

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD
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6 IN THE MATTER OF: :
7 DC Irish, LLC: :CASE # 15-CMP-00997
8 t/a Sign of the Whale :
9 1825 M Street NW :
10 License #85120 :
11 Retailer CT ANC 2B :
12 Substantial Change :

13 - - - - -X

14 Wednesday, August 3, 2016

15
16 Whereupon, the above-referenced matter
17 came on for hearing at the Alcoholic Beverage
18 Control Board, Reeves Center, 2000 14th Street,
19 N.W., Suite 400S, Washington, D.C. 20009.

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1 BOARD MEMBERS PRESENT

2 NICK ALBERTI, BOARD MEMBER

3 JAMES SHORT, BOARD MEMBER

4 MIKE SILVERSTEIN, BOARD MEMBER

5 RUTHANNE MILLER, BOARD MEMBER

6

7 ALSO PRESENT:

8 ANTHONY RIVERO

9 STEPHEN BRODERICK

10

11

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

2 FACT FINDING HEARING

3 CHAIRPERSON ANDERSON: Are the parties
4 here for the Sign of the Whale?

5 UNKNOWN SPEAKER: I am [inaudible 30:53].

6 CHAIRPERSON ANDERSON: Can you look for Mr.
7 [inaudible]. And, Mr. Bramson, you're going to
8 be up here for a minute and I think that case is
9 going to be short, so that's one of the reasons
10 why I'm trying to go out of order. So, no
11 disrespect to you, I know that your time is also
12 -- Mr. Lopez and Mr. Bramson I know that your
13 time is also important too, but it's my
14 understanding that this next case is going to be
15 very short, so -- so as soon as we can find the
16 government's attorney, but if he doesn't show up
17 then I'm going to move on. Well, moving on then,
18 we now move to our fact finding hearing schedule
19 so I would like to call Mr. Bramson, Michael
20 Bramson, for the pub crawl event September 10,
21 2016, pub crawl event October 1, 2016, pub crawl
22 event October 29, 2016, and pub crawl event for

1 December 12, 2016. Mr. ? and Mr. Bramson, let me
2 have you sit back just a minute, please, because
3 I think this will be involved, and I'm more so
4 doing this as a courtesy to the licensee because
5 the licensee for the next case is here and I
6 appreciate the fact, so what I'm going to do, let
7 me call case #15-CMP-00997, Sign of the Whale,
8 license #85120, and as a courtesy to the licensee
9 I'm doing this since he was here and I want to
10 make sure -- although I appreciate everyone's
11 time --

12 MR. RIVERO: : And I appreciate the day off,
13 so thanks.

14 CHAIRPERSON ANDERSON: Can the parties please
15 identify themselves?

16 MR. RIVERO: Good morning, board members,
17 Fernando Rivero for the District of Columbia.

18 MR. BRODERICK: Steven Broderick for Sign of
19 the Whale.

20 CHAIRPERSON ANDERSON: Good morning everyone.
21 Mr. Rivero, are there any preliminary matters in
22 this case?

1 MR. RIVERO: Yes, there are. The parties
2 have an offer in compromise to present to the
3 board at this time.

4 CHAIRPERSON ANDERSON: And what is the offer
5 in compromise, sir?

6 MR. RIVERO: First, a preliminary matter.
7 I'd like to make an oral motion to amend the
8 notice, some technical changes. The notice
9 currently says that the statutes at issue are 25-
10 762(a) and (a3). The technical changes are to
11 list (b3) and (b4). These are the correct
12 sections of the statute. The b3 deals with the
13 expansion for another floor and b4 deals with the
14 expansion of music. So, to the two issues in
15 this, based on an incident in December of last
16 year, with that technical change, if the board
17 will accept that motion.

18 CHAIRPERSON ANDERSON: I make a motion that
19 the technical change, as proposed by Mr. Rivero,
20 be accepted. Is there a second?

21 MR. ALBERTI: Second.

22 CHAIRPERSON ANDERSON: Mr. Alberti seconds.

1 All those in favor say aye. (chorus of ayes)

2 Those opposed. (No audible response) So made.

3 MR. RIVERO: Thank you.

4 CHAIRPERSON ANDERSON: Thank you.

5 MR. RIVERO: The government will be
6 recommending an offer in compromise, presenting
7 an offer in compromise, of a written warning for
8 (b3) which is the charge that has to do with an
9 additional floor and then a dismissal of (b4)
10 which is the charge that has to do with the
11 music. The grounds for the dismissal are that
12 the government doesn't have the evidence anymore,
13 and the witness, Investigator Puente, is not
14 available to testify. That leaves us with (b3)
15 and the government took the following factors
16 into account for recommending to the other side
17 and presenting to the board a written warning at
18 this time. Evidence would have shown that the
19 licensee had a valid certificate of occupancy but
20 inadvertently did not come to the board to seek
21 approval of adding the floor before commencing
22 with operations on that floor, so that the change

1 -- the move -- was inadvertent which is different
2 from other licensees that had where they had no
3 valid permit whatsoever and they just do what
4 they will. So, there is a legal certificate of
5 occupancy that was in use that day. The second
6 reason is that a warning is allowed by the
7 statute for this charge and we believe, again
8 because it's inadvertent and the licensee had a
9 valid certificate of occupancy, that a warning
10 would be appropriate in this circumstance.
11 Another factor is that the licensee sought to
12 come into compliance with ABRA in discussions
13 about resolving this case, so I sent the licensee
14 to ABRA, ABRA asked him to write a letter which I
15 understand is what you consider an application,
16 and the licensee has written that and I have a
17 copy and it was submitted to the agency. The
18 letter is requesting the substantial change
19 approval for the second floor. And then the last
20 factor that we considered is that there are, from
21 a prior case, five suspended days that would be
22 triggered by this case and the government does

1 not think that that would be an equitable result
2 given the facts of this matter.

3 UNKNOWN SPEAKER: Say that again, sir.

4 MR. RIVERO: The government does not think
5 that it would be an equitable result given the
6 facts of this case that there are five staid days
7 that would be triggered by the finding of a
8 violation in this matter. So, I think those are
9 all the factors that I took into account for
10 providing this offer in compromise. If there are
11 any questions I'm happy to ask them -- to answer
12 them.

13 CHAIRPERSON ANDERSON: Yes, Mr. Alberti?

14 MR. ALBERTI: I have a question, but just
15 sort of a comment on the technical comment. With
16 the respect to the five stages, I agree with you,
17 Mr. Rivero, it's not warranted here but my
18 reasoning is different than yours --

19 MR. RIVERO: Okay.

20 MR. ALBERTI: -- in that, for one he really
21 isn't -- you might -- I don't view a warning as a
22 violation, it's a warning not to repeat -- you

1 know -- it's less than a conviction that would
2 trigger the five days in my view. So, I'm not
3 sure I'm putting this correctly, but I agree for
4 different reasons than the ones you gave.

5 MR. RIVERO: And I understand, but so the
6 government is clear then -- the government is
7 using the language of Title 25 for the conclusion
8 that a warning logically has to follow the
9 finding of a violation.

10 MR. ALBERTI: Right.

11 MR. RIVERO: In the title -- or the section
12 of the title that deals with sales to minors, the
13 language seems to strongly suggest that once you
14 have a first violation you have a mandatory
15 written warning, so there has to actually be some
16 sort of proof or recognition that a wrongful act
17 was committed. That finding leads, then, to the
18 mandatory written warning in the sales to minors
19 section. I believe it's D.C. Code 25-781 and so
20 following that rationale, there would have to be
21 a finding here on the other violation in order
22 for those dates to be triggered which is what the

1 government is trying not to happen, so that's my
2 rationale for that.

3 MR. ALBERTI: But I give you my rationale
4 only because my stance is that there is a
5 violation, there should be no waiving of the days
6 staid.

7 MR. RIVERO: Right.

8 MR. ALBERTI: So, and I want to be consistent
9 for everyone and in every case. But I do have a
10 question. So, you said there is a letter and
11 either one of you can respond. What's being
12 requested in this letter?

13 MR. RIVERO: It's approval of the use of the
14 second floor --

15 MR. ALBERTI: Okay.

16 MR. RIVERO: -- which was the issue in the
17 case. The establishment has had at the time, and
18 still does, a certificate of occupancy from DCRA
19 that allowed use of the second floor but at the
20 time that the investigators visited in December
21 of last year, the certificate of occupancy on
22 file with ABRA was one older than the one that

1 had gotten it, so that didn't the second floor.

2 MR. ALBERTI: But as of this report, there's
3 a couple of allegations, so that's why I ask, so
4 that's the one.

5 Sir, I just -- one of the allegations is that
6 you had entertainment outside of your hours of
7 entertainment. Do you understand that even
8 though it was earlier --

9 MR. BRODERICK: Yeah.

10 MR. ALBERTI: -- it's still a viola -- it's
11 still potentially a violation.

12 MR. BRODERICK: Yes, in fact, I'm going to
13 butcher his last name, but I think it was David
14 Hagggar, one of the license specialists, walked me
15 through the whole explanation of where
16 entertainment hours start --

17 MR. ALBERTI: Okay.

18 MR. BRODERICK: -- where they begin, what is
19 considered entertainment. Mr. Rivero did the
20 same thing, so we're totally clear on the
21 [inaudible 42:09].

22 MR. ALBERTI: Very good, thank you.

1 MR. BRODERICK: It'll be a lot of Direct TV
2 for a long time.

3 CHAIRPERSON ANDERSON: Any other questions by
4 any other board members?

5 MS. MILLER: I do.

6 CHAIRPERSON ANDERSON: Yes, Ms. Miller?

7 MS. MILLER: Mr. Rivero, does the file date
8 the five suspension days, were they a result of
9 the statute? The sales to minors statute? Or
10 were they the result of the [inaudible 42:40]?

11 MR. RIVERO: I believe it was a sale to
12 minor, if I'm not mistaken. The case number is
13 #15-CC-00108.

14 MR. ALBERTI: That's what our records show.

15 MS. MILLER: Okay. So --

16 MR. RIVERO: A fine was paid and the five-day
17 suspension was staid for one year.

18 MS. MILLER: Do you have any additional info
19 where the [inaudible] 43:05]?

20 MR. RIVERO: Yes. If the board accepts an
21 offer in compromise, the offer in compromise
22 being that of a warning, a warning should have

1 the same effect throughout all of the areas of
2 Title 25. So, when you get a warning, you don't
3 -- you don't get punished. It's a warning. So,
4 a warning here would not make any sense if the
5 licensee is still being punished. So that's --
6 the rationale is the logical nature of the
7 warning itself. It would not be very useful if
8 they closed for being warned.

9 MS. MILLER: Okay, thank you.

10 MR. RIVERO: You're welcome.

11 CHAIRPERSON ANDERSON: Okay, any other
12 questions by any other board members? All right.
13 Sir, can you repeat your name again?

14 MR. BRODERICK: It's Steven Broderick. B-R-
15 O-D-E-R-I-C-K.

16 CHAIRPERSON ANDERSON: And who are you in
17 regard to the establishment, sir?

18 MR. BRODERICK: I'm the general manager.

19 CHAIRPERSON ANDERSON: And we have something
20 in our records authorizing?

21 MR. BRODERICK: Yes.

22 CHAIRPERSON ANDERSON: Okay. Mr. Broderick

1 it's my understanding there is the offer in
2 compromise that for charge 1 there's a written
3 warning, and for charge 2 the matter is
4 dismissed. Is this your understanding of the
5 offer in compromise?

6 MR. BRODERICK: Yes, sir.

7 CHAIRPERSON ANDERSON: And are you aware that
8 by accepting the offer in compromise that you are
9 giving up your right to a hearing?

10 MR. BRODERICK: Yes, sir.

11 CHAIRPERSON ANDERSON: And are you also aware
12 that you give up your right to appeal this
13 matter?

14 MR. BRODERICK: Yes, sir.

15 CHAIRPERSON ANDERSON: All right. Hearing
16 that, I then make a motion that this offer in
17 compromise of a written warning for charge 1, and
18 that's the charge 2 is dismissed, be approved.
19 Is there a second?

20 MR. SILVERSTEIN: Second.

21 CHAIRPERSON ANDERSON: Mr. Silverstein has
22 seconded the motion. All those in favor say aye.

1 (Chorus of ayes.) Those opposed. (No audible
2 response.) The matter passed 5-zero-zero. One
3 thing that I'll say to you, sir, next -- it's my
4 understanding that your establishment came to
5 ABRA with -- and went to the front desk to make
6 the appropriate changes and that you -- the
7 establishment was told to write a letter to the
8 board. On behalf of the agency, I would like to
9 apologize for the incorrect information that was
10 given to you, and so what we're asking for you to
11 do is to actually meet with Mr. Gordy so you can
12 file the appropriate documentation with the board
13 --

14 MR. BRODERICK: Okay.

15 CHAIRPERSON ANDERSON: -- to make the
16 changes, okay?

17 MR. BRODERICK: Totally fine.

18 CHAIRPERSON ANDERSON: All right, thank you
19 very much.

20 MR. BRODERICK: Thank you.

21 MR. RIVERO: Thank you.

22 CHAIRPERSON ANDERSON: We'll have you sign

1 off on this piece.

2 (Whereupon, the above-entitled matter was

3 concluded.)

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