. Kline, it is
6 your understanding that the clock will start the
7 moment we accept this, if we do?

8 MR. KLINE: That's correct. In other
9 words, yes. If there is a primary tier after
10 today inasmuch as the licensee is admitting to
11 three primary tiers, that would represent a
12 fourth primary tier with everything that we all
13 know comes with that and the same with respect to
14 any secondary tiers, or whatever we're up to at
15 this point.

16 MR. SILVERSTEIN: Thank you, sir.

17 MR. KLINE: Thank you.

18 MR. SHORT: Madam Chair, I just had --

19 MS. MILLER: Yes, Mr. Short?

20 MR. SHORT: Good morning again, Mr.
21 Kline.

22 MR. KLINE: Good morning.

1 MR. SHORT: I'm just looking -- I know we
2 discussed some things but a licensee must pick up
3 a summer garden endorsement from ABRA within
4 three days? Is that -- you mean the application
5 for a summer garden?

6 MR. KLINE: Yes, sir. When this
7 applicant originally applied, it applied with the
8 understanding that they were applying for outside
9 space initially. They weren't represented by
10 counsel. They worked directly with staff. There
11 seemed to be some miscommunication and some
12 confusion as to what it was they should have been
13 approved for. And everyone just wants to make
14 sure that that's corrected and that everybody is
15 clear that they are a summer garden and should
16 have a summer garden endorsement on their
17 license.

18 MR. SHORT: That's still not clear to me.
19 I mean, he has to go through the process of being
20 inspected. I mean, we just -- is this OIC saying
21 we're just going to --

22 MR. KLINE: Mr. Short, nothing is

1 changing about their operation. There was a
2 final inspection that was done. In fact I think
3 when we heard the first case last week there was
4 some talk about -- there was quite a bit of
5 testimony about the final inspection. It's been
6 known since day one that this was an outdoor
7 facility.

8 MR. SHORT: Okay.

9 MR. KLINE: So it's really just a
10 technical correction in terms of making sure the
11 license conforms with what everyone knows that it
12 is, which is a summer garden with a sidewalk
13 café.

14 MR. SHORT: Okay.

15 MR. KLINE: Thank you.

16 MR. SHORT: I'll accept that.

17 (Indiscernible)**10:20. Thank you.

18 MS. MILLER: Other questions? Yes.

19 MR. ALBERTI: Yes. Just so I'm clear on
20 this. So this doesn't speak -- I mean, the
21 summary, the written summary doesn't speak to the
22 secondaries and if I missed any discussion of the

1 secondaries, I apologize. So how are the
2 secondaries being treated in terms of going
3 forward? By my count I have five, and correct me
4 if I'm wrong there, but secondaries here. So
5 that the record would reflect five secondaries,
6 or not?

7 MR. KLINE: That's our understanding.

8 MS. SCHMIDT: Yes.

9 MR. ALBERTI: Okay.

10 MS. SCHMIDT: Definitely.

11 MR. ALBERTI: Just wanted to make sure
12 that that was clear. I didn't hear it stated
13 specifically so, very good. Thank you.

14 MS. MILLER: Thank you. Any other
15 questions?

16 Yeah, well first of all let me just make
17 sure that the licensee understands that by
18 accepting this offer and compromise you waive
19 your right to a hearing. Okay. And appeal.

20 MR. KLINE: Yes, we understand that if
21 it's accepted by the Board we waive our right to
22 further hearing with respect to any of these

1 charges and we will waive our right to appeal and
2 this will represent a final resolution of all
3 these cases.

4 MS. MILLER: Okay. Yes. Mr.
5 Silverstein, did you have a comment? Or do you
6 want to vote on this?

7 MR. SILVERSTEIN: I'll do it after the
8 vote.

9 MS. MILLER: Okay. All right. We're
10 prepared to vote. All right, then. I'm not
11 going to read this whole settlement again. It's
12 in paper and it was just articulated. I will
13 read the summary.

14 I'm going to move to approve this offer
15 and compromise. Summarizing it consists of a
16 resolution on 19 cases where all cases in the
17 pipeline are that have been brought against Dacha
18 Beer, and they're listed on the document that we
19 were given. And also there was a reference if
20 there are any others in the pipeline which there
21 do not seem to be.

22 We resolve all these cases for a fine of

1 \$42,500, payable within 30 days, 40 day
2 suspension with 21 days served and 19 days stayed
3 for one year. The dates are articulated in the
4 offer and compromise, the dates that are going to
5 be stayed. The licensee admits to liability for
6 three primary tier violations and the secondaries
7 that are listed. And they will be picking up a
8 summer garden endorsement from ABRA within three
9 business days.

10 So I move that we approve this offer and
11 compromise. Do I have a second?

12 MR. SILVERSTEIN: I second that motion.

13 MS. MILLER: Mr. Silverstein seconded the
14 motion.

15 [Vote taken.]

16 MS. MILLER: Motion passes, four to one
17 to zero with Member Alberti opposed. And I
18 believe that some board members, at least one,
19 would like to make comment.

20 MR. SILVERSTEIN: Yes.

21 MS. MILLER: Okay.

22 MR. SILVERSTEIN: Thank you.

1 MS. MILLER: Mr. Silverstein.

2 MR. SILVERSTEIN: Thank you, Madam Chair.
3 I voted for this but I was holding my nose. And
4 the reason I was holding my nose is that the
5 process allowed 19 separate cases to ripen, and
6 there was a stench about that. We found
7 ourselves in the situation and the respondent,
8 Mr. Alberti, you played a key role in that. But
9 the situation was, how do we fairly resolve this
10 matter, keeping in mind that members of your
11 community, the community where you do business,
12 were deeply involved in allowing your
13 establishmet to open and to operate through their
14 ANC. They willingly gave up their right to
15 protest the licensure by signing a settlement
16 agreement. And then you were cited for violation
17 that settlement agreement repeatedly and
18 repeatedly and repeatedly, for 19 weeks.

19 Moving forward I think the question was
20 whether this offer and compromise, and this was a
21 matter that we're all concerned about, was
22 sufficient enough to deter future actions, not

1 only by this licensee but future actions by
2 anyone else in the District who sees the
3 precedent that we set here, and whether this
4 offer provides some justice for the neighbors of
5 your community who live nearby and had their
6 peace and quiet and the quality of their lives
7 disrupted, sir.

8 I believe that the offer and compromise
9 met that standard and for that reason I voted for
10 it and hopefully we can move forward. And
11 hopefully we never allow so many cases to ripen
12 for so long that the stench affects the quality
13 of life of our neighbors, the people who live and
14 pay taxes here in the District of Columbia. I
15 hope I never see you again, sir.

16 MS. MILLER: Any other comments? Yes,
17 Mr. Short.

18 MR. SHORT: I too like to concur with
19 what member Silverstein's comments. The citizens
20 of your community, sir, expect better of you. We
21 as the Board, or I can speak for myself. We
22 expect better of you. Hopefully this will be the

1 last time we'll see you before this Board.

2 Thank you, Madam Chair.

3 MS. MILLER: Thank you. I just want to
4 say, you know, there's so much here in this offer
5 and compromise, and if I didn't say this I just
6 want to make it clear for the record that, you
7 know, we talk about this is a very large amount
8 of penalty in this case. And we said that, you
9 know, it's \$42,500 payable within 30 days. And I
10 just want to make it clear on the record that I
11 believe that it's part of the offer and
12 compromise as it has been in all of them lately,
13 that if it's not paid within 30 days the license
14 is suspended until it is paid.

15 Okay. So I see a nodding from Mr. Kline.

16 MR. KLINE: Yes, we understand that.

17 MS. MILLER: Okay. And I think that's
18 the consensus of the Board. All right. I just
19 wanted to put that on the record and we can all
20 go forward.

21 MS. SCHMIDT: There's one other
22 correction.

1 MS. MILLER: Yes.

2 MS. SCHMIDT: There are nine secondary
3 violations, not seven.

4 MS. MILLER: Nine. Okay. Okay. There's
5 no special treatment to the secondaries, they're
6 just treated as they are.

7 MS. SCHMIDT: Yes.

8 MS. MILLER: Yeah. Okay.

9 MR. KLINE: And if I may? We appreciate
10 all of your comments. We understand the
11 concerns. We have been working with the
12 community. In fact you will shortly be seeing a
13 settlement agreement involving the pending
14 requested substantial changes. And this licensee
15 doesn't want to see you again in this setting.
16 So we certainly expect that that will be the case
17 and appreciate your consideration for today.
18 Thank you.

19 MS. MILLER: Okay. Thank you. And I
20 also do want to say that there will be a Board
21 order issued because this is such a large
22 settlement.

1 MR. KLINE: I understand.

2 MS. MILLER: So you won't get anything
3 today, but you will get a Board order shortly.

4 MR. KLINE: Thank you.

5 MS. MILLER: Thank you very much.

6 [Whereupon, the above-entitled matter
7 concluded at 2:09 p.m.]

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22