

Town of West New York Hudson County, New Jersey

Alcoholic Beverage Control Board

Minutes of Special Meeting
(Special Session)
April 19, 2012

Joan Palazzo
Julio C. Garcia
Osvaldo Garcia
Board of Alcoholic Beverage Control

Attest: **Milena Castaneda**
 Board Secretary

Alcoholic Beverage Control Board
April 19, 2012
Special Meeting

Reference is made to the official transcript of the April 19, 2012 meeting which is incorporated into these minutes by specific reference thereto; if there is any inconsistency between the official transcript and these minutes, the official transcript is deemed to be controlling.

Minutes of a Special Meeting of the ABC Board of the Town of West New York, in the County of Hudson, State of New Jersey, held in Public School No. 4 Auditorium, West New York, NJ on Thursday, April 19, 2012 at 6:00 p.m.

Salute to the Flag

Present: Chairwoman Joan Palazzo, Vice-Chairman Julio C. Garcia, Board Member Osvaldo Garcia, Attorney Frank Gioia, Sgt. Michael Clement, Board Prosecutor Marlene Caride, and Board Secretary Milena Castaneda

Meeting commenced at 6:00 p.m.

There being a quorum, the meeting continued

Note: Board Member Osvaldo Garcia was not present at the start of the meeting; he arrived at 6:04 PM.

Chairwoman Joan Palazzo made the following announcement regarding compliance with the **OPEN PUBLIC MEETING ACT**

This Special meeting of the ABC Board of the Town of West New York held Wednesday, April 19, 2012 at 6:00 PM and it is publicly announced and directed that this announcement be placed in the minutes of this meeting that the notice requirements provided for in the "Open Public Meetings Act" have been satisfied. Notice of this meeting was properly given and published in the Jersey Journal and Bergen Record and publicly posted on the Municipal Bulletin Board, Town Hall and filed with the Town Clerk. Copies are available to the public in accordance with the Law.

The Board Attorney asked to adjourn the meeting for a period of time until the ABC Prosecutor was ready to proceed. A motion was made and a vote taken and the meeting was adjourned at 6:02 pm

It was moved by Chairwoman Palazzo, seconded by Vice-Chairman Garcia to adjourn meeting, which was carried by the following vote:

YEAS: Chairwomen Palazzo, Vice Chairman Garcia

ABSENT: Board Member Garcia

The Board Attorney asked for a motion to reconvene meeting at 6:30 pm.

It was moved by Chairwoman Palazzo, seconded by Vice-Chairman Garcia to reconvene meeting, which was carried by the following vote:

YEAS: Chairwomen Palazzo, Vice Chairman Garcia and Board Member Garcia

NAYS: None

Charges filed against DGNY Group t/a as Son Cubano.

The Board Attorney advised the members that he had been informed by the ABC Prosecutor that a settlement of charges had been reached after discussion among the Prosecutor, the Police Department and the Licensee who was represented by David L. Epstein of the firm of Post, Polak, Goodsell, MacNeill, & Strauchler. Alex Duran, principal of DGNY Group t/a Son Cubano was present.

The Board Attorney asked the ABC Prosecutor to place the settlement on the record.

The Prosecutor advised that the charges scheduled for hearing involved two events that occurred on September 9, 2011 and October 2, 2011 both of which involved fights which allegedly occurred at the location. Ms. Caride explained that it had been agreed to enter into a global settlement of all charges currently pending against Son Cubano – this would encompass any and all charges up to today's date that may have been filed or would be filed at this point in time April 19, 2012 and that the global settlement involved the merger of all open charges into the non vult pleas.

The Prosecutor explained that the licensee would plead non vult to Charge No. 2 of the September 9, 2011 Complaint and Charge No. 2 of the October 2, 2011 Complaint. Charge No. 1 of the October 2, 2011. The Prosecutor stated that she was recommending a period of license suspension for fifteen (15) days with five (5) days to be served from May 21, 2012 through May 25, 2012 and the remaining ten (10) days to be suspended with the specific condition that if the licensee pleads or found guilty of any infraction during the one year period beginning April 19, 2012 that the suspension will be lifted automatically and the remaining ten day suspension will be imposed. No alcoholic beverages are to be sold or consumed during the five day period and the liquor is to be take off-premises in accordance with law.

The Prosecutor also recommended to the Board and the Board Attorney that it make a recommendation to the Town Attorney and Town Officials to review existing noise and nuisance ordinances to bring them up to date and to insure that they are constitutional. Prosecutor Caride also wanted to take the opportunity to recommend to Board Attorney and to the Board that this particular

The Prosecutor also advised the Board that Sgt. Clement had spoken to Mr. Duran and informed him of the procedures that would have to be followed with regard to the surrender of the License and removal of the alcohol from the premises after obtaining a permit that would allow the transport of the alcohol. The Board Attorney stated for the benefit of the Board that the Licensee would have to apply to the State for a special permit in order to transport the alcohol, and then they would have to return the alcohol to the premises when the period of suspension is over.

Joseph Pojanowski, Esq. rose to address the Board and inquire about the settlement which had been set forth by the Board Prosecutor. Mr. Epstein objected to Mr. Pojanowski's statements and said he had no right or standing to interfere at that time.

The Board Attorney recommended that the Board take a brief recess to enable the four attorneys present here tonight (Mr. Gioia, Mr. Epstein, Ms. Caride and Mr. Pojanowski) to enter into a discussion and the Board adopted a motion to go into recess for a five minute period.

The Board returned from recess and reconvened.

Mr. Pojanowski was permitted to place on the record his position that the Board does not have the authority to consider a global settlement of all charges pending because the notice that had gone out for the meeting only mention two "fight" charges. The Board Attorney advised the Board that the Board does have authority to consider recommendations made by the police and by the prosecutor for purposes of efficiency to dispose of matters that are pending, generally, before the Board. The Board Attorney also pointed out these matters had been before the Board formally at prior meetings and that not-guilty pleas had been entered.

Mr. Pojanowski stated that a letter from the Board Attorney April 16th says that any charges pending which involved alleged noise violations will be scheduled for a future hearing date and that he was prepared to talk about the fights but not the noise issues.

Board Attorney explained to Mr. Pojanowski that the Notice of Special Meeting provides that the Board may consider other matters coming before it and that the global settlement certainly qualifies as other matters brought before the Board and that the Board could continue.

Board Attorney explained to the Board members that a "non vult" plea is similar to a plea of nolo contendere, which is another Latin phrase which means "not contested." He explained that the licensee was not contesting the charges that had been brought and which were being disposed of by way of merger and that the plea of non vult is the functional equivalent of a guilty plea or finding as is stated in the A.B.C. handbook.

The Board Attorney addressed Mr. Duran who stated that he understood that he was retracting his pleas of not guilty and entering the non vult pleas voluntarily guilty and giving up his right to have a hearing which is similar to a trial. Mr. Duran stated that he understood the disposition of the charges and all outstanding charges would merge into the non vult pleas. Mr., Duran stated that he understood the recommended sentence and accepted it. Mr. Duran stated that he understood that if there was a subsequent violation which was sustained within a one year period from April 19, 2012 that the ten day suspended sentence would automatically take effect and could not be appealed. The Board Attorney asked Mr. Duran if he was satisfied with the advice that he received from his attorney and Mr. Duran answered in the affirmative.

The Board Attorney addressed the Board and stated that before it was the recommendation made by the Prosecutor and that the Board had the right to reject the recommendations and the proposed sentence and go forward with the hearing. He said that if the Board acts to adopt the recommendations, he would prepare a resolution that could be formally adopted at the next meeting memorializing the action taken at this meeting but that the motion adopted tonight would be effective immediately. .

The recommended settlement of all outstanding charges by way of non vult plea and merge was moved Chairwoman Palazzo, seconded by Vice-Chairman Garcia to accept settlement agreement, which was carried by the following vote:

YEAS: Chairwomen Palazzo, Vice Chairman Garcia and Board Member Garcia

NAYS: None

Public Portion:

1. Joseph Pojanowski Esq. office located at 1135 Clifton Avenue, Clifton, New Jersey.

Mr. Pojanowski addressed the Board and said that he represents the interests of Christine Piscitelli who lives directly above Son Cubano. He said that at a prior meeting he had presented a copy of a noise report from a licensed engineer to all the attorneys including the Prosecutor and Mr. Epstein. The Engineer had determined that the noise emanating from Son Cubano exceeded the state limits on noise levels. Mr. Pojanowski stated that the letter he had received from the Board Attorney stated that the hearing was going to be limited to the two fights and not the noise complaints and that had the noise complaints been on the agenda, the entire auditorium would have been filled with the citizens of West New York.

2. **Harry Stromnes, 22 Avenue Port Imperial, unit 306, West New York NJ.**

Mr. Stromnes said that he lives directly down from Son Cubano. He told the Board that he was disappointed because the Board had ignored and incident that had occurred on March 31, 2012. Prosecutor Caride said that all incidents up to and including April 19, 2012 were included in the global settlement. Mr. Stromnes said that they punishment was too lenient.

3. **Michelle Schwartz, 22 Avenue at Port Imperial, unit 408, West New York, NJ.**

Ms. Schwartz said that she lives directly across the street from Son Cubano and that the noise level is horrible. She said that the Board should be ashamed of its decision.

The Board Attorney addressed Ms. Schwartz and said that when you have a disciplinary hearing like this one where there charges against a licensee the hearing is not held so that they public may be heard. It is a hearing that requires that the Prosecutor present a case and prove it and to determine if there is going to be a penalty. It is not a public hearing such as is likely to take place in May or June when the license is up for renewal and people file objections to renewal. There will be public participation at that kind of hearing as there was last year when the Lusso Pizzeria license came before the Board and there was a six hour hearing at which everybody who wanted to was able to address the Board.

Adjournment:

A motion to adjourn was made by Chairwoman Palazzo, seconded by Vice-Chairman Garcia and the motion carried by the following vote:

YEAS: Chairwomen Palazzo, Vice Chairman Garcia and Board Member Garcia

NAYS: None

Joan Palazzo, Chairwoman

Julio Garcia, Vice Chairman

Oswaldo Garcia, Member
Board of Alcoholic Beverage Control

Attest: _____

Milena Castaneda
Board Secretary