

Capital Reporting Company
In the Matter of: 750Biere, LLC t/a Duchess and The Queen 09-12-2012

1

DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

----- :
IN THE MATTER OF: :
 :
750Biere, LLC :
t/a Duchess and The Queen :
2102 18th Street, NW :
Retailer CR : Protest
License No. 89545 : Hearing
ANC 1C : (Status)
Case No. 12-PRO-00064 :
Transfer Application with :
Substantial Change :
----- :

September 12, 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

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

2 9:50 a.m.

3 CHAIRPERSON MILLER: Good morning. I'd like
4 to welcome you to the regularly scheduled meeting of
5 the District of Columbia Alcoholic Beverage Control
6 Board. Today is September 12, 2012. My name is
7 Ruthanne Miller. I'm the chairperson. Joining me today
8 to my far right is Mr. Calvin Nophlin. To his
9 immediately left is Mr. Donald Brooks. To my immediate
10 right is Mr. Nick Alberti. And to my immediate left is
11 Mr. Mike Silverstein.

12 The Board has five members in attendance for
13 the conduct of business today with three constituting a
14 quorum. Copies of today's hearing calendar and agenda
15 are available at the receptionist's desk. Please be
16 aware that these proceedings are being recorded by a
17 court reporter. Accordingly, we must ask you to
18 refrain from any disruptive noises or actions in the
19 hearing room.

20 If you have any electronic devices, pagers,
21 cell phones or such, please make certain that they're
22 turned off to avoid any interruption of the

1 proceedings. Please note when you come forward and
2 take a seat at the table in the front, you'll find a
3 piece of paper. That's to have you sign in on that
4 paper to ensure the correct spelling of your name for
5 the record.

6 The Open Meetings Act requires that the
7 public hearing on each case be open to the public. The
8 Board may, consistent with Section 405(b) of the Open
9 Meetings Act, enter a closed meeting during or after
10 the public hearing on a case to consult with an
11 attorney, to obtain legal advice, discuss settlement
12 agreements or deliberate upon a decision in an
13 adjudication proceeding.

14 Board's calendar today includes show cause
15 status hearing, show cause hearing and protest status
16 hearings. So we can now proceed with the first item on
17 our morning calendar. That is a protest hearing
18 (status) in Case No. 12-PRO-00064, Duchess and the
19 Queen, located at 2102 18th Street, N.W., License No.
20 89545. Would the parties in that case please come
21 forward? And when you're ready, introduce yourselves
22 for the record.

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1 MR. PASCAL: Good morning. Paul L. Pascal of
2 Pascal & Weiss representing the applicant.

3 MR. AGUILAR: Good morning. George Aguilar,
4 the applicant.

5 CHAIRPERSON MILLER: Okay.

6 MR. KAMANDA: Good morning. Olivier Kamanda
7 on behalf of ANC 1C.

8 CHAIRPERSON MILLER: GOOD MORNING.

9 MR. JAMES: Good morning. Denis James
10 representing the Kalorama Citizens Association.

11 CHAIRPERSON MILLER: Okay.

12 MR. ELKO: John Elko, one of the group of six
13 protestants.

14 MS. SAULINO: Good morning. Jennifer
15 Saulino, one of the group of six protestants.

16 CHAIRPERSON MILLER: Okay. Good morning.
17 Okay. So this is a status hearing and I don't know if
18 you have anything to report necessarily. There's not a
19 --

20 MR. PASCAL: Ms. Miller, could the rest of
21 them identify themselves? Because I think there's a
22 total of maybe up to seven protestants and there's five

1 here. So I would at least like the record to show
2 who's here so the other two that are not here would be
3 stricken.

4 CHAIRPERSON MILLER: Would be dismissed as
5 protestants, is that what you're saying?

6 MR. PASCAL: Those -- the remaining two, yes.
7 But they have -- they did not appear at the roll call.

8 CHAIRPERSON MILLER: Okay.

9 MR. JAMES: When the time is appropriate, we
10 would like to respond to that request but if you're not
11 done --

12 CHAIRPERSON MILLER: I think the time will
13 permit. So the -- Mr. Pascal is saying that there are
14 seven protestants for a party of five on the one --

15 MR. PASCAL: I counted this morning. I
16 counted up to seven people that wrote letters to the
17 Board. Only one showed up at the roll call, Mr. Elko.
18 They were told that all the remaining had to be here
19 today. There's only, I think, five here. So that
20 would still leave a group of five but at least I won't
21 have to deal with two people that didn't show up either
22 at the roll call or at the hearing today.

1 So if the rest of them could identify
2 themselves, then at least I know who's here.

3 CHAIRPERSON MILLER: All right. But let me
4 just finish what you're saying. And what's your
5 authority for saying that if there are seven and five
6 show up that two have to be dismissed from the party?

7 MR. PASCAL: It's the Board's practice that
8 anybody that files a protest has to appear at least at
9 the roll call or at the status call.

10 CHAIRPERSON MILLER: That's correct. But
11 we're talking about a group. So you're --

12 MR. PASCAL: Pardon me?

13 CHAIRPERSON MILLER: You're talking about a
14 group, correct? We're not talking about an individual
15 protestant? We're talking about -- if I understand
16 correctly, it's a group of five or more. So if you're
17 saying the group was 100 people, 100 people would have
18 to show up today? Is that your interpretation?

19 MR. PASCAL: I think from a management
20 standpoint, if the people, you know, take the time to
21 come down here and act in the matter that they signed
22 on that they should be here. It still doesn't change

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1 that I have a group of five so I don't have a problem
2 with that. But I think that if two people didn't show
3 up today -- either today or at the other one, then
4 they've disregarded the practices of the Board and they
5 themselves should be stricken.

6 CHAIRPERSON MILLER: Okay. Would you like to
7 address --

8 MR. ELKO: May we respond?

9 CHAIRPERSON MILLER: Yes.

10 MR. ELKO: The --

11 CHAIRPERSON MILLER: Could you first identify
12 who is here again for the --

13 MR. ELKO: Yes. My name is John Elko and the
14 group of seven that were originally the protestants at
15 the roll call hearing -- the group gave me the right to
16 represent them at the roll call hearing. And there
17 were letters that were sent to the Board stating that.
18 Judy Mills did not send in a protest letter. And
19 LaVerne Fletcher did not dismiss her. She just did not
20 recognize her as a protestant.

21 James Beulin was not able to be at this
22 status hearing or at the roll call hearing. And that's

1 why sent the letter appointing me as his representative
2 because he is in his first year of residency as a
3 physician in a hospital in Philadelphia. And he has
4 sent a letter that I would like to submit so that he
5 could remain as a protestant.

6 CHAIRPERSON MILLER: As part of the group,
7 correct?

8 MR. ELKO: As part of the group.

9 CHAIRPERSON MILLER: Okay, okay.

10 MR. JAMES: And if I might add on that there
11 is no -- there's nothing in the regulations that says
12 the Board shall. This is a Board policy that you like
13 to see the -- all the protestants. This group of
14 protestants has behaved admirably throughout learning
15 the process, appointing one main person as a
16 representative. They've kept close contact with the
17 issues being discussed at settlement and are working as
18 a team.

19 And so in both 23 DCMR 1600 -- 1602 and 1603,
20 it says that protestants may be -- have representation
21 if they're not able to appear. It doesn't say there
22 that the Board shall dismiss them. So I think this

1 group has made significant efforts to participate
2 responsibly before the Board. And, you know, this
3 gentleman who's learning to be a physician has written
4 a special letter just because he's not able to be here
5 today. We hope that you would respect that.

6 CHAIRPERSON MILLER: Okay. It's my
7 impression then -- or my understanding of the
8 regulations that you have to have five at least and
9 that, you know, I think it would be kind of an absurd
10 meeting if everybody had to show up and then prove --
11 like I was saying, could be as big as 100. And the
12 regs do allow for a designated representative. So --

13 MR. JAMES: And just as a further note, this
14 is within the (inaudible) only required to have three.

15 CHAIRPERSON MILLER: Okay. The -- well, the
16 principal is still the same. I do -- does any other
17 Board member think that those individuals should be
18 dismissed from participating in the group, party of
19 five or more?

20

21 MR. ALBERTI: Madam Chair, I think the
22 important point here is that those individuals have

1 signed a letter of -- I'll say the power of attorney.
2 They have designated someone to represent them at the
3 hearing. Mr. Pascal is right that without that letter,
4 we would expect them to show here or at the status
5 hearing but we do have a letter of representation. So
6 it's been our policy to accept representation by
7 others. Thank you.

8 CHAIRPERSON MILLER: Did you have a letter
9 you wanted to read?

10 MR. ELKO: Yes, ma'am. And could we have the
11 other --

12 CHAIRPERSON MILLER: And have you shown it to
13 -- what?

14 MR. ELKO: -- protestants give their names
15 orally?

16 CHAIRPERSON MILLER: Yes, so we have a record
17 that they were here.

18 MR. MOTEN: Cliff Moten (ph) --

19 CHAIRPERSON MILLER: Uh-huh.

20 MR. MOTEN: -- protestant.

21 MR. MORIMOTO: Michael Morimoto (ph) --

22 CHAIRPERSON MILLER: Okay.

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1 MR. MORIMOTO: -- protestant.

2 MS. HERTZ: Hi. Annabel Hertz, protestant.

3 CHAIRPERSON MILLER: Okay. And you two --
4 you two are part of the group which is five, correct?
5 All right.

6 MR. ELKO: Correct.

7 CHAIRPERSON MILLER: Okay. And did you show
8 the letter to Mr. Pascal?

9 MR. ELKO: Oh, I'm sorry. I did not.

10 CHAIRPERSON MILLER: Okay.

11 MR. PASCAL: Okay. He can email it to me.

12 CHAIRPERSON MILLER: All right. You're okay?
13 All right. So --

14 MR. PASCAL: We've been in constant touch.

15 So

16 MR. ELKO: That's the only -- that's the only
17 copy I brought. I'm sorry.

18 MR. PASCAL: So --

19 CHAIRPERSON MILLER: Okay.

20 MR. ELKO: I have the --

21 CHAIRPERSON MILLER: Okay. Could you --

22 MR. ELKO: Sure.

1 CHAIRPERSON MILLER: I'm sorry. Could you
2 clarify for the record just so -- there are five
3 individuals here who identify themselves as part of the
4 party of five or more in this case. There's a letter
5 that designates you to represent -- is that -- I
6 haven't seen the letter yet -- one or two people?

7 MR. ELKO: Oh, this is for one person.

8 CHAIRPERSON MILLER: One person. And --

9 MR. ELKO: For James Beulan.

10 CHAIRPERSON MILLER: All right. And what's -
11 - and just -- and what's the situation with the other
12 individual?

13 MR. ELKO: The -- during the roll call
14 hearing, LaVerne Fletcher did not dismiss her as a
15 protestant but did not recognize her as one pending a
16 letter from her to clarify because of the fact -- what
17 we had done is that we thought we were -- in your -- in
18 good faith on this, we had written a letter that two
19 people had signed with my name on it.

20 But because of the structure of the letter --
21 I did not put in, "We, the undersigned." I just said,
22 "I." And there was an objection to that. And as a

1 result, Judy was not recognized with that letter
2 because of it being, "Me," as a -- or as a group of
3 three. So we ended up -- and Judy never responded in
4 terms to the Board with another letter stating that she
5 -- because it was after the deadline. So she has not
6 been active in this group.

7 CHAIRPERSON MILLER: So are you -- is she a
8 part of this group or not?

9 MR. ELKO: No. Not -- no.

10 CHAIRPERSON MILLER: Okay. All right. And
11 then it's -- there are six individuals --

12 MR. ELKO: Yes.

13 CHAIRPERSON MILLER: -- who are part of this
14 group? Okay. And that sixth person is Mr. --

15 MR. ELKO: Dr. Beulan.

16 CHAIRPERSON MILLER: -- Dr. -- no, not on the
17 letter.

18 MR. ELKO: That's Dr. Beulan.

19 CHAIRPERSON MILLER: That's Dr. Beulan?

20 MR. ELKO: Yeah.

21 CHAIRPERSON MILLER: Okay, fine. All right.

22 And that's a parting consisting of six individuals.

1 All right.

2 MR. ELKO: Thank you.

3 CHAIRPERSON MILLER: So I think that we can
4 move forward then at this point. And are there any
5 other preliminary matters you want to bring to our
6 attention? Otherwise I'm going to set this for, you
7 know, hearing.

8 MR. PASCAL: There was a -- we've had two
9 mediations. I think we're very close in getting the
10 matter resolved. I filed a motion to continue. The
11 hearing is set for December 5th. And I'm an advisory
12 council member of the Wine and Spirits Wholesalers of
13 America and that's the day an event starts in San
14 Diego. So I asked that it be continued. I think this
15 will be resolved but I can't -- I had that on my
16 calendar just in case for some reason there's a
17 problem.

18 So -- and the other side didn't object other
19 than they don't want an undue delay. So they wanted to
20 have it, you know, perhaps before the end of the year.
21 So if you had any time in the calendars the next two
22 Wednesdays to reschedule it? But that matter's

1 pending.

2 CHAIRPERSON MILLER: In the next two what?

3 MR. PASCAL: Two Wednesdays after the 5th of
4 December.

5 CHAIRPERSON MILLER: Oh, after. All right.

6 Other --

7 MR. PASCAL: Before -- they want it before
8 the end of --

9 CHAIRPERSON MILLER: Right.

10 MR. PASCAL: -- the year, which was fine for
11 me but --

12 CHAIRPERSON MILLER: Okay. All right.

13 MR. JAMES: I would just like to say, you
14 know, our -- at least from the Kalorama Citizens point
15 of view, we have had one session with the applicant and
16 all the protestants prior to having the two mediations
17 with Ms. Fletcher. At each of the three sessions we
18 made incremental progress and with the most recent
19 draft, I believe that we are very, very close to
20 reaching an agreement.

21 And we just -- I would like to state that,
22 you know, we are moving quickly on this and we feel a

1 little bit like, you know, the other side is not
2 moving, you know, as directly towards a solution as
3 they could. And

4 --

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: -- like they're concerned about
7 going to a protest hearing? I don't quite understand
8 because we don't want there to be a protest hearing
9 anymore.

10 CHAIRPERSON MILLER: Okay.

11 PARTICIPANT: Well, I've settled.

12 MR. PASCAL: I didn't want it either but --

13 CHAIRPERSON MILLER: Okay.

14 MR. PASCAL: -- I just have that date on my
15 calendar. And I'm going to be in California. So --

16 CHAIRPERSON MILLER: Okay. I understand
17 that. Okay. So let me just -- I think I'm going to
18 recommend to my Board members that we just deal with
19 the motion for continuance afterwards.

20 MR. JAMES: That's fine.

21 CHAIRPERSON MILLER: We'll take it under
22 advisement with the calendar. But are you -- do you

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1 have a position on the motion since we're here whether
2 you oppose it?

3 MR. JAMES: We don't oppose it. Just from
4 the --

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: -- the Kalorama Citizens point of
7 view, I would suggest seeking an earlier date than
8 December 5th.

9 MR. KAMANDA: The ANC concurs in that request
10 for an earlier date --

11 CHAIRPERSON MILLER: Earlier? All right.

12 MR. KAMANDA: -- for that protest hearing.

13 CHAIRPERSON MILLER: Okay. Mr. Pascal --

14 MR. PASCAL: If one --

15 CHAIRPERSON MILLER: Mr. Pascal, do you have
16 a position?

17 MR. PASCAL: Well, earlier would be pushing
18 us probably into Thanksgiving time.

19 CHAIRPERSON MILLER: Okay.

20 MR. PASCAL: And --

21 CHAIRPERSON MILLER: So you would oppose
22 that?

1 MR. PASCAL: Yeah.

2 CHAIRPERSON MILLER: Okay.

3 MR. PASCAL: I -- but --

4 CHAIRPERSON MILLER: But --

5 MR. PASCAL: -- we are close. I mean, yeah.

6 CHAIRPERSON MILLER: -- looks like -- yes, we
7 mean it yes. Let's (inaudible).

8 MR. PASCAL: Contrary to Mr. James's
9 statements, you know, we're not delayed. So --

10 CHAIRPERSON MILLER: Okay. So what I'm going
11 to do is, you know, set the day for December 5th. And
12 the Board and our attorneys will look at the schedule
13 and then get back to you all on any continuance. So at
14 this point though I'm going to read the instructions
15 for protest hearings in the event you don't reach a
16 voluntary agreement, which it looks like it's promising
17 that you will. Okay.

18 I just want to remind the parties that they
19 should have received in a mailing from Adjudication
20 Assistant Sarah Fashbaugh a letter explaining the
21 protest process and a copy of the protest information
22 form. If you don't have those documents, please see

1 Ms. Fashbaugh at the conclusion of this hearing.
2 You're required to complete and submit the protest
3 information form, PIF, seven days before the date of
4 the hearing.

5 The document needs to be submitted to ABRA
6 and to the opposing parties in this case. If we do not
7 receive a copy of your PIF, your application or your
8 protest, whichever side you're representing, may be
9 subject to dismissal. The form is important to the
10 Board in narrowing the protest issues, facilitating the
11 process and keeping you all on point during the
12 hearing. So if you have any questions, you should
13 contact Ms. Fashbaugh at 202-397-3971.

14 So that concludes that and then do -- all
15 right. Thank you very much.

16 MR. PASCAL: Thank you very much.

17 PARTICIPANT: Thank you.

18 (WHEREUPON, at 10:06 a.m., the hearing was
19 concluded.)

20

21

22

1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, ERICK McNAIR, the officer before whom the
4 foregoing hearing was taken, do hereby certify that the
5 testimony appearing in the foregoing transcript was
6 recorded by me and thereafter reduced to typewriting
7 under my direction; that said transcription is a true
8 record of the testimony given by said parties; that I
9 am neither counsel for, related to, nor employed by any
10 of the parties to the action in which this was taken;
11 and, further, that I am not a relative or employee of
12 any counsel or attorney employed by the parties hereto,
13 nor financially or otherwise interested in the outcome
14 of this action.

15

16

17

18

19

ERICK McNAIR

20

Notary Public in and for the

21

District of Columbia

22

My Commission Expires: July 14, 2016

1 CERTIFICATE OF TRANSCRIPTION

2

3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the following
5 proceeding and that I have typed the transcript of this
6 proceeding using the Court Reporter's notes and
7 recordings. The foregoing/attached transcript is a
8 true, correct and complete transcription of said
9 proceeding.

10

11

12

13 _____
Date

14

MIRANDA PENNACHI
Transcriptionist

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<hr/> <p style="text-align: center;">1</p> <hr/> <p>10:06 19:18</p> <p>100 6:17 9:11</p> <p>12 1:11 2:6</p> <p>12-PRO-00064 1:8 3:18</p> <p>14 20:22</p> <p>14th 1:13</p> <p>1600 8:19</p> <p>1602 8:19</p> <p>1603 8:19</p> <p>18th 1:6 3:19</p> <p>1C 1:8 4:7</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2000 1:13</p> <p>2012 1:11 2:6</p> <p>2016 20:22</p> <p>202-397-3971 19:13</p> <p>2102 1:6 3:19</p> <p>23 8:19</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>405(b) 3:8</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5th 14:11 15:3 17:8 18:11</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>750Biere 1:5</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>89545 1:7 3:20</p> <hr/> <p style="text-align: center;">9</p> <hr/>	<p>9:50 2:2</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m 2:2 19:18</p> <p>able 7:21 8:21 9:4</p> <p>ABRA 19:5</p> <p>absurd 9:9</p> <p>accept 10:6</p> <p>Accordingly 2:17</p> <p>act 3:6,9 6:21</p> <p>action 20:10,14</p> <p>actions 2:18</p> <p>active 13:6</p> <p>add 8:10</p> <p>address 7:7</p> <p>adjudication 3:13 18:19</p> <p>admirably 8:14</p> <p>advice 3:11</p> <p>advisement 16:22</p> <p>advisory 14:11</p> <p>afterwards 16:19</p> <p>agenda 2:14</p> <p>agreement 15:20 18:16</p> <p>agreements 3:12</p> <p>Aguilar 4:3</p> <p>Alberti 1:17 2:10 9:21</p> <p>Alcoholic 1:2,12,13 2:5</p> <p>allow 9:12</p> <p>am 20:9,11 21:3</p> <p>America 14:13</p>	<p>ANC 1:8 4:7 17:9</p> <p>Annabel 11:2</p> <p>anybody 6:8</p> <p>anymore 16:9</p> <p>anything 4:18</p> <p>appear 5:7 6:8 8:21</p> <p>appearing 20:5</p> <p>applicant 4:2,4 15:15</p> <p>application 1:9 19:7</p> <p>appointing 8:1,15</p> <p>appropriate 5:9</p> <p>Assistant 18:20</p> <p>Association 4:10</p> <p>attendance 2:12</p> <p>attention 14:6</p> <p>attorney 3:11 10:1 20:12</p> <p>attorneys 18:12</p> <p>authority 6:5</p> <p>available 2:15</p> <p>avoid 2:22</p> <p>aware 2:16</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>behalf 4:7</p> <p>behaved 8:14</p> <p>believe 15:19</p> <p>Beulan 12:9 13:15,18,19</p> <p>Beulin 7:21</p> <p>Beverage 1:2,12,13 2:5</p>	<p>bit 16:1</p> <p>Board 1:2,13 2:6,12 3:8 5:17 7:4,17 8:12,22 9:2,17 13:4 16:18 18:12 19:10</p> <p>Board's 3:14 6:7</p> <p>bring 14:5</p> <p>Brooks 1:17 2:9</p> <p>brought 11:17</p> <p>Building 1:13</p> <p>business 2:13</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calendar 2:14 3:14,17 14:16 16:15,22</p> <p>calendars 14:21</p> <p>California 16:15</p> <p>Calvin 1:18 2:8</p> <p>case 1:8 3:7,10,18,20 12:4 14:16 19:6</p> <p>cause 3:14,15</p> <p>cell 2:21</p> <p>certain 2:21</p> <p>CERTIFICATE 20:1 21:1</p> <p>certify 20:4 21:3</p> <p>Chair 9:21</p> <p>chairperson 1:14,16 2:3,7 4:5,8,11,16 5:4,8,12 6:3,10,13 7:6,9,11 8:6,9 9:6,15</p>
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