DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:        :

M Street Management Group:
LLC.,                     :
t/a MPIRE Club           :
1819 M Street NW         :
Retailer CN - ANC 2B     : Contested Fact
License No. 71088         : Finding Hearing
:
(Request for a Hearing) :

Wednesday
October 30, 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
BOBBY CATO, JR., Member
JAMES SHORT, Member
RAFI ALIYA CROCKETT, Member

ALSO PRESENT:

LYLE M. BLANCHARD, COUNSEL FOR APPLICANT
ADRIAN KUNDANMAL, APPLICANT
WILLIAM BOWIE, SENIOR COUNSEL, OFFICE OF TAX AND
REVENUE
P-R-O-C-E-E-D-I-N-G-S

11:31 a.m.

CHAIRPERSON ANDERSON: And our next case is a -- it's a contested fact finding hearing. It's M Street Management Inc., MPIRE Club. Will the parties please approach and identify themselves for the record?

MR. BLANCHARD: Good morning, Chairman Anderson. Lyle Blanchard of Greenstein DeLorme and Luchs representing license holder.

CHAIRPERSON ANDERSON: Good morning, Mr. Blanchard.

MR. KUNDANMAL: Good morning. I'm Adrian Kundanmal. I'm a managing member of --

CHAIRPERSON ANDERSON: I'm sorry. Your last name, sir?


CHAIRPERSON ANDERSON: Good morning, Mr. Kundanmal. There's a sign-in sheet. Please make sure that you sign in. All right.

We're here today at the request of Lyle Blanchard, attorney of record for MPIRE Club located at 1819 M Street, Northwest. MPIRE Club desires to challenge the Board's cease and desist
order issued on October 23rd, 2019, Board Order No. 2019-742.

Let us review the series of events that got us to where we are in this matter. All retailers, Class CT taverns, and CN nightclubs were required by law to renew their ABC licenses no later than September 30th, 2019.

ABRA notified all licensees scheduled for renewal regarding this deadline on August 14th, 2019. MPIRE Club, a retail Class C and nightclub, failed to renew its license by September 30th, 2019 and thus was operating on an expired license. On October 23rd, 2019, the ABC Board issued over 50 cease and desist orders to those licensees who failed to renew on September 30th, 2019, MPIRE being one of them.

On October 23rd, 2019, MPIRE filed a motion for reconsideration request for a hearing and stay of the cease and desist order. The Board granted that motion, Board Order No. 2019-787, and set this matter for a hearing which brings us today.

Mr. Blanchard, please tell the Board on what grounds you are challenging the cease and desist order? Has anything changed since last
Wednesday when it was issued? In other words, has your client renewed his license?

MR. BLANCHARD: Thank you, Chairman Anderson. Before I answer that question, as a preliminary matter I request that the hearing be closed to the public pursuant to 23 DCMR 1616.5. This is a contested case for all intents and purposes.

And I'd also request that the transcript either be redacted or not posted to the agency's website based on D.C. Code 2-534(a)(1) which is the District's Freedom of Information Act.

That exclusion from disclosure under the Freedom of Information Act is based on commercial information that if disclosed would result in a substantial harm to the competitive position of the person from whom the information was obtained.

And on that note, the Board will note that one of the exhibits that I included with the motion, I wrote, confidential, on top of it. It's a statement of account which is the financial information that concerns my client's tax liabilities to date or at least as of last
month.

Under District law, sales and use tax information is privileged. It is not allowed to be disclosed to the public unless you file a power of attorney form with the Office of Tax and Revenue that is signed by the taxpayer.

And so we'd ask that that exhibit to the motion be kept confidential and not disclosed and that any financial information that's discussed today be kept out of the public record.

CHAIRPERSON ANDERSON: All right.

Let's deal with the second one first. You said -- what was the provision you relied upon?

MR. BLANCHARD: It's D.C. Code 2-534(a)(1). It is the District's Freedom of Information Act, and there are certain exemptions from exclusion under Section 534. It's a laundry list of different things. One of them is trade secrets and commercial financial information.

CHAIRPERSON ANDERSON: Okay. All right.

MR. BLANCHARD: And that's used in other -- for instance, if I had a client who withdrew on a government contract and their financial information is proprietary. For the
sense that if it was disclosed to their competitors, it might take away their advantage. And similarly here, if my client's tax liabilities are disclosed, his competitors will use that in a way that might harm them.

CHAIRPERSON ANDERSON: All right. So for -- I was looking for the provision. But it's my understanding that you're correct. So I'll make a motion that that motion be granted. Is there a second?

MEMBER SHORT: Second.

MEMBER CROCKETT: Second.

CHAIRPERSON ANDERSON: Mr. Short has seconded the motion and Ms. Crockett. All those in favor, say aye.

(Chorus of aye.)

CHAIRPERSON ANDERSON: Those opposed.

(No audible response.)

CHAIRPERSON ANDERSON: Okay. So that information will not be disclosed on the transcript. So we'll make sure that that remains. So --

MR. BLANCHARD: Thank you.

CHAIRPERSON ANDERSON: -- the other provision you had required, you said it's a
contested hearing. And what's the provision you
relied upon?

MR. BLANCHARD: That's in the Board's
own regulations. One second. 1616.5 says that
all fact finding hearings shall be open to the
public unless closed to the public in accordance
with Section 405 of the Open Meetings Act.

CHAIRPERSON ANDERSON: Well, I believe
--

MR. BLANCHARD: And just if I could
for a moment --

CHAIRPERSON ANDERSON: I don't believe
that's the right provision. I don't believe
that's the right -- I know -- I don't believe
that's the right provision that you're applying.
I know that we have closed meetings when we
discuss personal matters. But I think in this
particular case -- hold on one minute. All
right.

MR. BLANCHARD: Just if I could --

CHAIRPERSON ANDERSON: Who is in --
well, let's -- I'm not necessarily disagreeing
with you. But that's not the right provision. I
guess so the issue I'm asking, there are one,
two, three -- there are four people in the
audience. So there's a young woman who is behind you. Is that someone who is --

MR. BLANCHARD: She's an employee.

CHAIRPERSON ANDERSON: She's an employee of the agency? All right. And I see there's an investigator which I think that wouldn't apply because she works for the agency. And I'm trying to get some clarification on who else is in the room. I don't know who else is in the room.

MR. BLANCHARD: This gentleman is from the Office of Tax and Revenue.

CHAIRPERSON ANDERSON: I know he's from Tax and Revenue. So although you're -- I would not -- I would allow him to remain because you informed us that one of the reasons why you're requesting this hearing is because an issue with someone from the Tax and Revenue. So I'm not going to tell an official from the Tax and Revenue that they can't be in the room. So --

MR. BLANCHARD: And I'm perfectly fine with that.

CHAIRPERSON ANDERSON: Right. So that's fine. I'm just trying to -- there's
another person in the room I'm trying to get clarification who it is. And I'll get, I guess, some clarification. But there's really no one else in the room. So I believe that your motion is -- all right.

So well, your motion is -- I'm going to deny the motion. The reason I'm going to deny the motion because there are no members of the public in this hearing. So it's moot. The only parties that are actually in the hearing room today are an employee of your client and an investigator from our -- two investigators from our agency and also an employee of the Department of Finance and Revenue.

So I'm going to deny the motion because it's moot in this particular case. All right. So -- but anyway, so let's go on from there then. Where are we?

MR. BLANCHARD: Now we can get down to the heart of the matter.

CHAIRPERSON ANDERSON: Yes.

MR. BLANCHARD: So in my -- members of the Board, in my motion that I'm basing our request for a stay, our request for --

CHAIRPERSON ANDERSON: But we granted
the stay, so I think what --

MR. BLANCHARD: Our request for reconsideration of the Board's cease and desist --

CHAIRPERSON ANDERSON: Okay.

MR. BLANCHARD: -- is based on my client's extraordinary efforts to try and reach a resolution with OTR on its tax liability. As you know -- as the Board knows, you cannot file a renewal application unless as a precursor, a prerequisite you have a certificate of good standing from the Office of Tax and Revenue.

And my client has been working with the Office of Tax and Revenue for over the past year to try and get its sales and use taxes resolved. I got involved about a month ago on trying to speed up those efforts, and I informed ABRA staff by phone and email that this issue is pending.

And that's why we hadn't renewed by the September 30th deadline. That we were trying to resolve an outstanding tax issues before the Board took action to issue its cease and desist order.

My -- and hopefully you'll call Mr.
Bowie to the stand for his input. But my best estimate at this moment is that we have filed some outstanding -- some other returns that were due that we weren't aware of. So we have filed those personal property tax returns.

We have one outstanding unincorporated business franchise tax return for tax year 2018 which was due on April 15th. Our client's previous accountant filed some extensions which are allowed. And our client has hired a new accountant which he can talk about why they did that.

But the new account has stepped up, filed the personal property, and we're working to get any outstanding sales tax returns filed. The business unincorporated franchise tax return should be filed next week, and that will put us in a position where we can then enter into a payment plan and get the certificate of good standing.

My client's staff has -- so I worked with Mr. Aronin who is the Chief of Collections at OTR. I sent him about five emails over the past three weeks to try and get his staff focused. So there are challenges.
Your agency doesn't have very many challenges. You're fortunate. But the Office of Tax and Revenue and some other agencies have staffing capacity challenges and they have challenges with their software system. Their software system doesn't always apply a tax payment properly.

And because of that, we've had to get the numbers scrubbed several times and they're supposed to be being audited now. I got a statement at the end of the day yesterday that I think still has a few errors in it.

So we are close to getting the certificate of good standing. And I believe that those issues -- unlike some other that I'm not going to say. I'm not going to name names or say treat us just as other licensees have been treated in this situation.

But I believe that those issues with being able to resolve this, and the key issue here is my client needs to stay open in order for that cash flow to pay the initial down payment. The initial down payment, as you saw, I believe, in the email that I submitted --

CHAIRPERSON ANDERSON: I have not seen
that information. It might've been submitted to
the agency, but I don't have that.

MR. BLANCHARD: So basically, to
recap, my client, only outstanding issue is this
financial one to get a certificate of good
standing. Everything else that needs to do to
renew is ready to go. My client has had no
violations in the entire time it's been
operating.

CHAIRPERSON ANDERSON: The unfortunate
thing you're asking the Board to do, Mr.
Blanchard, is to get into the minutia of getting
a good standing certificate. There are certain
requirements that we -- the Board doesn't get
into the minutia of what's going on. All the
Board -- the Board's position is -- the agency's
position, in order renew your license, you need
to comply, provide us this information.

We don't -- it's not the concern --
the Board cannot get into the reason why you
cannot provide this information. Whatever the
reason why this information can't be provided,
that is between the licensee and whatever agency.

For example, if the licensee -- you
need to do -- give us a police record -- a police
report. And if the licensee said for whatever reason, I can't get the police report, the regulation says, this is what we need. And so the Board cannot get into the minutia of why it that the person didn't get it.

And so I'm not saying I've made a decision. But I'm not sure how is it that -- you're asking the Board to get into the minutia of why that your client cannot get a letter of good standing.

I'm not trying to be unsympathetic. But I believe that if the Board goes down this road, then every other licensee can come to us and to say, I can't get a Clean Hands certificate, I can't get a police report because of this reason.

And the Board doesn't have the expertise to -- I mean, the Board, we don't -- the regulations say that if you owe more than 100 dollars, then -- and so I don't -- it's not important to us whether or not it's 101 dollars or 100,000 dollars. I'm not quite sure how the Board can get into the intricacies of that because that's going to open the floodgate for everyone else.
I know that there is a regulation. And off the top of my head, I don't remember the regulation where it is clear that if there is a dispute between the licensee and the government, say, OTR, and if you have filed a complaint with the Office of Administrative Hearings and you provide us proof.

Now there is a regulation there that says that should not prevent you from moving forward. And this is not this case in the sense that the licensee has contested whatever the findings are. And they provided us with a copy of their filing and they have a hearing. And that hearing will address the issues.

But that's not the situation that you're providing to us today, right? Is that correct? I mean, when I say, correct, that --

MR. BLANCHARD: It's correct that we have not filed either with the tax division of D.C. Superior Court or with the Office of Administrative Hearings.

CHAIRPERSON ANDERSON: Right, because those are --

MR. BLANCHARD: Those are the two administrative hearing bodies that could hear a
tax dispute.

CHAIRPERSON ANDERSON: And the law addresses --

MR. BLANCHARD: We have opted --

CHAIRPERSON ANDERSON: Right.

MR. BLANCHARD: -- work things out with OTR. So my email to Mr. Aronin that I included in our motion is a protest. It's titled protest of this statement of account. And so I'm asking for the agency to hear our protest rather than go to a third party appeals board like OAH or to the court like the tax division. We are trying to resolve this without going into litigation because my client's funds are limited.

CHAIRPERSON ANDERSON: But you're also --

MR. BLANCHARD: But we have, in fact, protested within the agency.

CHAIRPERSON ANDERSON: But there's no provision in at least our law that accounts for that. And so the problem that I'm having thinking this through is that if the ABC Board was to decide today to, okay, listen to your case and give you -- to say to you that, okay, fine, we'll give you some extra time to settle your
matter with OTR.

Would it be a day? Would it be a week? Would it be a month? Would it be a year?
I don't know because then we would have to make a decision how much -- we would have to make a decision that we're going to lift the cease and desist, allow you to operate. And what, for another month?

Because we have allowed you to -- the establishment to operate a month now since September 30th. Today is October 29. So we have now -- we've allowed -- well, we have allowed you to -- yeah, because we lifted the order. So we've allowed you to operate a month beyond September 30th.

So when is this going to end? When are you saying to us, okay, I need another month? I need another two months or three months, four months. I don't know.

MR. BLANCHARD: Well, let me answer that question. I believe -- and I've discussed it with Mr. Bowie just today while we were -- before the hearing. I believe that we can resolve this.

The section that you're referring to
is D.C. Code 47-2862, prohibition against issuance of a license or permit. Subsection B says if the amount outstanding is over 100 dollars is subject to dispute, the applicant has properly and timely appealed the infraction, assessment, tax, or basis for the alleged debt and the appeal is pending, then the outstanding debt shall not be cause for the District government to deny the issuance or reissuance of a license or permit pursuant to the section.

It does not say that an appeal has been filed with OAH or an appeal has been filed with the D.C. Superior Court. I contend that we have appealed to the agency itself before reconsideration of a statement of account and the amount owed.

I don't want to go into the minutia either. I don't want to say, okay, here's this spreadsheet with all the -- I don't want to do that. And if Mr. Bowie could come up to the table, I think he could tell you we are close.

CHAIRPERSON ANDERSON: I don't necessarily -- in this particular case, I don't think it's necessary for Mr. Bowie to come forward because you're asking us to make a policy
decision. So because we'd have to decide whether
or not -- we have to make a decision whether or
not we're going to be involved in the weeds of
this.

Rather than just saying -- rather than
accepting the fact that you're unable to give us
the Clean Hands certificate, we, the Board, would
have to make a decision that we're going to make
an exception. And that's basically what it is.
We have to make -- you're asking us to make an
exception to what our rules and regulations
states.

MR. BLANCHARD: I would say we're
asking the Board to be flexible in how it applies
to the rules.

CHAIRPERSON ANDERSON: Where do we
draw the line, though? We've already given you --
- I'm asking -- we've already given you 30 days
past September 30th. So we've already given you
a month because the cease and desist order did
not go out until 23 days after the deadline had
passed.

By operation of law, you requested a
hearing which -- and we granted that. And so the
Board also lifted the provision. And so
therefore, we have now given you -- today is the 29th. So we have now given you 29 days. And so therefore, you have gotten 6 more days than every other establishment that got this because we sent out all the cease and desist orders.

Because I know we were here last Wednesday and we signed off on all the decisions. But I read them in the record last Wednesday, so we have now give you an additional six more days. And so you're asking us to give you another -- at least another two more weeks.

I mean, if you were to say to me, okay, fine, we'll get a cease and desist order. We'll have this issued by Friday, then the Board in its deliberation, you know, you -- because what I'm going to recommend at the end of this hearing is that we're going to take it under advisement.

So that's the recommendation I'm going to make. So I'm not making a decision here. But if you give us a timeline, I mean, the Board -- and it could legitimately say that we are deliberating what we're going to do. And so we're going to issue a decision and then I'll say that --
MR. KUNDANMAL: I'm going to be Lyle's
--

(Simultaneous speaking.)

MR. KUNDANMAL: -- and I'm going to

speak as a client.

CHAIRPERSON ANDERSON: Hold on one
minute, sir. I'm an attorney, and I'm saying
this. And I do this for every -- I apply this to
everyone and I know you want something to say.
But he's your attorney. Make sure that you tell
him what you want to speak and he give his
permission. Because I'm an attorney, that's why,
and I do this to everyone. Okay.

MR. BLANCHARD: Can we --

CHAIRPERSON ANDERSON: Do you want to
-- what do you need? What do you need?

MR. BLANCHARD: The Board's

indulgence.

CHAIRPERSON ANDERSON: Yes.

MR. BLANCHARD: Can we have five

minutes?

CHAIRPERSON ANDERSON: I'm fine. And

as I said to you, because I'm an attorney, I
always want to make sure that when someone

speaks, they're speaking through their attorney.
And I always do that.

MR. KUNDANMAL: Which I prefer.

CHAIRPERSON ANDERSON: Okay. So we can take a five-minute break. Okay. Thanks.

We're off the record for five minutes.

(Whereupon, the above-entitled matter went off the record at 11:57 a.m. and resumed at 12:12 p.m.)

CHAIRPERSON ANDERSON: We're back on the record. So where are we now?

MR. BLANCHARD: Chairman Anderson and members of the Board, we have -- I have conferred with my client. We've conferred with OTR about the timing because of the amount of money. And we also had our client take his account into the woodshed to get things done.

I don't believe we'll be able to get everything done with OTR, and I don't believe OTR will be able because it takes -- Mr. Bowie tells me it takes several levels over Mr. Aronin to make the decision. But I believe we will be able to resolve everything with OTR by Tuesday or Wednesday morning at the latest.

CHAIRPERSON ANDERSON: So you're asking the Board to lift -- that they --
MR. BLANCHARD: I'm asking the Board to continue the stay until Wednesday, one week from today.

CHAIRPERSON ANDERSON: I don't know what -- I don't know. Because you're giving us something for consideration, I'll call Mr. Bowie up for him to -- since Mr. Bowie is here. So I'll -- just for the record so he can explain to us whether or not that's even a possibility. And I'm not sure that's going to be.

I'm not saying that the Board will -- that's important to the Board. But since you're making a representation and OTR is here, I'll just have -- we'll have some type of record that whatever decision we made, we considered the representation that was made. Yes, Mr. Bowie. Can you state your name for the record, please?

MR. BOWIE: William Bowie, Senior Counsel with the Office of Tax and Revenue.

CHAIRPERSON ANDERSON: And without going into the weeds of the licensee's financial -- or how much they owe or anything like that, there's -- it's clear that because -- is it correct that based on their failure to pay more than 100 dollars in taxes or fees to the District
of Columbia that they are unable to receive a Clean Hands certificate from the city. Is that correct?

MR. BOWIE: That's accurate as of today.

CHAIRPERSON ANDERSON: That's today. And there's some representation made by Mr. Blanchard that based on his conversations with your agency that they believe that if the ABC Board was to lift this order for another week that they would be able to receive a Clean Hands certificate from the agency. Do you have any representation, if any you can put on the record today, sir?

MR. BOWIE: As I discussed with Mr. Blanchard, there's certain items that we've stipulated they needed to take care of before we would consider whether or not to put them -- to get their -- put them on a payment agreement. So they're aware of that, and we're going to resend them those stipulations at the conclusion of the hearing.

As to whether or not can guarantee that this would be resolved next Tuesday, as I told Mr. Blanchard, I cannot guarantee that.
That would be the goal. But whether or not that
could be done between now and next Tuesday, I
can't -- we can't guarantee that.

CHAIRPERSON ANDERSON: So that would asking -- today is Wednesday. So the business
would be allowed to be opened for Wednesday,
Thursday, Friday, Saturday, Sunday, Monday, at
least for another seven days. Now Mr. Blanchard,
is this establishment open seven days a week?

MR. BLANCHARD: Yes, it is, yes.

CHAIRPERSON ANDERSON: So you're asking us to extend this for another week.

MR. BLANCHARD: That is correct.

CHAIRPERSON ANDERSON: Any questions by any of the Board members? Any final
representation you would like to make, sir?

MR. BLANCHARD: Just that my client has 90 employees, and we respectfully request the
Board's deference and flexibility in continuing the stay for the period requested.

CHAIRPERSON ANDERSON: All right.

That's it.

MR. BLANCHARD: Thank you.

CHAIRPERSON ANDERSON: The Board will take this matter under advisement. All right.
MR. BLANCHARD: Thank you.

CHAIRPERSON ANDERSON: Thank you.

Have a good day. We're in recess until our 1:30 hearing.

(Whereupon, the above-entitled matter went off the record at 12:18 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: MPIRE Club

Before: DCABRA

Date: 10-30-19

Place: Washington, DC

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