

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF: :

:

Connexion Group, LLC, :

t/a 1230 DC :

1230 9th Street, NW : Show Cause

Retailer CR - ANC 2F : Hearing

License No. 100537 :

Case #18-CMP-00150 :

:

(Failed to Obtain a :
 Summer Garden :
 Endorsement, Cover Charge:
 Endorsement, Operating :
 After Board Approved :
 Hours, Exceeded Capacity):

Wednesday,
 February 27, 2019

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
 Donovan W. Anderson, presiding.

PRESENT:
 DONOVAN W. ANDERSON, Chairperson
 NICK ALBERTI, Member
 BOBBY CATO, JR., Member
 MIKE SILVERSTEIN, Member

ALSO PRESENT:
 INVESTIGATOR KEVIN PUENTE, ABRA
 JESSICA GUNZEL, OAG
 LINDSAY MARKS, OAG

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

2 11:06 a.m.

3 CHAIRPERSON ANDERSON: We are back on
4 the record. Our next case is Case No. 18-CMP-
5 00150, 1230 DC, License No. 100537.

6 Would the parties, please, approach
7 and identify themselves for the record, please?

8 MS. GUNZEL: Good morning. Jessica
9 Gunzel for the District of Columbia.

10 CHAIRPERSON ANDERSON: Good morning,
11 Ms. Gunzel.

12 MS. MARKS: Good morning. Lindsay
13 Marks for the District of Columbia.

14 CHAIRPERSON ANDERSON: Good morning,
15 Ms. Marks.

16 I see that the licensee is not here.
17 Have you had any conversation with the licensee
18 to know whether or not they would appear today?

19 MS. GUNZEL: Mr. Chair, this Show
20 Cause Hearing has been rescheduled a few times.
21 The District and the licensee were emailed by
22 ABRA on January 17, 2019 informing the licensee

1 of today's hearing at 11:00 a.m. I have a copy
2 of that email.

3 On January 22nd I also have a
4 communication from ABRA to the licensee, once
5 again informing him that this hearing would be
6 February 27th at 11:00 a.m.

7 CHAIRPERSON ANDERSON: And the reason
8 why I'm asking the question is because we had
9 another Show Cause Hearing with this licensee who
10 did not appear, but he did appear two hours later
11 after we did the hearing.

12 So I was told that after we did the
13 hearing that he did show up and that's why I was
14 asking if there is any --

15 MS. GUNZEL: I would also like to add
16 that during the last hearing two weeks ago, we
17 spoke when he showed up later and we confirmed
18 that the next Show Cause Hearing was scheduled
19 for today at 11:00.

20 CHAIRPERSON ANDERSON: All right. So
21 is the Government prepared to move forward ex
22 parte?

1 MS. GUNZEL: Yes, Mr. Chair.

2 CHAIRPERSON ANDERSON: All right.

3 Pursuant to DC Official Code § 25-447, the Board
4 has the authority to proceed ex parte where the
5 licensee waives a hearing or fails to appear,
6 unless the hearing is extended for good and
7 sufficient cause.

8 The Board record reflects that the
9 licensee was properly served. I don't have the
10 date in front of me, but based on the
11 representation by the Government, there was
12 actual notice by the Government to the licensee
13 on or about January 22nd regarding -- or the
14 Board, I think, had provided notice to the
15 licensee on January 22nd regarding this matter.

16 There was another hearing scheduled,
17 I think, two weeks ago regarding this licensee
18 and he showed up late and the Government
19 represented today that they had also confirmed
20 with him that this hearing was scheduled for
21 today.

22 Seeing no licensee here today and

1 having no good and sufficient cause to extend
2 this hearing, the Board will proceed with the
3 Show Cause Hearing.

4 Does the Government wish to make an
5 opening statement?

6 MS. GUNZEL: Yes, Mr. Chair, a brief
7 one. Good morning, Board Members. In this case
8 there are four charges before the Board.

9 The evidence will show that on
10 Saturday, May 26, 2018, 1230 DC operated a summer
11 garden on the second floor of the establishment
12 and charged patrons a cover charge, despite the
13 fact that the establishment did not have
14 endorsements for either on its ABC License.

15 The District will also establish that
16 the establishment operated beyond its Board-
17 approved hours by staying open until 2:45 a.m.
18 when its hours of operation and sales end at 2:00
19 a.m. on Fridays.

20 Finally, the evidence will show that
21 the establishment exceeded its maximum capacity,
22 specifically 1230 DC had over 200 patrons in the

1 establishment on May 26th, more than double the
2 capacity listed on its ABC License. Thank you.

3 CHAIRPERSON ANDERSON: All right.
4 Does the Government have -- wish to call a
5 witness?

6 MS. GUNZEL: Yes, Mr. Chair. The
7 Government has one witness, ABRA Investigator
8 Kevin Puente.

9 CHAIRPERSON ANDERSON: Mr. Puente.
10 Whereupon,

11 INVESTIGATOR KEVIN PUENTE
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 PUENTE: Yes.

17 CHAIRPERSON ANDERSON: All right.
18 Your witness.

19 DIRECT EXAMINATION

20 BY MS. GUNZEL:

21 Q Good morning.

22 A Good morning.

1 Q Please, state your name and spell it
2 for the record.

3 A Kevin Puente, K-E-V-I-N P-U-E-N-T-E.

4 Q Thank you. Where do you work?

5 A The Alcoholic Beverage Regulation
6 Administration.

7 Q And what's your title there?

8 A Investigator.

9 Q And how long have you been an
10 Investigator for ABRA?

11 A Approximately, three and a half years.

12 Q Okay. What are your primary job
13 responsibilities as an Investigator?

14 A To conduct inspections and
15 investigations of licensed ABC establishments
16 throughout the District of Columbia.

17 Q Are you familiar with an ABC
18 establishment by the name of 1230 DC?

19 A Yes.

20 Q Did you have an occasion to visit 1230
21 DC on May 26, 2018?

22 A Yes.

1 Q And what was the purpose of your visit
2 that day?

3 A I received a telephone call from ABRA
4 Investigator Mark Brashears who was working the
5 Noise Task Force with a DCRA Inspector and asked
6 if I could come and assist them. They observed a
7 summer garden operating and over-crowding inside
8 the establishment.

9 Q Okay. And did you subsequently write
10 an investigative report after your visit?

11 A Yes.

12 Q Okay. I'm going to hand you a copy of
13 your investigative report now. I also have
14 additional copies for the Board, if needed.

15 Okay. So what happened when you first
16 arrived at the establishment?

17 A I arrived. I met Investigator
18 Brashears and Inspector Manning in the back alley
19 where we observed people up on the summer garden
20 appearing to be -- looking like they were
21 drinking alcoholic beverages. And also at the
22 same time, we observed what appeared to be

1 construction work going on at the same time.

2 So we conferred with each other and
3 then we went in through a back door where we
4 observed patrons going in through the back door
5 as well.

6 Q Okay. And what happened once you got
7 inside?

8 A Investigator Brashears and Inspector
9 Manning, they went upstairs to the summer garden
10 immediately. I asked an employee on the first
11 floor if there is an ABC manager or owner
12 available? And I waited for the ABC manager to
13 come.

14 Q Okay. What did you talk about once --
15 or first, did an ABC manager or owner come?

16 A Yes. An ABC manager, Edgar Johnson,
17 approached me. I asked to see the ABC License
18 and a Certificate of Occupancy. He went and got
19 those for me.

20 Q Okay. Did you have a chance to review
21 the ABC License?

22 A Yes.

1 Q Okay. What did you do next?

2 A I pointed out to Mr. Johnson that the
3 establishment didn't have a summer garden
4 endorsement. The only endorsement they had was
5 entertainment and we proceeded to walk upstairs
6 to the summer garden.

7 Q Okay. What did you observe on the
8 summer garden?

9 A As we were walking out on the summer
10 garden, approximately, about 10 patrons were
11 walking in past us. Investigator Brashears came
12 up to me and said he observed several females
13 consuming alcoholic beverages as well as
14 Inspector Manning notifying us that illegal
15 construction was being performed at 1:00 in the
16 morning.

17 Q Okay. And now can you describe what
18 the summer garden looked like?

19 A Yeah, it was on the rooftop. There
20 was tables, chairs, there was a grill, there was
21 coolers, like it was being operated earlier in
22 the day.

1 Q And to your knowledge, was the
2 establishment approved to have a summer garden?

3 A No.

4 Q Okay. And how did you know that?

5 A The license only -- didn't have a
6 summer garden endorsement on it, just an
7 entertainment endorsement.

8 Q Okay. What did you do after visiting
9 the summer garden?

10 A I advised Mr. Johnson that the
11 establishment could not be operating a summer
12 garden, nobody out there drinking alcohol, eating
13 or anything like that. I also advised him that
14 it was on the C of O, he didn't have the summer
15 garden C of O, that he needed to go to DCRA to
16 get that done.

17 Q Okay. And what did you do next?

18 A We advised him that he was in
19 violation for the summer garden endorsement.
20 DCRA Inspector Manning advised him that he will
21 be notifying illegal construction at DCRA and he
22 will get a citation.

1 Q Okay. Did you note anything else, any
2 other violations?

3 A Not at that time. I advised him it
4 was 1:40 in the morning and he needed to shut
5 down at 2:00, based off past experiences where
6 they didn't and he assured me that they will be
7 done operating at 2:00.

8 Q And why was 2:00 significant?

9 A Because the license stated the
10 operation -- the hours and sale and operation
11 were to 2:00 a.m.

12 Q Okay. What did you do after that?

13 A I went outside. I telephoned ABRA
14 Investigator Jason Peru, who was the Acting
15 Supervisor that night, and advised him of the
16 situation. He advised me to stand by and him and
17 Investigator Shawn Townsend would be coming over
18 to talk to the owner as well.

19 Q Okay. So is it fair to say that you
20 stayed at the establishment then?

21 A Yes, I pulled my car around up front
22 and I parked right out front of the

1 establishment.

2 Q Okay. What did you do when
3 Investigator Peru and, I believe you said,
4 Investigator Townsend arrived?

5 A We went through the front door. We
6 identified ourselves. We saw a young female
7 collecting a cover charge from people who were in
8 front of us.

9 Q Um-hum.

10 A And at that time, we observed it was
11 2:00. We asked to see the manager/owner. Mr.
12 Johnson recognized me and came running over.

13 Q Taking a step back for a minute, you
14 mentioned you saw an employee collecting what you
15 believed was a cover charge?

16 A Yes.

17 Q Why was that significant to you?

18 A Because when I reviewed the license
19 earlier, there was no cover charge endorsement on
20 it.

21 Q Okay. So what happened next?

22 A We advised Mr. Johnson, Investigator

1 Peru advised Mr. Johnson, that he cannot be
2 accepting a cover charge and it was 2:00. Why
3 wasn't the establishment shutting down? I walked
4 upstairs. I observed a very large crowd, people
5 were dancing, bartenders were still selling
6 alcohol and the DJ was still playing music.

7 Q Okay. And what did the ABC manager
8 say when you brought this to his attention?

9 A He stated that he was told by the
10 owners that they have -- it was a holiday weekend
11 and they can stay open until 4:00 a.m.

12 Q What did you do next?

13 A I pulled out a list of approved
14 establishments that got holiday hours. I advised
15 Mr. Johnson 1230 DC was not on it, since they
16 haven't applied for it.

17 Q Okay. And why was that significant?

18 A Because in order for an establishment
19 to have holiday extension hours, they have to
20 apply and get approved and that will allow them
21 to stay open until 4:00 in the morning on a
22 holiday.

1 Q Okay. So if you are not on the list
2 and you are not pre-approved, what does that
3 mean?

4 A They have to shut down at the regular
5 time.

6 Q Okay. What happened next?

7 A I advised Mr. Johnson they had to shut
8 down. Mr. Johnson said he will speak with the
9 owner, that's when Investigator Townsend asked
10 him why the owner was not talking to us. A few
11 minutes later an individual came over and
12 identified himself as Kwamey. He wouldn't give
13 us any ID or anything. He stated that he was the
14 owner.

15 Investigator Townsend advised him that
16 it was well after 2:00 now and that they needed
17 to shut down. And he said that he had to go talk
18 to the promoter first.

19 Q Okay. And around what time did 1230
20 DC finally shut down?

21 A At 2:45 in the morning after we
22 radioed in for MPD assistance, that's when Mr.

1 Kwamey went in and turned the lights off and had
2 the DJ shut the music off.

3 Q And what did you do next?

4 A We stood outside with MPD officers and
5 observed a very large crowd come out. Myself and
6 Investigator Peru went and asked Mr. Johnson how
7 many people were inside. He said probably around
8 250. The license only listed 111.

9 Q Okay. So is it accurate to say that
10 1230 DC had approximately double the amount of
11 patrons that it is allowed under its license?

12 A Yes.

13 Q Okay. Did you observe any other
14 violations while you were there?

15 A No.

16 MS. GUNZEL: If I could have the
17 Board's indulgence? The District has no further
18 questions. Thank you.

19 CHAIRPERSON ANDERSON: Any questions
20 by any of the Board Members? Go ahead, Mr.
21 Alberti.

22 MEMBER ALBERTI: Investigator, thank

1 you for your report. Can you show the order
2 again how you determined that there was a summer
3 garden being operated?

4 THE WITNESS: When we got there,
5 first, we stood out back and watched. We had a
6 good view from the back alley. We observed
7 people out there laughing, people were -- had
8 Solo cups in their hands. Several people had
9 beer bottles.

10 MEMBER ALBERTI: Okay. I missed that
11 part. So you did see people out there?

12 THE WITNESS: Yes, sir.

13 MEMBER ALBERTI: All right. Thank
14 you. No further questions.

15 CHAIRPERSON ANDERSON: I think all of
16 us missed that portion, Mr. Alberti. And that
17 was a question that I was going to ask you.

18 MEMBER ALBERTI: Yes, just to be
19 clear, I got the grill. I got the cooler. But I
20 didn't get -- I didn't hear people out there.

21 CHAIRPERSON ANDERSON: That was my
22 question, Mr. Alberti. I wrote that to ask.

1 MEMBER ALBERTI: Well, good. I'm glad
2 I'm not the only one.

3 CHAIRPERSON ANDERSON: You're not the
4 only one. All right.

5 I'm sorry, just a clarification. What
6 was on their Certificate of Occupancy? What is
7 their occupancy load?

8 THE WITNESS: 111.

9 CHAIRPERSON ANDERSON: 111. And so
10 you are saying that at 2:45 how many people you
11 saw leaving at or approximately 2:45?

12 THE WITNESS: It was a very large
13 crowd. We lost count, so we asked Mr. Johnson
14 how many people were inside and he said probably
15 around 250. It was a private party. A white --

16 MEMBER SILVERSTEIN: How many?

17 THE WITNESS: 250 patrons. It was a
18 white-tie affair party, he called it.

19 CHAIRPERSON ANDERSON: All right. Any
20 other questions by any other Board Members?

21 All right. Thank you very much, Mr.
22 Puente. You can step down.

1 (Whereupon, the witness was excused.)

2 CHAIRPERSON ANDERSON: Does the
3 Government have any other witnesses?

4 MS. GUNZEL: No, Mr. Chair.

5 CHAIRPERSON ANDERSON: Does the
6 Government rest?

7 MS. GUNZEL: Yes.

8 CHAIRPERSON ANDERSON: And the only
9 document that the Government has is the
10 investigative report. Do you want to move it
11 into evidence?

12 MS. GUNZEL: Yes, Mr. Chair, I would
13 like to do that.

14 CHAIRPERSON ANDERSON: All right.

15 (Whereupon, the above-
16 referred to document was
17 marked as Government Exhibit
18 No. 1 for identification and
19 was received into evidence.)

20 CHAIRPERSON ANDERSON: So do you wish
21 to make a closing?

22 MS. GUNZEL: Yes, Mr. Chair, briefly.

1 Members of the Board, the District
2 Government has provided sufficient evidence for
3 the Board to find that on May 26, 2018, 1230 DC
4 operated a summer garden without an endorsement,
5 charged a cover charge without an endorsement,
6 operated beyond its Board-approved hours of sales
7 and exceeded the capacity listed on its ABC
8 License.

9 You heard from ABRA Investigator Kevin
10 Puente that on that date Investigator Puente
11 visited the establishment and observed a summer
12 garden with patrons drinking what appeared to be
13 alcoholic beverages and employees charging a
14 cover charge at the front door.

15 However, Investigator Puente testified
16 that 1230 DC did not have an endorsement for a
17 summer garden or to charge a cover charge on its
18 ABC License.

19 Investigator Puente also testified
20 that he witnessed the establishment continue to
21 operate and sell alcohol until roughly 2:45 a.m.,
22 even though the establishment's hours of

1 operations and sales end at 2:00 a.m. and the
2 establishment was not pre-approved for a holiday
3 extension of its hours.

4 Investigator Puente also told us that
5 while he was at 1230 DC, there were over 200
6 people in the establishment, but that the
7 establishment's maximum capacity was 111 persons
8 on its ABC License.

9 The District has therefore met its
10 burden in proving all four charges. The
11 Government defers to the Board's judgment on the
12 penalties that should be imposed for these
13 charges. Thank you.

14 CHAIRPERSON ANDERSON: All right.
15 Thank you. The record is now closed. And I'll
16 ask you this, do you wish to file proposed
17 findings of fact and conclusions of law or waive
18 your right to do so?

19 MS. GUNZEL: The District waives its
20 right to do so.

21 CHAIRPERSON ANDERSON: Okay. So we
22 will issue a decision within 90 days. And hold

1 on one minute, please.

2 As Chairperson of the Alcoholic
3 Beverage Control Board for the District of
4 Columbia and in accordance with DC Official Code
5 Section 2-574(b) of the Open Meetings Act, I move
6 that the ABC Board hold a closed meeting for the
7 purpose of seeking legal advice from our counsel
8 on Case No. 18-CMP-00150, 1230 DC, pursuant to DC
9 Official Code Section 2-574(b)(4) of the Open
10 Meetings Act and deliberating upon Case No. 18-
11 CMP-00150, 1230 DC, for the reasons cited in DC
12 Official Code Section 2-574(b)(13) of the Open
13 Meetings Act.

14 Is there a second?

15 MEMBER SILVERSTEIN: Second.

16 CHAIRPERSON ANDERSON: Mr. Silverstein
17 has seconded the motion. I will now take a roll
18 call vote on the motion before us now that it has
19 been seconded.

20 Mr. Silverstein?

21 MEMBER SILVERSTEIN: I agree.

22 CHAIRPERSON ANDERSON: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON ANDERSON: Mr. Cato?

3 MEMBER CATO: I agree.

4 CHAIRPERSON ANDERSON: Mr. Anderson?

5 I agree.

6 As it appears that the motion has
7 passed, I hereby give notice that the ABC Board
8 will recess these proceedings to hold a closed
9 meeting in the ABC Board conference room pursuant
10 to Section 2-574(b) of the Open Meetings Act.

11 Thank you very much. Have a good day.

12 MS. GUNZEL: Thank you.

13 CHAIRPERSON ANDERSON: The Board then
14 will be in recess until our 1:30 hearing.

15 (Whereupon, the Show Cause Hearing was
16 concluded at 11:24 a.m.)

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