

Capital Reporting Company
In the Matter of A.B.R.A. Agenda 10-24-2012

DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
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A.B.R.A. AGENDA :
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October 24, 2012

The Alcoholic Beverage Control

Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- HERMAN JONES, Member
- CALVIN NOPHLIN, Member
- MIKE SILVERSTEIN, Member

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

2 1:17 p.m.

3 CHAIRPERSON MILLER: We're on the -- back on
4 the record for the Board's meeting on our agenda items
5 for Wednesday, October 24th, 2012.

6 The first item on our agenda is applicant's
7 motion for reconsideration of Board Order, dated
8 October 11, 2012 from Andrew Kline to which the Office
9 of the Attorney General responded. The establishment
10 is Pan Mar Liquors. It's located at 1926 I Street,
11 N.W., License No. 60242. And I'm going to ask Mr.
12 Alberti to lead the discussion on this motion.

13 MR. ALBERTI: The motion from the applicant
14 has two parts. The first part is a motion to dismiss
15 the charges stemming from a violation of Title 25-783.
16 The Board agrees with the government that it can -- it
17 can bring both charges and convict the applicant of
18 both charges. So we are denying the motion on -- we're
19 denying that aspect of the motion for reconsideration.
20 Our decision to --

21 CHAIRPERSON MILLER: No, you're proposing
22 that the Board deny.

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1 MR. ALBERTI: Right, right, right. So --

2 CHAIRPERSON MILLER: Go ahead.

3 MR. ALBERTI: Right. I will make that
4 motion. I will make it.

5 CHAIRPERSON MILLER: Okay.

6 MR. ALBERTI: So my motion will be to deny
7 that portion of the -- that portion of the motion. And
8 let's stand our conviction on the violation of both 781
9 -- 25- 781 and 25-83. The second part of the -- of the
10 motion from the applicant was to reduce the fine for
11 the violation stemming from 25-783. I will note that
12 the fine that was -- the monetary fine that was levied
13 by the Board in its Order stems from -- well, it stems
14 from a transcription error.

15 The Board, in its decision, had intended to
16 fine the applicant \$2000 with five days suspension, one
17 served and four stayed. So we are granting the motion
18 to reduce the monetary fine stemming from 25-783. So
19 in the end -- so that is -- that is my motion, to grant
20 the second part of the motion, which is to reduce the
21 monetary fine stemming from 25-783.

22 And we'll just say in summary, the final

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1 penalty here is \$4000 for 25-781 with ten days
2 suspension, six -- four served and six stayed and for
3 the violation of 25- 783, the final Order will have a
4 fine of \$2000 with five days suspension, one served and
5 four stayed. So my recommendation is to -- that is my
6 recommendation to the Board.

7 MR. BROOKS: I second.

8 CHAIRPERSON MILLER: Discussion? I would
9 just like to say that with respect to the two charges,
10 25-781 and 25-783, while I think maybe the Board may
11 charge both -- or the government may charge both, I
12 think that we -- it would be good to use discretion to
13 only charge one in my view and that was the one under
14 25-783. So -- and my other comment is that in 25-783
15 one talks about suspending the license for five
16 consecutive days.

17 And then it say, "The five-day suspension may
18 be stayed by the Board for one year if all employees
19 who serve alcoholic beverages in the licensed
20 establishment complete an alcohol training program
21 within three months," which is -- my understanding is
22 what's going to happen here and what our Order says

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1 that should be done. And I read this provision strictly
2 as the applicant does, that all five days should be
3 stayed and not just a part of the five days.

4 So I would be in opposition to the motion
5 with respect to that part. So --

6 MR. ALBERTI: I believe there are additional
7 comments.

8 CHAIRPERSON MILLER: Other comments? Yes.

9 MR. JONES: Thank you. Just for
10 clarification, I believe the wording is, "May," and
11 not, "Should be stayed."

12 CHAIRPERSON MILLER: It -- yes. It -- are
13 you asking me a question? Yes, it is -- it's -- the
14 five-day suspension maybe stayed. So it gives the
15 Board the discretion to stay the five-day suspension.
16 I see a distinction between that and Paragraph 2 and 3,
17 where the language says that the Board may stay up to a
18 certain amount of days.

19 MR. JONES: But just for clarification
20 purposes, you -- in your statement, I believe you said,
21 "Should."

22 CHAIRPERSON MILLER: Oh, I did? I didn't

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1 mean to.

2 MR. JONES: Okay.

3 CHAIRPERSON MILLER: I mean -- oh --

4 MR. JONES: Because it's, "May."

5 CHAIRPERSON MILLER: Yes, it's, "May."

6 MR. JONES: And I think your contention had
7 to do with the totality of the five days.

8 CHAIRPERSON MILLER: Right.

9 MR. JONES: As it was clearly up to is in
10 perspective, as you read it, we don't have -- or should
11 not take a portion of those days and either choose to
12 stay a portion and serve a portion. It's either we do
13 all five, i.e., we have them serve all five or stay all
14 five. But it's a may do that, correct?

15 CHAIRPERSON MILLER: Correct.

16 MR. JONES: Okay.

17 CHAIRPERSON MILLER: Correct. And we may.
18 We don't have to do that. But if we do it, we --
19 literally it looks like we do it for all five.

20 MR. JONES: Okay.

21 CHAIRPERSON MILLER: Yeah.

22 MR. JONES: So -- and my other concern was

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1 regarding the training that the Licensee had said they
2 were going to do and by Order should have done and by
3 them not completing that in the first time that we
4 ordered them to do that, by their admission on the
5 record, when we had the case, I have very little faith
6 that this Licensee respects the Board enough to follow
7 through on the request that we ordered them to have
8 training done.

9 Therefore, I don't hold any credence to that
10 as I evaluate the decision regarding this Order.

11 CHAIRPERSON MILLER: Okay.

12 MR. ALBERTI: Mr. Jones, just to be clear,
13 you're talking about the -- a previous Order --

14 MR. JONES: Correct.

15 MR. ALBERTI: -- to this one where we ordered
16 training and they admitted they had not fulfilled the
17 Board's instructions in that Order?

18 MR. JONES: Yes, sir. I am referring to a
19 previous --

20 MR. ALBERTI: Thank you.

21 CHAIRPERSON MILLER: Is it my --

22 MR. JONES: -- (inaudible) clarification.

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1 MR. ALBERTI: Thank you.

2 CHAIRPERSON MILLER: Is it my understanding -
3 - that Order precedes me -- that he had his employees
4 trained but he didn't -- he didn't get trained? Is
5 that what you mean by didn't comply with it?

6 MR. JONES: He was unable to provide any
7 proof of the fact that his employees were trained, nor
8 did he take the training, which was part of the request
9 that was made.

10 CHAIRPERSON MILLER: Okay. Mr. Silverstein?

11 MR. SILVERSTEIN: Madam Chair, I agree with
12 you. This is a difficult case and it's a close call
13 because the establishment did in fact at least have a
14 cursory glance at an ID. But a cursory glance is not
15 defined specifically by the statute as being adequate.
16 And I believe that the government made its case just
17 barely, but yet, it still did. The issue of a five-day
18 suspension versus zero, if it was to be a five -- if it
19 was either/or and not allow us to lessen it, I would go
20 for the five days.

21 CHAIRPERSON MILLER: Uh-huh.

22 MR. SILVERSTEIN: But I feel that by lowering

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1 it to one day, we're showing fairness to the
2 establishment. And as such, I would agree with Board
3 Member Alberti's motion but I do respect and understand
4 those who would feel otherwise. It is a close call.

5 CHAIRPERSON MILLER: Okay. Others? There
6 was a motion -- what -- and it was seconded by Mr.
7 Jones, correct?

8 MR. ALBERTI: By Mr. Brooks.

9 CHAIRPERSON MILLER: Oh, Mr. Brooks. I'm
10 sorry. Okay. Mr. Alberti made a motion. Mr. Brooks
11 seconded it. It's -- I believe the motion is to grant
12 the motion for reconsideration in part and deny it in
13 part in the manner that Mr. Alberti stated. If there's
14 no question on the motion, then I'll call the vote.

15 All those in favor, say aye?

16 (Chorus of ayes.)

17 CHAIRPERSON MILLER: All those opposed?
18 Opposed. All those abstaining?

19 (No audible response.)

20 CHAIRPERSON MILLER: Then the vote is 5-1-0
21 to grant Mr. Alberti's motion -- to grant in part and
22 deny in part the motion for reconsideration.

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1 No. 2 is --

2 MR. ALBERTI: Ms. Miller opposed.

3 CHAIRPERSON MILLER: No. 2 is a review of a
4 new cooperative agreement concerning issuance of
5 license for sale of alcoholic beverages dated October
6 3, 2012 between Mellow Mushroom, ANC 1C, the Kalorama
7 Citizens Association, and the Reed-Cooke Neighborhood
8 Association. The establishment is Mellow Mushroom,
9 located at 2436 18th Street, N.W., License No. 86063.
10 So this is a voluntary agreement which we're reviewing
11 to see if we have any concerns with any of the
12 provisions.

13 Okay. Looking at Page 1, Paragraph 3, it
14 says, "Whereas, the applicant and protestants seek to
15 combine the previous voluntary agreement, Board Order,
16 and two amendments into one document to be considered a
17 new voluntary agreement, upon the occasion of the
18 applicant's simultaneous request to the Board for a
19 sidewalk cafe/summer garden in the front of the
20 establishment in 2436 18th Street, N.W."

21 Okay. I would propose that the Board Order
22 language come out of this, "Whereas," and that a Board

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1 Order not be grouped into one document as the document
2 with other voluntary agreements, but that the parties
3 know that they can make reference to reading the
4 combined voluntary agreement with Board Orders that are
5 in existence.

6 That was the first recommendation. I don't
7 know if there are any other comments on that. Not
8 hearing any, Page 2, the Paragraph B and C discussed
9 protestants being able to petition the Board and a more
10 accurate process. That should be deleted, "The more
11 accurate process is that they may file a complaint with
12 ABRA." I don't know if anybody has any more comments
13 on that.

14 And Page 3, just to make a comment -- no
15 change -- it talk about the applicant agreeing to
16 provide the ANC with a copy of the contract to remove
17 grease/fatty oils from the establishment. That's in
18 Paragraph 5C and I don't have a problem with that. But
19 just as a comment to the parties, I think it's the
20 Board's view that information such as cost of the
21 services or whatever, things dealing with money and
22 price could be redacted.

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1 So those are my only comments on this
2 voluntary agreement. Are there others?

3 (No audible response.)

4 CHAIRPERSON MILLER: All right. Then I'm
5 going to move approval of this voluntary agreement with
6 those few recommendations.

7 Do I have a second?

8 MR. NOPHLIN: Second.

9 CHAIRPERSON MILLER: Mr. Nophlin has seconded
10 the motion. Any comments?

11 (No audible response.)

12 CHAIRPERSON MILLER: All those in favor, say
13 aye?

14 (Chorus of ayes.)

15 CHAIRPERSON MILLER: All those opposed?

16 (No audible response.)

17 CHAIRPERSON MILLER: All those abstaining?

18 (No audible response.)

19 CHAIRPERSON MILLER: The vote is 6-0-0 to
20 approve with those -- with those recommendations.

21 No. 3 on our agenda is a voluntary agreement
22 dated October 10, 2012 between La Plaza Mexican

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1 Restaurant and ANC 6B. And La Plaza Mexican Restaurant
2 is located at 629 Pennsylvania Avenue, S.E., License
3 No. 60614. Okay. Just on Page 1 of that voluntary
4 agreement, I recommend that, "Serving Mexican food," be
5 deleted from Paragraph 2. And the reason for that is
6 if this -- if this license is transferred to another
7 restaurant serving a different type of food, it creates
8 complications in having to amend a voluntary agreement.

9 So it would read, "The applicant will manage
10 and operate a restaurant at the listed address." I
11 don't have any other concerns on this. Anybody else?

12 (No audible response.)

13 CHAIRPERSON MILLER: Not hearing anybody --
14 hearing any, I move to approve this voluntary agreement
15 - - sorry -- with that one recommended change.

16 Do I have a second?

17 MR. NOPHLIN: Second.

18 CHAIRPERSON MILLER: Mr. Nophlin has seconded
19 the motion. All those in favor, say aye?

20 (Chorus of ayes.)

21 CHAIRPERSON MILLER: All those opposed?

22 (No audible response.)

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1 CHAIRPERSON MILLER: All those abstaining?

2 (No audible response.)

3 CHAIRPERSON MILLER: The motion passes to
4 approve the voluntary agreement with the one change.
5 Okay.

6 No. 4 is a review of a second amendment dated
7 September 25th, 2012 between VLSL, LLC, LivingSocial,
8 and the Ventana Homeowners Association. VLSL, LLC is
9 located at 918 F Street, N.W., License No. 88360. I
10 move that we postpone our consideration of this
11 amendment pending our review of the application. And
12 we will be able to rule on this next week.

13 Do I have a second?

14 MR. NOPHLIN: Second.

15 CHAIRPERSON MILLER: All those in favor, say
16 aye?

17 (Chorus of ayes.)

18 CHAIRPERSON MILLER: All those opposed?

19 (No audible response.)

20 CHAIRPERSON MILLER: All those abstaining?

21 (No audible response.)

22 CHAIRPERSON MILLER: The vote is 6-0-0 to

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1 postpone -- okay -- until next week. That is -- that
2 concludes our regular agenda. We have a supplemental
3 agenda, just a few items.

4 First on our supplemental agenda is a request
5 for a stipulated license to change the hours of
6 operation dated August 16, 2012, and a letter of
7 support from ANC 6B. The establishment is La Plaza
8 Mexican Restaurant, located at 629 Pennsylvania Avenue,
9 S.E., License No. 60614. I move that we approve this
10 request.

11 Do I have a second?

12 MR. SILVERSTEIN: Second.

13 CHAIRPERSON MILLER: Any comments?

14 (No audible response.)

15 CHAIRPERSON MILLER: Okay. The motion has
16 been seconded by Mr. Silverstein. All those in favor,
17 say aye?

18 (Chorus of ayes.)

19 CHAIRPERSON MILLER: All those opposed?

20 (No audible response.)

21 CHAIRPERSON MILLER: All those abstaining?

22 (No audible response.)

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1 CHAIRPERSON MILLER: The motion passes 6-0-0.

2 No. 2 is a request for a stipulated license

3 to change hours of operation dated September 5, 2012.

4 And the -- there is a letter of support from ANC 1A.

5 The establishment is Ma Ma's Southern Cuisine, located

6 at 3118 Georgia Avenue, N.W., License No. 85583. I

7 move that we grant this request.

8 Do I have a second?

9 MR. NOPHLIN: Second.

10 CHAIRPERSON MILLER: Is that Mr. Nophlin?

11 Okay. Mr. Nophlin has seconded the motion. Any

12 comments?

13 (No audible response.)

14 CHAIRPERSON MILLER: All those in favor, say

15 aye?

16 (Chorus of ayes.)

17 CHAIRPERSON MILLER: All those opposed?

18 (No audible response.)

19 CHAIRPERSON MILLER: All those abstaining?

20 (No audible response.)

21 CHAIRPERSON MILLER: The vote is 6-0-0 to

22 approve.

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1 Next -- the next and last item on our
2 supplemental agenda is correspondence dated October 23,
3 2012 from David Chung requesting permission to have
4 alcoholic beverages delivered on Friday, October 26th,
5 2012 for an event at the Carnegie Library on Saturday,
6 October 27, 2012. It's K Street Lounge, 1301 K Street,
7 N.W., License No. 72225. I move that we approve this
8 request.

9 Do I have a second?

10 MR. SILVERSTEIN: Second.

11 CHAIRPERSON MILLER: Motion was seconded by
12 Mr. Silverstein. All those in favor, say aye?

13 (Chorus of ayes.)

14 CHAIRPERSON MILLER: All those opposed?

15 (No audible response.)

16 CHAIRPERSON MILLER: All those abstaining?

17 (No audible response.)

18 CHAIRPERSON MILLER: The motion passes 6-0-0.

19 Okay. That completes our agenda and our
20 supplemental agenda.

21 We have just some cancellations to -- we're
22 requested to approve. They are as follows -- I think

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1 we can do them en masse. I'm going to read them.

2 MR. SILVERSTEIN: Yes.

3 CHAIRPERSON MILLER: Okay. 026504, Zanzibar
4 on the Waterfront; Licensee did not make the third year
5 payment.

6 076295, Champel's; Licensee did not make the
7 second and third year payments.

8 Rail Station Lounge, 2001 Benning Road, N.E.;
9 Licensee did not make second and third year payments.

10 License No. 084695, Desperados Pizza, located
11 at 1387 H Street, N.W.; Licensee did not make third
12 year payment.

13 087075, Happy Hour, at 1201 U Street, N.W.;
14 Licensee did not make second and third year payment.

15 ABRA License No. 088292, Sol Mexican Grill,
16 1251 H Street, N.E.; Licensee did not make third year
17 payment.

18 ABRA License No. 022973, Saloun; Licensee did
19 not make third year payment.

20 And 082038, FunXion; Licensee did not make
21 second year and third year payment.

22 I move that we approve the -- those license

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1 cancellations for the reasons I just articulated.

2 Do I have a second?

3 MR. NOPHLIN: Second.

4 CHAIRPERSON MILLER: Any comments?

5 (No audible response.)

6 CHAIRPERSON MILLER: All those in favor, say
7 aye?

8 (Chorus of ayes.)

9 CHAIRPERSON MILLER: All those opposed?

10 (No audible response.)

11 CHAIRPERSON MILLER: All those abstaining?

12 (No audible response.)

13 CHAIRPERSON MILLER: The motion passes 6-0-0.

14 Okay. All right. I'm going to do this

15 quickly as well as the last item on our agenda, our

16 orders to cease and desist as follows:

17 075156, Tattoo, 1413 K Street, N.W.; didn't
18 make third year payment.

19 075162, Lotus, 1420 K Street, N.W.; didn't
20 make third year payment.

21 083133, Eye Bar/Garden of Eden, 1716 I
22 Street, N.W.; did not make third year payment.

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1 Okay. The following I'm going to read all
2 did not make third year payments: 084726, Love, 1350
3 Okie Street, N.E.; 087317, U4RIA@Republic Gardens, 1335
4 U Street, N.W.; 087875, Louis Rogue, 476 K Street,
5 N.W.; 000964, Hawk 'N Dove, 329 Pennsylvania Avenue,
6 S.E.; 075377, Manchester Bar & Restaurant, 944 Florida
7 Avenue, N.W.

8 Okay. All of these did not make third year
9 payments: Solly's U Street Tavern, No. 075811, 1942
10 11th Street, N.W.; 076726, Veritas Wine Bar, 2031
11 Florida Avenue; Current Sushi, No. 077883, 1215
12 Connecticut Avenue, N.W.; 078578, SOVA Espresso & Wine,
13 1359 H Street, N.E.; 083552, Optimism, 3301 12th
14 Street, N.E.; 086037, Mood, 1318 19th [sic] Street,
15 N.W.; 087045, DC Reynolds, 3628 Georgia Avenue; 087398,
16 the Big Board, 421 H Street, N.E.; King of Kabob, No.
17 088347, 1018 Vermont Avenue, N.W.; 088592, HR-57, 1007
18 H Street, N.E.; 088924, Koffee's Lounge, 2632 Georgia
19 Avenue, N.W., Unit 2.

20 My goodness, all right. Here are -- the
21 following did not make second year payments: 025561,
22 Royal Market, at 4600 14th Street, N.W.; 060197, 10th

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1 Street Market, at 1000 S Street, N.W.; 088815, Capitol
2 Food Mart at B -- at 1634 North Capitol Street, N.W.;
3 088833, MLK Mini Market, at 3333 Martin Luther King
4 Avenue, S.E.; 077268, Grapes n' Hopes Market, 512 Rhode
5 Island Avenue, N.W.; 026649, D & B Deli Carryout,
6 Georgia Avenue, N.W.; 072048, Minnesota Food Mart, 3728
7 Minnesota Avenue; 074723, Clover Market, 5014
8 Connecticut Avenue, N.W.; Gee's Market, No. 083125, at
9 3583 Warder Street, N.W.; No. 086606, 11th & M Corner
10 Market, 1133 11th Street, N.W.; and 060653, Washington
11 Cash & Carry, Wholesaler B, at 1270 4th Street, N.E.

12 So all of those are Orders to cease and
13 desist. I move that we issue those Orders.

14 Do I have a second?

15 MR. NOPHLIN: Second.

16 CHAIRPERSON MILLER: Okay. All those in
17 favor, say aye?

18 (Chorus of ayes.)

19 CHAIRPERSON MILLER: All those opposed?

20 (No audible response.)

21 CHAIRPERSON MILLER: All those abstaining?

22 (No audible response.)

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1 CHAIRPERSON MILLER: Passes 6-0-0. Okay.
2 That concludes our agenda for this afternoon.
3 (WHEREUPON, at 1:42 p.m., the hearing was
4 concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, LINDA METCALF, the officer before whom the foregoing hearing was taken, do hereby certify that the testimony appearing in the foregoing pages was recorded by me and thereafter reduced to typewriting under my direction; that said transcription is a true record of the testimony given by said parties; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

LINDA METCALF
Notary Public in and for the
District of Columbia

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CERTIFICATE OF TRANSCRIPTION

I, MIRANDA PENNACHI, hereby certify that I am not the Court Reporter who reported the proceeding and that I have typed the transcript of the proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

Date

MIRANDA PENNACHI

Transcriptionist

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