

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

- - - - -X

IN THE MATTER OF: :
Acott Ventures :Case #15-251-00176
t/a Shadow Room :
2131 K Street Northwest :
License #75871 :
Retailer CN :
ANC 2A :
Failure to Follow Security Plan:

- - - - -X

Wednesday, July 13, 2016

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

1

2 BOARD MEMBERS PRESENT

3 NICK ALBERTI, BOARD MEMBER

4 RUTHANNE MILLER, BOARD MEMBER

5 JAMES SHORT, BOARD MEMBER

6 MIKE SILVERSTEIN, BOARD MEMBER

7

8 ALSO PRESENT:

9 FERNANDO RIVERO

10 SWAPTAK DAS

11

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

2 SHOW CAUSE HEARING (STATUS)

3 CHAIRPERSON ANDERSON: The next matter on
4 our Show Cause Hearing (Status) is Case #15-251-
5 00176, The Shadow Room, license #75871. Will the
6 parties please approach and identify themselves
7 for the record?

8 MR. RIVERO: Good morning, Board members,
9 Fernando Rivero for the District of Columbia.

10 CHAIRPERSON ANDERSON: Good morning again,
11 Mr. Rivero.

12 MR. DAS: Good morning, Swaptak Das for
13 Shadow Room. It's spelled S-W-A-P-T-A-K, last
14 name is Das, D-A-S.

15 CHAIRPERSON ANDERSON: And, I'm sorry sir,
16 and who are you?

17 MR. DAS: I am one of the owners of Shadow
18 Room.

19 CHAIRPERSON ANDERSON: You're one of the
20 owners of the Shadow Room?

21 MR. DAS: [inaudible 26:03]

22 CHAIRPERSON ANDERSON: Okay, all right. Are

1 there any preliminary matters in this case?

2 MR. RIVERO: Yes there are. The government
3 has an offer in compromise to present to the
4 Board at this time. I have copies. I'm not sure
5 if the Board has been provided with copies so I
6 have some.

7 CHAIRPERSON ANDERSON: Go ahead, the Board
8 has, go ahead.

9 MR. RIVERO: This matter stems from an
10 incident that occurred in August of last year and
11 the government in this case alleged a violation
12 of the licensee's security plan and the terms of
13 the offer in compromise is in writing so that the
14 Board can follow along as well. The terms begin
15 with the licensee's agreement to pay a fine of
16 \$4000 within 30 days. If the fine is not paid
17 within 30 days, the license will be suspended
18 until the payment is received. Secondly, the
19 licensee will file with the Board a revised
20 security plan within 45 days. If the licensee
21 does not file the revised security plan within 45
22 days, the license will be suspended until the

1 revised security plan is filed with the Board.
2 As to this security plan, it will include
3 language in the section that's called "Prevention
4 of Fights/Altercations," that requires security
5 staff to inform patrons who are not escorted from
6 the premises or who are separated due to verbal
7 or physical altercations that they will be
8 immediately escorted from the premises and police
9 notified if they become engaged in any verbal or
10 physical altercation. The purpose of this
11 particular provision is to get at some of the
12 facts of the case.

13 In this case, the licensee actually has a
14 fairly valid security plan and some of the things
15 that the security plan required the licensee to
16 do, in fact did not do, the evidence would show.
17 But there's also some ambiguity in the security
18 plan and this language is one of the provisions
19 that is aimed at getting at the ambiguity.

20 In the law, the Board requires licensees to
21 have security plans that detail procedures for
22 how to deal with certain areas. The licensee has

1 a procedure here in this area and the procedure
2 involves a judgment call as to whether or not
3 people who are separated under any circumstances
4 can remain on the premises. That is a possible
5 outcome under the security plan and it is an
6 outcome that is allowable under the law.

7 Because these kinds of incidents are numerous
8 and any kind of situation can happen, one of the
9 things that I was interested in is understanding
10 that if there is a minor incident, often it could
11 escalate at some other point in time. There is -
12 - it's too ambiguous as to whether or not that
13 the patrons themselves are on notice that they
14 will be immediately ejected if they persist in
15 any kind of behavior. The facts in this case
16 concerned what appeared to be a minor argument
17 that then initiated into some small scuffle, the
18 parties were separated as the plan would require
19 them to do. There was a judgment call made,
20 though, not to take them out of the premises
21 though they are supposed to, and they simply
22 stayed on the premises and then there was an

1 escalation some minutes later. So, this
2 particular provision, again, is designed to put
3 the patrons on notice given that the licensee
4 legally has the ability to make judgment calls in
5 any given situation. There is a related
6 provision -- two related provisions following
7 this one.

8 On Number 4 of the revised security plan will
9 include language in the section again,
10 "Prevention of Fights/Altercations" that amends
11 the text. The procedure is to inform the manager
12 when there is one of these situations but it's
13 not clear how, and so I've tightened that up by
14 indicating that the manager should be informed
15 via radio. The security employees use radios and
16 it should be clear to them since this is a manual
17 that will be used to train the employees that
18 they are directly instructed to use the radios to
19 call the manager when they must do so.

20 Another provision on the security plan, #5,
21 will amend the section called "Fights and
22 Altercations" that's going to specify which

1 security staff are available for the purpose of
2 reporting to a code red radio call. Under the
3 security plan if there's an actual altercation, a
4 fight, someone is supposed to call what's called
5 a code red and all available security employees
6 are supposed to go to the area. The word
7 "available" is ambiguous, but the licensee does
8 have a very clear idea of which security
9 personnel are not to report because their
10 presence is required in their particular post
11 constantly and so the new language will be
12 instructive to security staff to let them know
13 with complete certainty who is to stay put and
14 who must report whenever there is a need to
15 report.

16 I'm on the second page now. Number six, the
17 revised security plan will include language --
18 again in the same Fights and Altercations
19 section, detailing the procedure for how police
20 will be contacted. This is an actual requirement
21 in Title 25 of the D.C. Code and there is a
22 statement actually in the security plan that says

1 police will be contacted or 911 but it doesn't
2 say who or how, and so I want to make sure that
3 that procedure is further detailed., again to
4 remove ambiguity in the plan. Also the revised
5 security plan will include language in a new
6 section detailing how an incident log will be
7 completed and maintained on the premises. The
8 section shall state that incident logs will be
9 maintained for at least six months and be
10 available for inspection by police or ABRA
11 investigators.

12 The section shall also state that incident
13 logs will document that a patron refuses medical
14 attention. The law again requires a security
15 plan to have a section detailing the use of
16 incident logs. There isn't one here. However,
17 the facts of the case do show that the licensee
18 in fact uses incident logs and one was used in
19 this case, and also there was a documentation
20 that medical assistance was declined, and so this
21 is a provision designed to clarify, essentially,
22 the current practice of the licensee. The

1 licensee agrees to conduct training for all
2 security staff on the revised plan no later than
3 30 days after filing the revised plan with the
4 Board.

5 This training will include, meaning it is not
6 limited to, but I want to focus on, drills on
7 separating hostile parties, deescalating verbal
8 altercations and checking identification. The
9 first two stem directly from this case. The
10 checking identification portion of the focus of
11 the training is not related to this case but the
12 licensee has a history of cases where checking
13 identification is an issue and so I felt it
14 important to go ahead and include it here as a
15 prophylactic measure.

16 And finally, after the training session
17 required by this agreement, the licensee agrees
18 to conduct quarterly training sessions on this
19 plan to ensure that everybody stays fresh with
20 what needs to happen, and no security employee
21 will begin employment without actual training.

22 CHAIRPERSON ANDERSON: Is that it, Mr.

1 Rivero?

2 MR. RIVERO: Yes.

3 CHAIRPERSON ANDERSON: Mr. Broderick, do you
4 have a copy of the document in front of you, sir?

5 MR. BRODERICK: Yes.

6 CHAIRPERSON ANDERSON: And, based on what was
7 read by Mr. Rivero, is this your understanding of
8 what is it that you agree to?

9 MR. BRODERICK: Yes, sir.

10 CHAIRPERSON ANDERSON: All right. Board
11 members have any questions? Yes, Mr. Alberti.

12 MR. ALBERTI: Mr. Chairman Anderson, I would
13 request that we recess, brief recess, to seek
14 legal advice on this, I have some questions about
15 the history, and I would ask that.

16 CHAIRPERSON ANDERSON: That's fine. Do we
17 have any other questions by any other Board
18 members? As chairperson of the Alcoholic
19 Beverage Control Board for the District of
20 Columbia and in accordance with Section 45 of the
21 Open Meetings Amendment Act of 2010, I move that
22 the ABC Board hold a closed meeting for the

1 purpose of seeking legal advice from our counsel
2 on Case #15-251-00176, The Shadow Room, per
3 Section 45-B4 of the Open Meetings Amendment Act
4 of 2010 and to deliberate upon Case #15-251-
5 00176, the Shadow Room, for the reasons cited in
6 Section 45-B13 of the Open Meetings Amendment Act
7 of 2010. Is

8 Is there a second?

9 MR. SHORT: Second.

10 CHAIRPERSON ANDERSON: Mr. Short has seconded
11 the motion. I will now take a roll call vote on
12 the motion before us now that it has been
13 seconded, Ms. Miller?

14 MS. MILLER: I agree.

15 CHAIRPERSON ANDERSON: Mr. Alberti?

16 MR. ALBERTI: I agree.

17 CHAIRPERSON ANDERSON: Mr. Short?

18 MR. SHORT: I agree.

19 CHAIRPERSON ANDERSON: Mr. Silverstein?

20 MR. SILVERSTEIN: I agree.

21 CHAIRPERSON ANDERSON: Mr. Anderson? I
22 agree. As it appears that the motion has passed,

1 I hereby give notice that the ABC Board will hold
2 its closed meeting in the ABC Board Conference
3 Room pursuant to the Open Meetings Amendment Act
4 of 2010. Give us about 15 minutes so I can find
5 out what the issues are, okay? Thank you.

6 We're back on the record. There is an OIC
7 that was presented for the Board to vote on. Do
8 we have any -- does either party have any
9 comments to make before the Board has further
10 discussions on whether or not we will accept or
11 reject this OIC?

12 MR. RIVERO: No. The OIC is relevant to the
13 facts, a just outcome, and we're available for
14 questions --

15 MR. SILVERSTEIN: Please speak up a little
16 louder, Mr. Rivero.

17 MR. RIVERO: And we're available for
18 questions, and that's it.

19 CHAIRPERSON ANDERSON: Then I'll ask you a
20 question, Mr. Rivero.

21 MR. RIVERO: Yes?

22 CHAIRPERSON ANDERSON: It's my understanding

1 that there was an OIC that was signed by the
2 government that was accepted by the parties on
3 October 8th, I'm sorry, on July 8th 2015, and
4 that OIC basically stated that if there were five
5 days staid in this offer in compromise and it's
6 my understanding that this incident occurred on
7 August 30th, 2015, which is within the one year,
8 so why is it that this OIC doesn't address those
9 dates?

10 MR. RIVERO: Well, part of the negotiations
11 also includes the fact that this is not the only
12 case that I have, that the ANC unfortunately has
13 several cases in the pipeline, in fact I'm
14 working on one right now, and I had intended on
15 ensuring -- and, by the way, the ones that I'm
16 mentioning are also events that occurred within
17 the same period -- that the Board has just
18 mentioned. So, I had intended that these five
19 days be served on one of those other cases which
20 dealt with the exact violation which was the
21 subject of the OIC that was presented.
22 Basically, that's the answer to that. I can ask

1 the licensee his position. I would have to have
2 a brief indulgence on that, but that was how I
3 was viewing moving forward because there are
4 several other cases and, in fact, one is coming
5 rather soon to the Board. And the licensee has
6 no intention on seeking a show cause hearing on
7 any of them so it's just a matter of bringing
8 successive offers in compromise in front of the
9 Board.

10 CHAIRPERSON ANDERSON: But, wasn't that --
11 shouldn't it at least be addressed? So,
12 shouldn't the OIC -- I'm asking you -- shouldn't
13 at least the OIC make some mention that this
14 incident occurred and so, therefore, you're
15 asking the Board to either waive it in this case
16 or it's not going to be addressed, but since
17 there's no mention in this OIC it's out there and
18 there's not a -- you're asking us to accept an
19 OIC and there's no mention of this --

20 MR. RIVERO: Right, I understand the chair's
21 concern. Brief indulgence?

22 CHAIRPERSON ANDERSON: Sure.

1 MR. RIVERO: Thank you for that brief
2 indulgence. I discussed the issue with the
3 licensee and a representation that the licensee
4 agrees to is that the five days could be served
5 but because the dates can't be produced
6 immediately, and the government does not have a
7 problem with that, we can have an additional
8 condition that within the next 30 days those five
9 days will be served and I'm fine with that. It's
10 a matter of selecting the days which can't be
11 done on the spot because the licensee has to
12 consult with staff.

13 CHAIRPERSON ANDERSON: Are you able to
14 provide the Board -- because if the Board was to
15 accept this offer in compromise we'd be issuing a
16 Board order --

17 MR. RIVERO: Right.

18 CHAIRPERSON ANDERSON: -- so is it possible
19 that by close of business today you could provide
20 us with the dates?

21 MR. RIVERO: I'm not sure because it's the
22 licensee, the licensee is nodding, so he appears

1 to be able to do it, so I don't have a problem
2 with that.

3 CHAIRPERSON ANDERSON: All right, so --

4 MR. RIVERO: It's up to the licensee to pick
5 the dates, not me.

6 CHAIRPERSON ANDERSON: So, by close of
7 business today, if the Board was to consider this
8 offer in compromise then by close of business
9 today you would provide us the dates that would
10 be served.

11 MR. RIVERO: Yeah.

12 CHAIRPERSON ANDERSON: Do we have any other
13 questions by any other Board members? Yes, Mr.
14 Alberti?

15 MR. ALBERTI: Just a brief question for the
16 licensee, Mr. Das, what days are you normally
17 open?

18 MR. DAS: Well, sometimes on Tuesdays, but
19 Thursdays, Fridays, Saturdays are -- yes,
20 Tuesdays, Thursdays, Fridays, Saturdays.

21 MR. ALBERTI: So, you're not open normally on
22 Sundays or Mondays, is that correct?

1 MR. DAS: That's correct, sir.

2 MR. ALBERTI: Thank you.

3 CHAIRPERSON ANDERSON: Any other questions by
4 any of the Board members?

5 MR. ALBERTI: I just want to make one
6 statement.

7 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

8 MR. ALBERTI: It's my -- it's my expectation
9 then that the days chosen will be -- will be
10 according to I think it's actually statute that
11 they have to be served on days when you're
12 normally open, so --

13 MR. RIVERO: That's been communicated, sir.

14 MR. ALBERTI: Okay, great, I wanted to put
15 that out there. All right, thank you, that's it,
16 I'm sorry.

17 CHAIRPERSON ANDERSON: With that said, then,
18 I make a motion that this offer in compromise of
19 a fine of \$4000 payable within the next 30 days,
20 if it's not payable in 30 days that it will be --
21 the license will be suspended, that there is --
22 I'm just summarizing the written order -- that

1 there's a revised security plan being provided
2 within 45 days, that the security plan will also
3 have a section regarding the prevention of fights
4 and altercations, 4) that prevention -- that
5 again the section dealing with prevention and
6 fights and altercations will be amended, the
7 security plan will be revised to talk about to
8 specify what code red, and that there's an
9 amendment that -- the amendment would be that by
10 close of business today the parties will provide
11 the Board with the days that will be served --
12 with the five days that will be served.

13 MR. ALBERTI: And those days will be within
14 the next 30 days.

15 CHAIRPERSON ANDERSON: And --

16 MR. ALBERTI: They said that they would be
17 within the next 30 days.

18 MR. RIVERO: Right.

19 CHAIRPERSON ANDERSON: All right, and that --

20 MR. ALBERTI: And the days they choose.

21 CHAIRPERSON ANDERSON: -- and the days chosen
22 will be within the next 30 days. Do we have

1 agreement that -- do we have agreement that by
2 close of business today the establishment parties
3 will provide us the five days that will be served
4 and that those days will be within the next
5 thirty days?

6 MR. RIVERO: That's right.

7 CHAIRPERSON ANDERSON: Mr. Broderick, yes?

8 MR. BRODERICK: Yes.

9 CHAIRPERSON ANDERSON: All right. Then, with
10 that said, I make a motion that this offer in
11 compromise be accepted. Is there a second?

12 MR. SILVERSTEIN: I second, Mr. Chair.

13 CHAIRPERSON ANDERSON: Mr. Silverstein
14 seconds the motion. Any further discussions?
15 All those in favor say aye. [Chorus of ayes]
16 All those opposed? [No audible response.] The
17 matter passed 5-zero-zero, so therefore the offer
18 in compromise is accepted for the \$4000 fine
19 payable within 30 days, that by close of business
20 today the parties will provide the Board with the
21 five days that will be served within the next 30
22 days. And the Board will issue a Board Order in

1 this matter. Thank you very much.

2 MR. RIVERO: Thank you.

3 (Whereupon, the above-entitled matter was
4 concluded.)

5