

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

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IN THE MATTER OF: :
 :
Asefu Alemayehu :
t/a Yegna : Show Cause
1920 9th Street, NW : Hearing
Retailer CT - ANC-1B :
License No. 74241 :
Case #11-CMP-00321 :
 :
(Allowed the Sale or :
Delivery of Alcoholic :
Beverages Outside of the :
Allowed Hours) :
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January 9, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, 2000 14th Street, N.W., Suite

400S Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
ALSO PRESENT:

FERNANDO RIVERO, OAG

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

(1:39 p.m.)

CHAIRPERSON MILLER: Okay. I'm going to call the first case in the afternoon and that is Case No. 11-CMP-00321, Yegna located at 1920 9th Street, N.W., License No. 74241 in ANC-1B.

And would the parties introduce themselves for the record?

MR. RIVERO: Good afternoon, Board Members. Fernando Rivero for the District of Columbia.

CHAIRPERSON MILLER: Good afternoon.

MR. KLINE: Good afternoon, Board Members. Andrew Kline on behalf of the licensee. Seated to my left is Asefu Alemayehu, principal of the licensee.

MR. ROBINSON: Madam Chairman, I would ask that my appearance be withdrawn as the --

CHAIRPERSON MILLER: Wait, I'm

1 sorry. Can he be heard on the -- can you hear
2 him? You need to speak into a microphone,
3 sir.

4 MR. ROBINSON: Yes. Let me say
5 that Wendell Robinson is my name. I was
6 previously the attorney with the licensee at
7 the previous hearing, but then I asked that my
8 appearance be withdrawn --

9 CHAIRPERSON MILLER: Okay.

10 MR. ROBINSON: -- as the licensee
11 has retained Mr. Kline.

12 CHAIRPERSON MILLER: Okay. Thank
13 you very much.

14 MR. ROBINSON: Thank you.

15 CHAIRPERSON MILLER: Okay. Okay.
16 This is a Show Cause Hearing. Mr. Rivero, do
17 we have any preliminary issues?

18 MR. RIVERO: Yes, we do.
19 Actually, Madam Chairperson, we have an offer
20 in compromise to present to the Board at this
21 time.

22 CHAIRPERSON MILLER: Okay.

1 MR. RIVERO: The offer in
2 compromise consists of a fine of \$3,000
3 payable within 60 days. A suspension of the
4 license for 10 days, such days to be served
5 February 18 through February 27, inclusive,
6 all dates being dates that the licensee is
7 normally open. And the submission of an
8 application for the transfer of license within
9 60 days.

10 CHAIRPERSON MILLER: Okay. Mr.
11 Kline, do you have anything to add to that?

12 MR. KLINE: The only thing I would
13 add is yes, that is the offer in compromise
14 that Mr. Rivero and I, on behalf of the
15 licensee, have agreed to. If it's accepted by
16 the Board, the licensee will waive their right
17 to hearing.

18 And I would just like to add that
19 Ms. Alemayehu and I have spent quite a bit of
20 time together and the conclusion was reached
21 what would be best for her would be to move on
22 from this business and transfer the license,

1 which is why that is part of the offer in
2 compromise.

3 We do have a perspective
4 transferee. It is an arms-length transaction.
5 And we wanted the Board to know that that's
6 the direction that we are headed, because we
7 think that's a very important component of the
8 offer, given the investigative history and the
9 other factors that are there. And we would
10 hope that the Board would accept the offer in
11 compromise as presented. Thank you.

12 CHAIRPERSON MILLER: Well, what if
13 there is no transferee in 60 days?

14 MR. KLINE: Well, the order, if
15 it's accepted, would require the transfer
16 application be filed within 60 days. If not,
17 then it would be left open for the Board to
18 take further action. There is another
19 investigative matter in the pipeline, so
20 that's the intent of the parties, at this
21 point.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER SILVERSTEIN: Mr. --

2 CHAIRPERSON MILLER: Go ahead. Do
3 you have a question?

4 MEMBER SILVERSTEIN: Mr. Rivero,
5 what guarantee is there that this doesn't just
6 kick the can down the road for 60 days? What
7 is -- you know to say the Board can take
8 further action, I'm not sure what that means.
9 I'm not sure what the --

10 MR. RIVERO: I'll explain what
11 that means.

12 MEMBER SILVERSTEIN: Yes, sir.

13 MR. RIVERO: With an offer in
14 compromise, the terms of the offer are reduced
15 to a Board order. So as of today's date,
16 there will be a Board order that tells the
17 licensee to pay a fine, to have the license
18 suspended and to file an application to
19 transfer, as we have discussed today.

20 I have had similar cases where
21 licensees have had an offer in compromise,
22 promised to pay \$1,000 in 30 days, don't do so

1 and the case comes back to me. And at this
2 point, the violation is failure to follow
3 Board order.

4 It is a separate and distinct
5 violation. I am not required to present
6 evidence of the underlying case. The only
7 thing such a proceeding that I will be
8 required to present to the Board is did the
9 licensee pay \$1,000 in 30 days or not?

10 So that is the hammer, if you
11 will, that the Board wields at the end of the
12 60 days.

13 Having said that, I have discussed
14 with licensee's personal representative that
15 if on the 61st day they are about to transfer
16 the license, but they need, you know, some
17 sort of insurance or something or other, it
18 will take another few days, I'm not going to
19 be a stickler about it. It is my goal to work
20 with the licensee to ensure that the license
21 is transferred to an operator that is more
22 suitable and appropriate.

1 This has been my goal with this
2 case and with this particular operator for
3 some time now. I hope that that is a good
4 response.

5 MEMBER SILVERSTEIN: But after 62
6 days, 63 days, they are in violation. They
7 simply are shut down?

8 MR. RIVERO: No.

9 MEMBER SILVERSTEIN: No?

10 MEMBER ALBERTI: Not until the
11 charge is brought.

12 MEMBER SILVERSTEIN: Not until the
13 charge --

14 MR. RIVERO: Not until the charge
15 is brought. Now, as the Board is aware, there
16 is another case in the pipeline that was
17 mentioned. That case concerns an incident
18 that took place in July of last year. The
19 instant case concerns an incident that took
20 place in July of 2011.

21 So there is that other case that
22 is coming up as well. However, I anticipate

1 that by the time that case arrives for
2 litigation, that there would have been
3 something filed for the Board's consideration.

4 Notwithstanding that, the offer in
5 compromise that is presented today is also
6 proper, given the nature of the violation.

7 MEMBER SILVERSTEIN: Say again,
8 please.

9 MR. RIVERO: The terms of the
10 offer in compromise -- I'm sorry, I'm not
11 feeling well, so I'm trying to project as best
12 as I can.

13 The terms of the offer in
14 compromise are consistent with the kind of
15 violation that we have before us where we have
16 the paring of a suspension of 10 days and a
17 fine to pay as well.

18 MEMBER SILVERSTEIN: Thank you,
19 sir.

20 MEMBER ALBERTI: Ms. Miller,
21 before we go on any further, I would like to
22 remind the Board that we shouldn't be

1 considering future cases that are to be
2 brought to us.

3 MR. KLINE: Correct.

4 MEMBER ALBERTI: As Mr. Kline has
5 reminded us in the future, we shouldn't now be
6 considering cases that are "in the pipeline."
7 So I just wanted to remind our Board Members
8 that that -- the fact that there is something
9 in the pipeline is irrelevant to this case.

10 MR. KLINE: Madam Chair?

11 CHAIRPERSON MILLER: Yes?

12 MR. KLINE: If I may?

13 CHAIRPERSON MILLER: Yes.

14 MR. KLINE: Mr. Alberti, just to
15 be clear, I'm not raising that in terms of
16 your determination of a penalty. I only
17 raised it in the context of the offer in
18 compromise given the concerns that were raised
19 in and effort to try to address those
20 concerns.

21 I want the Board to know that this
22 is not an attempt to kick the can down the

1 road, as Mr. Silverstein questioned. There is
2 a sincere effort on behalf of the licensee to
3 move her out of this business. A buyer has
4 been located. Documents, in fact, have
5 already been drafted and sent to that buyer.

6 So this is sincere and I want the
7 Board to know that. I mean, obviously, the
8 Board can't make a decision and say okay, yes,
9 we are going to do it because they are really
10 doing it. But I think it goes into your
11 consideration in terms of well, what are we
12 doing here? Are they, you know, just playing
13 games and do they just intend to keep
14 operating?

15 I want the Board to be assured
16 that is not the case. A buyer has been
17 located. Terms have been agreed upon. We are
18 going to be moving quickly to try to put that
19 in place and get the transfer application
20 filed.

21 If for some reason that deal can't
22 go forward, then the applicant will be

1 aggressively pursuing another transferee.

2 This is not a game. It's quite serious.

3 CHAIRPERSON MILLER: Yes, Mr.

4 Jones?

5 MEMBER JONES: This is more of an
6 administrative question. During the last, I
7 think it was, hearing that we were supposed to
8 have with this licensee, there was a concern
9 about a translator not being present or a
10 translator being necessary or required and
11 that's why the continuance was granted,
12 because it wasn't clear that the licensee
13 clearly understood all the nature of the
14 discussions that were being had between her
15 and her counsel.

16 And subsequently wasn't in the
17 position to clearly understand all the
18 discussions that were being had by us as a
19 Board here during that hearing, at that time.
20 I am just concerned just to make sure we
21 establish on the record that no translator is
22 necessary for whatever reason may be deemed

1 appropriate.

2 CHAIRPERSON MILLER: And, Mr.
3 Kline, can you address that?

4 MR. KLINE: The only way that I
5 can address that is I have spent a great deal
6 of time with Ms. Alemayehu. I'm satisfied
7 that she understands the terms of the deal.
8 I'm happy to have her answer any questions
9 that the Board may have, so that the Board
10 might be satisfied.

11 Obviously, in my role, I've got to
12 make a decision as to whether the client
13 understands what is going on or not. And in
14 this case, given the time that I have spent
15 with her in our review of the offer and other
16 considerations, I don't have a question in my
17 mind at this point.

18 MEMBER ALBERTI: Ms. Miller, let
19 me just follow-up. Excuse me, Mr. Jones.

20 MEMBER JONES: Yes, sir.

21 MEMBER ALBERTI: But what I'm not
22 hearing from you is if we were to not accept

1 this, the question is, still in my mind which
2 you haven't addressed, would your client
3 understand English well-enough to understand
4 the proceedings that we would be having?
5 Because that's the real question here, Mr.
6 Kline.

7 MR. KLINE: Yes.

8 MEMBER ALBERTI: And Mr. Jones, I
9 think, is concerned because we already delayed
10 this once because of the lack of -- because of
11 the language barrier.

12 MR. KLINE: I beg your indulgence.
13 Ms. Alemayehu is willing to make a statement
14 that she does understand what is going on and
15 understands the nature of the proceeding and
16 will understand what is going on here.

17 I was not present at the last
18 hearing, so I'm not directly privy to what
19 went on in terms of what the difficulties are.
20 I can tell you with respect to this offer and
21 the discussions and preparations, I'm
22 comfortable. If the Board is not comfortable,

1 that's a different issue.

2 CHAIRPERSON MILLER: Okay. I
3 think there are two issues. One is as far as
4 I can understand that you have been authorized
5 to represent your client on behalf of this OIC
6 and that you have discussed it with her
7 thoroughly and I don't think there is an issue
8 with that, at least I don't see that.

9 I think Mr. Alberti was saying if
10 the Board does not accept the OIC, which, you
11 know, is getting to the next thing --

12 MR. KLINE: Right.

13 CHAIRPERSON MILLER: -- would your
14 client be able to participate in the hearing?

15 MR. KLINE: Yes.

16 CHAIRPERSON MILLER: Okay. All
17 right. Is that satisfying?

18 MEMBER ALBERTI: Yes.

19 CHAIRPERSON MILLER: Okay. With
20 respect to the OIC, Mr. Rivero, I was
21 wondering if you could elaborate on your
22 statement that you think it is proper given

1 the nature of the violation? You said
2 something to that effect.

3 MR. RIVERO: Certainly.

4 CHAIRPERSON MILLER: Okay.

5 MR. RIVERO: In Title 25 there is
6 one place where "offers in compromise" are
7 mentioned. And it is -- they are mentioned
8 that they can be brought before the Board and,
9 therefore, the Board can, you know, accept
10 those terms or not.

11 And so with respect to this
12 violation, I looked at -- parties engage in
13 negotiations all the time. And because this
14 is a part of an offer in compromise as opposed
15 to the end result of a Show Cause Hearing
16 where the Board finds a violation and then
17 automatically turns to the statute to figure
18 out penalties or, for instance, a fine or a
19 suspension of which there is no regulation in
20 Title 25, and I'm referring to the suspension,
21 then parties come together and, based on their
22 own experiences and my experience in the cases

1 that I've handled in the past, arrive at a
2 suspension date and a fine that we think is
3 important within -- or appropriate within our
4 own experience.

5 So given again this particular
6 violation, I went ahead and I thought that a
7 10 day suspension was fair and a \$3,000 fine
8 as well.

9 MR. KLINE: And if I could add to
10 that?

11 CHAIRPERSON MILLER: Yes.

12 MR. KLINE: I mean, if one looks
13 at the investigative history and one presumes
14 the statute and the regulations contemplate
15 what we call a progressive discipline, which
16 I think they do and I don't think the Board
17 would quarrel with that and certainly the
18 regulations, in fact, in some areas precisely
19 say a fine of between \$1,000 and \$2,000 for a
20 first violation and so and so forth.

21 So it's pretty clear we have a
22 progressive discipline system. If one looks

1 at the previous violations, this is certainly
2 a logical result of that progression in terms
3 of the other violations that are there.

4 Now, granted and unfortunately,
5 it's for the same section of the regulations,
6 but to do more than that would seem to take us
7 off the charts in terms of the progression.

8 In other words, we think it goes
9 up in sort of a natural progression and it's
10 a lot -- what has been proposed is logical,
11 particularly when you combine it with the
12 unusual requirement that the licensee will be
13 filing a transfer application within 60 days
14 and that will be part of the offer in
15 compromise.

16 We think it is perfectly logical
17 and makes a lot of sense.

18 MR. RIVERO: I --

19 MEMBER JONES: Madam Chair? Oh.

20 MR. RIVERO: This will be the case
21 in the investigative histories of many
22 licensees that I have seen. You will find

1 Violation No. 2, say \$2,000, and Violation No.
2 3 say \$1,000, which wouldn't make sense. You
3 would expect to see a violation fine higher
4 than \$2,000, but that is, in fact, the case
5 all across the board with many licensees,
6 because the fines are the subject of, again,
7 an offer in compromise and not the end of a
8 Show Cause Hearing.

9 And if you, again, dig deeper
10 every time you see a sort of spike in fines
11 and they go up and down rather than just go
12 up, straight up like this, you will find that
13 there are other components to the offer in
14 compromise that are taken together in view of
15 the particular circumstances of a case.

16 So while there are -- there is the
17 laudable goal of ensuring that everybody is
18 treated the same, due process and so forth,
19 it's also the equally laudable goal of taking
20 each case on its merits and its own particular
21 circumstances.

22 And so there is always tension

1 between the two and you see that reflected in
2 the various histories of licensees'
3 investigative histories where even in this one
4 you have a violation of \$2,000 paid at one
5 point, but then subsequent in time you have a
6 \$1,000, but then there are other terms
7 involved there as well.

8 I'm trying to sort of lay out why.

9 CHAIRPERSON MILLER: Yes.

10 MR. RIVERO: Does -- a system
11 really doesn't work mechanically, if you will,
12 or automatically, because, you know, the real
13 circumstances of a case always happen to
14 intrude, as I call it, reality happens to
15 intrude. And I respond to those always with
16 an eye to ultimate discipline as well.

17 CHAIRPERSON MILLER: Okay. Other
18 questions? Other comments on the OIC for the
19 Board to consider before we go to consider it?
20 Okay. I think that that is what the Board
21 would like to do is take a careful, thoughtful
22 look at the OIC and then come back and take a

1 vote on it.

2 As Chairperson of the Alcoholic
3 Beverage Control Board for the District of
4 Columbia and in accordance with Section 405 of
5 the Open Meetings Amendment Act of 2010, I
6 move that the ABC Board hold a closed meeting
7 for the purpose of seeking legal advice from
8 our counsel on Case No. 11-CMP-00321, Yegna,
9 per Section 405(b)(4) of the Open Meetings
10 Amendment Act of 2010 and deliberating upon
11 this case for the reasons cited in Section
12 405(b)(13) of the Open Meetings Amendment Act
13 of 2010.

14 Is there a second?

15 MEMBER BROOKS: Second.

16 CHAIRPERSON MILLER: Mr. Brooks
17 has seconded the motion. I'll now take a roll
18 call vote on the motion.

19 Mr. Brooks?

20 MEMBER BROOKS: I agree.

21 CHAIRPERSON MILLER: Mr. Alberti?

22 MEMBER ALBERTI: I agree.

1 CHAIRPERSON MILLER: Ms. Miller

2 agrees.

3 Mr. Silverstein?

4 MEMBER SILVERSTEIN: I agree.

5 CHAIRPERSON MILLER: And Mr.

6 Jones?

7 MEMBER JONES: I agree.

8 CHAIRPERSON MILLER: It appears
9 that the motion has passed by a 5-0-0 vote.
10 I hereby give notice that the ABC Board will
11 hold a closed meeting now in the ABC Board
12 conference room pursuant to the Open Meetings
13 Amendment Act of 2010.

14 And then we will return shortly.

15 MR. KLINE: Thank you.

16 CHAIRPERSON MILLER: Okay.

17 (Whereupon, at 1:59 p.m. a recess
18 until 2:10 p.m.)

19 CHAIRPERSON MILLER: Okay. We are
20 back on the record. The Board had an
21 opportunity to consider the offer in
22 compromise. And I'm going to make a motion to

1 -- well, let me just -- yes, articulate this.

2 I'll make a motion to approve the
3 offer in compromise. I'll articulate it if
4 anyone understands that if I articulate it
5 incorrectly, please, bring that to my
6 attention.

7 Okay. That would be a motion to
8 approve an offer in compromise for a fine of
9 \$3,000 payable within 60 days, a suspension of
10 the license for 10 days served February 18
11 through February 27th and submission of an
12 application for transfer of the license within
13 60 days.

14 Okay. The parties are nodding
15 that that is correct --

16 MR. RIVERO: Yes.

17 CHAIRPERSON MILLER: --
18 characterization of the offer in compromise.
19 Okay. Then I move to approve this offer in
20 compromise.

21 Do I have a second?

22 MEMBER SILVERSTEIN: Second.

1 CHAIRPERSON MILLER: Mr.
2 Silverstein has seconded the motion. Any
3 comments? Okay.

4 Then all those in favor of the
5 motion to accept the offer in compromise say
6 aye.

7 MEMBER SILVERSTEIN: Aye.

8 CHAIRPERSON MILLER: Aye.

9 All those opposed?

10 MEMBER JONES: Oppose.

11 MEMBER ALBERTI: Oppose.

12 MEMBER BROOKS: Oppose.

13 CHAIRPERSON MILLER: Then the --
14 all those abstaining? Okay. Then the motion
15 fails by a vote of 2-3-0.

16 MEMBER SILVERSTEIN: Madam Chair,
17 I think for the record you and I voted in
18 favor and the remaining three -- our three
19 colleagues voted against.

20 CHAIRPERSON MILLER: That's
21 correct. Thank you. And, yes, I thought it
22 was a reasonable offer in compromise, but the

1 majority of my colleagues feel otherwise. So
2 we --

3 MEMBER ALBERTI: Ms. Miller? Ms.
4 Miller, I move --

5 CHAIRPERSON MILLER: Do we need --

6 MEMBER ALBERTI: Ms. Miller, I
7 move that we deny the offer in compromise.

8 CHAIRPERSON MILLER: Okay. Just
9 to be safe, yes. Okay. Is there a second?

10 MEMBER ALBERTI: No, we have to.

11 CHAIRPERSON MILLER: Mr. Alberti
12 has made a motion to deny the offer in
13 compromise. Is there a second?

14 MEMBER BROOKS: Second.

15 CHAIRPERSON MILLER: Mr. Brooks
16 has seconded the motion.

17 All those in favor of the motion
18 to deny the OIC say aye.

19 MEMBER BROOKS: Aye.

20 MEMBER ALBERTI: Aye.

21 MEMBER JONES: Aye.

22 CHAIRPERSON MILLER: All those

1 opposed?

2 MEMBER SILVERSTEIN: Oppose.

3 CHAIRPERSON MILLER: Opposed.

4 All those abstaining? Then the
5 motion passes by a vote of 3-2-0. All right.

6 Are the parties ready to go to --
7 proceed with the hearing?

8 MR. KLINE: Madam Chairperson, we
9 would like to present for the Board's
10 consideration a revised offer in compromise
11 that would be upon the same terms that were
12 previously set forth, except with a \$4,000
13 fine instead of a \$3,000 fine, which is the
14 statutory maximum under the statute. I think
15 I was just redundant, but that is the maximum
16 under the statute and we would present that
17 for the Board's consideration with the hope
18 that that might or might not, but might
19 address the concern of one or more of the
20 Members that did not find the offer in
21 compromise acceptable.

22 CHAIRPERSON MILLER: I think it

1 would be helpful if you could draw the Board's
2 attention to the statutory provision.

3 MR. KLINE: Certainly.

4 CHAIRPERSON MILLER: Okay.

5 MR. KLINE: I have may misspoke.
6 I believe it is a regulatory provision.

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: And that would be 23
9 DCMR 801.1(b). This would be the second
10 primary tier violation within two years. This
11 fine shall be \$2,000 to \$4,000.

12 CHAIRPERSON MILLER: Mr. Rivero,
13 do you agree with Mr. Kline that this is a
14 second primary tier violation within two
15 years? And that's the applicable regulation?

16 MR. RIVERO: Board's indulgence,
17 please. Correct. And the dates in question
18 are September 25, 2008, May 6, 2009 and April
19 14, 2010.

20 MR. KLINE: And --

21 CHAIRPERSON MILLER: Could you
22 repeat that, Mr. Kline, because Mr. Rivero's

1 voice is very soft right now.

2 MR. KLINE: Certainly.

3 CHAIRPERSON MILLER: Okay. Will
4 that be helpful?

5 MR. KLINE: Yes, it might.

6 MR. RIVERO: One moment, please.

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: Go ahead.

9 MR. RIVERO: Okay. All right.

10 CHAIRPERSON MILLER: Okay.

11 MR. RIVERO: I'll try not to get
12 too technical, but I think I have to.

13 CHAIRPERSON MILLER: Okay.

14 MR. RIVERO: I'll explain to the
15 Board. The language --

16 CHAIRPERSON MILLER: Wait a
17 second. Could you hold on a second? I would
18 like Mr. Jones to hear this.

19 MR. RIVERO: That's fine.

20 CHAIRPERSON MILLER: Okay.

21 MR. RIVERO: Thank you. The
22 language of the statute at DC Code 25-830

1 states, I'm giving -- this is my starting
2 point. Okay. "A licensee found in violation
3 of a primary tier violation within four years,
4 the fourth within four years is a mandatory
5 revocation." This is not in play.

6 I'm just drawing your attention to
7 the word found in that provision. Okay. By
8 finding, which means that a board has to make
9 a finding. When you look at an investigative
10 history, you essentially have two kinds of
11 dates.

12 You have the date of incident and
13 you have the date of adjudication. I'll call
14 that the date of adjudication for lack of a
15 better term. That date of adjudication
16 corresponds to found whenever you see the word
17 finding in Title 25 of the Regulations.

18 CHAIRPERSON MILLER: Yes.

19 MR. RIVERO: So when you have
20 findings, you look at the investigative
21 history at issue here and the findings
22 correspond to the dates of adjudication.

1 The instant case has not been
2 adjudicated. All we have for our purposes is
3 an incident date. So if I look at the date of
4 adjudication, and I just mentioned them just
5 now, they are -- the fine rate becomes \$2,000
6 to \$4,000.

7 MEMBER ALBERTI: Okay. So --

8 CHAIRPERSON MILLER: Can you give
9 me --

10 MEMBER ALBERTI: -- Mr. Rivero,
11 let's cut to the quick here.

12 MR. RIVERO: Yes.

13 MEMBER ALBERTI: On your
14 calculations, forgetting the case that we all
15 have before us, which hasn't been adjudicated,
16 how many primaries are there in the last three
17 years, because that's the way we have to look
18 at this.

19 MR. RIVERO: Certainly. But if
20 it's going to be looked at that way, then what
21 we are looking at is three.

22 MEMBER ALBERTI: Thank you.

1 CHAIRPERSON MILLER: Could you
2 give the dates again, just so we are looking
3 at the same thing?

4 MR. RIVERO: May 6, 2009, April
5 14, 2010 and January 9, 2013. But the Board
6 understands --

7 MEMBER ALBERTI: I just want to
8 comment. I just want to comment.

9 Ms. Miller, I came to the same
10 conclusion prior to coming out here looking at
11 the history. So I understand what Mr. Rivero
12 is saying there.

13 MR. KLINE: If I may clarify, the
14 two in 2009 are more than three years ago. So
15 they are not within the three years.

16 MEMBER ALBERTI: The adjudication
17 was within three years. Mr. Rivero just said.

18 MR. KLINE: Well, I don't agree
19 with him.

20 MEMBER ALBERTI: Well, you don't
21 have to agree with him.

22 MR. KLINE: But it's math though.

1 I think we should all agree on this.

2 CHAIRPERSON MILLER: Yes.

3 MEMBER ALBERTI: Ms. Miller? Ms.
4 Miller?

5 CHAIRPERSON MILLER: Right.

6 MEMBER JONES: Well, we have to
7 agree on a premise before you agree to -- give
8 the real equation and we can do the math.

9 MEMBER ALBERTI: Right.

10 MR. RIVERO: Just to make sure
11 that we are talking about the same thing.

12 MR. KLINE: How about we get that.

13 CHAIRPERSON MILLER: That's why I
14 want the specific dates you are talking about
15 and what happened on them.

16 MR. RIVERO: Okay.

17 MR. KLINE: I can do math.

18 MR. RIVERO: All right. The
19 Government is sick, but it is correct. The
20 dates are January 9, 2013, going back is
21 January 9, 2010.

22 CHAIRPERSON MILLER: Okay.

1 MR. RIVERO: Within that time
2 frame we have April 14, 2010. So we have two.

3 CHAIRPERSON MILLER: So you are
4 counting today?

5 MEMBER JONES: Counting up to
6 today.

7 MR. RIVERO: Yes.

8 CHAIRPERSON MILLER: Oh, you are
9 counting today?

10 MR. RIVERO: Correct. If we --
11 again, that is the interpretation. Using
12 today as something that is found.

13 MEMBER SILVERSTEIN: Your starting
14 date is what?

15 MR. RIVERO: Today.

16 MEMBER ALBERTI: No, your starting
17 date in the past.

18 MR. RIVERO: Oh, January 9, 2010.

19 MR. KLINE: That's three years ago
20 today.

21 MEMBER ALBERTI: Wait, wait.
22 January 9, 2010. Which case are we looking

1 at? Which number are we looking at in the
2 history? Which case are we looking at in the
3 history to get that?

4 MR. RIVERO: Sure. If you will
5 give me a moment, I will give you that case
6 number. It is 09-CMP-00043.

7 MEMBER ALBERTI: Okay. And that
8 case was adjudicated?

9 MR. RIVERO: I have here April --

10 MEMBER ALBERTI: The findings of
11 that case were, I believe, April.

12 MR. RIVERO: 14, 2010.

13 MEMBER ALBERTI: Okay. So we are
14 work -- talking about the same date. Great.
15 Excellent. Thank you.

16 MR. RIVERO: Yes.

17 MEMBER ALBERTI: Thank you. I
18 just wanted to make sure.

19 MR. RIVERO: Yes. And so if we go
20 back from today's date three years --

21 MEMBER ALBERTI: Okay.

22 MR. RIVERO: -- that is the only

1 case that is within the window.

2 MEMBER ALBERTI: Okay.

3 MR. RIVERO: Of three years.

4 MEMBER ALBERTI: Thank you.

5 MR. RIVERO: And therefore --

6 MR. KLINE: Therefore, there is
7 two in two years and two in three years.

8 MR. RIVERO: And so you default to
9 the \$2,000 to \$4,000.

10 MR. KLINE: Okay.

11 MR. RIVERO: Rate. 23 DCMR
12 801.1(b).

13 CHAIRPERSON MILLER: (b). Okay.

14 MR. RIVERO: And so the proposed
15 \$4,000 is, in fact, the maximum.

16 MEMBER ALBERTI: Ms. Miller? Ms.
17 Miller?

18 CHAIRPERSON MILLER: Yes?

19 MEMBER ALBERTI: I have heard the
20 arguments. I understand them very clearly,
21 but I would like to make a motion.

22 CHAIRPERSON MILLER: Okay. Well,

1 I don't know about everybody else though,
2 where everybody else is.

3 MEMBER ALBERTI: I'll make the
4 motion. If it doesn't get seconded, it
5 doesn't get seconded.

6 CHAIRPERSON MILLER: Okay. All
7 right.

8 MEMBER ALBERTI: My motion is to
9 deny the offer in compromise.

10 MEMBER BROOKS: I second.

11 CHAIRPERSON MILLER: Discussion?
12 I would like to have discussion, because I
13 don't -- not that you have to give a reason,
14 but I think that the parties have made a much
15 clearer argument in showing that the penalty,
16 that the fine is an appropriate fine under
17 801(b).

18 And, in fact, it's the maximum
19 fine that could be issued. I don't know if
20 anyone --

21 MEMBER ALBERTI: Well, I'll give
22 my reason.

1 CHAIRPERSON MILLER: Okay.

2 MEMBER ALBERTI: I was trained as
3 a statistician and I have learned that you can
4 tell many stories from a set of data. So --
5 but there is another story to be said from
6 this set of data and it is by looking at the
7 totality of where we are today and the
8 totality of the history.

9 And so I don't agree that the
10 offer in compromise is an appropriate offer in
11 compromise, an acceptable offer in compromise
12 looking at the totality of it. And I don't
13 want to belabor this by going into detail on
14 that. But that is my feeling right now.

15 So the motion is -- that's my
16 motion.

17 CHAIRPERSON MILLER: Okay. So
18 there is a motion that has been seconded. And
19 as I said to Mr. Alberti before he offered the
20 motion, I'm not sure whether anybody else who
21 voted against the offer in compromise needed
22 any time to consider further consecutive

1 discussion before the vote.

2 So I guess it's just Mr. Jones,
3 because Mr. Brooks has --

4 MEMBER JONES: I'm ready to vote.

5 CHAIRPERSON MILLER: -- seconded
6 it, correct?

7 MEMBER BROOKS: Yes.

8 CHAIRPERSON MILLER: Okay. So all
9 right. Any further discussion? All right.
10 There is a motion that has been seconded to
11 deny the revised offer in compromise.

12 All those in favor of the motion
13 say aye.

14 MEMBER ALBERTI: Aye.

15 MEMBER BROOKS: Aye.

16 MEMBER JONES: Aye.

17 CHAIRPERSON MILLER: All those
18 opposed?

19 MEMBER SILVERSTEIN: Opposed.

20 CHAIRPERSON MILLER: Opposed.

21 All those abstaining? The motion
22 passes by a vote of 3-2-0. Mr. Silverstein

1 and Miller opposing. Okay. That leaves us,
2 I believe, ready to go to hearing.

3 Oh, you're ready to proceed? I'm
4 sorry. Okay.

5 MR. RIVERO: The Government is
6 ready.

7 CHAIRPERSON MILLER: The
8 Government is ready. So any opening
9 statements?

10 MR. KLINE: Madam Chairperson, we
11 are going to stipulate to the facts that are
12 asserted in the notice and she just would want
13 to address the appropriate penalty to be
14 served.

15 CHAIRPERSON MILLER: Okay. You
16 are stipulating to the facts.

17 MR. KLINE: Correct.

18 CHAIRPERSON MILLER: Okay. Are
19 there going to be any opening statements?

20 MR. RIVERO: The Government waives
21 opening statement.

22 CHAIRPERSON MILLER: Okay.

1 MR. RIVERO: Since we have a
2 stipulation of fact, the Government does not
3 need to present a witness, since the notice
4 facts have been stipulated to by both parties.
5 Consequently, the Government will waive
6 closing.

7 CHAIRPERSON MILLER: Okay.

8 MR. RIVERO: The stipulation of
9 facts speaks for itself. Thank you.

10 CHAIRPERSON MILLER: And I just
11 want to be sure. The facts that are being
12 stipulated to, they are the ones in the
13 notice?

14 MR. KLINE: In the notice,
15 correct.

16 CHAIRPERSON MILLER: Okay.

17 MR. RIVERO: And I'm happy to read
18 that if the Board would just give me a moment.

19 On Tuesday, July 5, 2011, at
20 approximately 3:49 a.m., an Alcoholic Beverage
21 Regulation Administration Investigator visited
22 the establishment. Before entering the ABRA

1 investigator observed the front door being
2 locked and some patrons inside holding beer
3 bottles.

4 Inside the establishment the
5 investigator observed, approximately, 20
6 patrons consuming alcoholic beverages,
7 including Budweiser beer.

8 The owner, Ms. Asefu Alemayehu
9 stated that -- to the investigator that she
10 was unaware of the time. The establishment's
11 licensed hours of operation on the date in
12 question end at 2:00 a.m.

13 CHAIRPERSON MILLER: Okay. Thank
14 you very much. So that is what has been
15 stipulated to.

16 Mr. Kline, do you have any closing
17 arguments?

18 MR. KLINE: Yes, just briefly.

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: As we indicated at the
21 outset, it is Ms. Alemayehu's intent to
22 transfer the license. It is clear from the

1 investigative history that she has had
2 difficulty running this. She certainly has a
3 responsibility with the requirements of the
4 law.

5 At this point, she understands
6 that responsibility and is taking steps to do
7 that. However, given the history, she and I
8 have discussed that it is time for her to move
9 on from this business. And we hope that the
10 Board will take that into consideration in
11 fashioning the appropriate sanction.

12 Ms. Alemayehu takes responsibility
13 for the violation, which is why we are not
14 going forward with having the investigator
15 testify and putting the Government to its
16 proof.

17 We believe that there is a better
18 solution to the issue before the Board and it
19 involves the one that has been presented in
20 terms of transferring the license. And we
21 hope that the Board -- although the Board
22 can't work with us directly in deciding this

1 case and imposing the penalty, keep that in
2 mind and will be receptive to the transfer
3 application, which we will proceed with and we
4 will be filing.

5 And we also certainly remind the
6 Board that the penalty must be consistent with
7 the requirements of the statute. I think it
8 has already been presented to the Board that
9 the law provides for a maximum fine of \$4,000
10 and we would submit that that would be the
11 maximum fine that could be imposed.

12 But in terms of any other portion
13 of the sanction, the Board keep in mind that
14 there will be a transfer application filed,
15 which you will likely have before a final
16 order is prepared and signed by the Board.

17 Thank you.

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much.

20 MR. RIVERO: I actually concur
21 with the view of this case. I have been
22 trying to head in this direction actually for

1 quite some time now, but I'm constrained
2 because I only act in the context of an active
3 case. And so I took the advantage of this
4 active case to head in this direction. Thank
5 you.

6 CHAIRPERSON MILLER: What do you
7 exactly mean head in this direction?

8 MR. RIVERO: In terms of making
9 sure that there was another operator at that
10 location.

11 CHAIRPERSON MILLER: Okay. Thank
12 you. All right. At this point then, I'm
13 going to close the record. Do the parties
14 want to fill out the proposed findings of fact
15 and conclusions of law or waive the right?

16 MR. KLINE: We'll waive.

17 MR. RIVERO: Likewise.

18 CHAIRPERSON MILLER: Okay. All
19 right.

20 As Chairperson of the Alcoholic
21 Beverage Control Board of the District of
22 Columbia and in accordance with Section 405 of

1 the Open Meetings Amendment Act of 2010, I
2 move that the ABC Board hold a closed meeting
3 for the purpose of seeking legal advice from
4 our counsel on Case No. 11-CMP-00321, Yegna,
5 per Section 405(b)(4) of the Open Meetings
6 Amendment Act of 2010 and deliberating upon
7 this case for the reasons cited in Section
8 405(b)(13) of the Open Meetings Amendment Act
9 of 2010.

10 Is there a second?

11 MEMBER SILVERSTEIN: Second.

12 MEMBER BROOKS: Second.

13 CHAIRPERSON MILLER: I'll now take
14 a roll call on the motion that has been
15 seconded by Mr. Brooks.

16 Mr. Brooks?

17 MEMBER BROOKS: I agree.

18 CHAIRPERSON MILLER: Mr. Alberti?

19 MEMBER ALBERTI: I agree.

20 CHAIRPERSON MILLER: Ms. Miller
21 agrees.

22 Mr. Silverstein?

1 MEMBER SILVERSTEIN: I agree.

2 CHAIRPERSON MILLER: Mr. Jones?

3 MEMBER JONES: I agree.

4 CHAIRPERSON MILLER: As it appears

5 the motion has passed by a vote of 5-0-0, I

6 hereby give notice that the ABC Board will

7 hold a closed meeting in the ABC Board

8 conference room today pursuant to the Open

9 Meetings Amendment Act of 2010 and issue an

10 order within 90 days.

11 MR. RIVERO: Thank you.

12 MR. KLINE: Thank you.

13 CHAIRPERSON MILLER: Okay. Thank

14 you very much.

15 (Whereupon, the Show Cause Hearing

16 in the above-entitled matter was concluded at

17 2:32 p.m.)

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