DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF:            :
Brothers Burger Bar, LLC,    :
t/a Felicity Lounge          :
707 H Street, N.E.           : Show Cause
Retailer CR - ANC 6C         : Hearing
License No. 112502           :
Case #21-CMP-00038           :

(No ABC Manager on Duty,     :
Failed to Follow a Board    :
Order)                      :
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Wednesday
January 12, 2022

The Alcoholic Beverage Control Board
met via 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

ALSO PRESENT:

SARAH FASHBAUGH, DC ABRA Staff
ANTHONY CELO, ESQ., DC OAG
JOHN FIORENTINE, ABRA Investigator
MARK RUIZ, ABRA Investigator
CHAIRPERSON ANDERSON: Moving now to our afternoon session, the first case on our afternoon session is Case Number 21-CMP00038, Felicity Lounge, License Number 112502.

Ms. Fashbaugh, can you please elevate the rights for the parties in this case, please.

I'm sorry.

MS. FASHBAUGH: Please --

CHAIRPERSON ANDERSON: No, I'm sorry. Hold on. I'm sorry. Hold on, Miss. Yes, go ahead, Miss. Yes. My apologies.

MS. FASHBAUGH: Please stand by. I do not see a Darrell Jones.

Anthony Celo, your rights have been elevated. Mark Ruiz, your rights have been elevated.

That is all, Mr. Chair.

CHAIRPERSON ANDERSON: All right.

Thank you.

MR. CELO: I am also expecting Investigator John Fiorentine. Is he also needing to have his rights elevated?

CHAIRPERSON ANDERSON: Ms. Fashbaugh, have you seen Mr. Fiorentine?
Yes, I see Mr. Fiorentine. I see Mr. -- all right. Do we -- is -- is Mr. Jones available?

(No response.)

CHAIRPERSON ANDERSON: Mr. Celo, have you had any conversation with Mr. Jones?

MR. CELO: Yes, sir, Mr. Chairman. I did have conversations with Mr. Jones. We were unable to reach a settlement in this matter.

I would note that he was not at the status hearing, either. I do not know if he intended to be here today. Our conversations did not get that far.

CHAIRPERSON ANDERSON: I'm sorry. When was the last time you had conversations with him?

MR. CELO: It would have been shortly before the status hearing, within a few days of that. But I can find the exact date if you need it.

CHAIRPERSON ANDERSON: Yes, please, sir.

MR. CELO: Please hold on one moment.

CHAIRPERSON ANDERSON: Thank you.

(Pause.)
CHAIRPERSON ANDERSON: All right. You don't have to answer that question. All right. Mr. -- I'm sorry. Miss --

MR. CELO: Sorry. It appears that I spoke to him on or about the 29th or 30th of November; I think the 29th. And I've left multiple messages for him since then, but I don't have the exact dates of those messages. But since the status hearing.

CHAIRPERSON ANDERSON: Okay. That's fine. I just want to -- is Mr. Darrell Jones online? If Mr. Darrell Jones is having some technical issues, can you please raise your hand or identify yourself in the chat?

Ms. Fashbaugh, can you do me one other favor, please? Can you -- is there anyone else sitting out there waiting to participate in any hearings this afternoon?

MS. FASHBAUGH: Yes, I see the name Seka Chef. I'm going to unmute you and you can tell us if you're related to any of the cases. So you're unmuted now, Seka Chef.

MS. CHEF: No, I'm not.

CHAIRPERSON ANDERSON: Okay. So you're not -- okay. All right. We don't have --
okay. Fine. So thank you. You can -- you can
move that person back, Ms. -- so all right.
Okay. All right. Give me a minute.

Mr. Celo, are you -- are you prepared
to move forward?

MR. CELO: I am, Your Honor.

CHAIRPERSON ANDERSON: All right.

Pursuant to D.C. -- pursuant to D.C. Official
Code Section 25-447, the Board has the authority
to proceed ex parte, where the licensee waives
the hearing or fails to appear unless the hearing
is extended for good cause and sufficient cause.

The Board's record reflects that the
licensee was properly served by personal service
on November 5, 2021 -- on personal services made
on November 5, 2021.

Seeing no licensee here and having no
good and sufficient cause to extend this hearing,
the Board will proceed with the show-cause
hearing.

All right. Mr. Celo, can you please
spell and state your name for record, please.

MR. CELO: Anthony Celo, C-E-L-O, on
behalf of the District.

CHAIRPERSON ANDERSON: All right.
Thank you, Mr. Celo. This is the first time you're appearing before me, and so I apologize. Sorry. All right. Do you have a witness you wish to call, sir?

MR. CELO: Yes, Mr. Chairman.

CHAIRPERSON ANDERSON: Well, let me ask you a question before you call a witness. Do you wish to make an opening statement, or do you just want to call -- so, it's your -- why -- do you wish to make an opening statement?

MR. CELO: I'll waive the opening statement in this case.

CHAIRPERSON ANDERSON: All right. So who is the first -- who is your first witness, sir?

MR. CELO: Investigator Ruiz.

CHAIRPERSON ANDERSON: Mr. Ruiz, can you raise your right hand, please.

Do you swear or affirm to tell the truth and nothing but the truth?

INVESTIGATOR RUIZ: I do.

CHAIRPERSON ANDERSON: All right.

Thank you. Your witness, sir.

DIRECT EXAMINATION
BY MR. CELO:

Q Investigator Ruiz, can you please describe to the Board your position and how many years you have worked in that position?

CHAIRPERSON ANDERSON: I'm sorry. Can you also -- can you spell and state your name, Mr. Ruiz?

INVESTIGATOR RUIZ: Yes. First name's Mark, M-A-R-K, last name, Ruiz, R-U-I-Z. I am also an investigator with the Alcoholic Beverage Regulation Administration for approximately two and a half years -- actually almost three years now.

And I investigate -- conduct inspections and investigations within ABC establishments located within the District of Columbia.

BY MR. CELO:

Q And Investigator Ruiz, did you have cause to investigate Felicity Lounge in the matter that has brought us here today?

A Yes.

MR. CELO: And at this time I
request

permission to present what has been marked as
Exhibit 1 -- Government Exhibit 1, specifically.

CHAIRPERSON ANDERSON: All right. Ms. Fashbaugh, can you -- can you give Mr. Celo the opportunity to present, please. Ms. Fashbaugh?

MS. FASHBAUGH: This has been accomplished.

CHAIRPERSON ANDERSON: Okay. Thank you. Go ahead. You can share your screen, sir.

MR. CELO: All right.

BY MR. CELO:

Q Investigator Ruiz, are you seeing the shared screen?

CHAIRPERSON ANDERSON: No, we're not seeing it, sir.

INVESTIGATOR RUIZ: No.

CHAIRPERSON ANDERSON: Yes, now we are.

MR. CELO: Thank you.

INVESTIGATOR RUIZ: Yes, I can see it now.

MR. CELO: Thank you.

BY MR. CELO:
Q This document has been marked as
Government Exhibit 1. Have you had an
opportunity to review this document before the
hearing?

A I have.

Q And are you familiar with this
document?

A Yes, this is the document I
drafted.

Q And when you say you drafted it,
you authored this document?

A Yes.

Q And did you present all the
exhibits that I am scrolling through now in this document,
as well?

A I did.

Q And is this a fair and accurate
copy of the report that you prepared?

A Yes.

MR. CELO: And I apologize for the
echo. I don't know if that's something on my
end. But is the Board hearing the testimony
okay?

CHAIRPERSON ANDERSON: I can. Mr. Short, can -- mute your phone, please, Mr. Short. Let me see if it gets any better. I think that's the only person I see -- go ahead, Mr. -- go ahead, sir.

MR. CELO: Thank you.

BY MR. CELO:

Q Investigator Ruiz, can you please explain what the case report is as a document for the Board?

A Yeah. The investigative report is the findings from the result in a complaint that I investigated on August 13, 2021 for Felicity Lounge.

Q Thank you. And can you tell me what occurred on August 13, 2021?

A Yes. I arrived at the establishment after receiving notification from Supervisory Investigator John Fiorentine that a complaint was made in regards to the establishment allowing
hookah smoking inside of the establishment.

So I arrived at the establishment approximately 11:56 p.m. I spoke with the -- a male security guard at the front verbally and identified myself as an ABRA investigator and displayed my badge and credentials, and asked to speak with the ABC manager or owner at -- that was present that evening.

The security officer immediately turned and entered the establishment, at which time I followed, in which I met with a manager by the name of Dominic Jones.

Q: And did you speak with Mr. Jones?
A: I did. I asked Mr. Jones if there was an ABC manager or owner present that evening. He identified himself as being an owner.

Q: Did he direct you to anyone alleged to be an ABC manager?
A: He did consult with a female bartender behind. He stated that she was an ABC manager.

I followed up with the female bartender. She
mistaken her tips card to be for an ABC manager's license.

She was not an ABC manager, and no one else on -- at the establishment had an ABC manager's card.

Q And did she acknowledge in your conversation with her that she was not an ABC manager?

A Yes. After I clarified what I was looking for, she said she was not.

Q And according to your records regarding the establishment, is Mr. Jones a recognized owner of the establishment?

A He is not.

Q With regard to the complaint concerning hookah, did you see any hookah smoking in the establishment?

A Yes. Upon my entrance to the establishment, I did observe approximately six hookah devices throughout the establishment, with patrons smoking from them.

Q And did Mr. Jones acknowledge that he routinely sells hookah in the establishment?
A

Mr. Jones -- well, I notified
him why
I was there and what I observed. He did respond
by saying that this was an unfair violation, that
he sells approximately 10 hookahs each evening,
and he has to do that to remain in business.

Q

Did you or any of the
investigators
confirm whether or not he has an exemption to
sell tobacco and hookah in the establishment?

A

Yes. Supervisory Investigator
Fiorentine did follow up on August 24 with the
Department of Health Tobacco Control Program to
confirm their status, and they did -- still did
not have the proper permits in place.

Q

And I am scrolling down to show
you
what was marked on your report as Exhibit 2.
This would be page 18 of Government Exhibit 1.

Do you recognize this photograph?

A

I do.

Q

What is this a photograph of?

A

This is a photograph of me
standing at
the end of the -- well, not of me, but of the bar
with patrons with the hookah devices in front of them.

Q And did you take this photograph?

A I did.

Q And then on the next page, Exhibit 3, do you recognize this photograph?

A Yes. This will also detail a patron sitting at the bar with a hookah, with the smoking device in her left hand.

Q And did you witness her using this device?

A I did.

MR. CELO: At this time, I move for the entry of Government Exhibit 1.

CHAIRPERSON ANDERSON: So moved.

MR. CELO: And I have stopped sharing that exhibit for the moment.

CHAIRPERSON ANDERSON: Thank you.

BY MR. CELO:

Q Investigator Ruiz, is it a violation
to have no ABC manager on duty?

A  It is.

Q  And in your investigation, did you
determine that this was the first secondary tier
violation this establishment had had?

A  I determined that it was a violation
that evening. I'm not sure approximately of the
history you stated.

Q  And is it a violation to permit hookah
without obtaining the exemption?

A  It is.

Q  And did you determine that, on
that evening, this establishment violated that
provision?

A  I did.

MR. CELO:  Nothing further at this
time.

CHAIRPERSON ANDERSON:  All right.
Thank you. Any questions by the Board Members?
Any questions by any Board Members?
(No response.)
CHAIRPERSON ANDERSON: All right.

Hearing none, thank you, Mr. Ruiz, for your testimony.

INVESTIGATOR RUIZ: You're welcome.

CHAIRPERSON ANDERSON: Do you have another witness, sir?

MR. CELO: Yes, sir, Mr. Chairman.

The District calls Investigator Fiorentine.

CHAIRPERSON ANDERSON: Mr. Fiorentine, can you raise your right hand, please. Do you swear or affirm to tell the truth and nothing but the truth? I can't hear you, Mr. Fiorentine.

INVESTIGATOR FIORENTINE: I do.

CHAIRPERSON ANDERSON: All right.

Thank you. Your witness, sir.

DIRECT EXAMINATION

BY MR. CELO:

Q Could you please state and spell your name for the record.


Q And Investigator Fiorentine, what is your specific title role and how long have you
worked for ABRA?

A I am the supervisory

investigator in

charge of the orange team. I supervise the

inspection and investigation of ABC-licensed

establishments, and I am the program manager for

the Noise Control Program.

And I have worked for ABRA for

approximately three years.

Q Thank you. And did you hear the

testimony of Investigator Ruiz?

A I did.

Q He indicated that you had

directed the

investigation in response to a complaint. Could

you please elaborate on that?

A I did. ABRA had received a

complaint

through our electronic complaint system that --

the complaint had mentioned that the

establishment was in violation of a previously

directed Board order, and I tasked Investigator

Ruiz to investigate that allegation.

Q And following his investigation,
you confirm that Felicity Lounge had not obtained an exemption for -- from DOH regarding the tobacco use?

A That is correct. I contacted the Tobacco Control Program Manager, Ms. Carrie Dolquist [phonetic] and verified that the establishment had not obtained the necessary paperwork or permits to be exempted from the Tobacco Control regulations.

Q And as part of your investigation, did you look into the violation history of this establishment?

A I did look into the violation history of the establishment.

Q Were you able to determine whether or not the action of permitting hookah without an exemption constituted their third primary tier violation within a three-year period?

A It did.

Q And the violation that was testified
to with not having an ABC manager present, did
that constitute the first secondary tier
violation for this establishment?

A It did.

Q As part of your investigation, did you
look into any monies or fines outstanding to the
District from this establishment?

A I did.

Q Does Felicity Lounge currently have
any outstanding monies owed to the District?

A It does. Felicity Lounge has an
outstanding balance of approximately $13,000 with
the Metropolitan Police Department for the
reimbursable detailed officers that were required
to be present at the establishment for a Board
order.

The establishment was subsequently
suspended from that program due to being in
arrears.

Q And they were required to have
these
officers as the result of an order of discord, correct?
That is correct.

And had they ever made payments on any of those invoices?

Based on my investigation and the information presented to me from the program manager, Ms. Brenda Smith, it does not appear that the establishment had ever made a payment for its reimbursable detail.

Does that $13,000 outstanding bill give you concern as to whether or not they would make payment were a fine issued in this case?

It does. It also gives me concern whether they would be in compliance with a Board order in the future because they owe such a substantial amount, and the Board order requires two officers' presence if live entertainment is conducted.

And so I have serious misgivings whether they would be able to meet that requirement, given the amount of money owed.

And because of that concern...
regarding payment of fines, do you believe that a different penalty may be appropriate in this case?

A I do, that a financial penalty may not dissuade that behavior.

MR. CELO: Thank you. Nothing further at this time.

CHAIRPERSON ANDERSON: Any -- thank you. Any questions by any Board Members?

MEMBER SHORT: Mr. Chair?

CHAIRPERSON ANDERSON: Go ahead, Mr. Short.

MEMBER SHORT: Investigator Fiorentine, thank you for your excellent testimony and reports. How many times have you been to this establishment, Felicity Lounge, 707 H Street Northeast?

INVESTIGATOR FIORENTINE: Mr. Short, I can't tell you an exact number. I can tell you it's probably a dozen or more.

MEMBER SHORT: Then every time you've gone there, have there been Board orders to guide them to different types of behavior in the establishment?
INVESTIGATOR FIorentine: No, sir.

But they do have, I would say, a history of noncompliance to fairly important Board orders. They were the first establishment that was found in violation of the first Mayor's order, now two years ago into the pandemic.

Member Short: Thank you very much, and thank you for a great job, and continue to go. Sooner or later, the road has got to end for violators like this.

And I'll just simply say this, continue doing a wonderful job. We appreciate the work you do. All of us Board Members appreciate all the work you do, and we will do our very best to assist you in doing your job as well as we possibly can. Thank you.

INVESTIGATOR FIorentine: Thank you, sir.

Chairperson Anderson: Any other questions by any of the Board Members?

(No response.)

Chairperson Anderson: Any redirect, Mr. Celo?

Mr. Celo: No, Mr. Chairman.

Chairperson Anderson: Do you need to
make a -- do you want to make a closing, sir?

MR. CELO: Yes, I --

CHAIRPERSON ANDERSON: I'm sorry. Do you rest?

MR. CELO: Yes, Government rests.

CHAIRPERSON ANDERSON: All right. Do you want to make a closing?

MR. CELO: Yes, a brief closing, if I may.

CHAIRPERSON ANDERSON: Sir, go ahead.

MR. CELO: The Government has proven by a preponderance of the evidence that two violations occurred at the establishment, Felicity Lounge, on August 13, 2021.

They failed to have an ABC manager on duty, a violation of D.C. Code 25-701, their first secondary tier violation. They also failed to follow Board order 2021-221, by permitting hookah without obtaining an exemption from DOH, a violation of D.C. Code 25-823(a)(6).

This would be their third primary tier violation within three years. Given the history of this establishment and the $13,000 that are still due in owing, this Government's position is
that a fine is insufficient to rectify the situation and is inappropriate as the form of punishment, in and of itself.

As a result, the Government would request either a revocation of their license or, at the very least, a significant suspension of their license, in addition to any fines levied by this Board.

The Government has therefore proven the charges laid out in the notice to show cause, and asks the Board to impose the appropriate penalties under D.C. Code 25-823 and 25-701.

Thank you.

CHAIRPERSON ANDERSON: Thank you, sir.

MR. CELO: Thank you.

CHAIRPERSON ANDERSON: All right.

As Chairperson of the Alcoholic Beverage Control Board for the District of Columbia, in accordance with D.C. Official Code Section 25-74(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 Number 21-CMP00038, Felicity Lounge, pursuant to D.C. Official Code Section 25-74(b)(4) of the Open Meetings Act, and deliberate

Is there a second?

MEMBER SHORT: Mr. Short. I second.

CHAIRPERSON ANDERSON: Mr. Short has seconded the motion. We will now have a roll call vote on the motion.

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. Hansen?

MEMBER HANSEN: Jeni Hansen. I agree.

CHAIRPERSON ANDERSON: Ed Grandis?

MEMBER GRANDIS: Edward Grandis. I agree.

CHAIRPERSON ANDERSON: And Mr. Anderson. I agree. And it appears that the motion has passed 6-0-0. I hereby give notice that the ABC Board will recess this proceeding to hold a closed meeting in ABC conference room,
pursuant to Section 25-74(b) of the Open Meetings Act.

Thank you very much for the presentation. The Board will issue a decision within 90 days. Thank you. Have a great afternoon.

MR. CELO: Thank you.

(Whereupon, the above-entitled matter went off the record.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Felicity Lounge

Before: DCABRA

Date: 01-12-22

Place: teleconference

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

[Signature]
Court Reporter

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