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

- - - - -X

IN THE MATTER OF: :
Tasty Burger, DC1, LLC :
t/a Tasty Burger :

2108 8th Street Northwest : Case #15-PRO-00107
License #100284 :
Retailer CR :

Wednesday, January 6, 2016 :

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Wednesday, January 6, 2016

Whereupon, the above-referenced matter
came on for hearing at the Jerrily R. Kress
Memorial Hearing Room, 441 4th Street, N.W.,
Suite 220-S, Washington, D.C. 20001.

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CHAIRPERSON: DONOVAN ANDERSON

ANDREW KLINE, ESQ.,
on behalf of Tasty Burger, LLC

JOHN GREEN, ESQ.,
On behalf of ANC 21B

OTHER PERSONS PRESENT

- NICK ALBERTI, BOARD MEMBER
- RUTHANNE MILLER, BOARD MEMBER
- JAMES SHORT, BOARD MEMBER
- MIKE SILVERSTEIN, BOARD MEMBER
- MARTHA JENKINS, GENERAL COUNSEL
- DANETTE WALKER, LEGAL SPECIALIST

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P R O C E E D I N G S

CHAIRPERSON ANDERSON: Okay, the next case on the calendar is Case #15-PRO-00107, Tasty Burger. Excuse me, License #100284. Will the parties approach?

MR. KLINE: Good morning, Andrew Kline on behalf of the applicant.

JOHN GREEN: Good morning I am ANC Commissioner, John Green, representing ANC 2 1B.

CHAIRPERSON ANDERSON: Alright. This matter is scheduled for -- this matter is scheduled for a -- I'm sorry -- Alright, this matter is scheduled for a hearing on January the 27th, 2016, at 1:30 -- at 1:30 p.m. and you are familiar with the -- the instructions I just provided regarding the protest hearing. Are you familiar with that?

MR. GREEN: For the most part.

CHAIRPERSON ANDERSON: I'm sorry?

1 MR. GREEN: For the most part.

2 CHAIRPERSON ANDERSON: The most part?

3 MR. KLINE: For the record, the applicant is.

4 CHAIRPERSON ANDERSON: Okay. And so, this is
5 just a status? Right there, that's it.

6 MR. GREEN: So, I'm the single member, I'm
7 not the single member commissioner but I'm here
8 to relay a message from that commissioner. The -
9 - and -- and I'll just read an e-mail I received.
10 "Unfortunately, repeated attempts to schedule a
11 meeting in September, October and December were
12 not answered by Tasty Burger's counsel." Here's
13 the timeline of the contact information. There's
14 one, two, three, four, five dates. They're --
15 essentially they're working on a settlement
16 agreement; however, the ANC's left in an awkward
17 position with mediation which had been on Monday,
18 this past Monday, at 1:00 p.m. This was the
19 first contact they've had with Tasty Burger in
20 trying to negotiate a settlement agreement.

1 Unfortunately they weren't able to reach that
2 agreement this past Monday and our ANC meeting is
3 this Thursday, January 7th, which is not going to
4 give them much time for the ANC to vote on this
5 matter.

6 CHAIRPERSON ANDERSON: So, you're asking for
7 what?

8 MR. GREEN: So, what the commissioner is
9 asking is for a request to postpone the protest
10 hearing so that they can negotiate a settlement
11 agreement and for the 4 1 ANC to vote on this and
12 to have weight -- great weight -- on -- which our
13 next meeting will be February 4.

14 MR. KLINE: May I respond? First of all, we
15 dispute this fax and, frankly, we had a
16 productive mediation earlier this week. There
17 was earlier contact. I'm surprised by this
18 ambush by this ANC because we have a good
19 relationship with this ANC. This is a new
20 application. We believe that there isn't any

1 reason in the world why the ANC could not
2 consider this matter at its meeting tomorrow
3 night.

4 We've worked diligently to finalize an
5 agreement and are willing to appear tomorrow
6 night at the ANC meeting to have an agreement
7 rendered on. My understanding is that the ANC
8 prefers not to do that because they wish to have
9 the matter considered by a committee that is made
10 up of people who are not ANC commissioners, which
11 is not part of the process, and would be
12 potentially subject to challenge in terms of an
13 approval or disapproval by committee that it is
14 not elected representatives. But, the bottom
15 line is this is a new application. The applicant
16 at this point is not consenting to a continuance.

17 CHAIRPERSON ANDERSON: Okay. Unfortunately,
18 we don't have a whole of leeway in the sense of
19 granting an extension at the time. Since the
20 applicant is not in agreement, I would hope that

1 -- that the parties could work something out to
2 see, but -- but I -- I don't have a lot of leeway
3 in the sense of granting an extension of a --

4 MR. GREEN: Is that unprecedented? To grant
5 an extension?

6 CHAIRPERSON ANDERSON: It's my understanding
7 that for new business there is a specific
8 timeline that we have to comply with to make the
9 decision. If the applicant is not in agreement,
10 then we don't have a whole lot of leeway. But --

11 MR. ALBERTI: May I just?

12 CHAIRPERSON ANDERSON: Yes, go ahead.

13 MR. ALBERTI: Yeah, I -- I would not be
14 favorable for a postponement. However, I will say
15 to you, hopefully the two parties can come to an
16 agreement -- a settlement agreement -- before the
17 January 27th.

18 Mr. KLINE, the committee -- the settlement
19 agreement gets voted on by the ANC. The
20 committee's recommendation is just a

1 recommendation. So, there is no challenge to the
2 committee's recommendation. The ANC does that
3 all the time and it has withstood legal
4 challenge.

5 So, to the commissioner: You come to a
6 settlement agreement -- both parties come to a
7 settlement agreement. You can decide as late as
8 the day before the hearing whether you --

9 MR. KLINE: That's today--

10 MR. GREEN: Wait, wait, wait. Both parties
11 can decide that they may want to postpone it
12 because you have a settlement agreement you think
13 is going to get approved and then avoid the
14 hearing, but that's up to you. I mean, that's up
15 to the two parties to decide. So, hopefully
16 there is a chance that you'll both consider
17 whether or not to postpone it, but I would
18 encourage you to continue your negotiations on a
19 settlement agreement and see where you are just
20 prior to that hearing.

1 MR. KLINE: And, indeed, Mr. Alberti, that's
2 exactly how we responded, that is if we had an
3 agreement that was subject only to the ANC that
4 we would certainly consider a continuation of the
5 protest hearing.

6 MR. ALBERTI: Great, great, then we're all on
7 the same page.

8 MR. KLINE: Absolutely.

9 MR. ALBERTI: Thank you.

10 MR. GREEN: And again I'm not the single
11 member commissioner in that [inaudible 14:55]
12 works with Commissioner Hudson to reach a
13 settlement agreement hopefully before our meeting
14 tomorrow and I am on the committee so there are
15 ANC representatives on that committee. You know
16 that, Andrew? And remember, hearing the proposed
17 settlement agreement, we were all unanimously
18 opposed to it because of some of the extra hours
19 added to it.

1 MS. MILLER: Excuse me, we don't want to get
2 into that. See we don't want to -- I'm sorry, I
3 just --

4 CHAIRPERSON ANDERSON: I -- I -- I'm trying
5 to be very --

6 MR. GREEN: I know it's just a status -- I
7 just want the -- the -- the commission to
8 understand that this is -- this isn't going to be
9 just solved very quickly.

10 CHAIRPERSON ANDERSON: And I appreciate it
11 but remember, this is a status, so I don't
12 necessarily want to be --

13 CHAIRPERSON ANDERSON: -- hear the minutia
14 of that. If we have a protest hearing, then we
15 will get into that. But I -- I hear what you
16 have to say --

17 MR. GREEN: Yes.

18 CHAIRPERSON ANDERSON: -- and I do hope that
19 both parties can work this out. You as the
20 applicant stated that there is an -- you have an

1 ANC meeting tomorrow, the applicant stated that
2 they would come to the meeting, so I think part
3 of that issue can be addressed. Alright?

4 MR. KLINE: Thank you.

5 MR. GREEN: Thank you.

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