

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

2 (10:08 a.m.)

3 CHAIRPERSON MILLER: Next we have
4 a Show Cause Hearing which is scheduled for
5 10:00. It is Case No. 13-CMP-00225, Best-In
6 Liquors located at 1450 P Street, N.W.,
7 License No. 11823, in ANC-2F. Good morning.

8 MR. ADAMS: Good morning and happy
9 new year, Members of the Board and Madam
10 Chairman. I'm Walter Adams. I represent the
11 District of Columbia.

12 CHAIRPERSON MILLER: Good morning,
13 happy new year. And, sir, you are?

14 MR. LUCAS: Good morning, madam
15 and gentlemen, I am Amare Lucas from Best-In
16 Liquors at 1450 P Street, N.W.

17 CHAIRPERSON MILLER: Mr. Lucas?

18 MR. LUCAS: Yes.

19 CHAIRPERSON MILLER: And you are
20 the owner?

21 MR. LUCAS: I am the corporate
22 officer and I have interest, yes.

1 CHAIRPERSON MILLER: Okay. All
2 right. Good.

3 MR. LUCAS: Thank you.

4 CHAIRPERSON MILLER: So this is a
5 Show Cause Hearing. Are there any preliminary
6 matters?

7 MR. ADAMS: Madam Chairman, there
8 are no preliminary matters in this case.

9 CHAIRPERSON MILLER: Okay. Then
10 we will proceed with the hearing. Mr. Lucas,
11 are you familiar at all with how this
12 proceeding goes? Do you have any concept of
13 what the proceeding will be? I can give you
14 an idea of what happens in this hearing.

15 MR. LUCAS: Okay.

16 CHAIRPERSON MILLER: Okay. So
17 basically, the Government has the burden of
18 proof and so makes its case first. But at the
19 beginning, the Government has an opportunity
20 to give an opening statement to say what the
21 case is about and, you know, what he is going
22 to prove. And then you also have an

1 opportunity, though you don't have to, give an
2 opening statement about what your defense will
3 be. But it's not a time to argue your case,
4 okay? It's just an overview.

5 So then the Government will put on
6 any witnesses to make the case and he will ask
7 questions. We can ask questions and you can
8 ask questions. And then you will have an
9 opportunity to do the same thing and also put
10 in any documents that you might want to put
11 into the record.

12 And then the Government has the
13 last word at rebuttal or whatever. And at the
14 end each side can sum up their case, a closing
15 and then we will close the record at that
16 point. Okay. And if you have any questions
17 along the way, you can feel free to ask me.

18 MR. LUCAS: Okay.

19 CHAIRPERSON MILLER: All right.
20 All right. Then, Mr. Adams, do you have an
21 opening statement?

22 MR. ADAMS: Yes, I do very

1 briefly, Madam Chairman. This charge -- this
2 case is regarding a single charge of the
3 establishment provide -- or selling a go-cup
4 to a customer.

5 Specifically, the facts will be
6 the April 12, 2013 that an ABRA Investigator,
7 in this case, Brian Molloy, visited the
8 establishment in an undercover capacity. He
9 went to the establishment's cooler and the
10 evidence will show that he was -- he purchased
11 a bottle of champagne, but when he -- the
12 evidence will also show that when Investigator
13 Molloy went to the counter, he made a request
14 for a single cup that he -- that was refused.
15 However, the clerk did sell him three plastic
16 cups for a dollar that were the -- and the
17 evidence will show that the clerk actually
18 removed the cups from a different sleeve of
19 cups and sold it to the Investigator.

20 And as a result, based upon the --
21 upon that sale of the three cups for a dollar,
22 we believe that that's a prima facie case

1 where it proves that the establishment did
2 sell go-cups to a customer.

3 CHAIRPERSON MILLER: Okay. Mr.
4 Lucas, would you like to make an opening
5 statement?

6 MR. LUCAS: Sure. Thank you.

7 CHAIRPERSON MILLER: Okay.

8 MR. LUCAS: First of all, if I
9 may, I have something to bring to your
10 attention. I have a couple of papers.
11 Because these papers clearly demonstrate the
12 clerk of our institution. One is for 2012
13 stopping under drinking and there is one for
14 2013 and this is for stopping a minor from
15 buying cigarettes. So three here in all.

16 Now, coming back to this case,
17 yes, as Mr. Walter stated, a gentleman came,
18 bought champagne, asked for a single cup,
19 which he confirmed the clerk refused, that is
20 the key word now, refused to sell single cups.

21 I mean, if the clerk refuses to
22 sell a single cup, the investigation is over.

1 We have clearly demonstrated that we did not
2 violate the law. But the clerk also tried to
3 tell the customer, but, sir, we also sell a
4 pack of three for a dollar, which we do. We
5 still sell it.

6 So we put three outside the
7 counter, inside the counter. We sell in a
8 pack of three. And for this, we need 100,
9 200, there is another one over there. So he
10 agree to buy the pack of three. Then when the
11 clerk is inside the counter, it was finished.

12 CHAIRPERSON MILLER: Yes. Mr.
13 Lucas, that's often the case with non-
14 attorneys, what you are saying sounds like
15 what your testimony will be for your case.

16 MR. LUCAS: Oh, I --

17 CHAIRPERSON MILLER: Okay. And I
18 know it gets confusing, but I --

19 MR. LUCAS: I'm sorry.

20 CHAIRPERSON MILLER: That's where
21 you should reserve it for. This is just an
22 overview, you know, such as I'm going to prove

1 that we only sell wine or something. You
2 know, that's all. You don't have to argue
3 your case right now.

4 MR. LUCAS: Oh, I'm sorry.

5 CHAIRPERSON MILLER: That's okay.
6 That's okay. I'm telling you.

7 MR. LUCAS: Okay.

8 CHAIRPERSON MILLER: Because I'm
9 going to put you under oath when you testify.

10 MR. LUCAS: Okay.

11 CHAIRPERSON MILLER: And that's
12 when you should say all those things.

13 MR. LUCAS: Okay. Sorry.

14 CHAIRPERSON MILLER: Okay. So are
15 you all right to stop right there, because --

16 MR. LUCAS: I will.

17 CHAIRPERSON MILLER: -- this isn't
18 even evidence. This was just an overview.

19 MR. LUCAS: I will.

20 CHAIRPERSON MILLER: Okay.

21 MR. LUCAS: Thank you.

22 CHAIRPERSON MILLER: All right.

1 MR. LUCAS: Thank you. I'm sorry.

2 CHAIRPERSON MILLER: Okay. Mr.

3 Adams?

4 MR. ADAMS: Yes, the District has
5 a single witness.

6 CHAIRPERSON MILLER: Okay.

7 MR. ADAMS: Investigator Brian
8 Molloy.

9 CHAIRPERSON MILLER: Good morning.

10 MR. MOLLOY: Good morning.

11 Whereupon,

12 BRIAN MOLLOY

13 was called as a witness by Counsel for the
14 Government, and having been first duly sworn,
15 assumed the witness stand and was examined and
16 testified as follows:

17 CHAIRPERSON MILLER: Okay. Thank
18 you.

19 DIRECT EXAMINATION

20 MR. ADAMS: Good morning. Mr.
21 Molloy, can you, please, state your name and
22 spell it for the record?

1 MR. MOLLOY: Brian Molloy. B-R-I-
2 A-N M-O-L-L-O-Y.

3 MR. ADAMS: And you are currently
4 employed?

5 MR. MOLLOY: Private practice of
6 law.

7 MR. ADAMS: Okay. And you --
8 private practice of law. And there was a time
9 that you worked for the District of Columbia's
10 Alcoholic Beverage Regulation Administration?

11 MR. MOLLOY: That is correct, as
12 an investigator.

13 MR. ADAMS: As an investigator.
14 And when was that?

15 MR. MOLLOY: It was from July 2012
16 through June 2013.

17 MR. ADAMS: Okay. And during the
18 course that you were working here, you
19 conducted a series of investigations of
20 establishments within the District of
21 Columbia?

22 MR. MOLLOY: That is correct.

1 MR. ADAMS: All right. And during
2 the time that you were there, did you do
3 investigations in an undercover capacity?

4 MR. MOLLOY: Yes, I did.

5 MR. ADAMS: And why were the cases
6 done in an under -- why were you doing the
7 cases in an undercover capacity?

8 MR. MOLLOY: Investigators
9 frequently conducted cases in an undercover
10 capacity to make sure that establishments were
11 following the Rules and Regulations of DC and
12 often times the easiest way for us to do it
13 would be to go into an establishment and not
14 identify ourselves as an investigator and try
15 to purchase something that the establishment
16 is not allowed to sell.

17 MR. ADAMS: And on -- are you
18 familiar with the establishment that is called
19 Best-In Liquors?

20 MR. MOLLOY: Yes, I am.

21 MR. ADAMS: And how are you
22 familiar with this establishment?

1 MR. MOLLOY: I have conducted
2 undercover investigations there, including the
3 one at issue in this case, where I went in in
4 an undercover capacity and attempted to
5 purchase go-cups.

6 MR. ADAMS: Okay. So
7 specifically, on April 12, 2013, did you have
8 occasion to be at Best-In Liquors?

9 MR. MOLLOY: Yes.

10 MR. ADAMS: All right. And on
11 that occasion were you in an undercover
12 capacity?

13 MR. MOLLOY: I was.

14 MR. ADAMS: Okay. And what
15 occurred when you went to the establishment?

16 MR. MOLLOY: I entered the
17 establishment and immediately looked for a
18 cooler, which is on the left side of the
19 store. I went to the cooler, looked for the
20 cheapest drink available. I found a bottle of
21 Cook's Champagne. After removing it from the
22 cooler, I walked up to the counter. I put it

1 on the counter and asked the clerk for a cup
2 to go with it.

3 At that time, she said I couldn't
4 have a cup, but I could buy a package of cups,
5 somewhere around 25 cups. I said I don't need
6 a package, I just need one cup to drink the
7 champagne with. At that point, she offered to
8 sell me three cups for a dollar. And after I
9 agreed to that price, she went to one of the
10 larger packages of cups, opened the top,
11 removed three cups from it and then sold me
12 the champagne and the three cups for a total
13 of, I believe it was, \$9.86.

14 MR. ADAMS: All right. And what
15 occurred after you -- did you -- what occurred
16 after she made the offer to sell the, I guess,
17 champagne and the cups for \$9.86?

18 MR. MOLLOY: I paid for it,
19 received my change, went back out to the -- my
20 vehicle, made notes of the time of sale, the
21 price of the sale and what I got. I returned
22 to ABRA's Office, labeled the evidence and

1 then filled out an Evidence Transmittal Sheet
2 and gave it to my superior, the Chief of the
3 Enforcement Division.

4 MR. ADAMS: And did you do
5 anything else as part of your investigation?

6 MR. MOLLOY: I informed another
7 investigator of the purchase of the go-cups
8 and what time it happened. With that other
9 investigator, we looked at the establishment's
10 record, so that we could write the proper
11 citation. That other investigator was
12 Investigator Peru, Jason Peru. And then after
13 we confirmed what the citation should be,
14 based on the establishment's history,
15 Investigator Peru went and delivered the
16 citation.

17 MR. ADAMS: And how did you record
18 -- how do you make the recordation of your
19 investigation?

20 MR. MOLLOY: I write it in an
21 investigative report.

22 MR. ADAMS: Okay. I'm going to --

1 I have already provided what is marked for
2 identification purposes as District's Exhibit
3 1 that Mr. Lucas already has. I would like to
4 approach the witness with what -- with the
5 exhibit.

6 CHAIRPERSON MILLER: Okay.

7 MR. ADAMS: All right.

8 CHAIRPERSON MILLER: Mr. Lucas, do
9 you have it? Okay. Good. All right.

10 MR. ADAMS: Mr. Molloy, do you
11 recognize the document that is in front of
12 you?

13 MR. MOLLOY: Yes, it's a copy of
14 my investigative report.

15 MR. ADAMS: And how do you
16 recognize that investigative report?

17 MR. MOLLOY: It looks exactly like
18 it did when I wrote it and turned it in.

19 MR. ADAMS: Okay. And as part of
20 the investigative report -- okay. And it also
21 has a signature on the second page?

22 MR. MOLLOY: Yes.

1 MR. ADAMS: Is that your
2 signature?

3 MR. MOLLOY: It is.

4 MR. ADAMS: All right. And I
5 would like -- is it a true and accurate
6 version of the investigative report that was
7 completed for this case?

8 MR. MOLLOY: It is.

9 MR. ADAMS: I would like to move
10 what is marked as the District's Exhibit 1
11 into evidence, which is Investigator Molloy's
12 report.

13 CHAIRPERSON MILLER: Okay. Any
14 objection? Then it is admitted as the
15 Government's Exhibit No. 1.

16 (Whereupon, the document was
17 marked for identification as
18 Government Exhibit 1 and was
19 received in evidence.)

20 MR. ADAMS: Now, as part of this
21 investigation -- now, you state that you
22 actually did make a purchase. Did you

1 actually retain the physical evidence in this
2 case?

3 MR. MOLLOY: Yes.

4 MR. ADAMS: All right. And in
5 this case, you state that you purchased a
6 bottle and three cups?

7 MR. MOLLOY: That is correct.

8 MR. ADAMS: Okay. I'm going to
9 mark for identification purposes what is going
10 to be the Government's Exhibits 2 and 3. And
11 I'll show it to the owner. Okay.

12 (Whereupon, the documents were
13 marked as Government Exhibit 2 and
14 3 for identification.)

15 MR. LUCAS: Thank you, sir.

16 MR. ADAMS: All right. Now, I'm
17 going to approach the witness.

18 CHAIRPERSON MILLER: Okay. So
19 Exhibit 2 is the bottle and Exhibit 3 is the
20 cups or what?

21 MR. ADAMS: Yes.

22 CHAIRPERSON MILLER: Okay.

1 MR. ADAMS: Mr. Molloy, looking at
2 Exhibit 2, what exactly is that?

3 MR. MOLLOY: That is a 750 ml
4 bottle of Cook's Brut Champagne.

5 MR. ADAMS: All right. And do you
6 recognize that bottle or that -- the bottle
7 that is in front of you?

8 MR. MOLLOY: Yes.

9 MR. ADAMS: Okay. How do you
10 recognize it?

11 MR. MOLLOY: That is the bottle I
12 purchased at Best-In Liquor on April 12th and
13 I know because it has got the evidence label
14 that I affixed on it that day stating that it
15 was from Best-In.

16 MR. ADAMS: Okay. And also there
17 is -- what is Exhibit 3?

18 MR. MOLLOY: Exhibit 3 is three
19 red plastic cups.

20 MR. ADAMS: And how -- and do you
21 recognize those?

22 MR. MOLLOY: Yes, they are the

1 three cups I purchased for a dollar at Best-In
2 Liquors.

3 MR. ADAMS: And how do you know
4 that those are the --

5 MR. MOLLOY: They have the
6 evidence sticker I put on them labeling that
7 it is from Best-In Liquors.

8 MR. ADAMS: And it's a true and
9 accurate representation of what you purchased
10 on April 12, 2013?

11 MR. MOLLOY: It is.

12 MR. ADAMS: All right. I would
13 like to move into evidence District's exhibits
14 -- what is marked as District's Exhibits 2 and
15 3 into evidence, which is the physical bottle
16 and three plastic cups that were bought at
17 Best-In Liquors.

18 CHAIRPERSON MILLER: Any
19 objection? Okay. They are admitted then as
20 Exhibits 2 and 3, Government Exhibits 2 and 3.
21 Okay.

22 (Whereupon, the documents marked

1 as Government Exhibit 2 and 3 were
2 received in evidence.)

3 MR. ADAMS: I'll hand it to you.

4 I'm sorry.

5 CHAIRPERSON MILLER: Okay.

6 MR. ADAMS: Now, as part of your
7 investigation and your observations, was there
8 -- within the establishment, can you describe
9 what cups -- what types of cups were within
10 the establishment? Were they separately
11 packaged cups within the establishment, per
12 your observations?

13 MR. MOLLOY: The only cups I saw
14 were the large sleeve of red plastic cups. I
15 didn't get close enough to see how many were
16 labeled in the sleeve, but I would guess it
17 was a sleeve of anywhere from 25 to 50 cups.

18 MR. ADAMS: Okay. And in terms of
19 you actually going to the establishment, was
20 there any particular reason that you went to
21 this establishment on this day?

22 MR. MOLLOY: As part of our ABRA

1 investigations we keep a list of all the A and
2 B stores in the District of Columbia. And we
3 have rotating days when investigators will go
4 out on plain clothes assignments to conduct
5 these. And you just take the list with you
6 and any time you go to an establishment, you
7 put the date, the time, which investigator you
8 are and if there was a sale or not.

9 And we will just go through that
10 list until every establishment has been
11 checked before we will start over again. So
12 I had the list for the day and I went to Best-
13 In because no one had gone to Best-In since
14 that list had been generated.

15 MR. ADAMS: All right. And now
16 this case specifically that -- you received
17 three cups as opposed to one cup. Based upon
18 your experience as an investigator, is there
19 any difference in terms of how you interpret
20 having receiving three cups versus just having
21 one cup?

22 MR. MOLLOY: No. Based on my

1 experience and the instruction I got, as long
2 as it was a -- very few cups that didn't come
3 in a standardized package and you either got
4 for free or for a nominal fee, like a dollar,
5 that was considered a go-cup violation.

6 MR. ADAMS: All right. I have no
7 further questions for Mr. Molloy.

8 CHAIRPERSON MILLER: Okay. Mr.
9 Lucas, do you have any questions for Mr.
10 Molloy?

11 MR. LUCAS: Yes.

12 CHAIRPERSON MILLER: Okay.

13 CROSS-EXAMINATION

14 MR. LUCAS: Sir, you said you have
15 instructions when he asked you what
16 instructions you take to the store, whether
17 there is a difference between a single cup and
18 many and you say a few cups. What is few?
19 How many is few?

20 MR. MOLLOY: Five or less.

21 MR. LUCAS: Specify it's like
22 that? Five or less?

1 MR. MOLLOY: Five or less is what
2 I was told.

3 MR. LUCAS: Thank you.

4 CHAIRPERSON MILLER: Anything
5 else?

6 MR. LUCAS: Nothing.

7 CHAIRPERSON MILLER: Okay. Are
8 there Board questions? I would just like to
9 follow-up then on that question about what is
10 a go-cup. I mean, when you say three, is that
11 based on any regulation or definition in the
12 statute or case law or what is it based on?

13 MR. MOLLOY: I don't have the
14 statute right in front of me to recall exactly
15 what it says about the amount of cups. I just
16 was informed in my training that when we do
17 these undercover operations, when you ask for
18 a go-cup, as long as it is five or less, that
19 qualifies. And I believe most of that
20 instruction came from previous cases that were
21 found to be in violation.

22 CHAIRPERSON MILLER: And is it

1 correct that you ask for one cup and the clerk
2 said no?

3 MR. MOLLOY: She responded with I
4 could buy the entire package, which appeared
5 to be a package of anywhere from 25 to 50.

6 CHAIRPERSON MILLER: So her first
7 response was you have to buy the whole
8 package?

9 MR. MOLLOY: Correct.

10 CHAIRPERSON MILLER: Did she give
11 any reason for changing her mind to give you
12 fewer than a package?

13 MR. MOLLOY: I simply responded I
14 didn't need the whole package. I just needed
15 a cup to drink the champagne.

16 CHAIRPERSON MILLER: Okay.

17 MR. MOLLOY: And then she offered
18 the three for a dollar.

19 CHAIRPERSON MILLER: Okay. All
20 right.

21 MEMBER ALBERTI: Just --

22 CHAIRPERSON MILLER: Yes, Mr.

1 Alberti?

2 MEMBER ALBERTI: -- a follow-up.

3 CHAIRPERSON MILLER: Yes.

4 MEMBER ALBERTI: So I think you
5 just testified that you stated to the clerk
6 that you needed a cup to drink the champagne.
7 Is that correct?

8 MR. MOLLOY: Correct.

9 MEMBER ALBERTI: Okay. I'm going
10 to read the statute for you. It says "A go-
11 cup means a drinking utensil provided at no
12 charge or a nominal charge to a customer for
13 the purpose of consuming alcoholic beverages
14 off the premise of an establishment."

15 So hearing that, does that, in
16 your experience as an investigator, fit the
17 interpretation of the charge, the
18 interpretation of a go-cup as, I believe, Mr.
19 Adams is interpreting it?

20 MR. MOLLOY: Yes, I believe so,
21 especially when I stated that I wanted a cup
22 to drink the champagne.

1 MEMBER ALBERTI: Okay. Thank you
2 very much.

3 CHAIRPERSON MILLER: I would like
4 to just follow-up on that. A nominal charge.
5 Would you say that -- how much did you get
6 charged for the three cups?

7 MR. MOLLOY: It was a dollar for
8 three cups.

9 CHAIRPERSON MILLER: A dollar for
10 three cups. Okay. And how do you determine
11 a nominal charge?

12 MR. MOLLOY: We don't -- I never
13 was given a specific equation to figure it
14 out. I suppose it is anything that I felt was
15 an insignificant amount of money to what I was
16 paying for the alcohol, at the time.

17 CHAIRPERSON MILLER: Do you know
18 how much the whole pack would have cost you?

19 MR. MOLLOY: I do not.

20 CHAIRPERSON MILLER: Okay. I have
21 no further questions. Anybody else have
22 questions? Are there any questions based on

1 the Board questions?

2 MR. ADAMS: I have no further
3 questions for Mr. Molloy.

4 CHAIRPERSON MILLER: Okay. All
5 right. Not hearing any questions from either
6 party, you are excused.

7 (Whereupon, witness was excused.)

8 CHAIRPERSON MILLER: Thank you
9 very much.

10 MR. MOLLOY: Thank you.

11 MR. ADAMS: The District rests its
12 case.

13 CHAIRPERSON MILLER: Okay. Now,
14 Mr. Lucas, would you like to testify on behalf
15 of yourself in this case?

16 MR. LUCAS: Sure.

17 CHAIRPERSON MILLER: Okay. So I'm
18 going to ask you to take the witness stand and
19 I'll swear you in.

20 MR. LUCAS: Thank you.

21 CHAIRPERSON MILLER: Okay.

22 Whereupon,

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AMARE LUCAS

was called as a witness for the licensee, and having been first duly sworn, assumed the witness stand and was examined and testified as follows:

CHAIRPERSON MILLER: Okay. And have a seat. And now is the time to present your case. And you are under oath, so you can feel free to repeat what you said earlier, because this is the time to make your case and say whatever else you would like to say.

DIRECT EXAMINATION

MR. LUCAS: Thank you, madam. First of all, a go-cup means -- I think I know a little bit about it, because it goes back to 10 years ago when every liquor store or stores were selling a cup of ice, so that anyone buying half a pint or smaller than that buys one cup and one small drink, mixes it on the certain drinks.

So the neighborhood, the merchants agreed, you know, how to avoid this. And I

1 was a willing partner. So I know for sure a
2 single cup was bad and I have never sold a
3 single cup now and then.

4 So by his own admission, Mr.
5 Walter say the clerk refused selling a single
6 cup. Madam, where is the ofference? If
7 somebody says no, we do not --

8 MR. ADAMS: Objection. The -- at
9 this point, the testimony is based upon the
10 facts in the case. At this point, what Mr.
11 Lucas is doing is making an argument, which is
12 more appropriate for closing argument. He is
13 not talking about the allegations that
14 occurred at that time.

15 Now that he is on the stand, this
16 is -- the purpose of testimony is upon facts.

17 CHAIRPERSON MILLER: I'm going to
18 overrule that. I think you may also be
19 getting into your understanding or intent and
20 I don't think it matters if you say it now.
21 So go ahead.

22 MR. LUCAS: Thank you, ma'am. So

1 I have given very strict instruction to my
2 employees that they never sell a single cup.
3 As I see effectively they always do as I
4 showed before. So to make it shorter, she
5 refused and -- but also offered what we always
6 do. We sell them a pack of three. We still
7 sell them. I'm going to sell them now as I
8 go, because the regulation doesn't stop me
9 from selling a pack of three.

10 So when she couldn't find behind
11 the counter, she went outside, because we put
12 on the counter -- I wish we have a video and
13 it can account for my story any time or he can
14 send another inspector or examiner.

15 There are packs inside, three
16 packs and there is outside. There is also a
17 pack of 30, a pack of 250. So those three
18 packs by the way we make them by three packs.
19 So when she couldn't find, she went outside
20 and outside there was -- they were finished.
21 Customers in store. She took out the three
22 cups and put them in the plastic bag she sold

1 to the examiner. There is okay, we are not
2 denying anything. That's how it happened.

3 So we are assuming anybody who has
4 -- anybody who buys champagne or beer, they
5 can buy cups from us. We don't know when they
6 are going to use it. But by law, we are only
7 restricted not to sell single cups, not a pack
8 of four, not a pack of five. That's my
9 understanding.

10 If that is -- in fact, I'm very
11 intrigued. This should have these cups right
12 away. When she said I do not sell single cup,
13 the examiner must have stopped. But must have
14 to correct this, because we are abiding by the
15 law. So thank you for the time, but that's
16 all I can say.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Now, stay there for a few minutes,
19 because Mr. Adams has the right to cross-
20 examine you and we may have some questions.
21 Okay?

22 MR. LUCAS: Okay.

1 CHAIRPERSON MILLER: Mr. Adams, do
2 you have some questions?

3 MR. ADAMS: A couple of questions.

4 CROSS-EXAMINATION

5 MR. ADAMS: April 12, 2013, you
6 were not within the establishment, correct?

7 MR. LUCAS: I'm always six days a
8 week.

9 MR. ADAMS: At the time that the
10 investigator made the sale, you were not the
11 clerk that was behind the counter. Is that
12 correct?

13 MR. LUCAS: No, I'm not.

14 MR. ADAMS: Okay. So everything
15 that you testified about what occurred is
16 based upon what has been relayed to you. Is
17 that correct?

18 MR. LUCAS: I'm always there and
19 there was no dispute by the witness or by you,
20 by the way.

21 MR. ADAMS: But it was based upon
22 what the -- the question was what you

1 testified today was what was relayed to you.
2 Is that correct?

3 MR. LUCAS: Absolutely.

4 MR. ADAMS: And that was relayed
5 to you by your employee, correct?

6 MR. LUCAS: My employee.

7 MR. ADAMS: All right. Thank you.

8 CHAIRPERSON MILLER: All right.
9 Board questions? Mr. Lucas?

10 MR. LUCAS: Yes, ma'am.

11 CHAIRPERSON MILLER: Did you say
12 that you sell packs of three?

13 MR. LUCAS: Always.

14 CHAIRPERSON MILLER: Okay. And
15 just so that I understand you, and you are
16 saying on that day there weren't any more
17 packs of three, so the employee put three
18 together?

19 MR. LUCAS: Yes, that's exactly.
20 She told me that she sold inside, there was
21 not there and then she went outside to reach,
22 she couldn't find, so she took out three --

1 CHAIRPERSON MILLER: Okay.

2 MR. LUCAS: -- in other words, the
3 plastic back in, that was sold to him first.
4 So she put in the plastic bag, that's what
5 happened.

6 CHAIRPERSON MILLER: How much do
7 the bags of three cost? Do you know?

8 MR. LUCAS: A dollar. Always
9 every day, every customer knows that.

10 CHAIRPERSON MILLER: Do you sell
11 packs of two cups?

12 MR. LUCAS: Never.

13 CHAIRPERSON MILLER: Okay. So
14 three is your lowest?

15 MR. LUCAS: Three is the lowest.
16 Three for a dollar. We are -- I mean, we are
17 trying to be reasonable with the customers and
18 it's three.

19 CHAIRPERSON MILLER: What --

20 MR. LUCAS: If I get \$7 champagne
21 and buying a dollar for cups, I --

22 CHAIRPERSON MILLER: Okay. So

1 what are the other sizes, what are the other
2 packages? 25, 10?

3 MR. LUCAS: No.

4 CHAIRPERSON MILLER: Five? What
5 do you sell them in?

6 MR. LUCAS: When we bring them, we
7 bring them in 250 sleeves. 250 inside a big
8 bag or 150 inside a bag. Then we do them. We
9 are the ones who make them a pack of three.

10 CHAIRPERSON MILLER: Okay. What
11 are the other packs, 25? What are your other
12 packs of cups?

13 MR. LUCAS: No, it is three and
14 then if some people want the whole 250. Some
15 people want 150. Some people -- the sleeve is
16 30/30 or 60/60. So they say I need one
17 quarter of that, 60 of them, the sleeve has
18 the 60. They take it.

19 CHAIRPERSON MILLER: So your
20 customers can just tell you how many cups they
21 want and you make -- you package it for them?
22 If somebody comes in and says I want eight

1 cups, do you do that?

2 MR. LUCAS: We cannot do that. We
3 can -- usually it is by three. So mostly we
4 tell them -- when they ask for cups we have
5 either by three or we have the sleeves, the
6 whole thing or we have a 30, a 60, you know.

7 CHAIRPERSON MILLER: Okay. So --

8 MR. LUCAS: If they say two 60s,
9 we give it to them.

10 CHAIRPERSON MILLER: Okay.

11 MR. LUCAS: But mostly it is the
12 pack of 30, pack of 60 or the minimum is the
13 three. That's usually what we sell.

14 CHAIRPERSON MILLER: You sell a
15 lot of packs of three?

16 MR. LUCAS: Packs of three?

17 CHAIRPERSON MILLER: Yeah.

18 MR. LUCAS: Yes, we do.

19 CHAIRPERSON MILLER: Why do people
20 ask for packs of three, do you know?

21 MR. LUCAS: Usually I mean the
22 come together and then they buy wine, they ask

1 for a glass for the wine. There is -- we give
2 -- there is also a glass for wine that are
3 \$19.99, \$24.99. They say this is very
4 expensive. We bought a \$7 wine, so we don't
5 want to spend that. So in the alternative, we
6 give them this one, the pack of three.

7 CHAIRPERSON MILLER: Okay. Any
8 other questions?

9 MEMBER ALBERTI: I have a
10 question.

11 CHAIRPERSON MILLER: Mr. Alberti?

12 MEMBER ALBERTI: How much do you
13 charge for a pack of 30?

14 MR. LUCAS: For the three?

15 MEMBER ALBERTI: 30.

16 MR. LUCAS: 30? Usually \$5.99,
17 \$4.99 or \$5.99.

18 MEMBER ALBERTI: Okay. Thank you.

19 MR. LUCAS: Weekends, holidays we
20 sell -- give for \$4.99.

21 MEMBER ALBERTI: Thank you.

22 MR. LUCAS: Yes.

1 CHAIRPERSON MILLER: Other

2 questions? Okay.

3 MR. ADAMS: No more questions.

4 CHAIRPERSON MILLER: All right.

5 Thank you very much. Did you want to put in--

6 well, you are finished testifying, correct?

7 Mr. Lucas, you are finished testifying? Do

8 you have any documents you wanted to put into

9 evidence?

10 MR. LUCAS: Yes. The documents

11 that I showed first.

12 CHAIRPERSON MILLER: Are they

13 there? You can go and identify them and then

14 show them to Mr. Adams and see if he has an

15 objection.

16 MR. LUCAS: Okay. Here is one.

17 Here is another one and the three.

18 (Whereupon, the documents were

19 marked as Licensee Exhibit 1, 2

20 and 3 for identification.)

21 MR. LUCAS: So one is called 2012,

22 the year 2012. How we kept the minors from

1 buying liquors that are under 21. So the ABC
2 send us congratulations and certification.

3 Then another one for 2013 in a
4 row. Another one for cigarettes. Now, you
5 can be the Judge. I mean, we have been
6 stopping every investigation, every under
7 investigation year after year and it has been
8 like that for years. So I think most people
9 talk about our establishment.

10 By the way our establishment is
11 one of the cleanest stores in D.C. We spend
12 almost \$200,000, you know, to make it good for
13 our customers. So we get a good, you know,
14 customers they will ask how clean the place
15 is. They have never seen a store like ours.
16 And that's one thing by the way, if I may,
17 there were 37 --

18 MR. ADAMS: I object, at this
19 point.

20 MR. LUCAS: -- people --

21 MR. ADAMS: I mean, I think Mr.
22 Lucas is talking about, I guess, his

1 establishment in general. However, it is not
2 relevant to whether or not this go-cup thing
3 occurred or go-cup sale occurred on April 12,
4 2013.

5 I understand he wants to talk
6 about the -- he should be proud of his
7 establishment, but more or less this line of
8 testimony regarding the cleanliness and
9 anything else is irrelevant.

10 In terms of if he is seeking to
11 have this admitted, I will also object on the
12 grounds of the fact that it is irrelevant and
13 not material to the case, immaterial to the
14 case.

15 CHAIRPERSON MILLER: Okay. Do you
16 want to get them, so I can see them? You can
17 take a seat now, because you are finished
18 testifying, I believe, right, Mr. Lucas? You
19 can take a seat now.

20 MR. LUCAS: Thank you.

21 CHAIRPERSON MILLER: Okay. I'm
22 going to overrule the objection and admit them

1 as Respondent's Exhibits 1, 2 and 3. They
2 just in general show that -- I believe you are
3 showing that you have been a law-abiding
4 establishment. Okay. They don't go to the
5 specific facts of the case, as Mr. Adams
6 stated, so they will be given, you know,
7 whatever weight they deserve with respect to
8 this case, but they can be admitted.

9 (Whereupon, the documents marked
10 as Licensee Exhibit 1, 2 and 3
11 were received in evidence.)

12 CHAIRPERSON MILLER: Okay.
13 Anything else? Any other -- does that
14 complete your case until we get to closing?
15 You don't have any evidence, any other
16 documents to put in?

17 MR. LUCAS: No.

18 CHAIRPERSON MILLER: Okay.

19 MR. LUCAS: Thank you.

20 CHAIRPERSON MILLER: All right.

21 So then now we go to -- you don't have any
22 rebuttal evidence, do you?

1 MR. ADAMS: No.

2 CHAIRPERSON MILLER: Okay.

3 MR. ADAMS: The District has no
4 rebuttal.

5 CHAIRPERSON MILLER: So now we go
6 to closing.

7 MR. ADAMS: Very quickly, Madam
8 Chairman, the District has proven this case
9 and indeed this establishment did sell go-cups
10 to Investigator Molloy on April 12, 2013.
11 Well, it seems like there is no issues and
12 disputes in terms of the facts that
13 Investigator Molloy did buy a bottle of Cook's
14 Brut Champagne and along with three cups.

15 The only thing that is really in
16 dispute is the manner. Well, the facts are
17 that he was able to -- he purchased three cups
18 in which the clerk opened up a sleeve of cups
19 and removed three cups from that sleeve and
20 sold it to Investigator Molloy for a dollar,
21 which essentially would be .33.33 cents in
22 terms of what was sold to -- for the unit

1 price for each cup.

2 On this -- this is a situation
3 where the cups that he received is -- was not
4 prepackaged. And so, therefore, we believe
5 that it does meet the standard in terms of
6 what is a go-cup.

7 Now, based upon the definition of
8 go-cup, there is nothing within the
9 regulations or anything that states that it's
10 only a single cup. I mean, obviously, we have
11 had cases before the Board where there has
12 been two, three cups where a person has
13 purchased a cup from the establishment or the
14 establishment has provided that for sale along
15 with the alcoholic beverage.

16 And this is a case where the
17 investigator actually stated in evidence, he
18 stated well, I want to just drink, you know,
19 this alcohol. So whether it is three or one
20 is of no real import. The idea is that you
21 have cups that are not within any type of
22 original packaging that were removed from

1 original packaging to be sold for -- to the
2 customers.

3 And based upon the definition, I
4 believe that it would be consistent with a
5 drinking utensil that was sold for a nominal
6 fee for off-premises uses.

7 And also, now this case, the sole
8 defense by the establishment is like well,
9 yeah, I have been through this. I tend to be
10 law-abiding, but we have decided that, you
11 know, three cups is what I could sell as
12 opposed to a single cup. Now, that's
13 obviously up for the Board to interpret
14 whether or not that is -- whether it's
15 reasonable or not.

16 But I guess what you have here is
17 that in this case, with the establishment
18 admitted and saying yes, this did occur, but
19 we do in the more uniform way than maybe some
20 other establishments do, that we -- that
21 essentially I have determined that I can do --
22 I can sell three cups and I'll repackage it

1 myself and, therefore, because I repackaged it
2 myself on other occasions, then that therefore
3 is okay. And that would not be violative of
4 any rule.

5 And I think that, in general,
6 whether -- even if it weren't -- even if it
7 were a prepackaged or repackaged by the
8 establishment as three, that it would still be
9 a violation of the statute by more or less
10 trying to do an evasive work-around in terms
11 of the intent of the statute.

12 So more or less for the reasons
13 that have already been stated, that this is a
14 violation of the go-cup rule, especially based
15 upon the facts that you do have where this
16 wasn't repackaged three cup, these were loose
17 three cups that were provided to the
18 investigator and, therefore, this would be a
19 proven violation.

20 CHAIRPERSON MILLER: Thank you.

21 Mr. Lucas?

22 MR. LUCAS: Thank you, madam.

1 First of all, because the buyer say he is
2 going to drink, that all observed, people like
3 to drink it. Where they drink it, we don't
4 know. Either they buy it either to drink or
5 for as a gift.

6 So Mr. Walter is insisting that
7 because the examiner said I wanted to drink,
8 then whatever we do after that, selling cups
9 is a violation of the law. No, that's not how
10 I understand it. So where does it say, where
11 does it say you can only sell five cups?
12 Where does it say if somebody says I want to
13 drink this champagne, don't sell him cups?
14 Where does it say?

15 No, the only thing it says is do
16 not sell single cups. I know the history.
17 It's not religion. There was a reason why
18 they told you not to do. It is to stop people
19 from drinking on the street, loitering.

20 So I don't see that. I don't want
21 people to drink right in front of me, you
22 know. Tires would be torn off. I don't want

1 that. I'm not part of it. So where does it
2 say you are not supposed to make three and
3 sell them?

4 In this case, I haven't -- I made
5 a particular offense. I admit that. So
6 unless the ABC tells me now from today on do
7 not sell a pack of three by citing the law,
8 I'm going to continue.

9 So I still don't understand, madam
10 and gentlemen, where my offense is if I had
11 believed slightly that I made a violation
12 three times for \$250, \$150 was the penalty.
13 I would not come three times, no. It's only
14 solely for the principal. And I'm very much
15 intrigued by the way, if I may, why the
16 District Court takes all this time, why -- I
17 mean, the Board would suspend on this. I see
18 it. I'm very sorry. This is a very, very
19 minor thing that shouldn't have -- it's not a
20 minor. It's not a kid. It shouldn't have
21 come and wasted two times of the Board sitting
22 for this case, three times for me coming, the

1 ABC examiners twice.

2 They came one to hand to me and
3 another two people to give me the Status
4 Hearing. Is this really important? Is there
5 a violation here? I do not believe so until
6 I see the law and I get it from you against.
7 So I rest my case. Thank you.

8 CHAIRPERSON MILLER: Thank you.
9 Thank you very much.

10 MR. ADAMS: Just a very quick
11 rebuttal.

12 CHAIRPERSON MILLER: Okay.

13 MR. ADAMS: This is an important
14 case. All cases in which the District of
15 Columbia enforces the rules and law are
16 important. But regardless of, I guess, the
17 relative size of the cases, we want to ensure
18 -- as stated by Mr. Lucas, that this law was
19 put in place to make sure that there was not
20 nuisances along the streets.

21 So this is important to ensure
22 that there are not nuisances and loitering

1 within the street. However with that being
2 said, again the statute does not state any
3 where that it is restricted to one utensil and
4 that should be noted by the Board.

5 Very briefly, in terms of the
6 District's recommendation for penalty, this
7 would be the establishment's first violation
8 within a two year period, so, therefore, the
9 District would recommend a fine of \$500.

10 CHAIRPERSON MILLER: Okay.

11 MR. ADAMS: I have no further
12 comments.

13 CHAIRPERSON MILLER: Thank you.
14 All right. So at this point then, I'm going
15 to close the record in this case and ask the
16 parties if you want to file any proposed
17 findings of facts and conclusions of law or
18 waive your right to do so? And I will explain
19 if you would like, Mr. Lucas, what I'm saying.

20 MR. LUCAS: No, I will like.

21 CHAIRPERSON MILLER: Yeah, okay.
22 So this is as a matter of course, parties at

1 the end of the case, you are a party, can file
2 in writing proposed findings of facts based on
3 the testimony and evidence put in the record
4 today that will be reflected in the transcript
5 and argue conclusions of law.

6 In most cases with this magnitude
7 or whatever, parties don't choose to do that,
8 that the Board gets it, the Board has the
9 transcript, the Board understands the
10 conclusions of law.

11 But you have a chance if you want
12 to put it in writing and that's what my
13 question is to each of you. If you want that
14 opportunity?

15 MR. ADAMS: The District waives
16 writing findings of fact and conclusions of
17 law.

18 CHAIRPERSON MILLER: Mr. Lucas?

19 MR. LUCAS: I'm sorry, but did he
20 say do you want me to put in writing what I --

21 CHAIRPERSON MILLER: No. Okay.
22 I'm saying I don't want you to do anything

1 really. You have an opportunity or a right
2 under our rules to put in writing arguments
3 about what facts we should find and what legal
4 conclusions we should draw, based on the facts
5 in the case.

6 I said Mr. Adams has waived that
7 right. He is not going to do that. In a case
8 where the issues are pretty simple,
9 straightforward, which I think this case is,
10 most parties will not choose to file something
11 in writing, but you have that right if you
12 want to.

13 MR. LUCAS: Yes.

14 CHAIRPERSON MILLER: So I'm asking
15 if you want to do that?

16 MR. LUCAS: No, thank you, madam.
17 There is nothing to add. Thank you.

18 CHAIRPERSON MILLER: Okay. I
19 think that the record is quite full and the
20 Board is quite aware of the legal issues in
21 this case and the facts.

22 Okay. So we will be issuing an

1 order, a written order within 90 days. And
2 I'm going to just read the instructions and
3 the Board will take a vote on deliberating on
4 this case in executive session as is allowed
5 under the Open Meetings Act.

6 So as chairperson of the Alcoholic
7 Beverage Control Board for the District of
8 Columbia and in accordance with DC Official
9 Code Section 2-574(b) of the Open Meetings
10 Act, I move that the ABC Board hold a closed
11 meeting for the purpose of seeking legal
12 advice from our counsel on Case No. 13-CMP-
13 00225, Best-In Liquors, pursuant to Section 2-
14 574(b)(4) of the Open Meetings Act and
15 deliberating upon this case for the reasons
16 cited in Section 2-574(b)(13) of the Open
17 Meetings Act.

18 Is there a second?

19 MEMBER BROOKS: Second.

20 CHAIRPERSON MILLER: Mr. Brooks
21 has seconded the motion. I'll now take a roll
22 call vote on the motion now that it has been

1 seconded.

2 Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Ms. Miller

7 agrees.

8 Mr. Silverstein?

9 MEMBER SILVERSTEIN: I agree.

10 CHAIRPERSON MILLER: It appears
11 that the motion has passed by a vote of 4-0-0.
12 And I hereby give notice that the ABC Board
13 will hold a closed meeting on this case and
14 issue an order within 90 days. Thank you.

15 That concludes this case.

16 MR. ADAMS: Thank you.

17 CHAIRPERSON MILLER: Any
18 questions? Otherwise, look for an order.

19 MR. LUCAS: Thank you, Madam Chair
20 and gentlemen.

21 CHAIRPERSON MILLER: Okay. Thank
22 you very much.

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(Whereupon, the Show Cause Hearing
in the above-entitled matter was concluded at
10:54 a.m.)

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