

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

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Case #11-CMP-00468 :

Ng Shu Kwan : Fact

t/a Chinatown Market : Finding

521 H Street NW : Hearing

License #19616 :

Retailer B :

ANC-6C :

Violation of Voluntary :

Agreement :

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January 25, 2012

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT

RUTHANNE MILLER, Chairperson

CALVIN NOPHLIN, Member

NICK ALBERTI, Member

DONALD BROOKS, Member

MIKE SILVERSTEIN, Member

JEANNETTE MOBLEY, Member

HERMAN JONES, Member

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

2:28 p.m.

CHAIRPERSON MILLER: Now we are ahead of schedule by two minutes. If our 2:30 case is here, that is Case #11-CMP-00468, Ng Shu Kwan, trading as Chinatown Market, 521 H Street, N.W., License #19616 in ANC-6C.

If you will come to the table. If you will introduce yourselves whenever you're ready.

MR. PASCAL: Good afternoon. I am Paul L. Pascal of Pascal & Weiss representing the licensee.

MR. LI: My name is Ling Li. I am the interpreter.

CHAIRPERSON MILLER: Okay.

MR. NG: My name is Shu Kwan Ng.

CHAIRPERSON MILLER: And are you the owner?

MR. NG: Yes.

CHAIRPERSON MILLER: Okay.

INVESTIGATOR PARKER: My name is

1 ABRA Investigator Vincent Parker.

2 MEMBER ALBERTI: The interpreter's  
3 name again? I'm sorry.

4 MR. LI: Ling Li. My other name  
5 is Edward actually.

6 MEMBER ALBERTI: Okay. But your  
7 last name is Li?

8 MR. LI: Yes.

9 MEMBER ALBERTI: Mr. Li.

10 CHAIRPERSON MILLER: Mr. Li, I'm  
11 just going to swear you in because you're  
12 interpreting.

13 MR. LI: Okay. No problem.

14 CHAIRPERSON MILLER: Do you want  
15 to raise your right hand?

16 MR. LI: All right.

17 CHAIRPERSON MILLER: Do you  
18 solemnly affirm that you will faithfully and  
19 accurately interpret the proceedings in this  
20 manner from -- what is the language?

21 MR. LI: Cantonese.

22 CHAIRPERSON MILLER: Cantonese

1 into English and from English into Cantonese  
2 to the best of your ability?

3 MR. LI: Yes, I do.

4 CHAIRPERSON MILLER: Thank you.

5 MR. LI: Thank you.

6 MR. PASCAL: Madam Chairman, may I  
7 make some preliminary remarks?

8 CHAIRPERSON MILLER: Sure.

9 MR. PASCAL: This is a matter of a  
10 fact finding and the case report notes that  
11 the investigation was initiated by a complaint  
12 from Mike Anderson.

13 The Voluntary Agreement in this  
14 case has a provision in Item No. 13 that says,  
15 "In the event of a violation of the provision  
16 of this agreement, licensee shall be notified  
17 in writing by the persons alleging such  
18 violation and given an opportunity to cure  
19 such violation within 15 days therein."

20 Then it goes on and talks about  
21 notices to the DNA and NAC. Then it says,  
22 "Failure to give notice shall not constitute

1 a waiver or acquiescence to the violation but  
2 notice shall be a prerequisite to the filing  
3 of a complaint with the Board."

4 Mr. Anderson represents the 6th  
5 Street Flats which is a signatory to the  
6 voluntary agreement. At this point in time I  
7 would ask that this matter be dismissed  
8 because, in fact, no letter and no notice was  
9 given. This was confirmed by Mr. Anderson at  
10 a meeting that we had with mediation.

11 Obviously I don't want to go into what took  
12 place in mediation but that question was  
13 raised. I can tell you unequivocally that my  
14 client did not receive that notice.

15 You should also note for the  
16 record that there is a protest hearing  
17 scheduled in this matter, I think, the 29th of  
18 February with the protestant again being Mr.  
19 Anderson's group. I would presume that  
20 whatever you would hear today would probably  
21 be the subject matter of the protest hearing.

22 Based on the voluntary agreement

1 which Mr. Anderson is the party thereto and  
2 the fact that my client was not given the  
3 prerequisite notice, nor given the opportunity  
4 to cure, and he has been sought in the past.

5 For instance, there was a time  
6 when Mr. Anderson talked to him about moving  
7 loiters on and he did take steps to ask  
8 loiters to move away from the store. I would  
9 ask that this matter be dismissed at this  
10 point in time.

11 CHAIRPERSON MILLER: Mr.  
12 Silverstein, do you have a question?

13 MEMBER SILVERSTEIN: I would ask  
14 Counsel is that required in cases where the  
15 law is being broken vis-a-vis the Voluntary  
16 Agreement?

17 MR. PASCAL: My position would be  
18 as if a party not to this agreement contacted  
19 the Board, then the Board could hear the fact  
20 finding hearing but there was a process that  
21 was part of the voluntary agreement that was  
22 negotiated that we were to have an opportunity

1 to do so and we were not given that  
2 opportunity here.

3 The party making the complaint is  
4 the party that's to the agreement. If an  
5 investigator goes by the store on a given time  
6 and sees a violation, certainly that should be  
7 brought to the attention of the Board either  
8 through fact finding or a show cause.

9 This is a process that candidly is  
10 being initiated as part of the protest  
11 process. From what I understand based on  
12 tidbits that I have heard and conversations,  
13 there has been a crescendo of calls that have  
14 come in, I think, leading up to this protest  
15 that is coming up on the 29th. My answer to  
16 you is if a third party or if the investigator  
17 on his own saw a violation, yes, we should be  
18 here however you wanted to handle it.

19 We are here solely today and, if  
20 you look at the case report, it states right  
21 here, this investigation was initiated as the  
22 result of an email complaint received from

1 Mike Anderson. What I'm submitting is the  
2 voluntary agreement is very clear that my  
3 client has a 15-day opportunity to cure.

4 Candidly, if the ANC were to -- I  
5 mean, if the protestants were to sit down with  
6 us and identify people that they don't want in  
7 that store, we would cooperate and do a stay-  
8 away agreement with the Metropolitan Police.  
9 I've actually made that offer.

10 In response to your question, I  
11 believe they did not comply with it and,  
12 therefore, we should have an opportunity to  
13 take steps to comply.

14 MEMBER SILVERSTEIN: So then  
15 Counsel sees no difference between a violation  
16 of the Voluntary Agreement and a violation of  
17 the D.C. Code?

18 MR. PASCAL: We are here today  
19 because of an alleged violation of the  
20 Voluntary Agreement. That is the caption of  
21 the matter on your calendar today, violation  
22 of Voluntary Agreement. I'm submitting to you

1 the Voluntary Agreement has not been violated  
2 because they didn't give the requisite notice  
3 and we didn't have an opportunity to resolve  
4 the issue to avoid all this.

5 MEMBER SILVERSTEIN: Thank you,  
6 Mr. Pascal.

7 MR. PASCAL: You are more than  
8 welcome.

9 CHAIRPERSON MILLER: Are you Mr.  
10 Anderson?

11 MR. ANDERSON: Yes, ma'am. I am.

12 CHAIRPERSON MILLER: You can give  
13 your name fully.

14 MR. ANDERSON: Michael S.  
15 Anderson, ma'am.

16 CHAIRPERSON MILLER: Okay. Can  
17 you speak to the preliminary matter?

18 MR. ANDERSON: My first point to  
19 that, ma'am, would be while the existing  
20 Voluntary Agreement, the one that Mr. Pascal  
21 referenced, I believe signed in 2008 -- 2009,  
22 rather, was between the Downtown Neighborhood

1 Association, the ANC, and a group of residents  
2 at 809 6th Street, N.W., with reference to the  
3 ANC at 6th Street Flats.

4 In an ongoing protest process, I  
5 represent another group of residents down the  
6 line at the same address, 809 6th Street, N.W.  
7 I was not one of the residents represented in  
8 that original Voluntary Agreement that Mr.  
9 Pascal was noting.

10 In fact, I think there is almost a  
11 complete turnover between the residents that  
12 submitted the protest petition so many years  
13 ago resulting in the current Voluntary  
14 Agreement and the residents that I represent  
15 as part of the current protest process at 809  
16 6th Street, N.W.

17 While we do reside at the same  
18 address, I was not -- while I owned a unit at  
19 809 6th Street, N.W. I was actually out of the  
20 country, in Afghanistan for that matter, and  
21 not able to participate in the protest process  
22 last year.

1 I don't know if that -- I don't  
2 believe that necessarily makes me required to  
3 submit anyone else currently involved in our  
4 current protest process with the Voluntary  
5 Agreement that is currently signed.

6 Two, I would point out my  
7 understanding that the violation in terms of  
8 sales of intoxicated persons and persons with  
9 intemperate disposition, my understanding is  
10 that is a violation of the code and not just  
11 the Voluntary Agreement.

12 Further, while we have not --  
13 other than emails to Mr. Pascal or other folks  
14 at his firm, while we haven't given any kind  
15 of formal written letters talking about our  
16 concerns and particular types of violations  
17 that Mr. Parker witnessed, we have  
18 participated in two separate ANC-6C Alcoholic  
19 Beverage license committee meetings where Mr.  
20 Pascal or the owners, or both, were present  
21 where I and other residents in my building got  
22 up and said, "We specifically see these kinds

1 of things. We would like you to stop selling  
2 to these kinds of people."

3 They were present at both those  
4 meetings and saw that. We asked them to kind  
5 of initiate further things I won't go into  
6 here about the concerns we had with activity  
7 associated with our place of business.

8 CHAIRPERSON MILLER: Go ahead.

9 MEMBER SILVERSTEIN: Mr. Anderson,  
10 where were you in April of 2009?

11 MR. ANDERSON: I was in  
12 Afghanistan, sir.

13 MEMBER SILVERSTEIN: Were you then  
14 an officer of any organization involved in the  
15 6th Street Flats?

16 MR. ANDERSON: Other than the 6th  
17 Street Flats Condominium Owners Association I  
18 was a member of as I owned the unit there,  
19 sir, but I wasn't present and wasn't able to  
20 participate in any of the meetings. I was not  
21 an officer of board or anything like that,  
22 sir.

1                   MEMBER SILVERSTEIN: Were you a  
2                   signatory to any protest?

3                   MR. ANDERSON: No, sir. I wasn't  
4                   here.

5                   MEMBER SILVERSTEIN: Are you now a  
6                   member of that organization? Are you now an  
7                   officer in that organization?

8                   MR. ANDERSON: Yes, sir. I am.

9                   MEMBER SILVERSTEIN: An officer?

10                  MR. ANDERSON: Yes, sir, in the  
11                  6th Streets Flats Condominium Association.  
12                  Yes.

13                  MEMBER SILVERSTEIN: Then would  
14                  you not be bound to the notification  
15                  provisions of this as an officer?

16                  MR. ANDERSON: Sir, my  
17                  understanding would be that the Condominium  
18                  Owners Association was not actually a party to  
19                  the original voluntary agreement. It was a  
20                  group of residents referred to as the 6th  
21                  Street Flats. It was a group of five  
22                  residents of which I was not one, and neither

1 of the current folks involved in the current  
2 protest hearing.

3 MR. PASCAL: Well, a condo  
4 association can't by definition be a  
5 protestant. This is signed on behalf of the  
6 6th Street Flats residents. If we were to go  
7 to amend this agreement, we would certainly  
8 still have to go to that group.

9 Of if we were to try to seek to  
10 terminate it as some point in time when we  
11 could, they would be parties of it. As a  
12 matter of fact, if you look on the internet,  
13 Mr. Anderson posted this. "Chinatown Market  
14 has recently applied to renew their business  
15 license.

16 My condo association 6th Street  
17 Flats, 806 6th Street, is now protesting their  
18 application. We would like to get as much  
19 input..." He is clearly acting behind the  
20 Flats and the residents are, in a sense, part  
21 of the -- there is a condo association but  
22 technically, as you know, the condo

1 association doesn't have standing.

2 As a matter of fact, I would  
3 almost want to file a motion to dismiss them  
4 based on the fact that they are the alter ego  
5 for the condo association, but that's another  
6 issue.

7 MEMBER SILVERSTEIN: Thank you,  
8 Mr. Pascal.

9 MR. PASCAL: You're welcome.

10 CHAIRPERSON MILLER: The 6th  
11 Street Flats, how many units are there?

12 MR. ANDERSON: There are 30,  
13 ma'am.

14 CHAIRPERSON MILLER: There are 30?

15 MR. ANDERSON: Yes, ma'am.

16 CHAIRPERSON MILLER: Are you aware  
17 that in 2009 -- it's condominium or is it  
18 apartment rental?

19 MR. ANDERSON: They are  
20 condominiums and about half of those are  
21 rentals.

22 CHAIRPERSON MILLER: So it's half

1 and half.

2 MR. ANDERSON: Yes, ma'am.

3 CHAIRPERSON MILLER: Did the units  
4 have to sign on to authorize participation in  
5 this Voluntary Agreement? Do you remember  
6 back then?

7 MR. ANDERSON: I wasn't physically  
8 here, ma'am at that time. My understanding --  
9 I can't say for certain. My understanding is  
10 that a group of, I believe, five or six  
11 residents who actually live in the building,  
12 about half of those were owners and about half  
13 of those were tenants, formed a group that  
14 filed a protest back in 2008/2009.

15 CHAIRPERSON MILLER: How about  
16 now? How is being organized? I mean, when we  
17 read 6th Street Flats residents, I don't know  
18 if they are participating with that name again  
19 or --

20 MR. ANDERSON: Yes, ma'am. It  
21 shows that name again, the name of the  
22 building.

1 CHAIRPERSON MILLER: Okay.

2 MR. ANDERSON: I believe we had 12  
3 residents sign the petition that was  
4 submitted. Last year I think we had like 30  
5 residents sign the petition that was submitted  
6 and 12 showed up at the roll call hearing.

7 To be honest, ma'am, I don't know  
8 off the top of my head what is the breakdown  
9 between owners and tenants. The only thing I  
10 think I've been told there is no actual  
11 overlap between the first group of folks and  
12 the current group.

13 CHAIRPERSON MILLER: Okay. My  
14 question really goes to some of the unit  
15 holders being party here and some not to the  
16 protest like last time but not everybody.  
17 Isn't that your point that everybody is a  
18 party to this?

19 MR. ANDERSON: No, not the entire  
20 -- you know, we don't have every owner or  
21 every tenant because some were out of town,  
22 some we weren't able to get hold of, some

1 didn't respond to the bulletin board we posted  
2 up in our building.

3 CHAIRPERSON MILLER: Okay. Is it  
4 your position that you are involved with the  
5 protest now? You are here and you are going  
6 to be party to that but in 2009 you weren't  
7 because you were in Afghanistan?

8 MR. ANDERSON: Yes, ma'am. I  
9 heard about it. I heard about it late. I  
10 tried to submit a letter and send it but my  
11 understanding was it got here too late.

12 CHAIRPERSON MILLER: Is it your  
13 position that as an officer now for the 6th  
14 Street Flats you don't represent whoever was  
15 a party in 4009 on the Voluntary Agreement  
16 even though you are an officer?

17 MR. ANDERSON: By that do you  
18 mean, ma'am, that there is a separation  
19 between the group of residents who filed the  
20 protest in 2008 and the condominium  
21 association? Is that what you mean, ma'am?

22 CHAIRPERSON MILLER: My question

1 is you said that in 2009 -- I think it was 9.  
2 That's the agreement we have in front of us,  
3 April.

4 MR. ANDERSON: Yes, ma'am.

5 CHAIRPERSON MILLER: But you were  
6 in Afghanistan. You weren't a party to this.

7 MR. ANDERSON: That's correct,  
8 ma'am.

9 CHAIRPERSON MILLER: Now that you  
10 are back as an officer, do you have any  
11 responsibilities with respect to this  
12 voluntary agreement since you're an officer?

13 MR. ANDERSON: My understanding,  
14 ma'am, as it has been explained to me, is that  
15 our condominium association -- which I'm the  
16 officer of. That is the only thing I'm an  
17 officer of --

18 CHAIRPERSON MILLER: Okay.

19 MR. ANDERSON: -- has no standing  
20 in any kind of protest whatsoever. It was a  
21 group of residents who were separate and  
22 opposed -- separate and distinct, I guess,

1 from the group of residents who filed the  
2 protest. Obviously there is overlap.  
3 Obviously the people are still in the same  
4 building. We have the same -- we have aligned  
5 interests.

6 CHAIRPERSON MILLER: Okay. I  
7 understand.

8 MR. PASCAL: It's hard for me to  
9 see how he wants to disavowal his  
10 responsibilities under this agreement when in  
11 essence this is the only party acting now  
12 because DNA is not a part of this ultimate  
13 protest, nor is the adjacent property owner,  
14 nor is the ANC.

15 The only protestants are really  
16 the Flats. The essence of many items in this  
17 Voluntary Agreement really go to this. For  
18 instance, there is a requirement that my  
19 client keep the garden box in front of their  
20 apartment clean. Keep the ally next to their  
21 condo clean. They are the essence.

22 It's hard for me for him to come

1 in and say he's going to try to disavowal the  
2 responsibilities under the Voluntary Agreement  
3 because he certainly could hold us responsible  
4 under the agreement. What I'm saying is it  
5 goes the other way. He had to give us notice.  
6 We didn't get it and, therefore, I  
7 respectfully ask and, like I say, in any event  
8 there is a protest hearing coming up.

9 CHAIRPERSON MILLER: Mr. Alberti.

10 MEMBER ALBERTI: I am a little bit  
11 confused by what I've heard from both parties.  
12 I'm going to read from the current  
13 Voluntary Agreement, make a statement, and  
14 then I want to get the reaction of both  
15 parties to this.

16 This is item 13, Notice and  
17 Opportunity to Cure. It says, "In the event  
18 of a violation of the provision of this  
19 agreement, the licensee shall be notified in  
20 writing by the person alleging such violation  
21 and given an opportunity to cure such  
22 violation within 15 day," etc.

1                   As I read this it says that the  
2 person alleging the violation has to make  
3 notice. It doesn't say the parties to the  
4 Voluntary Agreement have to make notice. This  
5 can be a citizen who has no involvement. As  
6 I read this, it can be a citizen who has no  
7 involvement, is not a party to this  
8 Voluntary Agreement making the allegation and  
9 they have to provide notice.

10                   That is my interpretation based on  
11 a strict reading of this Voluntary Agreement.  
12 I would like to get, Mr. Anderson, first, your  
13 opinion on my view, and then Mr. Pascal's. I  
14 will say -- I'll hold my other comments for  
15 later.

16                   Go ahead, Mr. Anderson.

17                   MR. ANDERSON: Sir, all I would  
18 say is that my understanding going forward was  
19 that the Voluntary Agreement was an agreement  
20 between the signed parties and it applied to  
21 the folks on the signature page. I don't know  
22 how to say it, sir, but I'm not a lawyer and

1 I don't know if and how you can make an  
2 agreement between parties on the signature  
3 page apply to folks outside of those folks who  
4 are signed.

5 MEMBER ALBERTI: Mr. Pascal.

6 MR. PASCAL: There is a limiting  
7 word, Mr. Alberti, and it says, "Protestors  
8 may seek a show cause hearing." I think that  
9 means the parties dealing here because  
10 everyone that has signed this agreement is a  
11 protestor.

12 MEMBER ALBERTI: Okay. So that is  
13 the limiting word later on in that. Thank you  
14 for that --

15 MR. PASCAL: I would concede that  
16 a stranger to these agreements if they picked  
17 up the phone and called ABRA and said,  
18 "There's problems there. Go down and  
19 investigate," I would have no problem.

20 What we have here is we have a  
21 party to this agreement that made the  
22 complaint and he didn't give us an

1 opportunity. That is my position. I think  
2 there is a limiting word there.

3 MEMBER ALBERTI: Thank you, Mr.  
4 Pascal. Part of where I was going, and I  
5 think you hit the nail on the head, is that  
6 generally the Board takes allegations. We  
7 investigate allegations of a Voluntary  
8 Agreement if they have come from people who  
9 are not part of the Voluntary Agreement.  
10 Thank you for that, Mr. Pascal.

11 CHAIRPERSON MILLER: If I  
12 understand Mr. Pascal's point, if he is a  
13 party to the agreement, he needs to go through  
14 these channels. If someone was not a party to  
15 the agreement, like you're saying, may not  
16 need to because they didn't sign this  
17 agreement.

18 MR. PASCAL: That's correct.

19 CHAIRPERSON MILLER: I think  
20 what's at issue here is whether, in fact, Mr.  
21 Anderson is a party to this agreement.

22 MEMBER ALBERTI: May I add one

1 more thing?

2 CHAIRPERSON MILLER: Yes.

3 MEMBER ALBERTI: I think also  
4 what's at issue here is what the Chair just  
5 stated. But also for us to consider is  
6 whether or not what we read in the report is  
7 a violation of the D.C. statute, whether it's  
8 a violation of Title 25. I think that's for  
9 the Board to decide.

10 MR. PASCAL: I'm saying even  
11 arguendo if what you see you can conceive or  
12 perceive as a violation, my client didn't have  
13 the opportunity to deal with it. Therefore,  
14 I don't feel you sort of have jurisdiction in  
15 the sense. Primarily you are here for the  
16 violation of the Voluntary Agreement.

17 That is how this whole thing is  
18 captioned from a due process standpoint. You  
19 want to send your investigator there tomorrow  
20 and he sees a violation, then bring this back.  
21 Or if a stranger calls in. But we're here  
22 today because of an alleged violation of the

1 Voluntary Agreement. That's the caption.

2 That is the essence of this agreement.

3 CHAIRPERSON MILLER: I have two  
4 quick questions for you. One is if the  
5 adjacent property owner changed since 2009,  
6 would you think that the new adjacent property  
7 owner was a party to the agreement or it only  
8 applied to the one that signed it?

9 MR. PASCAL: Probably if there was  
10 a change of ownership, then that new person  
11 wouldn't be part of the agreement. In fact,  
12 I believe the adjacent property owner is the  
13 same owner.

14 CHAIRPERSON MILLER: Okay.

15 MR. PASCAL: Like I say, the only  
16 one that is protesting this year is this group  
17 here.

18 CHAIRPERSON MILLER: I think it's  
19 a question of who the signatories signed on  
20 behalf of.

21 Yes, Mr. Anderson.

22 MR. ANDERSON: Ma'am, if I could

1 just add a quick bit of context. Mr. Pascal  
2 noted that the residents of 6th Street Flats  
3 are the only ones protesting currently. I  
4 would just note that the Downtown Neighborhood  
5 Association did file a protest but the protest  
6 was dismissed for a lack of notice or lack of  
7 minutes and they didn't come to the status  
8 hearing to go over that.

9 I don't know exactly why they  
10 didn't. I know that the ANC-6C Alcohol  
11 Beverage License Committee recommended  
12 unanimously two meetings to the ANC for them  
13 to join the protest.

14 However, at the ANC meeting that  
15 was scheduled whether to vote on it, they  
16 voted unanimously but they didn't have a  
17 quorum and they weren't able to schedule  
18 another time before the deadline. There was  
19 intent for other parties to join the group of  
20 residents currently protesting.

21 CHAIRPERSON MILLER: I have  
22 another question. The 6th Street Flats

1 residents, is that a formal name of something?  
2 Is that the name of the condominium or just  
3 the name of this agreement?

4 MR. ANDERSON: There is no formal  
5 association of the 6th Street Flats residents,  
6 ma'am. We don't have a tenant association.  
7 We don't have a resident association other  
8 than having an informal computer bulletin  
9 board for residents of the building. 6th  
10 Street Flats is just the name of the building.

11 The actual name of the condominium  
12 owner's association is actually a separate  
13 name. It's Chinatown East. That is just the  
14 name of the building. It is clear to  
15 everybody who we are when we use that name.

16 CHAIRPERSON MILLER: How is it  
17 clear?

18 MR. ANDERSON: Meaning that's the  
19 building that everyone in the area knows as  
20 the name of our building now.

21 CHAIRPERSON MILLER: Okay.  
22 Any other questions?

1 Yes, Mr. Jones.

2 MEMBER JONES: Thank you, Madam  
3 Chair.

4 Is your argument that you're  
5 really just one member of a party of five or  
6 a party of five or more? Are you arguing --

7 MR. ANDERSON: For this hearing?

8 MEMBER JONES: For the purposes of  
9 this hearing.

10 MR. ANDERSON: For the purposes of  
11 this hearing I am just -- I wrote ABRA and  
12 actually it was well before -- originally I  
13 wrote ABRA now almost 18 months ago and then  
14 continued.

15 My original complaint that  
16 resulted in Mr. Parker showing up on the 27th,  
17 I believe I wrote that initially now in July  
18 well before the protest was filed. I was  
19 writing as someone who lives there. I have a  
20 son and I'm concerned about activity  
21 associated with the market so I submitted --

22 I tried to get ABRA to take a look

1 at what I thought were sales to intoxicated  
2 persons and sales to persons with intemperate  
3 disposition at the corner. Other residents in  
4 my building called and submitted similar  
5 complaints. I'm just the guy who submitted  
6 the original complaint.

7 MEMBER JONES: So today --

8 MR. ANDERSON: Yes, sir.

9 MEMBER JONES: -- right now are  
10 you an individual member of a party of five or  
11 more or are you representing a specifically  
12 named organization that consist of people that  
13 live at your condominium complex?

14 MR. ANDERSON: As far as I  
15 understand the condominium association has no  
16 standing here with the protest. I'm not  
17 involved in that. In the protest --

18 MEMBER JONES: So you refer to  
19 something as the something something Flats,  
20 something Street Flats?

21 MR. ANDERSON: 6th Street Flats.

22 MEMBER JONES: 6th Street Flats.

1 This entity that you're referring to as the  
2 6th Street Flats, are you here representing  
3 that entity, or are you here representing  
4 yourself who happens to be a member of a group  
5 of protestants that consist of five or more?

6 MR. ANDERSON: The latter, sir.

7 MEMBER JONES: The latter. Okay.

8 Thank you.

9 Thank you, Madam Chair.

10 MR. ANDERSON: Sorry. I didn't  
11 understand the question the first time.

12 MEMBER JONES: Not a problem.

13 CHAIRPERSON MILLER: Did you have  
14 a copy of the Voluntary Agreement when you  
15 called ABRA?

16 MR. ANDERSON: I had seen the  
17 Voluntary Agreement before but I had not -- to  
18 be honest, ma'am, I hadn't looked at it in  
19 great detail or looked at it recently in great  
20 detail until we began, the fellow residents  
21 and I, began to look kind of at filing a  
22 protest closer into September.

1                   CHAIRPERSON MILLER: Did it occur  
2 to you that maybe you should contact the  
3 licensee first and give them an opportunity to  
4 cure?

5                   MR. ANDERSON: Certainly I  
6 understand that. Yes, ma'am. We did -- we  
7 went also concurrently to our ANC and then  
8 they brought up the -- our single member  
9 representative ANC-6C-09 agreed to bring it up  
10 at the next Alcohol Beverage License Committee  
11 meeting which was in July.

12                   They invited the proprietors of  
13 Chinatown Market to go there. We went up  
14 there and laid out what we saw were the  
15 issues. I understand that did not kind of pro  
16 forma fit what was in the words of the  
17 Voluntary Agreement but I do feel that is a  
18 reasonable amount of notice.

19                   That was at two meetings we kind  
20 of wrote out what we were doing and both times  
21 we said we wanted to work with the proprietors  
22 if they had ideas of how they could change

1 their business practices so we wouldn't have  
2 these issues. We just haven't heard any  
3 proposals from them yet on that.

4 CHAIRPERSON MILLER: In two  
5 meetings you wrote something out or you just  
6 verbally addressed it?

7 MR. ANDERSON: It was all oral  
8 testimony, ma'am. I believe there were  
9 minutes that were wrote out as well. They  
10 were emailed to me and I believe emailed to  
11 the other party.

12 CHAIRPERSON MILLER: And the  
13 licensee was present?

14 MR. ANDERSON: The licensees --  
15 pardon my memory, ma'am, but I believe the  
16 licensees were present at the July meeting and  
17 then later on a meeting in I believe it might  
18 have been November or October. Both the  
19 licensees and Mr. Pascal were present.

20 MR. PASCAL: I think it's  
21 significant in his answer, and I appreciate  
22 his candor, that they were focusing on this in

1 September as they were preparing, and this  
2 complaint is dated October so he saw the VA  
3 agreement. He would have to know what was in  
4 it. He could have sent the letter and we  
5 could have dealt with it.

6 CHAIRPERSON MILLER: But you were  
7 at the meeting where this was being raised?

8 MR. PASCAL: That was an ANC  
9 meeting, the ABC Committee of the ANC, and I  
10 was invited to go there and I made a  
11 presentation on behalf of that. That was  
12 addressed to the ANC and I had no idea  
13 candidly that he was making a series of phone  
14 calls to the investigators until I picked up  
15 the language during different meetings that he  
16 was making these complaints.

17 CHAIRPERSON MILLER: But you heard  
18 the complaint that is at issue today at those  
19 meetings?

20 MR. PASCAL: I probably was aware  
21 because I think he stood up and made a  
22 presentation. Still, as part of his

1 presentation, to the best of my recollection,  
2 he said that when he communicated with my  
3 clients, I think, last July about loitering,  
4 he conceded that my client took immediate  
5 steps to deal with it and asked people to move  
6 on.

7           There was a positive response from  
8 my client. Had we gotten the notice, we would  
9 have sat down with them and see what we could  
10 work out. The fact is the notice wasn't  
11 given. It was required to be given. I think  
12 from the sense it's a jurisdictional issue, to  
13 look at this issue based on what the facts are  
14 in front of you.

15           MR. ANDERSON: Ma'am, just to  
16 clarify, I did originally submit the calls and  
17 complaints back in the summer of 2010 and the  
18 summer of 2011. It was June or July of my  
19 initial emails. I wasn't getting any kind of  
20 callbacks or response from calls to the ABRA  
21 line.

22           Someone from Counsel Member Evans'

1 staff, I think, gave me Craig Stewart's email  
2 in both the summer of 2010 and 2011. I wrote  
3 emails as to the problem. This is before  
4 September just to clarify that.

5 CHAIRPERSON MILLER: Okay.

6 Other questions? Okay. I would  
7 suggest we take a short recess and think about  
8 this, look at the documents again.

9 I'm going to read the instructions  
10 our closed meeting. As Chairperson of the  
11 Alcoholic Beverage Control Board for the  
12 District of Columbia and in accordance with  
13 Section 405 of the Open Meetings Amendment Act  
14 of 2010, I move that the ABC Board hold a  
15 closed meeting for the purpose of seeking  
16 legal advice from our counsel on case #11-CMP-  
17 00468, Chinatown Market, per Section 405(b)(4)  
18 of the Open Meetings Amendment Act of 2010 and  
19 deliberating upon the same case 11-CMP-00468,  
20 for the reasons cited in 405(b)(13) of the  
21 Open Meetings Amendment Act of 2010.

22 Is there a second?

1 MEMBER NOPHLIN: Second.

2 CHAIRPERSON MILLER: I'm going to  
3 poll the Board.

4 Mr. Nophlin.

5 MEMBER NOPHLIN: I agree.

6 CHAIRPERSON MILLER: Mr. Brooks.

7 MEMBER BROOKS: I agree.

8 CHAIRPERSON MILLER: Mr. Alberti.

9 MEMBER ALBERTI: I agree.

10 CHAIRPERSON MILLER: Ms. Miller, I  
11 agree.

12 Mr. Silverstein.

13 MEMBER SILVERSTEIN: I agree.

14 CHAIRPERSON MILLER: Ms. Mobley.

15 MEMBER MOBLEY: I agree.

16 CHAIRPERSON MILLER: Mr. Jones.

17 MEMBER JONES: I agree.

18 CHAIRPERSON MILLER: Okay. The  
19 vote is seven zero to go into closed meeting.  
20 We'll adjourn right now and we'll be back  
21 shortly.

22 If you all want to take a break

1 for at least 10 minutes, you are welcome to do  
2 so.

3 (Whereupon, at 3:03 p.m. off the  
4 record until 3:32 p.m.)

5 CHAIRPERSON MILLER: Okay. We are  
6 back on the record. I believe what we have  
7 before us is a motion by Mr. Pascal, who is  
8 the attorney for the licensee, that this fact  
9 finding hearing be dismissed, if I understand  
10 it, on the grounds that Mr. Anderson, who is  
11 a witness in this fact finding hearing, failed  
12 to provide him notice of what is being  
13 complained of here.

14 I would move that we deny the  
15 motion based on what we heard before in  
16 arguments and also looking back at the case  
17 report. I don't think it's established that  
18 Mr. Anderson was a party to the Voluntary  
19 Agreement that was signed in 2009.

20 As I look at the case report, the  
21 email that he sent did not specifically  
22 alleged a violation of the Voluntary Agreement

1 but, in fact, brought facts to ABRA's  
2 attention that he was concerned about.  
3 Therefore, I don't think he was required to  
4 provide the type of notice that Mr. Pascal  
5 says he was in order for us to have this fact  
6 finding hearing. I would move that and ask  
7 for a second and then open it up to further  
8 discussion.

9 Do I have a second?

10 MEMBER NOPHLIN: Second.

11 CHAIRPERSON MILLER: Okay. Is  
12 there further discussion?

13 MEMBER ALBERTI: Madam Chair.

14 CHAIRPERSON MILLER: Yes, Mr.  
15 Alberti.

16 MEMBER ALBERTI: I'm leaning  
17 towards concluding that this is not a  
18 violation, does not rise to being a violation  
19 of the VA because proper notice was not given.  
20 However, I'm going to vote in favor of the  
21 motion because I think based on the  
22 information that's in this report, which we

1 cannot ignore, we need to investigate whether  
2 or not there is a violation of D.C. code.

3 I don't think just because this  
4 was brought to us in the form of an accusation  
5 that is a violation of the VA that we can  
6 ignore the facts in this Investigative Report.  
7 For that reason I'm going to vote in favor of  
8 the motion.

9 CHAIRPERSON MILLER: Any other  
10 comments? Okay. All those in favor say aye.

11 BOARD MEMBERS: Aye.

12 CHAIRPERSON MILLER: All those  
13 opposed? All those abstaining? Okay. The  
14 vote is seven to zero to deny the motion. We  
15 will go forward with the fact finding hearing.

16 INVESTIGATOR PARKER: Good  
17 afternoon, Board Members. Like I stated, I'm  
18 Investigator Vincent Parker. I'm here  
19 presenting case 11-CMP-00468.

20 As was previously stated, this  
21 investigation was initiated as a result of an  
22 email from Mr. Anderson. The email, and I'll

1 read, states, "Request ABRA investigators take  
2 a close look at alcohol sales by Chinatown  
3 Market that take place between 9:15 a.m. and  
4 10:00 a.m. every day, particularly Saturdays  
5 and Sundays.

6 For the last several months I and  
7 several of my neighbors have witnessed the  
8 proprietors of the Chinatown Market standing  
9 at the front door of the store, not at the  
10 counter, sell single containers of beer, malt,  
11 ale beverages to vagrants that line up at that  
12 time.

13 We have also seen the proprietors  
14 assist those vagrants in pooling their cash so  
15 they can buy two or three 24-ounce containers  
16 of beer and malt liquor and then split the  
17 purchase circumventing the single sales ban.  
18 Please let me know if and when ABRA  
19 investigators examine Chinatown Market's  
20 morning sales activity. Thanks much."

21 Upon receiving the complaint from  
22 Mr. Anderson, which was one of numerous

1 complaints, I'll say, I reviewed ABRA records  
2 and determined that Chinatown Market's hours  
3 of operation begin at 9:00 a.m. Therefore,  
4 selling alcohol between 9:15 and 10:00 a.m. is  
5 not a violation.

6 I reviewed the file. I attached a  
7 copy of the establishment's ABC license, as  
8 well as, I believe, their initial placard  
9 posting which stated that they are allowed to  
10 operate at 9:00 a.m. Again, selling between  
11 9:15 and 10:00 was not a violation.

12 Also after receiving the complaint  
13 from Mr. Anderson, I began to monitor the  
14 establishment. The next day on October 27,  
15 2011 at approximately 1:45 p.m. until 3:00  
16 p.m. I went to the establishment and  
17 monitored.

18 I initially monitored from the  
19 vehicle parked across H Street. I then got  
20 out of the vehicle and stood on the corner  
21 near the lamp post directly near the front  
22 door of the establishment. While standing at

1 the establishment in that position I observed  
2 male individuals who appeared to be vagrant  
3 loitering on the corner of 6th and H Street,  
4 N.W.

5 I determined that these men were  
6 vagrants because they were begging people for  
7 money. They were digging in the trash cans  
8 and asking people who walked by for food or  
9 money. I observed these individuals pool  
10 their money -- I observed these individuals  
11 attempting to pool their money to purchase  
12 alcoholic beverages from Chinatown Market.

13 I also observed a female get off  
14 the bus. There is a bus stop directly at the  
15 front door of the establishment. During the  
16 extended monitoring period I was able to  
17 determine what patrons were loitering at the  
18 establishment and which patrons were standing  
19 at the bus stop.

20 This female patron got off the  
21 Metrobus. When she got off the bus she  
22 appeared to be mentally disabled because she

1 was screaming obscenities and talking to  
2 herself very loudly as she entered the  
3 establishment.

4 The female patron, photographed in  
5 my report, entered the establishment and then  
6 a few minutes later exited the establishment  
7 with a two-pack of Miller Genuine Draft Beer.  
8 That is photographed in Exhibit 5 and 6.

9 For much of the time I was outside  
10 of the Chinatown Market I observed a female --  
11 a different female in what I considered to be  
12 a semi-conscious state near Chinatown Market.  
13 The female was approximately two doors down  
14 from Chinatown Market. I have a video here  
15 which I'll go over.

16 She was approximately two doors  
17 down from the establishment in a semi-  
18 conscious state. The female was bent over  
19 from the waist with her head near her ankles  
20 and remained in that position for  
21 approximately 30 minutes. The female wasn't  
22 responding and wasn't conscious.

1                   My first interaction with the  
2                   female was I approached her and when I  
3                   observed her state, I immediately called 311  
4                   as opposed to 911. 311 directed me to call  
5                   911 which I did. I was informed by the  
6                   officer, or the person that answered the  
7                   phone, that there wouldn't be any response.

8                   My next action was to capture a  
9                   video of the woman's state just to help better  
10                  describe the female's condition. Like I  
11                  stated, she remained in that position for  
12                  approximately 30 minutes.

13                  A lot of things were happening  
14                  when this woman -- people were walking down  
15                  the sidewalk bumping into her or pushing past  
16                  her. Some people actually tried to offer her  
17                  assistance but she remained in the complete  
18                  bent-over position unconscious and didn't  
19                  move.

20                  Subsequent to this when I returned  
21                  to the office -- before that. Excuse me.  
22                  After the woman came to, I guess is the best

1 way I can describe it, out of your unconscious  
2 state, or semi-conscious state, she gathered  
3 her things still appearing to be under the  
4 influence of some foreign substance. She  
5 gathered her things and walked inside  
6 Chinatown Market.

7 I followed the female into  
8 Chinatown Market. She made a sharp right and  
9 went to the rear coolers of the establishment.  
10 I, too, made the right and went to the coolers  
11 of the establishment. She removed a Mad Dog  
12 wine cooler from the establishment, 375 ml,  
13 the smaller bottle.

14 I observed her remove the bottle.  
15 She then made a left to go towards the  
16 cashier. I made the left also. I caught eye  
17 contact with who I believe to be the owner's  
18 son. Then I turned around and left the  
19 establishment as I've been at the  
20 establishment before and figured he may  
21 recognize me.

22 I left the establishment. I went

1 back to my position at the light post directly  
2 outside. The female exited the establishment  
3 with the Mad Dog wine cooler and placed it  
4 into her bag and then walked away from the  
5 establishment. I have a photograph of her  
6 leaving. I don't have a photograph of her  
7 putting the Mad Dog into her purse but I  
8 observed her do so.

9 After I left the establishment,  
10 like I said, I returned to the office and I  
11 conducted internet research to determine some  
12 type of theory of the female's semi-conscious  
13 state. Numerous internet sources stated that  
14 is a common symptom of someone being on the  
15 nod which is a common term used for someone  
16 using heroin. The descriptions are --

17 MR. PASCAL: May I object to that  
18 because I think that is extraneous. I don't  
19 know that she has developed a predicate of  
20 what his knowledge is of people under some  
21 influence of drugs or what have you. I think  
22 it is beyond the scope of what should be

1 testified to here.

2 CHAIRPERSON MILLER: But I  
3 understand that he's explaining where his  
4 knowledge is coming from. Right? It's not  
5 that --

6 INVESTIGATOR PARKER: Yes, ma'am.  
7 I'm not saying --

8 CHAIRPERSON MILLER: -- he's an  
9 authority on it.

10 INVESTIGATOR PARKER: The symptoms  
11 described by the National Institute on Drug  
12 Abuse and the opioids.com explained the  
13 condition. I made the determination that  
14 these were, in fact, the symptoms.

15 The symptoms which I observed the  
16 lady exhibiting were consistent with some of  
17 the things mentioned on numerous sources  
18 including the National Institute on Drug Abuse  
19 and opioids.com. That being she was in a  
20 semi-conscious state.

21 She was standing -- technically  
22 she was standing but she was bent over at her

1 waist as if to touch her toes but was not  
2 responding or moving to any passersby and  
3 remained in that same position for 30 minutes  
4 approximately.

5 When she got up she was, like I  
6 said, somewhat out of it. She appeared drowsy  
7 is the way I can describe it. It could be  
8 determined to be under the influence of some  
9 substance.

10 After I observed that, like I  
11 said, I have a video here. I also just want  
12 to say, it's already been discussed, that  
13 Chinatown Market has a VA on file with ABRA  
14 which states, "The licensee shall not directly  
15 or indirectly knowingly sell or deliver  
16 alcoholic beverages to any intoxicated person  
17 or to any persons of intemperate habits or to  
18 any person who appears to be intoxicated."

19 The word intemperate habits as  
20 well as, I believe, in Title 25 -- Official  
21 Code 25-781, I believe the wording is  
22 notoriously intemperate habits, whereas in the

1 VA I think it just says intemperate.

2           There are two errors in the report  
3 which I would like to address. First thing on  
4 the first line of page 1 it says date of  
5 occurrence. The date of occurrence should be  
6 October 26 to go with the date I visited the  
7 establishment. Also in the summary section,  
8 line 3, the violation is of D.C. Official Code  
9 25-781 as opposed to 821.

10           If I may, I would like to show a  
11 brief video that is approximately 30 seconds  
12 long of the female in the state that I  
13 described.

14           MR. PASCAL: What is the date of  
15 the violation?

16           INVESTIGATOR PARKER: October 26,  
17 2011.

18           MR. PASCAL: And then the  
19 violation of the code?

20           INVESTIGATOR PARKER: It's the  
21 same thing, October 26.

22           MR. PASCAL: You said a code

1 number, 831 --

2 INVESTIGATOR PARKER: It should be  
3 781 as opposed to 821. Just as a point of  
4 reference, if you look at Exhibit 5, the  
5 photograph of the female I described, the  
6 first female entering the establishment, to  
7 the right of the female you'll see a white  
8 sign that says Capitol Hemp. That sign is  
9 also visible here on the surveillance footage.  
10 This shows the point of reference of where I  
11 was officially --

12 CHAIRPERSON MILLER: We can really  
13 see.

14 INVESTIGATOR PARKER: Yes. We'll  
15 turn the lights back on.

16 So Exhibit 5, like I said, this is  
17 me standing at the light post. On the right  
18 of the female you're see that there is a  
19 Capitol Hemp sign. This is the same Capitol  
20 Hemp sign here. The door of Chinatown Market  
21 is where the female in Exhibit 5 is entering.

22 Like I said, it's only a 20-second

1 video that shows the state of the female.

2 (Whereupon, the video was played.)

3 INVESTIGATOR PARKER: It's just on  
4 a loop. I can play it again if you want to  
5 see.

6 Then if you'll look at Exhibit 11,  
7 Exhibit 11 is the photograph of this female  
8 existing the establishment after she has  
9 placed the MD into her purse or bag, that blue  
10 bag that is hanging right there on the  
11 railing.

12 One thing I'll also add is that  
13 during the course of my monitoring of the  
14 establishment, the owner of the establishment  
15 did come outside. I was there for over an  
16 hour and at least on one occasion I heard him  
17 ask people to get out of here or move away  
18 from the establishment.

19 The people who were loitering at  
20 the establishment they didn't listen but he  
21 did make at least one attempt. He came  
22 outside on numerous occasions while I was

1 there to sweep up. There was one time he  
2 swept up. I think there was another time he  
3 may have taken something to the trash. That  
4 concluded my investigation.

5 CHAIRPERSON MILLER: Thank you.  
6 Did 911 ever respond?

7 INVESTIGATOR PARKER: No, they  
8 didn't.

9 CHAIRPERSON MILLER: Mr. Alberti.

10 MEMBER ALBERTI: Investigator  
11 Parker, aside from this woman here, did you  
12 witness anyone else being served who you  
13 thought was visibly inebriated on some drug or  
14 other?

15 INVESTIGATOR PARKER: The  
16 female --

17 MEMBER ALBERTI: Alcohol being a  
18 drug.

19 INVESTIGATOR PARKER: In Exhibits  
20 5 and 6 I was unsure if she was under the  
21 influence of drugs but she was definitely not  
22 a normal brain or she was acting erratically.

1 I didn't get close enough to her. Her visit  
2 to the establishment was very quick. She went  
3 in and a two-pack and left.

4 As she was getting off the bus she  
5 was shouting obscenities, screaming at  
6 herself, no one in general. No one was around  
7 her. She was by herself. She was screaming  
8 and yelling and then walked into the  
9 establishment. I couldn't say that she was  
10 under the influence of any drug or any  
11 substance but I can say that her behavior was  
12 quite erratic.

13 The males who were loitering,  
14 determined to be vagrants by their actions,  
15 they weren't acting in a manner that was  
16 consistent with what I would consider to be  
17 highly intoxicated or under the influence of  
18 any drugs. They did pool their money and  
19 purchased alcohol, and that's Exhibit 4.

20 MEMBER ALBERTI: This woman you  
21 believe was on the nod, she was out there for  
22 about a half hour?

1 INVESTIGATOR PARKER: Yes, sir.

2 MEMBER ALBERTI: Do you have any  
3 knowledge of whether the owner was aware of  
4 her presence out there?

5 INVESTIGATOR PARKER: I don't know  
6 if the owner is aware of her presence. The  
7 owner, like I said, came out of the  
8 establishment while she was on the nod, or  
9 while she was in this position. Then he came  
10 out for numerous reasons. One time was to  
11 take trash out and another time, like I said,  
12 was to ask the loiterers on the side of the  
13 building here --

14 MEMBER ALBERTI: So he came out  
15 while she was there?

16 INVESTIGATOR PARKER: Yes.

17 MEMBER ALBERTI: At least on two  
18 occasions?

19 INVESTIGATOR PARKER: At least two  
20 occasions.

21 MEMBER ALBERTI: Okay. And where  
22 was she standing in relationship to the front

1 door?

2 INVESTIGATOR PARKER: She was  
3 standing, I would say, in front of the  
4 neighboring establishment. The best way I can  
5 describe it is by the photograph here, Exhibit  
6 5, the photograph of the other woman entering  
7 the store. In the background of that picture  
8 you see the white Capital Hemp sign?

9 MEMBER ALBERTI: Yes.

10 INVESTIGATOR PARKER: That sign is  
11 pictured. When I took the video of the female  
12 in this position, I was standing basically at  
13 the front door of Chinatown Market, or a  
14 little past the front door of the  
15 establishment.

16 MEMBER ALBERTI: In your  
17 assessment do you believe that the owner saw  
18 her standing there?

19 INVESTIGATOR PARKER: I'm unsure  
20 if he saw her. I'm sure when she entered the  
21 store she was -- I don't know the appropriate  
22 term to use but she was not sober.

1                   MEMBER ALBERTI:   And that was  
2                   obvious to you that she was not sober when she  
3                   walked in?

4                   INVESTIGATOR PARKER:   Yes, sir.

5                   MEMBER ALBERTI:   Okay.   That was  
6                   going to be my next question.   Did you notice  
7                   anything that would make you believe that she  
8                   was known to the owner, had been there before?

9                   INVESTIGATOR PARKER:   No.   There  
10                  was no evidence that he had dealt with her  
11                  before.   The relationship he had with some of  
12                  the males, who I determined to be vagrants by  
13                  their actions, it was obvious that he had  
14                  dealings with them in the past.   This female  
15                  I didn't hear the owner himself have any  
16                  conversations with her.

17                  MEMBER ALBERTI:   When she walked  
18                  in, I'm trying to get a picture of whether she  
19                  was familiar with the interior of the  
20                  establishment.   When she walked in did she  
21                  look around and try to figure out where the  
22                  product that she wanted, or did she go

1 directly to it?

2 INVESTIGATOR PARKER: The  
3 establishment is very small. From the door of  
4 the establishment you can see the cooler if  
5 you just look to the right. I guess there  
6 were a few isles of grocery merchandise but  
7 the store is small itself so she went in. I  
8 was not very close behind her but I was behind  
9 her. She made a straight line to the cooler.

10 MEMBER ALBERTI: Okay. So she  
11 made the shortest route to the cooler I'd say?

12 INVESTIGATOR PARKER: Yes, sir.

13 MEMBER ALBERTI: I have no further  
14 questions.

15 CHAIRPERSON MILLER: Yes, Mr.  
16 Nophlin.

17 MEMBER NOPHLIN: Investigator  
18 Parker, I hate to ask this question. How  
19 close were you to this lady would you say?

20 INVESTIGATOR PARKER: Throughout  
21 the time that I was at the establishment I got  
22 close to her when I went to look at her to see

1 if -- you know, to check on her. I got much  
2 closer than the video shows. When she entered  
3 the store, I was approximately, I guess, five  
4 feet behind her so it did look like we were  
5 together.

6 MEMBER NOPHLIN: The second part  
7 of that question is could you smell alcohol?  
8 Did you sense the fact that she was  
9 inebriated?

10 INVESTIGATOR PARKER: I didn't  
11 smell any alcohol, sir, no. I got the  
12 impression that she was under the influence of  
13 some narcotic substance.

14 MEMBER NOPHLIN: She couldn't have  
15 been sick?

16 INVESTIGATOR PARKER: Yes, sir.  
17 That's possible. Like I said, it's possible  
18 she was sick. I can't make a medical  
19 determination. I didn't try to evaluate her  
20 condition. All I can say is her condition in  
21 that prone position, bent over like that for  
22 that period of time. Then when she stood up

1 eventually -- it took her a while to  
2 eventually stand up.

3           Once she did stand up to gather  
4 her purse, or that blue bag hanging there, and  
5 get herself walking, she appeared to have a  
6 hard time. Like I said, it was consistent  
7 with what I've seen as someone who is under  
8 the influence of a substance. I didn't smell  
9 any alcohol, sir.

10           MEMBER NOPHLIN: Thank you.

11           Thank you, Madam Chair.

12           CHAIRPERSON MILLER: I just want  
13 to clarify. You might have said this but in  
14 your summary you said that the vagrant  
15 citizens were displaying intemperate habits.  
16 I was just wondering if you could explain what  
17 you meant by that.

18           Do you see where I -- it's in the  
19 next to the last line of your summary of the  
20 case report. "Additionally, vagrant citizens  
21 displaying intemperate habits were observed  
22 combining their money for the purpose of

1 purchasing beer."

2 INVESTIGATOR PARKER: Yes, I  
3 believe that is an error. The vagrant  
4 citizens as described in this report are the  
5 males photographed in Exhibit 4 primarily.  
6 Those are the only males that I could classify  
7 as vagrant based on their actions being that  
8 they were begging. They didn't display the  
9 actions which I would consider to be  
10 intemperate.

11 CHAIRPERSON MILLER: Okay.

12 INVESTIGATOR PARKER: Intemperate  
13 habits, I believe, was addressed to the female  
14 photographed in No. 11.

15 CHAIRPERSON MILLER: Thank you.

16 Other Board questions?

17 Mr. Pascal, do you have any  
18 questions?

19 MR. PASCAL: Just --

20 CHAIRPERSON MILLER: We'll get  
21 back to you for statements but do you have any  
22 questions at this time?

1                   MR. PASCAL: Just to clarify, you  
2                   noted that he came out and asked people to  
3                   move away and also to sweep, but you don't  
4                   know specifically whether he observed her  
5                   because from what you've testified, the bigger  
6                   area on that corner is more to the right and  
7                   this woman was up to the left in the building  
8                   next door?

9                   INVESTIGATOR PARKER: When you  
10                  come out, the door is actually pretty much  
11                  directly on the corner. When you come out you  
12                  can go up H or you can make a right and kind  
13                  of go down 5th or --

14                  MR. PASCAL: 6th.

15                  INVESTIGATOR PARKER: 6th. Yeah,  
16                  you can go down 6th. Where he came out the  
17                  trash can you'll see in Exhibit 4, the second  
18                  picture, is on 6th Street and that's where the  
19                  vagrants were congregating so on his way to  
20                  the trash can or in some other capacity he  
21                  asks the vagrants, the photo in Exhibit 4, to  
22                  move along.

1 MR. PASCAL: Because that's the  
2 opposite direction where she was?

3 INVESTIGATOR PARKER: Yes.

4 MR. PASCAL: Okay. Now, was she  
5 bent over in the store?

6 INVESTIGATOR PARKER: No, sir.

7 MR. PASCAL: You said that she  
8 gathered herself together. She got herself up  
9 and was able to walk in without any  
10 difficulty.

11 INVESTIGATOR PARKER: I don't know  
12 about without difficulty, sir. I wouldn't say  
13 without difficulty.

14 MR. PASCAL: Was she screaming in  
15 the store?

16 INVESTIGATOR PARKER: No, she  
17 wasn't. The female photographed in the other  
18 exhibit was screaming right at the front door  
19 of the store before she entered.

20 MR. PASCAL: Before she entered.  
21 And you said you did not smell an odor on  
22 either one of these ladies?

1                   INVESTIGATOR PARKER:  No, I did  
2                   not.

3                   MR. PASCAL:  Is it possible -- you  
4                   did some research into causes and effects of  
5                   people that may have been on narcotics, but is  
6                   it possible that she may have had a stomach  
7                   disorder and was bent over because of a  
8                   stomach disorder?

9                   INVESTIGATOR PARKER:  It sure is  
10                  possible, sir.

11                  MR. PASCAL:  And you say the  
12                  vagrants that you saw that he asked to move  
13                  away, they were not intemperate or  
14                  intoxicated?

15                  INVESTIGATOR PARKER:  They did not  
16                  appear intoxicated.

17                  MR. PASCAL:  So they were merely  
18                  exercising whatever rights they may have to  
19                  stand on the corner and congregate?

20                  CHAIRPERSON MILLER:  Oh, you're  
21                  asking?

22                  MR. PASCAL:  Yes.

1                   INVESTIGATOR PARKER: Oh, yeah,  
2 they were standing on the corner. They were  
3 standing there together.

4                   MR. PASCAL: Okay. Thank you very  
5 much.

6                   CHAIRPERSON MILLER: Mr. Anderson,  
7 are you going to be testifying?

8                   MR. ANDERSON: I'm sorry, ma'am?

9                   CHAIRPERSON MILLER: I mean, not  
10 testifying. Are you going to -- do you have  
11 anything you wish to say?

12                   MR. ANDERSON: The only thing I  
13 would say, ma'am, not to drag this out, when  
14 I asked Ms. Walker if I could come, I just  
15 wanted to convey and let the Board know that  
16 (1) myself and my neighbors have witnessed --

17                   MR. PASCAL: I hate to interrupt,  
18 especially Major Miller -- I mean, Anderson.  
19 We've had a nice conversation but I think his  
20 comments have to be addressed to the fact  
21 finding today. He is going to have a forum in  
22 five weeks from now for a protest. I really

1 -- unless he can add comments about this  
2 specific episode --

3 CHAIRPERSON MILLER: That's true.

4 MR. PASCAL: -- I don't think they  
5 have any bearing on this hearing.

6 CHAIRPERSON MILLER: That's true.  
7 That's true. I'm sorry. Mr. Pascal has a  
8 point.

9 MR. ANDERSON: I'm sorry, ma'am.

10 CHAIRPERSON MILLER: That's all  
11 right.

12 MR. ANDERSON: I asked Ms. Walker  
13 if I could come to speak about what I saw in  
14 this particular incident that was part of a  
15 pattern that we see habitually on a daily  
16 basis.

17 MR. PASCAL: Same objection.

18 CHAIRPERSON MILLER: That's all  
19 right.

20 It was based on your email which  
21 is in the Investigative Report. This whole  
22 investigation was a result of your email. It

1 began with your email.

2 MR. ANDERSON: Yes, ma'am. I  
3 talked with Ms. Walker earlier this month and  
4 asked if I -- actually some other residents in  
5 my building asked me to come because they  
6 wanted to present testimony to the Board to  
7 say that what Mr. Parker witnessed of sales to  
8 people like this we see on a habitual basis.

9 Ms. Walker emailed me back saying  
10 that only one person could come. It ended up  
11 being me who was the best available. My  
12 understanding was I would be able to come and  
13 talk about it. I wasn't actually here when  
14 this particular thing happened but this is  
15 part of a pattern. That was my intent for  
16 showing up today.

17 CHAIRPERSON MILLER: This is a  
18 fact finding. It's somewhat lose. I think  
19 it's okay if what you're saying is that what  
20 we're hearing today you've seen similar on  
21 other days. Is that what you're saying?

22 MR. ANDERSON: Yes, ma'am. In

1 fact, we believe -- we see people whether they  
2 are on the bends, the nod, whatever  
3 terminology you want to use for people  
4 suffering from addiction to heroin, buy  
5 alcoholic products from Chinatown Market.

6 We see people who are drinking in  
7 public right on the corner or in the alley  
8 next to my building. Slurred speech, speaking  
9 agitated, gesticulating wildly, go into  
10 Chinatown Market and leave with two 24-ounce  
11 cans of malt liquor or high-grade high alcohol  
12 content beer.

13 In fact, both the individuals that  
14 Mr. Parker photographed I showed them to some  
15 of the folks in my building, we recognized  
16 both of them as people with the same -- they  
17 drink in public in our alley or right down on  
18 the corner or farther down H Street or 6th  
19 Street. They are habitually at the corner and  
20 seen habitually leaving Chinatown Market.

21 CHAIRPERSON MILLER: Are you  
22 referring to the woman or to the men, the ones

1 you've seen before?

2 MR. ANDERSON: The two women I  
3 recognized and actually in the photo I'm only  
4 able to recognize one of the men in the photo  
5 as someone I see regularly. One their back is  
6 turned and one is kind of to the side. I  
7 don't know any of these gentlemen's names  
8 other they all know me.

9 They like to threaten me on a  
10 pretty routine basis when I walk by because  
11 they know I called the cops for drinking in  
12 public and whatnot. The woman with the blonde  
13 was notorious for like, you know, she threw a  
14 piece of stone at my son once.

15 CHAIRPERSON MILLER: The woman  
16 that was bent over?

17 MR. ANDERSON: No, the first one,  
18 ma'am. I recognize those people. That's part  
19 of our concerns with the establishment is that  
20 they attract these folks to our neighborhood.

21 CHAIRPERSON MILLER: Yes, sir.

22 MEMBER ALBERTI: Very quickly,

1 just to be clear, the woman who was bent over  
2 did you recognize her as someone who --

3 MR. ANDERSON: Yes. Yes, sir. I  
4 did.

5 MEMBER ALBERTI: How frequently  
6 does she --

7 MR. ANDERSON: She is -- there are  
8 periods when she's not there at all. I don't  
9 know specifically why some of those periods  
10 she's not present at all.

11 I know for one period she was  
12 under arrest for a period of time but she's  
13 there at least two or three times a week, if  
14 not more. Often I'm not around during the  
15 workday, sir, when Chinatown Market is open  
16 but I'm off on the weekends.

17 MEMBER ALBERTI: Have you seen her  
18 patronize the establishment?

19 MR. ANDERSON: I don't want to  
20 speak -- I've seen her exit the establishment  
21 with alcoholic beverages often. I don't  
22 usually go in to follow them around, sir.

1 MEMBER ALBERTI: I understand.

2 MR. ANDERSON: I see them exit  
3 with alcoholic beverages.

4 MEMBER ALBERTI: I see.

5 CHAIRPERSON MILLER: Yes, Mr.  
6 Brooks.

7 MEMBER BROOKS: Just one question,  
8 Madam Chair.

9 Have you seen her patronize any  
10 other establishments on that block?

11 MR. ANDERSON: I don't believe --  
12 no sir. No, sir, I have not. There is  
13 another liquor store catty-corner across the  
14 street on the SW corner of 6th and H,  
15 Chinatown Liquor. From what I gather, sir,  
16 they don't sell -- and I've gone in there  
17 before.

18 They don't see the kind of  
19 products that the people we're concerned about  
20 buy. They don't sell the Mad Dog or the high-  
21 grade alcohol line. They don't sell the 24-  
22 ounce cans of malt liquor. They don't sell

1 those kind of things there so they don't go  
2 there.

3 I don't believe I've ever observed  
4 them leaving that establishment. Or there is  
5 one on the corner of 5th and I that I go to to  
6 pick up groceries from time to time and I've  
7 never seen them congregating or exiting there.  
8 I don't want to say it never happens but it's  
9 just my own personal experience.

10 MEMBER BROOKS: Thank you.

11 CHAIRPERSON MILLER: Any other  
12 questions from the Board? Thank you.

13 MR. ANDERSON: Thank you, ma'am.

14 CHAIRPERSON MILLER: Mr. Pascal.

15 MR. PASCAL: For a statement or to  
16 ask questions?

17 CHAIRPERSON MILLER: You can ask  
18 some questions if you want and then you can  
19 make any statements you want.

20 MR. PASCAL: No. I have --

21 MEMBER ALBERTI: There's no cross  
22 examination.

1 CHAIRPERSON MILLER: Excuse me.

2 MR. PASCAL: I have no questions  
3 for him.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER ALBERTI: There's no cross  
6 examination.

7 CHAIRPERSON MILLER: Go ahead, Mr.  
8 Pascal.

9 MR. PASCAL: In terms of my  
10 comments is that, first of all, I want to  
11 thank the investigator for being very candid  
12 because he noted that the vagrants that he saw  
13 there didn't appear to be intoxicated. He  
14 noted that my client has asked people to move  
15 away.

16 When he came out of the store to  
17 sweep and move them away, it was in an  
18 opposite direction so there is no clear  
19 evidence what my client may have seen, the  
20 condition of this woman out there. She  
21 obviously was -- both of them were well enough  
22 to come in and purchase alcohol and appear at

1 the account.

2 No evidence of screaming in the  
3 store. No evidence of bending over in the  
4 store. It's pure conjecture in terms of what  
5 her condition may or may not have been. She  
6 could have had a bad stomach.

7 She could be mentally disabled,  
8 but that doesn't necessarily mean that she's  
9 intemperate or intoxicated. Therefore, I  
10 would trust that you would view this as  
11 something that you wouldn't want to go further  
12 with. Thank you.

13 CHAIRPERSON MILLER: Thank you.

14 Questions for Mr. Pascal? I  
15 didn't think so. Okay.

16 We'll take another recess.

17 MR. PASCAL: Even though you  
18 denied my motion, I still have the same  
19 objection as to whether he had an obligation.  
20 I kind of respectfully disagree. He's here on  
21 behalf of the Flats so he's bound by that  
22 agreement.

1                   It is essentially from a due  
2 process stand we came down here today because  
3 we were told we have violated the Voluntary  
4 Agreement. I believe you should take that  
5 into consideration also.

6                   CHAIRPERSON MILLER: Okay. We are  
7 now going to close the meeting. As  
8 Chairperson of the Alcoholic Beverage Control  
9 Board for the District of Columbia and in  
10 accordance with Section 405 of the Open  
11 Meetings Amendment Act of 2010, I move that  
12 the ABC Board hold a closed meeting for the  
13 purpose of seeking legal advice from our  
14 counsel on case #11-CMP-00468 per Section  
15 405(b)(4) of the Open Meetings Amendment Act  
16 of 2010 and deliberating on case #11-CMP-00468  
17 for the reason cited in Section 405(b)(13) of  
18 the Open Meetings Amendment Act of 2010.

19                   Is there a second?

20                   MEMBER MOBLEY: I second.

21                   CHAIRPERSON MILLER: I'll now call  
22 the roll.

1 Mr. Nophlin.

2 MEMBER NOPHLIN: I agree.

3 CHAIRPERSON MILLER: Mr. Brooks.

4 MEMBER BROOKS: I agree.

5 CHAIRPERSON MILLER: Mr. Alberti.

6 MEMBER ALBERTI: I agree.

7 CHAIRPERSON MILLER: Ms. Miller, I  
8 agree.

9 Mr. Silverstein.

10 MEMBER SILVERSTEIN: I agree.

11 CHAIRPERSON MILLER: Ms. Mobley.

12 MEMBER MOBLEY: I agree.

13 CHAIRPERSON MILLER: Mr. Jones.

14 MEMBER JONES: I agree.

15 CHAIRPERSON MILLER: Okay. Then  
16 the vote is seven zero to go into closed  
17 meeting.

18 You all can take a short break as  
19 well if you would like. It should be at least  
20 10 minutes.

21 (Whereupon, at 4:08 p.m. off the  
22 record until 4:32 p.m.)

1 CHAIRPERSON MILLER: Okay. We are  
2 back on the record in this case. At this  
3 point having considered what we heard today,  
4 I would recommend that we send this action  
5 over to OIG for enforcement action. I would  
6 move accordingly. Is there a second?

7 MEMBER NOPHLIN: Second.

8 CHAIRPERSON MILLER: Okay. It has  
9 been seconded. Any other comments? Okay.  
10 Not hearing any other comments, then all those  
11 in favor say aye.

12 BOARD MEMBERS: Aye.

13 CHAIRPERSON MILLER: All those  
14 opposed? All those abstaining? The vote is  
15 seven to zero to zero to send this case over  
16 to OIG for enforcement action. That concludes  
17 this case. Thank you very much.

18 MR. PASCAL: Thank you.

19 (Whereupon, at 4:33 p.m. the  
20 hearing was adjourned.)  
21  
22

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