

Villa Tuscana

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

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IN THE MATTER OF:

EL Agave Tex Mex Restaurant, LLC,
t/a Villa Tuscana Case Number 16-PRO-00010

1723 Columbia Road NW
License #100312
Retailer CR
ANC 1C

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Wednesday, March 16, 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.

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CHAIRPERSON:

DONOVAN W. ANDERSON, Presiding

OTHER PERSONS PRESENT:

NICK ALBERTI, BOARD MEMBER

RUTHANNE MILLER, BOARD MEMBER

JAMES SHORT, BOARD MEMBER

MIKE SILVERSTEIN, BOARD MEMBER

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

2 CHAIRPERSON ANDERSON: All right. The next
3 case on our calender is Case Number 16-PRO-00010, Villa
4 Tuscana, License Number 100312. Will the parties please
5 approach. It's my understanding that there are
6 interpreters here. Who are they? Just before -- all
7 right. Okay. All right. Could the parties please
8 introduce yourself for the record please.

9 [The witness, Mr. Larios speaking through an
10 interpreter.]

11 MR. LARIOS: Jose Larios.

12 CHAIRPERSON ANDERSON: And who are you, sir?

13 MR. LARIOS: I'm the owner of Villa Tuscana.

14 CHAIRPERSON ANDERSON: Thank you. Yes. Can
15 you introduce yourself here please.

16 MR. SIMPSON: I am William Simpson here for
17 Advisory Neighborhood Commission 1C.

18 CHAIRPERSON ANDERSON: Okay.

19 MS. JAFFE: I'm Ellen Jaffe. I'm here for
20 the Group of 19, and we have five representatives if you
21 need that.

22 CHAIRPERSON ANDERSON: Yes. Who are -- who

1 are the representatives?

2 MS. JAFFE: They're all.

3 CHAIRPERSON ANDERSON: Identify yourself
4 please.

5 MS. JAFFE: What?

6 CHAIRPERSON ANDERSON: Have them introduce
7 themselves please.

8 MS. JAFFE: I can't hear you.

9 CHAIRPERSON ANDERSON: Have them identify
10 themselves please.

11 MS. SHIA: But I'm Nancy Shia. I'm one of
12 the representatives of the Group of 19.

13 MS. GLADING: Gay Glading, one of the
14 representatives of Group 19.

15 MR. SIMPSON: If I might clarify --

16 CHAIRPERSON ANDERSON: Yes.

17 MR. SIMPSON: -- the two individuals seated
18 here have been given authorization by the others to be
19 the representatives. The folks behind are part of the
20 Group of 19.

21 MR. SILVERSTEIN: You all signed in?

22 MS. JAFFE: We did. Oh, you want them to

1 sign in too? Sure.

2 CHAIRPERSON ANDERSON: So we have Ms. --
3 Ms. Jaffe and Ms. Shia, right?

4 MS. SHIA: Yes.

5 CHAIRPERSON ANDERSON: Okay.

6 MS. SHIA: Yes.

7 CHAIRPERSON ANDERSON: All right. Before we
8 start can you --

9 MS. SHIA: Sir.

10 CHAIRPERSON ANDERSON: I'm sorry.

11 MS. SHIA: We have three more that would
12 like to identify themselves.

13 CHAIRPERSON ANDERSON: Sure. Go ahead
14 please.

15 MS. SHIA: Sorry.

16 MS. DEVOE: Margaret Devoe, part of the
17 Group of 19.

18 CHAIRPERSON ANDERSON: Thank you.

19 MR. MCKEVITT: And Stephen McKevitt, also
20 part.

21 MR. WELLS: Matthew Wells, part of the Group
22 of 19.

1 CHAIRPERSON ANDERSON: Thank you. Well, you
2 know, the folks are here. So I just don't want them to
3 sit out as -- as potted plants and say they took an
4 opportunity to come here today, might as well introduce
5 yourself, you know, and sit there and act like -- I want
6 to know who you are. Okay.

7 MR. ALBERTI: I like the potted plants.

8 CHAIRPERSON ANDERSON: All right.

9 MR. JAMES: Ernest James representing
10 Kalorama Citizens Association.

11 CHAIRPERSON ANDERSON: Okay. Fine. Okay.
12 I need you to -- you to do something please. Can you
13 raise -- the interpreter, can you raise your right hand.
14 Do you solemnly affirm that you will faithfully and
15 accurately interpret the proceedings in this matter from
16 Spanish -- from -- from English into Spanish and -- and
17 from Spanish into English to the best of your ability.

18 THE INTERPRETER: I do.

19 CHAIRPERSON ANDERSON: Okay. Thank you.
20 All right. All right. All right. This matter -- or
21 this matter is set for a hearing, but are there any
22 preliminary matters?

1 MR. SIMPSON: There are indeed. We -- the
2 protestants together submitted information to The
3 Board's counsel, Martha Jenkins contending that the
4 applicant failed to attend the mediation hearing and
5 accordingly that the application should be dismissed
6 subject of course to his right to appeal that dismissal.
7 On the date of the mediation hearing he did not attend.
8 His son was present and alleged that he was authorized
9 to speak on behalf of his father based on his alleged
10 part ownership in the enterprise. However, the
11 protestants are relying on the applicants submission to
12 ABRA on the application in which he has identified
13 himself as the sole owner and sole individual entitled
14 to represent the -- the establishment. Accordingly, we
15 would ask The Board to dismiss the application again
16 subject to the applicant's right to petition for a
17 reinstatement.

18 CHAIRPERSON ANDERSON: That's the only
19 preliminary issue?

20 MR. SIMPSON: That's -- that's the principle
21 one. If The Board does decide to in some fashion
22 reinstate the application, we would just note that the

1 application is riddled with inaccuracies and missing
2 information. Just as a very obvious preliminary example
3 in the -- in Item 16, the type of application it lists
4 three different types of entities. He has checked sole
5 proprietor, corporation, and LLC. Of course, that's not
6 legally possible. Further, there is very significant
7 missing information. For example, he is the owner of
8 the establishment immediately next door, but he has not
9 identified on this application that he in fact owns
10 another establishment or that any other establishment
11 exists nearby. There are numerous other issues with --
12 with the application that ought to be corrected before
13 the community has to actually engage in further
14 proceedings.

15 CHAIRPERSON ANDERSON: Okay. So the two
16 preliminary issues that you have are basically that
17 the -- the applicant did not -- did not attend -- the
18 mediation session, he sent his son as his
19 representative. But you -- it's your -- it's your
20 belief that -- that the son stated that he was part
21 ownership. But on the application there's no mention
22 that he was an owner and that if The Board doesn't --

1 doesn't dismiss the matter, you're saying then the
2 application itself -- that there are several errors.
3 Are those -- are those the only errors? Are there -- I
4 have not seen the application. So since you're raising
5 them I -- I would prefer if you let me know what they
6 are so I can --

7 MS. JAFFE: Would you like me to run through
8 them?

9 CHAIRPERSON ANDERSON: Sure.

10 MS. JAFFE: Sure. In Item 7 -- this is all
11 in the business information part. In Item 7 he has left
12 a blank despite the fact that he has a license for the
13 sale of liquor.

14 CHAIRPERSON ANDERSON: You have to go --

15 MR. SILVERSTEIN: Excuse me. You're going
16 to have to speak more softly, and you're going to have
17 to speak more loudly. We can't hear you both.

18 CHAIRPERSON ANDERSON: Now, hold on. Now,
19 hold on a minute. Hold on. Hold on please. Hold on.
20 I'm running this hearing. All right. I understand the
21 translator, you -- you're a translator, so you have to
22 do what you have to do. So I'm fine with you. What

1 I'll ask you to do just move slowly -- slower.

2 MS. JAFFE: Okay. I'm sorry. I'm reading
3 this so I don't do that again.

4 CHAIRPERSON ANDERSON: Yeah. You're --
5 you're going too fast.

6 MS. JAFFE: Okay.

7 CHAIRPERSON ANDERSON: So just go a little
8 bit slower please.

9 MS. JAFFE: Okay. In Item 7 which is do you
10 have or have you previously held a liquor license for
11 the sale of alcoholic beverages he has left that blank
12 despite the fact that we were here years ago because he
13 is the owner of the establishment next door El Nuevo
14 Migueleno. Then Number 9 -- Number 9 seems -- has been
15 left blank as well. And that seemed to me that that one
16 also have to do with El Nuevo Migueleno because it has
17 to do with holding an ABC license. Number 12 has
18 apparently been corrected. Number 14 again, he fails --
19 he fails to mention that he owns the establishment next
20 door. And Number 18 which is really the crux of the
21 matter is I think give an explanation of what effect
22 your establishment will have. El Nuevo Migueleno has

1 been a bit of a scourge on the neighborhood, and I think
2 that because we've had so many complaints about it that
3 that would have had to have been mentioned as -- would
4 have had to put something in there, how this place was
5 not going to be that way. But I think that's it.

6 MS. SHIA: One more.

7 MS. JAFFE: One more.

8 MS. SHIA: Well, when it -- there was one
9 question that asked about education.

10 MS. JAFFE: He corrected that so that's why
11 I didn't mention it because we saw a copy of it.

12 MR. SIMPSON: Ms. Fashbar sent us an updated
13 version of the application this morning that corrected
14 that piece but not the others.

15 CHAIRPERSON ANDERSON: All right. All
16 right, sir, do you have a response to the preliminary
17 issues that were raised by the protestant?

18 MR. LARIOS: Yes. Yes. The reason that I
19 did not come to the preliminary -- the mediation hearing
20 was because I was in an accident three years ago, and my
21 two -- both of my shins were badly injured and I've had
22 residual problems from that. I had a very serious

1 infection, and I -- I can show you photos of what I was
2 dealing with. It's not that I didn't want to come, I
3 just -- I wouldn't. I could barely walk.

4 CHAIRPERSON ANDERSON: But I think you
5 also -- part -- part of the allegation was that you did
6 not come, you sent your son and your son said that he
7 was representing you and that he was part owner. So you
8 should also address that issue too please.

9 MR. LARIOS: He didn't say that. I called
10 him as an emergency -- in an emergency. I tried to call
11 represent -- some of their representatives. No one was
12 answering the phone, and I was just doing what I could.
13 I left them messages, and no one was calling me back or
14 responding in any way. That was the day before the
15 hearing, and I was -- a very serious condition. And
16 what they said about the El Nuevo Migueleno, that's a
17 very different -- that is a family restaurant. This is
18 going to be a very different business. It's going to be
19 an Italian restaurant. And I had come to correct a
20 mistake that was on the application. Michael --
21 Mr. Michael Stewart called me and asked me to come in.
22 So I came in early in the morning. And what we

1 corrected had to do with a kindergarten, a school that's
2 very close by. And that's what Michael Stewart had me
3 come into correct. He didn't say anything about any
4 other issues.

5 CHAIRPERSON ANDERSON: Well, I'm just saying
6 -- and I'm not making a ruling. I'm just saying that
7 the protestants are saying that there are problems with
8 Number 17. There's problems with Number 9 on the
9 application. There's problems with Question 14.
10 There's problems with Question 18. And so I -- so I'm
11 just raising to you that these are issues that the
12 protestant has stated. I don't know -- I have not seen
13 the application, and I don't know if -- if that is
14 correct. But are you aware of these errors that they're
15 pointing out? That's all I'm just asking you, if you're
16 aware of what -- what the concerns are?

17 MR. LARIOS: No. Because -- no. Because
18 the -- Mr. Mike called me in to help me fill out the
19 application, and he was the one who told me what I
20 needed to correct. I was not aware of any errors.

21 CHAIRPERSON ANDERSON: Well, you are on
22 notice that there are some other errors that the

1 protestants are stating that these areas -- that there
2 are errors that -- that should be looked at. I don't --
3 I am not making a ruling on that.

4 MR. LARIOS: I -- I don't know if there are
5 any errors, but if there are errors, I will correct
6 them.

7 CHAIRPERSON ANDERSON: All right. Are there
8 so -- yes, sir. And identify yourself when you talk,
9 sir.

10 MR. SIMPSON: Sure. It's William Simpson
11 again. Just a few clarification points. The various
12 errors in the application that Ms. Jaffe has identified
13 just now, she actually submitted those to ABRA's staff,
14 and that's what prompted in our understanding the reach
15 out by ABRA staff to -- to Mr. Larios. And it's -- it's
16 surprising to us then that when he came back in he only
17 corrected the one item rather than correcting all of
18 them especially the information about who actually owns
19 the place, especially the information about the fact
20 that he owns another establishment that frankly has been
21 causing a lot of issues for residents which is why you
22 have 19 residents who have signed up to protest in this

1 case. We -- we would also note that from the
2 community's side we've been very keen to try to work
3 through these issues. The mediation that was scheduled
4 was either the third or the fourth occasion where the
5 applicant was -- had agreed to meet with community
6 representatives and then cancelled at the moment or just
7 didn't show. So I guess we would -- we would be very
8 keen to have The Board just ask him directly does his
9 son own an interest in this establishment or not. That
10 would be something we would like to know and then -- and
11 anyone else.

12 CHAIRPERSON ANDERSON: Well, I can -- the
13 representation that -- the representation that was made
14 which I had asked, and I'm -- I'm not sure if there was
15 an issue with translation, I specifically asked the
16 question that the allegation was that his son came and
17 represented himself as an owner of the establishment and
18 was that correct. And I think I heard he said that's
19 not what his son said. But -- but maybe we can get some
20 clarification on that issue right here. But I --

21 MR. SIMPSON: Ms. -- Ms. Fletcher was in
22 attendance and could testify to that if needed.

1 MR. JAMES: If I might, on the different
2 pages of the application there's spots where there's
3 either a blank or a situation where there's very little
4 information.

5 MR. SIMPSON: Our broader point -- we -- we
6 understand the point that eventually in some form or
7 another he can either fill out a new application or get
8 this application corrected or get reinstated if he's
9 dismissed, and ultimately we understand all of that.
10 We're now in a position because of the multiple meetings
11 that he has failed to attend to show up, the failure to
12 attend the mediation, the fact that we're at status
13 today and the protest hearing is scheduled -- I think
14 it's two weeks from today. It is extremely prejudicial
15 to us as a community to be asked to possibly proceed to
16 a protest hearing by the end of the month. So we'd just
17 like to highlight that as well.

18 MR. JAMES: One point that links directly to
19 that is that the roll call didn't take place until two
20 weeks later than it was supposed to because of a weather
21 incident * scheduled roll call. So our -- if we had --
22 everything had been in order our time to negotiate was

1 shrunk down, our time to act before today shrunk by two
2 weeks.

3 CHAIRPERSON ANDERSON: Do you have a
4 response, sir, to what was just stated?

5 MR. LARIOS: I was in charge of the person
6 in charge of -- or I was in contact with the person in
7 charge of licensing. When he told me to come in to make
8 corrections I came and I corrected what -- what he told
9 me to correct. He called me yesterday to tell me to
10 come in, but -- but he wasn't here. And so I -- I have
11 to wait until Monday he said.

12 CHAIRPERSON ANDERSON: Tell -- just tell me
13 some -- give me some more information about what is
14 actually going on with the business. Is it under
15 construction? What -- what's going on?

16 MR. LARIOS: It was the Mambo Room before,
17 the place is ready. We didn't have to do a lot of
18 construction. We did a little bit of painting, but
19 we're ready to bring in tables and chairs.

20 CHAIRPERSON ANDERSON: Okay.

21 MR. LARIOS: We just changed the floor which
22 is ceramic and we put in new lights.

1 CHAIRPERSON ANDERSON: So about how long
2 will you say the business would -- could open? If you
3 were granted a license today, how -- when would the --
4 when would the business be open? I'm just trying to get
5 some background information to decide what we're going
6 to do. Okay. That's -- but I'm not making -- I just
7 want you to -- I'm not making a decision. I'm just
8 trying to be more informed.

9 MR. LARIOS: Just because we're going to be
10 serving food, we're not talking about entertainment,
11 music, et cetera. If you gave me the license today, I'd
12 be able to open in two weeks.

13 CHAIRPERSON ANDERSON: Okay. All right.
14 Yes, Ms. Miller.

15 MS. MILLER: If it's the appropriate time to
16 ask a couple questions. Mr. Larios, could you tell me
17 who you called to say that you wouldn't be able to
18 attend the mediation?

19 MR. LARIOS: I have the phone number.

20 MS. MILLER: Did you call the protestants or
21 did you call ABRA? That's kind of what I want to know.

22 MR. LARIOS: I called ABRA.

1 MS. MILLER: You called ABRA?

2 MR. LARIOS: But they didn't answer. It
3 was -- it was late.

4 MS. MILLER: Did you leave a message?

5 MR. LARIOS: Yes. And I called them as well
6 and I left them messages, but they didn't call me back.

7 MS. MILLER: Okay.

8 MR. LARIOS: And I was dealing with my
9 infection. They had to, you know, cut it open and --

10 MS. MILLER: Okay. I got -- I got that.
11 Okay. Mr. Simpson, was the mediation able to proceed
12 with the owner's son standing in his place or not?

13 MR. SIMPSON: It was not -- Ms. --
14 Ms. Fletcher indicated that she was not comfortable
15 proceeding because he did not have any sort of written
16 authorization and because the application form did not
17 identify him as authorized to represent. And -- and
18 furthermore, his son specifically stated that he himself
19 was not comfortable proceeding and didn't really want to
20 be there.

21 MS. MILLER: Okay. And you're moving to
22 dismiss on grounds that he couldn't designate to his son

1 to stand in his shoes or he has to be an owner there or
2 what or had to be authorized? Is that what --

3 MR. SIMPSON: I don't know what the ABRA
4 rules are. My understanding is that you can designate
5 an alternate, but I think you would have to do that in
6 writing, something that the other side can rely upon and
7 have legal confidence in.

8 MS. MILLER: Okay. So -- and I mean I think
9 that I'm going to leave it to the Chair to direct when
10 or what to do with respect to whether you should be
11 filing something in writing. But I just want to make
12 clear I understand your points while you're here. With
13 respect to the errors in the -- or what you perceive are
14 errors or blanks in the application that prejudice the
15 protestants from going forward, because are you going to
16 be seeking an extension of time or a dismissal? It
17 sounds like extension of time for the protest, but I'm
18 not sure. So --

19 MR. SIMPSON: So we did submit this
20 information in writing to Ms. Jenkins via e-mail. I
21 don't know if that's adequate or --

22 MS. MILLER: So we haven't seen that to be

1 frank.

2 MR. SIMPSON: Okay.

3 MS. MILLER: But as a comment that sounds
4 like an informal thing as opposed to a motion for The
5 Board to consider; is that right what you did?

6 MR. SIMPSON: We specifically asked in the
7 e-mail that the application be dismissed subject of
8 course to his right to seek reinstatement under the
9 rules and the regulations.

10 CHAIRPERSON ANDERSON: All right.

11 MR. SIMPSON: If -- if as an -- that would
12 be our preferred approach. We think that's the legally
13 correct approach.

14 MR. SILVERSTEIN: And what is that again?
15 What would you prefer?

16 MR. SIMPSON: That the application be
17 dismissed and then the applicant be given his ten days
18 in which to seek the reinstatement. We think that's the
19 legally correct approach because we think that he did in
20 fact fail as a legal matter to attend the mediation. If
21 for some reason The Board does not agree with that legal
22 conclusion and decides to allow the current application

1 to live, we would at least ask that we be given a
2 reasonable schedule in which to proceed with a real
3 mediation, a real status hearing, and a -- a protest
4 hearing that we actually have time to adequately prepare
5 for.

6 CHAIRPERSON ANDERSON: All right.

7 MS. MILLER: Thank you.

8 CHAIRPERSON ANDERSON: Are -- any other
9 board members want to ask -- yes, Mr. Silverstein.

10 MR. SILVERSTEIN: Thank you. Mr. Simpson, I
11 feel we're all at cross purposes here, and I think you
12 two gentlemen above all know why. And that is that
13 there are 1,200 licenses about to come due.

14 MR. SIMPSON: Yeah.

15 MR. SILVERSTEIN: That our tri-annual
16 avalanche is about to beset us of protests, requests to
17 terminate or modify settlement agreements, that right
18 now is sort of the calm before the storm. So it would
19 absolutely be best for us if we not put this into the
20 avalanche. But that's not entirely the issue, that's
21 just part of it. How are you prejudiced by the failures
22 in the application? Is there anything there that you

1 don't know, or is it simply that you feel that it is
2 incorrect and as such technically we should got go
3 forward?

4 MR. SIMPSON: Two comments. We -- we hear
5 and share your fear about the months ahead of us, dread,
6 yes, dread.

7 MR. SILVERSTEIN: Yeah. We'll be seeing you
8 guys.

9 MR. SIMPSON: Well, let me -- let me --
10 although let me say in fairness the situation in Adams
11 Morgan has improved substantially over the past few
12 years, and I'm hopeful that there will be relatively few
13 establishments have to be heavily scrutinized by our
14 community, but it's -- it's a lot of work. One thing I
15 will point out I think I can say for a fact certain that
16 you will see these three sets of applicants protesting
17 the renewal of the existing El Nuevo Migueleno
18 establishment. So if The Board desired -- I don't know
19 how this works -- perhaps we could have a double process
20 for the two establishments together. You know, but
21 that's going to be happening as well. And they have --
22 the existing establishment he operates has been causing

1 a lot of problems. The -- you know, in terms of the
2 gaps in the application I mean one of our key concerns
3 is that as this comes to a protest -- if when it comes
4 to a protest we want The Board to know exactly what the
5 real situation is. He shouldn't be able to appear
6 before The Board with the claim that he doesn't operate
7 another establishment. He -- that should -- the reason
8 that question is asked is so The Board can have a
9 reference point when they think about whether or not the
10 new establishment will be good or bad or -- or not. And
11 I think that's the main thrust of what we want to ensure
12 The Board is aware of.

13 MR. JAMES: I would add that we don't know
14 if we're dealing with a legal entity that was formed to
15 apply for this license. Is it sole proprietor? Is it a
16 corporation? Is it an LLC? Surely that's in ABRA's
17 [inaudible 38:01]

18 MR. SIMPSON: Who do we -- who do we sign
19 the settlement agreement with, which of those entities?

20 MR. SILVERSTEIN: Thank you for -- yes --
21 yes, ma'am.

22 MS. JAFFE: And if I may say something which

1 I hope is relevant I was part of the group that signed
2 the agreement for when El Nuevo Migueleno got its liquor
3 license, and it was very harmonious and everything was
4 agreed to. And as far as we can tell nothing was
5 maintained, and we were not --

6 MR. SILVERSTEIN: Well, that's -- that's
7 not -- that is not germane to this.

8 MS. JAFFE: But that's why we're concerned.

9 MR. SILVERSTEIN: Well, that's not germane
10 to this, so we're not going to discuss that.

11 MS. JAFFE: Okay. But I think that's why
12 we're so concerned about getting this right. How's
13 that?

14 MR. SILVERSTEIN: Thank you. You've --
15 you've cleared that up and I would say to Mr. Larios
16 that we have people here who speak Spanish, but -- and
17 they can help you, but you must get this right now. If
18 we're going to move forward, we have to get it right
19 now.

20 CHAIRPERSON ANDERSON: All right. Thank
21 you, Mr. Silverstein. Prior to The Board making a
22 decision on the motion do you guys have -- do you have

1 anything else you want to -- any other representation to
2 make, sir, based on the discussion that occurred a
3 couple of moments ago?

4 MR. LARIOS: One thing I would like to say
5 is that there's a difference between what goes on in the
6 establishment and what goes on in the street. For
7 example, there was a lot of hubbub that went on in front
8 of the Safeway the other day because a man had a heart
9 attack. And I just want to say that I am not
10 responsible for what happens in the street. It's --
11 it's separate.

12 CHAIRPERSON ANDERSON: All right. All
13 right. We're going to take this under advisement. I
14 will -- what I'm going to do is that The Board is going
15 to recess to discuss then come back to make a decision.
16 So as chairperson of the Alcoholic Beverage Control
17 Board for the District of Columbia in accordance with
18 D.C. Official Code Section 2574(B) of the Open Meetings
19 Act I move that the ABC Board hold a closed meeting on
20 Case Number 16-PRO-00010 Villa Tuscana, License Number
21 100312 for the purpose of seeking legal advice from our
22 counsel on the matters identified on The Board's agenda

1 for March 16, 2016 as published -- well, as was
2 published in the D.C. Register. Is -- is there a
3 second?

4 MR. SHORT: Second.

5 CHAIRPERSON ANDERSON: Mr. Short has
6 seconded the motion. I will take a roll call vote on
7 the motion before us now. That has been a second.
8 Ms. Miller.

9 MS. MILLER: Agree.

10 CHAIRPERSON ANDERSON: Mr. Alberti.

11 MR. ALBERTI: I agree.

12 CHAIRPERSON ANDERSON: Mr. Short?

13 MR. SHORT: I agree.

14 CHAIRPERSON ANDERSON: Mr. Silverstein.

15 MR. SILVERSTEIN: I agree.

16 CHAIRPERSON ANDERSON: Mr. Anderson, I
17 agree. As it appears that the motion has passed, I
18 hereby give notice that the ABC Board will hold its
19 aforementioned closed meeting pursuant to the Open
20 Meetings Act. Notice -- well, yeah. I'm reading the --
21 I'm reading the wrong thing.

22 MR. SIMPSON: Should we wait?

1 CHAIRPERSON ANDERSON: Yes. We will be back
2 in ten minutes, and we'll discuss it. And we'll be back
3 in ten minutes. Okay. And I apologize to -- to
4 the rest -- the folks that are waiting, but this is very
5 important to make sure that we have legal advice to make
6 this decision.

7 [Off the record 10:19 a.m.]

8 [On the record 10:24 a.m.]

9 CHAIRPERSON ANDERSON: Thank you for your
10 indulgence for The Board to consult legal to -- so we
11 can make some recommendation. I -- regarding the first
12 issue regarding -- regarding whether we should dismiss
13 your preliminary motion to dismiss, that's a very harsh
14 sanction for The Board to dismiss. It's my
15 understanding that there's nothing in the regulation
16 that states that a matter -- that The Board would
17 dismiss a matter for a party not participating in the --
18 in a mediation. It's also my understanding that The
19 Board had offered eight additional dates to the parties,
20 and for whatever reason the parties were unable to come
21 to an agreement on a second mediation. So the motion
22 that I'm making to The Board is that I make a motion

1 that we -- well, let me start off first the first motion
2 is to -- I make a motion to The Board that we do not
3 dismiss this -- that the motion be denied. Is there a
4 second.

5 MR. SILVERSTEIN: Second.

6 CHAIRPERSON ANDERSON: Is there any
7 discussion? Hearing none --

8 MS. MILLER: Just a clarification, it's the
9 motion to dismiss on grounds that the applicant failed
10 to attend mediation?

11 CHAIRPERSON ANDERSON: Right. Yes.

12 MS. MILLER: Okay. Yes. Thank you.

13 CHAIRPERSON ANDERSON: Is there a second?

14 It was seconded by -- all those in favor say aye.

15 [Chorus of ayes.]

16 CHAIRPERSON ANDERSON: Those opposed. [No
17 audible response.] All right. The matter passed
18 5-zero-zero. I'm going to give you some more
19 conversation. The second motion is that if it's not --
20 if the matter be that the -- the protestant decide --
21 determined that there are some fatal errors in the
22 application. I also -- I believe that these are matters

1 if -- if correct, that they can be addressed preliminary
2 rather than dismissing the -- the petition. And so
3 therefore I make a motion that -- that the motion to
4 dismiss preliminary be -- be denied. Is there a second?

5 MS. MILLER: Second.

6 CHAIRPERSON ANDERSON: Ms. Miller seconded
7 the motion. Those in favor say aye. [Chorus of ayes.]
8 Those opposed. [No audible response.] The matter
9 passed 5-zero-zero. What The Board is ordering today,
10 and we have the authority to do that, The Board will
11 order the parties to mediation. And The Board will
12 order the parties to agree to a date today when they
13 will mediate. Ms. Fletcher is at the back of the room,
14 and so I would hope that everyone has their calender and
15 that you will meet with Ms. Fletcher and come to a date
16 when you will come up -- come with a mediation. The
17 second thing, the -- Mr. Hager also from licensing will
18 meet with the applicant today personally to review the
19 application, and whatever errors that needs to be
20 corrected in the application based on applicant meeting
21 with Mr. Hager, that can be taken care of today. The
22 Board is also sensitive to the fact that the protest

1 hearing was scheduled for the 30th. And so what we will
2 do, we will move this date to April 6. April 6, is
3 there a problem with that? Yes.

4 MR. SIMPSON: That's the date of the ANC's
5 monthly business meeting. So if the -- if -- if it's
6 scheduled for the afternoon, it would render it --

7 CHAIRPERSON ANDERSON: It will be at 1:30.
8 Would that --

9 MS. SHIA: The original date we were given
10 was April 6th.

11 CHAIRPERSON ANDERSON: Yes.

12 MS. SHIA: We could not do it because of the
13 ANC meeting. So we were forced to take an earlier date.
14 It would be -- I mean we can't do April 6th. We reject
15 this --

16 MR. SILVERSTEIN: Of course you can.

17 CHAIRPERSON ANDERSON: Hold on. Hold on one
18 minute please.

19 MR. SIMPSON: I can do a mid-afternoon. I
20 can't do an -- I can't do a late afternoon because it
21 would run in, but I could do a 1:30.

22 CHAIRPERSON ANDERSON: It would be scheduled

1 for April the 6th at 1:30. But that would be the first
2 case in the afternoon.

3 MS. SHIA: Okay.

4 CHAIRPERSON ANDERSON: Okay. Now, is
5 everyone clear that Ms. Fletcher is around the back,
6 that you can agree to a mediation date? Mr. Hager will
7 meet with the applicant to review the application. And
8 if there are other areas that you think that are -- that
9 needs to be addressed, speak. We'll have that be
10 addressed today. But our goal is to have this matter
11 move -- have this matter move so we can come to closure.
12 All right. I want to -- and -- and I see one reason I'm
13 going to repeat the -- the protest process. So the
14 hearing is April 6th at 1:30, and I just want to make
15 the parties aware of the protest process. The purpose
16 of a protest is to address whether or not the -- the
17 appropriateness of the business in the location that the
18 applicant is seeking to open this business. And so
19 therefore I want to make sure that if and when we have
20 this protest hearing, that the issues -- we hone on
21 the -- these are the protest issues. The Board does not
22 intend to hear matters that are not relevant to this

1 case. You should receive by electronic or regular mail
2 a letter explaining the protest process, a copy of the
3 protest information form, and a copy of the exhibit
4 form. If you do not have these documents, please
5 consult or contact our assistant general counsel,
6 Ms. April Randall following this hearing. It is
7 imperative that you review the rules closely and adhere
8 to them before and during the protest hearing. You are
9 also required to complete and submit the protest
10 information form and the exhibit form seven days before
11 the date of the hearing. These two forms and
12 accompanying documents need to be submitted to ABRA's
13 legal division and all opposing parties in this matter.
14 If we do not receive a copy of your PIF, your
15 application, or your protest, whichever side you are
16 representing may be subject to dismissal. Likewise, if
17 we do not receive a copy of the exhibit form and the
18 exhibits themselves, your exhibits may be excluded from
19 the record upon a finding that the opposing party has
20 been prejudiced or no good cause for the failure to
21 submit has been shown. Likewise, witnesses other than
22 the party may be subjected -- subject to exclusion if

1 not identified in the PIF. Accordingly, these forms are
2 very important. They greatly assist The Board in
3 narrowing -- narrowing the protest issues, facilitating
4 the process, and keeping the parties on point during the
5 hearing. They likewise provide notice to the opposing
6 parties enabling them to better prepare for the hearing.
7 We thank for your cooperation. If you have any
8 questions today or any time during the hearing, please
9 do not hesitate to contact Ms. Randall at 202-442-4353.
10 Yes, sir.

11 MR. JAMES: A question I think is relevant
12 and I don't think The Board touched on it. Can the
13 applicant be instructed to have somebody at mediation
14 who can bind for them legally to any agreement we make
15 because that would -- that would be an uncertainty which
16 we faced in the attempted previous meeting?

17 CHAIRPERSON ANDERSON: All right. Since you
18 guys are going to hopefully agree on a date today for
19 the mediation because Ms. Fletcher is in the back of the
20 room. She's standing right there ready to. And, sir,
21 what I'll ask you to do if you are unable to attend the
22 date that you agree to and if you -- you need to advise

1 the parties in writing of your representative and also
2 provide that person with the authority to bind them in
3 an agreement because a mediation is that both sides are
4 coming to an agreement. So if the person cannot make
5 decisions for you, it doesn't makes sense for them to be
6 there. So is that understood? If you're unable to
7 attend?

8 MR. LARIOS: Okay.

9 CHAIRPERSON ANDERSON: All right. Okay. I
10 wish you luck in your mediation since you're going to
11 have -- come up with a date that's going to work for
12 everyone. And if not, we will see you here April 6,
13 2016 at 1:30. It's the first case in the afternoon. So
14 you should leave in time -- I'll cross my fingers -- if
15 we have a full hearing for your ANC meeting. Okay.
16 Thank you very much.

17 MR. SILVERSTEIN: Thank you all for your
18 understanding.

19 MS. SHIA: And I read that you -- it was
20 Ms. Randall?

21 CHAIRPERSON ANDERSON: Yes. And she is
22 right here.

1 MS. SHIA: Can you repeat that number
2 please.

3 CHAIRPERSON ANDERSON: 442-4353. And
4 Ms. Randall is there. If you need her, she can come
5 around back and speak to you now if you need. But
6 again, Ms. Fletcher is back there. Please talk to
7 Ms. -- please do not leave the room without talking to
8 Ms. Fletcher. And Mr. Hager will speak to you today,
9 sir, if you -- if you so desire to review your
10 application.

11 (Whereupon the above-entitled matter was
12 concluded.)

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