

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

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IN THE MATTER OF: :  
 :  
Bouzid, Inc. t/a Marrakesh :  
Palace Pasha Lounge : Show  
2147 P Street, NW : Cause  
Retailer CT - ANC-2B : Hearing  
License No. 60695 : (Status)  
Case #11-251-000197 :  
 :  
(Failed to Follow Security :  
Plan) :  
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February 8, 2012

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

CALVIN NOPHLIN, Member  
MIKE SILVERSTEIN, Member  
JEANNETTE MOBLEY, Member

ALSO PRESENT:  
FERNANDO RIVERO, OAG

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

2 (10:13 a.m.)

3 CHAIRPERSON MILLER: Okay. The  
4 next case on the agenda is another Show Cause  
5 (Status) Hearing. It's Case No. 11-251-  
6 000197, Marrakesh Palace Pasha Lounge on P  
7 Street, N.W., License No. 60695 in ANC-2B.

8 MR. RIVERO: Good morning, Board  
9 Members. Fernando Rivero for the District of  
10 Columbia.

11 MR. BOUZID: Good morning Jim  
12 Bouzid on behalf of Bouzid, Inc.

13 CHAIRPERSON MILLER: Okay. And  
14 you are the president?

15 MR. BOUZID: Yes, ma'am.

16 CHAIRPERSON MILLER: Okay. Did  
17 you receive notice of this Show Cause Hearing?

18 MR. BOUZID: Yes.

19 CHAIRPERSON MILLER: Did you read  
20 it?

21 MR. BOUZID: Yes.

22 CHAIRPERSON MILLER: Understand it?

1 MR. BOUZID: Yes.

2 CHAIRPERSON MILLER: And do you  
3 waive my reading it into the record?

4 MR. BOUZID: Yes.

5 CHAIRPERSON MILLER: Okay. Good.  
6 So now, we can move on to are there any  
7 preliminary matters in this case? Oh, Mr.  
8 Jones, yes?

9 MEMBER JONES: Thank you, Madam  
10 Chair. Just for clarification purposes, you  
11 are the president. Are you also an equity  
12 owner?

13 MR. BOUZID: Yes.

14 MEMBER JONES: What percentage do  
15 you have?

16 MR. BOUZID: I'm 67 percent.

17 MEMBER JONES: Thank you very  
18 much.

19 MR. BOUZID: You're welcome.

20 MEMBER JONES: Thank you, Madam  
21 Chair.

22 CHAIRPERSON MILLER: Okay. You're

1 welcome. Yes, Mr. Rivero?

2 MR. RIVERO: Thank you. Yes, the  
3 parties have an offer in compromise actually  
4 to present to the Board, at this time.

5 The offer in compromise was  
6 provided to the Board in written form, so you  
7 should have a two page document before you or  
8 you are about to receive it.

9 CHAIRPERSON MILLER: Oh.

10 MR. RIVERO: That would assist you  
11 in following along with the terms of this  
12 offer in compromise.

13 CHAIRPERSON MILLER: Thank you.

14 MR. RIVERO: Okay. The offer in  
15 compromise consists of the following terms:

16 A suspension of the license for a  
17 period of 30 days, commencing today. Upon  
18 expiration of the licensed suspension period,  
19 the license shall be deemed surrendered for  
20 safekeeping.

21 Submission to the Board prior to  
22 retrieval of the license of a revised security

1 plan, which will address the requirements for  
2 a security plan under Title 25 of the D.C.  
3 Code, including installation, operation and  
4 reporting of the video cameras.

5 The video must show the area in  
6 front of the establishment. The camera  
7 videotapes must be maintained for 30 days. The  
8 video must be available within 48 hours of  
9 request by a law enforcement entity or ABRA.

10 Employment of MPD reimbursable  
11 detail in accordance with Board Order 2011-  
12 402. In other words, employment of MPD  
13 reimbursable detail for at least four hours  
14 when there is entertainment and until one hour  
15 after the establishment closes on the night of  
16 entertainment.

17 Maintenance of a detailed incident  
18 log for one year to be made available to any  
19 law enforcement entity or ABRA upon request.

20 And detailed procedures addressing  
21 violent altercations in the establishment.

22 Those are the highlights to be

1 included at a minimum when a security plan  
2 that is revised and returned to the Board  
3 before the license may be retrieved from  
4 safekeeping.

5 In addition, payment to ABRA prior  
6 to retrieval of the license of all outstanding  
7 licensee fees.

8 In addition, submission to the  
9 Board prior to the retrieval of the license of  
10 a business plan.

11 In addition, the license shall  
12 only be returned to an officer having  
13 controlling interest in the licensee who  
14 presents a lease for the premises in the name  
15 of the licensee or its officer, subject to any  
16 license transfer proceeding.

17 Finally, in accordance with Board  
18 Order 2011-402, entertainment is limited to  
19 1:00 a.m. on Sunday through Thursday and to  
20 2:00 a.m. on Friday and Saturday.

21 Those are the terms of the offer  
22 in compromise at this time.

1 CHAIRPERSON MILLER: Let me ask  
2 you before the Board asks any questions, are  
3 you acceptable to this?

4 MR. BOUZID: Yes, ma'am.

5 CHAIRPERSON MILLER: Okay. Do  
6 Board Members have questions? Yes, Mr.  
7 Brooks?

8 MEMBER BROOKS: Yes, thank you,  
9 Madam Chair. Was the licensee open for  
10 business this past Friday and Saturday?

11 MR. RIVERO: I'm personally not  
12 aware. So I guess you could direct that  
13 question to the licensee.

14 MR. BOUZID: Yes.

15 MEMBER BROOKS: Thank you. Thank  
16 you, Madam Chair.

17 CHAIRPERSON MILLER: Did you get  
18 an answer?

19 MEMBER BROOKS: Yes.

20 CHAIRPERSON MILLER: Oh, it was  
21 open. Okay. Any other questions?

22 MEMBER NOPHLIN: I have a

1 question, please.

2 CHAIRPERSON MILLER: Yes.

3 MEMBER NOPHLIN: Attorney Rivero,  
4 you are saying there is no -- there was no  
5 fine levied? It was just --

6 MR. RIVERO: In this offer in  
7 compromise?

8 MEMBER NOPHLIN: Yes.

9 MR. RIVERO: Correct.

10 MEMBER NOPHLIN: No fine?

11 MR. RIVERO: No. It's a  
12 suspension of the license for 30 days.

13 MEMBER NOPHLIN: Suspension of the  
14 license for 30 days.

15 MR. RIVERO: After that --

16 MEMBER NOPHLIN: Okay.

17 MR. RIVERO: -- the license is  
18 converted into -- we -- as if it were  
19 surrendered for safekeeping. Before it may be  
20 retrieved, the conditions that I stated have  
21 to be met, such that, you know, the license  
22 then can be returned.

1 MEMBER NOPHLIN: Okay.

2 MR. RIVERO: So it could be  
3 returned on the 31st day if during the 30 days  
4 of suspension, the licensee works towards  
5 these conditions and achieves them.  
6 Otherwise, the license cannot be retrieved  
7 until these conditions are met, which means  
8 that in effect, the suspension continues.

9 MEMBER NOPHLIN: All right. Thank  
10 you very much.

11 CHAIRPERSON MILLER: Yes, Mr.  
12 Alberti?

13 MEMBER ALBERTI: Thank you, Madam  
14 Chair. Mr. Rivero, Item 2A -- 2B.

15 MR. RIVERO: Yes.

16 MEMBER ALBERTI: The reimbursable  
17 detail --

18 MR. RIVERO: Yes.

19 MEMBER ALBERTI: -- in accordance  
20 with Board Order 2011-402.

21 MR. RIVERO: Yes.

22 MEMBER ALBERTI: So this is

1 already part of our Board Order. So I'm  
2 trying to understand how this becomes part of  
3 the offer in compromise. I mean, this is  
4 something that the licensee should be adhering  
5 to presently, so how does it become part of an  
6 offer in compromise?

7 How does this become part of an  
8 offer in compromise that is supposed to  
9 represent a penalty?

10 MR. RIVERO: First of all, Board  
11 Member, you are absolutely correct that the  
12 licensee is supposed to be adhering to Board  
13 Order 2011-402. The terms of the offer in  
14 compromise, according to the regulations, do  
15 not on its face indicate that every term of an  
16 offer in compromise must be a penalty.

17 There are many, many terms in an  
18 offer in compromise that are designed to  
19 provide a comprehensive picture of what the  
20 understanding is between the Government and  
21 the licensee as to how the licensee is  
22 supposed to be conducting business moving

1 forward, given the issues raised in a  
2 particular case.

3 So while it is true that the  
4 licensee is supposed to be adhering to Board  
5 Order 2011-402, nevertheless, we include that  
6 term here to highlight the fact that it is a  
7 significant component of our agreement,  
8 because it stems from the particular  
9 circumstances of this case.

10 So it doesn't mean that we regard  
11 this as a penalty. All of the terms in the  
12 offer in compromise in this case are either a  
13 penalty or intended to be prophylactic  
14 measures or intended to be an understanding  
15 between -- to show the understanding between  
16 the licensee and the Government with respect  
17 to how we deal with the issues in this  
18 particular case.

19 MEMBER ALBERTI: Thank you, Mr.  
20 Rivero. So just for my own benefit, because  
21 I'm maybe a little bit slow here, could you,  
22 please, point out which parts of this offer in

1       compromise go above and beyond what is already  
2       required of the establishment either in a  
3       Board Order or as part of ABRA Law?

4                   MR. RIVERO:   Sure, certainly.

5       With respect to Item No. 2, since that was  
6       your initial question, the security plan, Item  
7       C and D are not reflected in Board Order 2011-  
8       402.

9                   MEMBER ALBERTI:   Yes.

10                  MR. RIVERO:   Item No. 1 in the  
11       offer in compromise just above that is not  
12       reflected in the Board Order that I mentioned.

13                  Items No. 3, 4 and 5 are not  
14       reflected in the Board Order.

15                  MEMBER ALBERTI:   Okay.

16                  MR. RIVERO:   And, of course, Item  
17       No. 6 is a reiteration of a term of that Board  
18       Order.

19                  MEMBER ALBERTI:   Yes.   Thank you.

20       Thank you.

21                  MR. RIVERO:   Does that answer your  
22       question?

1 MEMBER ALBERTI: Yes, it does.

2 Thank you very much.

3 MR. RIVERO: Yes.

4 CHAIRPERSON MILLER: Mr. Jones?

5 MEMBER JONES: Thank you, Madam  
6 Chair. Our records indicate, and I understand  
7 that they may not be reflective of what may be  
8 in yours, that's why I'm asking this  
9 question --

10 MR. RIVERO: Yes.

11 MEMBER JONES: -- that there would  
12 be two days that would be triggered as a  
13 result of a previous violation.

14 Do your records reflect that?

15 MR. RIVERO: No.

16 MEMBER JONES: And the question  
17 may be moot, because if they do or they don't,  
18 is the 30 days intended to be inclusive of any  
19 trigger or stayed days that would be triggered  
20 as a result of this?

21 MR. RIVERO: We believe so.

22 MEMBER JONES: Okay. Thank you.

1 MR. RIVERO: We believe 30 days is  
2 sufficient given the facts of this case. And  
3 if there are any stayed days to be served,  
4 absolutely. That depends, of course, on the  
5 amount of stayed days. If we're talking about  
6 20 stayed days, but we're talking about two  
7 stayed days, so that would be sufficient.

8 MEMBER JONES: Thank you very  
9 much, sir.

10 MR. RIVERO: Yes.

11 MEMBER JONES: Thank you, Madam  
12 Chair.

13 CHAIRPERSON MILLER: Okay. I'm  
14 sorry, Mr. Rivero, I wasn't sure 2A with the  
15 cameras --

16 MR. RIVERO: Yes.

17 CHAIRPERSON MILLER: -- is that  
18 new or is that something they were required to  
19 do?

20 MR. RIVERO: No, the Board Order  
21 No. 2011-402 required installation of cameras  
22 by a certain date. I want to say October of

1 last year, but I'm just working from memory.  
2 I don't have the Board Order in front of me.

3 CHAIRPERSON MILLER: Okay. And  
4 that hasn't been done yet?

5 MR. RIVERO: It has been done.

6 CHAIRPERSON MILLER: Oh, it has  
7 been done. Okay.

8 MR. RIVERO: My understanding is  
9 there are cameras installed.

10 CHAIRPERSON MILLER: Okay. Okay.  
11 So I mean what appears different to me in my  
12 short time here with the OIC is that the  
13 license remains suspended even after the 30  
14 days until all these provisions are complied  
15 with.

16 MR. RIVERO: Assuming that they  
17 haven't complied with the provisions, they  
18 can't retrieve the license after the 30 day  
19 suspension period.

20 CHAIRPERSON MILLER: Yes.

21 MR. RIVERO: They still have to do  
22 these other things that are --

1 CHAIRPERSON MILLER: Right.

2 MR. RIVERO: They have to meet all  
3 these other conditions.

4 CHAIRPERSON MILLER: Okay.

5 MR. RIVERO: And some of those  
6 conditions, of course, simply reflect an  
7 understanding between the parties as to how  
8 they are going to conduct business.

9 For example, Item No. 6, with  
10 respect to the entertainment hours, I mean,  
11 it's clearly not a penalty and it's already  
12 covered in another Board Order, but we want to  
13 reiterate that to understand -- to reflect the  
14 understanding between the parties to resolve  
15 this case.

16 CHAIRPERSON MILLER: Okay. And I  
17 just want to ask you just to maybe address one  
18 more time --

19 MR. RIVERO: Sure.

20 CHAIRPERSON MILLER: -- why you  
21 think it's a good offer in compromise without  
22 a penalty? Why there shouldn't be a penalty.

1 MR. RIVERO: Sure. As I have  
2 indicated to the Board before, an offer in  
3 compromise can either contain a monetary  
4 penalty, a fine, a period of suspension of the  
5 license, it can also include revocation of the  
6 license or it can be a combination of a fine  
7 or a suspension of the license or either/or.

8 The regulations provide the  
9 parties maximum flexibility when presenting an  
10 offer in compromise to the Board.

11 Now, the Board itself under the  
12 statute also has the flexibility to either  
13 find or suspend the license or do both. So  
14 because the flexibility is there, there is no  
15 -- you can't infer from the statute a rigid  
16 rule that there must always be a monetary  
17 penalty.

18 We have discussed the particular  
19 incidents of this case and given the length of  
20 the suspension, we believe that a monetary  
21 penalty doesn't really serve an additional  
22 punitive purpose, since 30 days of a

1 suspension of a license is a significant  
2 period of time.

3 The licensee essentially will be  
4 shut down. But part of that rationale is, of  
5 course, punitive, but the other part is to  
6 allow time for the licensee to improve its  
7 business operations as reflected in the  
8 conditions contained in this document.

9 I hope that answers your question.

10 CHAIRPERSON MILLER: It does.

11 Thank you very much. Any other questions?

12 Mr. Brooks?

13 MEMBER BROOKS: Yes. Again, and  
14 this is to the licensee, how many days a week  
15 are you normally open?

16 MR. BOUZID: We're open seven days  
17 a week.

18 MEMBER BROOKS: Seven days a week?

19 MR. BOUZID: Yes, sir.

20 MEMBER BROOKS: All right. Thank  
21 you, Madam Chair.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Jones?

2 MEMBER JONES: Thank you, Madam  
3 Chair. For, I guess, Item 4 of the offer in  
4 compromise, as noted, it says "The submission  
5 to the Board prior to the retrieval of the  
6 license have a business plan.

7 Is the licensee considered to have  
8 met that simply by the submission of a plan or  
9 is the assumption there that there is some  
10 approval or review to find it to be acceptable  
11 by the Board that it is in compliance and,  
12 therefore, that the licensee has met that?

13 MEMBER BROOKS: Good point.

14 MR. RIVERO: And I appreciate the  
15 question.

16 MEMBER JONES: Yes.

17 MR. RIVERO: The answer to that  
18 question is the condition is met by submission  
19 of a plan only.

20 MEMBER JONES: Thank you.

21 MR. RIVERO: The Board is not  
22 required to approve the plan. The rationale

1 for the submission, the business plan is that  
2 it provides notice to the Board of how the  
3 licensee intends to conduct its business.

4 So perhaps the plan might raise  
5 some red flags or it might not or it might  
6 quell some concerns that the licensee -- that  
7 the Board has had with respect to this  
8 licensee, given its particular investigative  
9 history.

10 So the Government's rationale in  
11 mandating the submission of the business plan  
12 is to give you all really notice that, yes,  
13 the licensee is getting its act together, if  
14 you will, or providing notice to the Board  
15 that there might be problems along the road  
16 and you all have additional time, some lead  
17 time to perhaps discuss those items with the  
18 licensee.

19 MEMBER JONES: Very good.

20 MR. RIVERO: Notice that we do not  
21 give any particular kind or content to the  
22 business plan, that is left up to the

1 licensee. It's simply to allow the Board time  
2 to see how this licensee is doing, given the  
3 way it has conducted its business and what the  
4 investigative history reflects with respect to  
5 that.

6 MEMBER JONES: Thank you for that  
7 clarification.

8 MR. RIVERO: You're welcome.

9 MEMBER JONES: Thank you, Madam  
10 Chair.

11 CHAIRPERSON MILLER: Any other  
12 questions? Okay. Okay. That's an  
13 interesting proposal and the Board is just  
14 going to take a few minutes to consider it.

15 MR. RIVERO: By all means.

16 CHAIRPERSON MILLER: So I'm going  
17 to read the instructions for closed meetings.

18 As Chairperson of the Alcoholic  
19 Beverage Control Board for the District of  
20 Columbia and in accordance with ^U 405 of the  
21 Open Meetings Amendment Act of 2010, I move  
22 that the ABC Board hold a closed meeting for

1 the purpose of seeking legal advice from our  
2 counsel and deliberating on this offer in  
3 compromise in Case No. 11-251-000197,  
4 Marrakesh Palace Pasha Lounge.

5 Do I have a second?

6 MEMBER BROOKS: Second.

7 CHAIRPERSON MILLER: How say you,  
8 Mr. Nophlin, on the motion?

9 MEMBER NOPHLIN: I agree.

10 CHAIRPERSON MILLER: Mr. Brooks?

11 MEMBER BROOKS: I agree.

12 CHAIRPERSON MILLER: Mr. Alberti?

13 MEMBER ALBERTI: I agree.

14 CHAIRPERSON MILLER: Ms. Miller  
15 agrees. Mr. Silverstein?

16 MEMBER SILVERSTEIN: I agree.

17 CHAIRPERSON MILLER: Ms. Mobley?

18 MEMBER MOBLEY: I agree.

19 CHAIRPERSON MILLER: Mr. Jones?

20 MEMBER JONES: I agree.

21 CHAIRPERSON MILLER: Okay. So the  
22 Board will take a short recess to consider

1 this. If anybody else wants to take a break,  
2 we will probably be at least five minutes.

3 (Whereupon, at 10:30 a.m. a recess  
4 until 10:57 a.m.)

5 CHAIRPERSON MILLER: Okay. We are  
6 back on the record. And the Board has before  
7 it an offer in compromise that was submitted  
8 in writing concerning Marrakesh Palace Pasha  
9 Lounge. And I'm not going to repeat the whole  
10 offer in compromise, because we do have it in  
11 writing and it's very long.

12 Okay. I would like to move that  
13 we accept the offer in compromise and my  
14 reasoning is that I recognize that it doesn't  
15 have penalties, per se, but I think that the  
16 30 day suspension is a -- we don't have a  
17 fine, but the 30 day suspension, to me,  
18 appears substantial.

19 And I appreciate that there are  
20 two days suspension that have been triggered,  
21 but I can see that 30 days is such a large  
22 number that I can accept that those two days

1 would be incorporated in that.

2 And I think that there is a lot in  
3 this offer in compromise that the licensee is  
4 already obligated to do, but there are some  
5 other things that I think are also good  
6 practice and I think it has the teeth in that  
7 the license will be held in safekeeping until  
8 those items are accomplished.

9 So that's my reasoning. Do I have  
10 a second?

11 MEMBER NOPHLIN: Second.

12 CHAIRPERSON MILLER: Okay. Does  
13 anybody else want to speak to this motion?  
14 Okay. Yes, Mr. Silverstein?

15 MEMBER SILVERSTEIN: I would like  
16 to associate myself wholeheartedly with the  
17 comments of the Chair.

18 CHAIRPERSON MILLER: Okay. Anyone  
19 else? Okay. Then I'll call the vote.

20 All those in -- I think I'll do  
21 roll call.

22 Mr. Nophlin?

1 MEMBER NOPHLIN: I agree.

2 CHAIRPERSON MILLER: Mr. Brooks?

3 MEMBER BROOKS: I disagree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I disagree.

6 CHAIRPERSON MILLER: Ms. Miller

7 agrees. Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Ms. Mobley?

10 MEMBER MOBLEY: I disagree.

11 CHAIRPERSON MILLER: And Mr.

12 Jones?

13 MEMBER JONES: I disagree.

14 CHAIRPERSON MILLER: Then I

15 believe that the motion fails on a vote of 3-

16 4. Yes, Mr. Alberti?

17 MEMBER ALBERTI: Madam Chair, I  
18 would like to move that we reject the offer in  
19 compromise as presented by Mr. Rivero.

20 CHAIRPERSON MILLER: Is there --

21 MEMBER JONES: I second the

22 motion.

1 CHAIRPERSON MILLER: Okay. Let's  
2 call the vote then. The motion is to reject  
3 the offer in compromise.

4 Mr. Nophlin, how do you say?

5 MEMBER NOPHLIN: I disagree.

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  
11 disagrees. Mr. Silverstein?

12 MEMBER SILVERSTEIN: I disagree.

13 CHAIRPERSON MILLER: Ms. Mobley?

14 MEMBER MOBLEY: I disagree. I  
15 agree, excuse me.

16 CHAIRPERSON MILLER: Mr. Jones?

17 MEMBER MOBLEY: I agree.

18 MEMBER JONES: I agree.

19 CHAIRPERSON MILLER: Okay. And  
20 just to be clear, Ms. Mobley, you support the  
21 motion to deny the offer in compromise?

22 MEMBER MOBLEY: That's correct,

1 Madam Chair.

2 CHAIRPERSON MILLER: Okay. Okay.

3 Then that motion passes. And we will set this  
4 for a hearing.

5 MR. RIVERO: The Board's  
6 indulgence?

7 CHAIRPERSON MILLER: Okay.

8 MR. RIVERO: The parties have a  
9 revised offer in compromise to present to the  
10 Board, at this time.

11 That offer in compromise consists  
12 of all terms being equal, except the  
13 suspension period of the license will be 28  
14 days. There will be a fine of \$2,000 to be  
15 paid within the suspension period. All other  
16 terms being equal.

17 CHAIRPERSON MILLER: I'm sorry,  
18 \$2,000 to be paid when?

19 MR. RIVERO: Within the period of  
20 the suspension.

21 CHAIRPERSON MILLER: Okay.

22 MR. RIVERO: Which is within the

1 28 day period, that's when the \$2,000 fine --

2 CHAIRPERSON MILLER: Okay.

3 MR. RIVERO: -- will be paid.

4 MEMBER SILVERSTEIN: A question.

5 CHAIRPERSON MILLER: Mr.

6 Silverstein?

7 MEMBER SILVERSTEIN: I have a  
8 question. The term is 28 days and then the  
9 two days are triggered as well?

10 MR. RIVERO: The two days are  
11 subsumed in the 28 day period.

12 MEMBER SILVERSTEIN: Say again.

13 MR. RIVERO: The two days are  
14 subsumed into the 28 day period. Just like as  
15 it was before.

16 MEMBER SILVERSTEIN: The 28 days--

17 CHAIRPERSON MILLER: I think it is  
18 -- do you mean two days served and then 26 of  
19 it -- well, the two days that are triggered,  
20 those two days are going to be served?

21 MR. RIVERO: The Board's  
22 indulgence. I would like to clarify with the

1 licensee, because I do want to make sure that  
2 he understood this particular --

3 CHAIRPERSON MILLER: All right.

4 MR. RIVERO: Thank you. Sorry. I  
5 had to consult with the licensee, because he  
6 needed clarification on that particular point.

7 The two days will be triggered, so  
8 that will be 30 days, but the fine is to be  
9 paid within the 28 days, not the 30 days. So  
10 the suspension is 30 days. It's really 28  
11 days plus those two days.

12 CHAIRPERSON MILLER: Okay.

13 MR. RIVERO: The fine is to be  
14 paid within the 28 days. I hope that's clear.

15 MEMBER SILVERSTEIN: What was the  
16 fine?

17 MEMBER MOBLEY: \$2,000.

18 CHAIRPERSON MILLER: \$2,000 paid  
19 within 28 days. 28 days plus the two days  
20 that are triggered. Okay. All right.

21 I guess I will then put it before  
22 the Board. Then there is a motion for this

1 amended offer in compromise which includes two  
2 days that are triggered to be served plus 28  
3 days, if I'm saying this correctly, and a fine  
4 of \$2,000 to be paid within 28 days of the  
5 suspended period which would start today.

6 MR. RIVERO: It would start today,  
7 yes.

8 CHAIRPERSON MILLER: Okay. Do I  
9 have a second?

10 MEMBER MOBLEY: Second.

11 MEMBER NOPHLIN: Second.

12 CHAIRPERSON MILLER: Okay. Mr.  
13 Nophlin?

14 MEMBER NOPHLIN: I agree.

15 CHAIRPERSON MILLER: Mr. Brooks?

16 MEMBER ALBERTI: May I just for  
17 clarification?

18 CHAIRPERSON MILLER: I'm sorry.  
19 Do you want to speak to the motion?

20 MEMBER ALBERTI: Well, really just  
21 for clarification for the record, because I'm  
22 a little bit confused.

1                   So we are amending the original  
2                   offer in compromise to say that the suspension  
3                   days are 28 days suspended. There will be two  
4                   days suspension that are triggered from a  
5                   previous matter, all right, and this new offer  
6                   in compromise in addition, includes a fine of  
7                   \$2,000 to be paid in 28 days.

8                   MR. RIVERO: That's correct.

9                   MEMBER ALBERTI: Thank you. I just  
10                  wanted to make sure that -- okay.

11                  MR. RIVERO: That is correct.

12                  MEMBER ALBERTI: With that  
13                  clarification, I agree.

14                  CHAIRPERSON MILLER: Ms. Miller  
15                  agrees. Mr. Silverstein?

16                  MEMBER SILVERSTEIN: I agree.

17                  CHAIRPERSON MILLER: Ms. Mobley?

18                  MEMBER MOBLEY: I agree.

19                  CHAIRPERSON MILLER: Mr. Jones?

20                  MEMBER JONES: I agree.

21                  CHAIRPERSON MILLER: Then the vote  
22                  is 7-0 to accept the offer in compromise.

1 MR. RIVERO: I actually have  
2 additional information to provide to the  
3 Board.

4 CHAIRPERSON MILLER: Okay. Okay.

5 MR. RIVERO: Title 23 of the DCMR  
6 Chapter 800, at 801.1 says that "The Board may  
7 fine a licensee for a primary tier violation  
8 at a Show Cause Hearing scheduled pursuant to  
9 the notice requirements in ^U 1604 as follows:"  
10 And then it has -- it lists A, B, C and D.

11 A says "For the first primary tier  
12 violation, the fine shall be within \$1,000 and  
13 \$2,000."

14 The sentence that begins that  
15 section uses the word may. The Board may  
16 fine. But if it does, assuming it's a first  
17 primary tier violation, the fine shall be  
18 within a particular range. That shows that the  
19 Board's power is discretionary in order to  
20 fine.

21 If the Board concludes that there  
22 is tension between the regulations and its

1 guidance, otherwise found in Title 25 of the  
2 D.C. Code, it might behoove the Board to take  
3 a look at that, because under case law, a  
4 regulation has the same force of law as a  
5 provision in a statute in D.C. Code.

6 And I wanted to make sure that the  
7 Board was aware of where the Government is  
8 proceeding.

9 And ^U 802 is similarly structured  
10 that deals with secondary violations. So,  
11 essentially, the regulations say that you may  
12 fine for a violation. And the fine is a  
13 particular range. So you want to take a look  
14 at that word may and that word shall in the  
15 subsequent.

16 Because if you do find that you  
17 have got that --

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

20 MR. RIVERO: Okay. Thank you.

21 MEMBER ALBERTI: May I speak to  
22 that?

1 CHAIRPERSON MILLER: Yes.

2 MEMBER ALBERTI: Mr. Rivero?

3 MR. RIVERO: Yes?

4 MEMBER ALBERTI: I believe you may  
5 be reading something into the Board's decision  
6 here, because I can tell you, at least for my  
7 part, that I'm fully aware of that statute and  
8 well-versed in its meaning --

9 MR. RIVERO: Right.

10 MEMBER ALBERTI: -- and its  
11 application. So I believe that -- and it has  
12 the word the Board's discretion as to whether  
13 we may fine or not, whether that is within our  
14 discretion. It had nothing -- how do I say  
15 this? It was not to the point -- it was not  
16 the point in our decision making, all right?  
17 And so I just want to make that clear to you.

18 MR. RIVERO: Right.

19 MEMBER ALBERTI: That you are  
20 possibly reading something into this, because  
21 I'm wondering what your point was in reminding  
22 the Board of that, if it wasn't that you were

1 reading something into the Board's decision.

2 MR. RIVERO: Okay. My point was  
3 that there might be tension between the  
4 language in the D.C. Code that seems to  
5 suggest that a fine is mandatory and language  
6 in the regulations that gives the court  
7 discretion.

8 So my point was to point that --  
9 point out that particular possible discrepancy  
10 and bring it to the Board's attention for  
11 further consideration.

12 MEMBER ALBERTI: Thank you --

13 MR. RIVERO: That was the point.

14 MEMBER ALBERTI: -- for that.

15 CHAIRPERSON MILLER: Thank you  
16 very much. Okay.

17 MR. RIVERO: Thank you.

18 CHAIRPERSON MILLER: Thank you.

19 So that concludes this matter.

20 (Whereupon, the Show Cause (Status)  
21 Hearing in the above-entitled matter was  
22 concluded at 11:08 a.m.)

<b>A</b>	<p><b>amending</b> 31:1</p> <p><b>Amendment</b> 21:21</p> <p><b>amount</b> 14:5</p> <p><b>ANC-2B</b> 1:8 2:7</p> <p><b>answer</b> 7:18 12:21 19:17</p> <p><b>answers</b> 18:9</p> <p><b>anybody</b> 23:1 24:13</p> <p><b>appears</b> 15:11 23:18</p> <p><b>application</b> 34:11</p> <p><b>appreciate</b> 19:14 23:19</p> <p><b>approval</b> 19:10</p> <p><b>approve</b> 19:22</p> <p><b>area</b> 5:5</p> <p><b>asking</b> 13:8</p> <p><b>asks</b> 7:2</p> <p><b>assist</b> 4:10</p> <p><b>associate</b> 24:16</p> <p><b>assuming</b> 15:16 32:16</p> <p><b>assumption</b> 19:9</p> <p><b>attention</b> 35:10</p> <p><b>Attorney</b> 8:3</p> <p><b>available</b> 5:8,18</p> <p><b>aware</b> 7:12 33:7 34:7</p> <p><b>a.m</b> 2:2 6:19,20 23:3,4 35:22</p>	<p>4:4,6,21 5:11 6:2 6:9,17 7:2,6 9:20 10:1,10,12 11:4 12:3,7,12,14,17 14:20 15:2 16:12 17:2,10,11 19:5 19:11,21 20:2,7 20:14 21:1,13,19 21:22 22:22 23:6 27:10 29:22 32:3 32:6,15,21 33:2,7 34:22</p> <p><b>Board's</b> 27:5 28:21 32:19 34:5,12 35:1,10</p> <p><b>Bouzid</b> 1:6 2:11,12 2:12,15,18,21 3:1 3:4,13,16,19 7:4 7:14 18:16,19</p> <p><b>break</b> 23:1</p> <p><b>bring</b> 35:10</p> <p><b>Brooks</b> 1:19 7:7,8 7:15,19 18:12,13 18:18,20 19:13 22:6,10,11 25:2,3 26:6,7 30:15</p> <p><b>business</b> 6:10 7:10 10:22 16:8 18:7 19:6 20:1,3,11,22 21:3</p>	<p>7:16 9:14 13:6 14:12 18:21 19:3 21:10 24:17 25:17 27:1</p> <p><b>Chairperson</b> 1:15 1:18 2:3,13,16,19 2:22 3:2,5,22 4:9 4:13 7:1,5,17,20 8:2 9:11 13:4 14:13,17 15:3,6 15:10,20 16:1,4 16:16,20 18:10,22 21:11,16,18 22:7 22:10,12,14,17,19 22:21 23:5 24:12 24:18 25:2,4,6,9 25:11,14,20 26:1 26:6,8,10,13,16 26:19 27:2,7,17 27:21 28:2,5,17 29:3,12,18 30:8 30:12,15,18 31:14 31:17,19,21 32:4 33:18 34:1 35:15 35:18</p> <p><b>Chapter</b> 32:6</p> <p><b>circumstances</b> 11:9</p> <p><b>clarification</b> 3:10 21:7 29:6 30:17 30:21 31:13</p> <p><b>clarify</b> 28:22</p> <p><b>clear</b> 26:20 29:14 34:17</p> <p><b>clearly</b> 16:11</p> <p><b>closed</b> 21:17,22</p> <p><b>closes</b> 5:15</p> <p><b>Code</b> 5:3 33:2,5 35:4</p> <p><b>Columbia</b> 1:1 2:10 21:20</p> <p><b>combination</b> 17:6</p> <p><b>commencing</b> 4:17</p> <p><b>comments</b> 24:17</p> <p><b>compliance</b> 19:11</p> <p><b>complied</b> 15:14,17</p> <p><b>component</b> 11:7</p> <p><b>comprehensive</b></p>	<p>10:19</p> <p><b>compromise</b> 4:3,5 4:12,15 6:22 8:7 10:3,6,8,14,16,18 11:12 12:1,11 16:21 17:3,10 19:4 22:3 23:7,10 23:13 24:3 25:19 26:3,21 27:9,11 30:1 31:2,6,22</p> <p><b>concerning</b> 23:8</p> <p><b>concerns</b> 20:6</p> <p><b>concluded</b> 35:22</p> <p><b>concludes</b> 32:21 35:19</p> <p><b>condition</b> 19:18</p> <p><b>conditions</b> 8:20 9:5 9:7 16:3,6 18:8</p> <p><b>conduct</b> 16:8 20:3</p> <p><b>conducted</b> 21:3</p> <p><b>conducting</b> 10:22</p> <p><b>confused</b> 30:22</p> <p><b>consider</b> 21:14 22:22</p> <p><b>consideration</b> 35:11</p> <p><b>considered</b> 19:7</p> <p><b>consists</b> 4:15 27:11</p> <p><b>consult</b> 29:5</p> <p><b>contain</b> 17:3</p> <p><b>contained</b> 18:8</p> <p><b>content</b> 20:21</p> <p><b>continues</b> 9:8</p> <p><b>Control</b> 1:2,13,14 21:19</p> <p><b>controlling</b> 6:13</p> <p><b>converted</b> 8:18</p> <p><b>correct</b> 8:9 10:11 26:22 31:8,11</p> <p><b>correctly</b> 30:3</p> <p><b>counsel</b> 22:2</p> <p><b>course</b> 12:16 14:4 16:6 18:5</p> <p><b>court</b> 35:6</p> <p><b>covered</b> 16:12</p> <p><b>CT</b> 1:8</p>
<b>B</b>	<p><b>B</b> 32:10</p> <p><b>back</b> 23:6</p> <p><b>begins</b> 32:14</p> <p><b>behalf</b> 2:12</p> <p><b>behoove</b> 33:2</p> <p><b>believe</b> 13:21 14:1 17:20 25:15 34:4 34:11</p> <p><b>benefit</b> 11:20</p> <p><b>Beverage</b> 1:2,13,14 21:19</p> <p><b>beyond</b> 12:1</p> <p><b>bit</b> 11:21 30:22</p> <p><b>Board</b> 1:2,14 2:8</p>	<b>C</b>	<p><b>C</b> 12:7 32:10</p> <p><b>call</b> 24:19,21 26:2</p> <p><b>CALVIN</b> 1:20</p> <p><b>camera</b> 5:6</p> <p><b>cameras</b> 5:4 14:15 14:21 15:9</p> <p><b>case</b> 1:9 2:4,5 3:7 11:2,9,12,18 14:2 16:15 17:19 22:3 33:3</p> <p><b>Cause</b> 1:7 2:4,17 32:8 35:20</p> <p><b>certain</b> 14:22</p> <p><b>certainly</b> 12:4</p> <p><b>Chair</b> 3:10,21 7:9</p>	

<b>D</b>	<b>E</b>	<b>force</b> 33:4 <b>form</b> 4:6 <b>forward</b> 11:1 <b>found</b> 33:1 <b>four</b> 5:13 <b>Friday</b> 6:20 7:10 <b>front</b> 5:6 15:2 <b>fully</b> 34:7 <b>further</b> 35:11	<b>include</b> 11:5 17:5 <b>included</b> 6:1 <b>includes</b> 30:1 31:6 <b>including</b> 5:3 <b>inclusive</b> 13:18 <b>incorporated</b> 24:1 <b>indicate</b> 10:15 13:6 <b>indicated</b> 17:2 <b>indulgence</b> 27:6 28:22 <b>infer</b> 17:15 <b>information</b> 32:2 <b>initial</b> 12:6 <b>installation</b> 5:3 14:21 <b>installed</b> 15:9 <b>instructions</b> 21:17 <b>intended</b> 11:13,14 13:18 <b>intends</b> 20:3 <b>interest</b> 6:13 <b>interesting</b> 21:13 <b>investigative</b> 20:8 21:4 <b>issues</b> 11:1,17 <b>Item</b> 9:14 12:5,6,10 12:16 16:9 19:3 <b>items</b> 12:13 20:17 24:8	<b>large</b> 23:21 <b>law</b> 5:9,19 12:3 33:3,4 <b>lead</b> 20:16 <b>lease</b> 6:14 <b>left</b> 20:22 <b>legal</b> 22:1 <b>length</b> 17:19 <b>Let's</b> 26:1 <b>levied</b> 8:5 <b>license</b> 1:8 2:7 4:16 4:19,22 6:3,6,9,11 6:16 8:12,14,17 8:21 9:6 15:13,18 17:5,6,7,13 18:1 19:6 24:7 27:13 <b>licensed</b> 4:18 <b>licensee</b> 6:7,13,15 7:9,13 9:4 10:4,12 10:21,21 11:4,16 18:3,6,14 19:7,12 20:3,6,8,13,18 21:1,2 24:3 29:1,5 32:7 <b>limited</b> 6:18 <b>lists</b> 32:10 <b>little</b> 11:21 30:22 <b>log</b> 5:18 <b>long</b> 23:11 <b>look</b> 33:3,13 <b>lot</b> 24:2 <b>Lounge</b> 1:6 2:6 22:4 23:9							
<b>D</b> 12:7 32:10 <b>date</b> 14:22 <b>day</b> 9:3 15:18 23:16 23:17 28:1,11,14 <b>days</b> 4:17 5:7 8:12 8:14 9:3 13:12,18 13:19 14:1,3,5,6,7 15:14 17:22 18:14 18:16,18 23:20,21 23:22 27:14 28:8 28:9,10,13,16,18 28:19,20 29:7,8,9 29:9,10,11,11,14 29:19,19,19 30:2 30:3,4 31:3,3,4,7 <b>DCMR</b> 32:5 <b>deal</b> 11:17 <b>deals</b> 33:10 <b>decision</b> 34:5,16 35:1 <b>deemed</b> 4:19 <b>deliberating</b> 22:2 <b>deny</b> 26:21 <b>depends</b> 14:4 <b>designed</b> 10:18 <b>detail</b> 5:11,13 9:17 <b>detailed</b> 5:17,20 <b>different</b> 15:11 <b>direct</b> 7:12 <b>disagree</b> 25:3,5,10 25:13 26:5,12,14 <b>disagrees</b> 26:11 <b>discrepancy</b> 35:9 <b>discretion</b> 34:12,14 35:7 <b>discretionary</b> 32:19 <b>discuss</b> 20:17 <b>discussed</b> 17:18 <b>District</b> 1:1 2:9 21:19 <b>document</b> 4:7 18:8 <b>doing</b> 21:2 <b>DONALD</b> 1:19 <b>D.C</b> 1:15 5:2 33:2,5 35:4	<b>effect</b> 9:8 <b>either</b> 11:12 12:2 17:3,12 <b>either/or</b> 17:7 <b>employment</b> 5:10 5:12 <b>enforcement</b> 5:9,19 <b>entertainment</b> 5:14 5:16 6:18 16:10 <b>entity</b> 5:9,19 <b>equal</b> 27:12,16 <b>equity</b> 3:11 <b>essentially</b> 18:3 33:11 <b>establishment</b> 5:6 5:15,21 12:2 <b>example</b> 16:9 <b>excuse</b> 26:15 <b>expiration</b> 4:18	<b>G</b>	<b>getting</b> 20:13 <b>give</b> 20:12,21 <b>given</b> 11:1 14:2 17:19 20:8 21:2 <b>gives</b> 35:6 <b>go</b> 12:1 <b>going</b> 16:8 21:14,16 23:9 28:20 <b>good</b> 2:8,11 3:5 16:21 19:13 20:19 24:5 <b>Government</b> 10:20 11:16 33:7 <b>Government's</b> 20:10 <b>guess</b> 7:12 19:3 29:21 <b>guidance</b> 33:1	<b>face</b> 10:15 <b>fact</b> 11:6 <b>facts</b> 14:2 <b>Failed</b> 1:10 <b>fails</b> 25:15 <b>February</b> 1:12 <b>fees</b> 6:7 <b>Fernando</b> 1:23 2:9 <b>Finally</b> 6:17 <b>find</b> 17:13 19:10 33:16 <b>fine</b> 8:5,10 17:4,6 23:17 27:14 28:1 29:8,13,16 30:3 31:6 32:7,12,16 32:17,20 33:12,12 34:13 35:5 <b>first</b> 10:10 32:11,16 <b>five</b> 23:2 <b>flags</b> 20:5 <b>flexibility</b> 17:9,12 17:14 <b>Follow</b> 1:10 <b>following</b> 4:11,15 <b>follows</b> 32:9	<b>F</b>	<b>H</b>	<b>hearing</b> 1:8,14 2:5 2:17 27:4 32:8 35:21 <b>held</b> 24:7 <b>HERMAN</b> 1:19 <b>highlight</b> 11:6 <b>highlights</b> 5:22 <b>history</b> 20:9 21:4 <b>hold</b> 21:22 <b>hope</b> 18:9 29:14 <b>hour</b> 5:14 <b>hours</b> 5:8,13 16:10	<b>J</b>	<b>JEANNETTE</b> 1:21 <b>Jim</b> 2:11 <b>Jones</b> 1:19 3:8,9,14 3:17,20 13:4,5,11 13:16,22 14:8,11 19:1,2,16,20 20:19 21:6,9 22:19,20 25:12,13 25:21 26:16,18 31:19,20	<b>M</b>	<b>Madam</b> 3:9,20 7:9 7:16 9:13 13:5 14:11 18:21 19:2 21:9 25:17 27:1 <b>maintained</b> 5:7 <b>Maintenance</b> 5:17 <b>making</b> 34:16 <b>mandating</b> 20:11 <b>mandatory</b> 35:5 <b>Marrakesh</b> 1:6 2:6 22:4 23:8 <b>matter</b> 1:5 31:5
<b>I</b>	<b>improve</b> 18:6 <b>incident</b> 5:17 <b>incidents</b> 17:19	<b>K</b>	<b>kind</b> 20:21 <b>know</b> 8:21	<b>L</b>	<b>language</b> 35:4,5						

35:19,21 <b>matters</b> 3:7 <b>maximum</b> 17:9 <b>ma'am</b> 2:15 7:4 <b>mean</b> 10:3 11:10 15:11 16:10 28:18 <b>meaning</b> 34:8 <b>means</b> 9:7 21:15 <b>measures</b> 11:14 <b>meet</b> 16:2 <b>meeting</b> 1:3 21:22 <b>meetings</b> 21:17,21 <b>Member</b> 1:18,19 1:19,20,21,21 3:9 3:14,17,20 7:8,15 7:19,22 8:3,8,10 8:13,16 9:1,9,13 9:16,19,22 10:11 11:19 12:9,15,19 13:1,5,11,16,22 14:8,11 18:13,18 18:20 19:2,13,16 19:20 20:19 21:6 21:9 22:6,9,11,13 22:16,18,20 24:11 24:15 25:1,3,5,8 25:10,13,17,21 26:5,7,9,12,14,17 26:18,22 28:4,7 28:12,16 29:15,17 30:10,11,14,16,20 31:9,12,16,18,20 33:21 34:2,4,10 34:19 35:12,14 <b>Members</b> 2:9 7:6 <b>memory</b> 15:1 <b>mentioned</b> 12:12 <b>met</b> 1:14 8:21 9:7 19:8,12,18 <b>MIKE</b> 1:21 <b>Miller</b> 1:15,18 2:3 2:13,16,19,22 3:2 3:5,22 4:9,13 7:1 7:5,17,20 8:2 9:11 13:4 14:13,17 15:3,6,10,20 16:1 16:4,16,20 18:10	18:22 21:11,16 22:7,10,12,14,14 22:17,19,21 23:5 24:12,18 25:2,4,6 25:6,9,11,14,20 26:1,6,8,10,10,13 26:16,19 27:2,7 27:17,21 28:2,5 28:17 29:3,12,18 30:8,12,15,18 31:14,14,17,19,21 32:4 33:18 34:1 35:15,18 <b>minimum</b> 6:1 <b>minutes</b> 21:14 23:2 <b>Mobley</b> 1:21 22:17 22:18 25:9,10 26:13,14,17,20,22 29:17 30:10 31:17 31:18 <b>monetary</b> 17:3,16 17:20 <b>moot</b> 13:17 <b>morning</b> 2:8,11 <b>motion</b> 22:8 24:13 25:15,22 26:2,21 27:3 29:22 30:19 <b>move</b> 3:6 21:21 23:12 25:18 <b>moving</b> 10:22 <b>MPD</b> 5:10,12 <hr/> <b>N</b> <b>name</b> 6:14 <b>needed</b> 29:6 <b>nevertheless</b> 11:5 <b>new</b> 14:18 31:5 <b>NICK</b> 1:18 <b>night</b> 5:15 <b>Nophlin</b> 1:20 7:22 8:3,8,10,13,16 9:1 9:9 22:8,9 24:11 24:22 25:1 26:4,5 30:11,13,14 <b>normally</b> 18:15 <b>noted</b> 19:4 <b>notice</b> 2:17 20:2,12	20:14,20 32:9 <b>number</b> 23:22 <b>NW</b> 1:7 <b>N.W</b> 1:14 2:7 <hr/> <b>O</b> <b>OAG</b> 1:23 <b>obligated</b> 24:4 <b>October</b> 14:22 <b>offer</b> 4:3,5,12,14 6:21 8:6 10:3,6,8 10:13,16,18 11:12 11:22 12:11 16:21 17:2,10 19:3 22:2 23:7,10,13 24:3 25:18 26:3,21 27:9,11 30:1 31:2 31:5,22 <b>officer</b> 6:12,15 <b>Oh</b> 3:7 4:9 7:20 15:6 <b>OIC</b> 15:12 <b>okay</b> 2:3,13,16 3:5 3:22 4:14 7:5,21 8:16 9:1 12:15 13:22 14:13 15:3 15:7,10,10 16:4 16:16 18:22 21:12 21:12 22:21 23:5 23:12 24:12,14,18 24:19 26:1,19 27:2,2,7,21 28:2 29:12,20 30:8,12 31:10 32:4,4 33:18,20 35:2,16 <b>open</b> 7:9,21 18:15 18:16 21:21 <b>operation</b> 5:3 <b>operations</b> 18:7 <b>order</b> 5:11 6:18 9:20 10:1,13 11:5 12:3,7,12,14,18 14:20 15:2 16:12 32:19 <b>original</b> 31:1 <b>outstanding</b> 6:6 <b>owner</b> 3:12	<hr/> <b>P</b> <b>P</b> 1:7 2:6 <b>page</b> 4:7 <b>paid</b> 27:15,18 28:3 29:9,14,18 30:4 31:7 <b>Palace</b> 1:6 2:6 22:4 23:8 <b>part</b> 10:1,2,5,7 12:3 18:4,5 34:7 <b>particular</b> 11:2,8 11:18 17:18 20:8 20:21 29:2,6 32:18 33:13 35:9 <b>parties</b> 4:3 16:7,14 17:9 27:8 <b>parts</b> 11:22 <b>Pasha</b> 1:6 2:6 22:4 23:8 <b>passes</b> 27:3 <b>payment</b> 6:5 <b>penalties</b> 23:15 <b>penalty</b> 10:9,16 11:11,13 16:11,22 16:22 17:4,17,21 <b>percent</b> 3:16 <b>percentage</b> 3:14 <b>period</b> 4:17,18 15:19 17:4 18:2 27:13,15,19 28:1 28:11,14 30:5 <b>personally</b> 7:11 <b>picture</b> 10:19 <b>plan</b> 1:10 5:1,2 6:1 6:10 12:6 19:6,8 19:19,22 20:1,4 20:11,22 <b>please</b> 8:1 11:22 <b>plus</b> 29:11,19 30:2 <b>point</b> 11:22 19:13 29:6 34:15,16,21 35:2,8,8,9,13 <b>possible</b> 35:9 <b>possibly</b> 34:20 <b>power</b> 32:19 <b>practice</b> 24:6 <b>preliminary</b> 3:7	<b>premises</b> 6:14 <b>present</b> 1:17,22 4:4 27:9 <b>presented</b> 25:19 <b>presenting</b> 17:9 <b>presently</b> 10:5 <b>presents</b> 6:14 <b>president</b> 2:14 3:11 <b>presiding</b> 1:15 <b>previous</b> 13:13 31:5 <b>primary</b> 32:7,11,17 <b>prior</b> 4:21 6:5,9 19:5 <b>probably</b> 23:2 <b>problems</b> 20:15 <b>procedures</b> 5:20 <b>proceeding</b> 6:16 33:8 <b>prophylactic</b> 11:13 <b>proposal</b> 21:13 <b>provide</b> 10:19 17:8 32:2 <b>provided</b> 4:6 <b>provides</b> 20:2 <b>providing</b> 20:14 <b>provision</b> 33:5 <b>provisions</b> 15:14 15:17 <b>punitive</b> 17:22 18:5 <b>purpose</b> 17:22 22:1 <b>purposes</b> 3:10 <b>pursuant</b> 32:8 <b>put</b> 29:21 <b>P-R-O-C-E-E-D-...</b> 2:1 <hr/> <b>Q</b> <b>quell</b> 20:6 <b>question</b> 7:13 8:1 12:6,22 13:9,16 18:9 19:15,18 28:4,8 <b>questions</b> 7:2,6,21 18:11 21:12 <hr/> <b>R</b> <b>raise</b> 20:4
---	--	--	---	---

<b>raised</b> 11:1	<b>result</b> 13:13,20	<b>scheduled</b> 32:8	<b>Street</b> 1:7,14 2:7	12:20 13:2,5,22
<b>range</b> 32:18 33:13	<b>Retailer</b> 1:8	<b>se</b> 23:15	<b>structured</b> 33:9	14:8,11 18:11,20
<b>rationale</b> 18:4	<b>retrieval</b> 4:22 6:6,9	<b>second</b> 22:5,6	<b>subject</b> 6:15	19:2,20 21:6,9
19:22 20:10	19:5	24:10,11 25:21	<b>submission</b> 4:21	29:4 31:9 33:18
<b>read</b> 2:19 21:17	<b>retrieve</b> 15:18	30:9,10,11	6:8 19:4,8,18 20:1	33:20 35:12,15,17
<b>reading</b> 3:3 34:5,20	<b>retrieved</b> 6:3 8:20	<b>secondary</b> 33:10	20:11	35:18
35:1	9:6	<b>section</b> 32:15	<b>submitted</b> 23:7	<b>things</b> 15:22 24:5
<b>really</b> 17:21 20:12	<b>returned</b> 6:2,12	<b>security</b> 1:10 4:22	<b>subsequent</b> 33:15	<b>think</b> 16:21 23:15
29:10 30:20	8:22 9:3	5:2 6:1 12:6	<b>substantial</b> 23:18	24:2,5,6,20 28:17
<b>reasoning</b> 23:14	<b>review</b> 19:10	<b>see</b> 21:2 23:21	<b>subsumed</b> 28:11,14	<b>Thursday</b> 6:19
24:9	<b>revised</b> 4:22 6:2	<b>seeking</b> 22:1	<b>sufficient</b> 14:2,7	<b>tier</b> 32:7,11,17
<b>receive</b> 2:17 4:8	27:9	<b>sentence</b> 32:14	<b>suggest</b> 35:5	<b>time</b> 4:4 6:22 15:12
<b>recess</b> 22:22 23:3	<b>revocation</b> 17:5	<b>serve</b> 17:21	<b>Suite</b> 1:14	16:18 18:2,6
<b>recognize</b> 23:14	<b>right</b> 9:9 16:1	<b>served</b> 14:3 28:18	<b>Sunday</b> 6:19	20:16,17 21:1
<b>record</b> 3:3 23:6	18:20 29:3,20	28:20 30:2	<b>support</b> 26:20	27:10
30:21	31:5 34:9,16,18	<b>set</b> 27:3	<b>supposed</b> 10:8,12	<b>Title</b> 5:2 32:5 33:1
<b>records</b> 13:6,14	<b>rigid</b> 17:15	<b>seven</b> 18:16,18	10:22 11:4	<b>today</b> 4:17 30:5,6
<b>red</b> 20:5	<b>Rivero</b> 1:23 2:8,9	<b>short</b> 15:12 22:22	<b>sure</b> 12:4 14:14	<b>transfer</b> 6:16
<b>reflect</b> 13:14 16:6	4:1,2,10,14 7:11	<b>show</b> 1:6 2:4,17 5:5	16:19 17:1 29:1	<b>trigger</b> 13:19
16:13	8:3,6,9,11,15,17	11:15 32:8 35:20	31:10 33:6	<b>triggered</b> 13:12,19
<b>reflected</b> 12:7,12	9:2,14,15,18,21	<b>shows</b> 32:18	<b>surrendered</b> 4:19	23:20 28:9,19
12:14 18:7	10:10 11:20 12:4	<b>shut</b> 18:4	8:19	29:7,20 30:2 31:4
<b>reflective</b> 13:7	12:10,16,21 13:3	<b>significant</b> 11:7	<b>suspend</b> 17:13	<b>true</b> 11:3
<b>reflects</b> 21:4	13:10,15,21 14:1	18:1	<b>suspended</b> 15:13	<b>trying</b> 10:2
<b>regard</b> 11:10	14:10,14,16,20	<b>Silverstein</b> 1:21	30:5 31:3	<b>two</b> 4:7 13:12 14:6
<b>regulation</b> 33:4	15:5,8,16,21 16:2	22:15,16 24:14,15	<b>suspension</b> 4:16,18	23:20,22 28:9,10
<b>regulations</b> 10:14	16:5,19 17:1	25:7,8 26:11,12	8:12,13 9:4,8	28:13,18,19,20
17:8 32:22 33:11	19:14,17,21 20:20	28:4,6,7,12,16	15:19 17:4,7,20	29:7,11,19 30:1
35:6	21:8,15 25:19	29:15 31:15,16	18:1 23:16,17,20	31:3
<b>reimbursable</b> 5:10	27:5,8,19,22 28:3	<b>similarly</b> 33:9	27:13,15,20 29:10	<b>t/a</b> 1:6
5:13 9:16	28:10,13,21 29:4	<b>simply</b> 16:6 19:8	31:2,4	
<b>reiterate</b> 16:13	29:13 30:6 31:8	21:1		<b>U</b>
<b>iteration</b> 12:17	31:11 32:1,5	<b>sir</b> 14:9 18:19	<b>T</b>	<b>U</b> 21:20 32:9 33:9
<b>reject</b> 25:18 26:2	33:20 34:2,3,9,18	<b>slow</b> 11:21	<b>take</b> 21:14 22:22	<b>understand</b> 2:22
<b>remains</b> 15:13	35:2,13,17	<b>sorry</b> 14:14 27:17	23:1 33:2,13	10:2 13:6 16:13
<b>reminding</b> 34:21	<b>road</b> 20:15	29:4 30:18	<b>talking</b> 14:5,6	<b>understanding</b>
<b>repeat</b> 23:9	<b>roll</b> 24:21	<b>speak</b> 24:13 30:19	<b>teeth</b> 24:6	10:20 11:14,15
<b>reporting</b> 5:4	<b>Room</b> 1:14	33:21	<b>tell</b> 34:6	15:8 16:7,14
<b>represent</b> 10:9	<b>rule</b> 17:16	<b>start</b> 30:5,6	<b>tension</b> 32:22 35:3	<b>understood</b> 29:2
<b>request</b> 5:9,19	<b>Ruthanne</b> 1:15,18	<b>stated</b> 8:20	<b>term</b> 10:15 11:6	<b>uses</b> 32:15
<b>required</b> 12:2	<b>S</b>	<b>Status</b> 1:8 2:5	12:17 28:8	
14:18,21 19:22	<b>safekeeping</b> 4:20	35:20	<b>terms</b> 4:11,15 6:21	<b>V</b>
<b>requirements</b> 5:1	6:4 8:19 24:7	<b>statute</b> 17:12,15	10:13,17 11:11	<b>video</b> 5:4,5,8
32:9	<b>Saturday</b> 6:20 7:10	33:5 34:7	27:12,16	<b>videotapes</b> 5:7
<b>resolve</b> 16:14	<b>saying</b> 8:4 30:3	<b>stayed</b> 13:19 14:3,5	<b>thank</b> 3:9,17,20 4:2	<b>violation</b> 13:13
<b>respect</b> 11:16 12:5	<b>says</b> 19:4 32:6,11	14:6,7	4:13 7:8,15,15 9:9	32:7,12,17 33:12
16:10 20:7 21:4		<b>stems</b> 11:8	9:13 11:19 12:19	<b>violations</b> 33:10
				<b>violent</b> 5:21

<b>vote</b> 24:19 25:15 26:2 31:21	<hr/> <b>1</b> <hr/>	<b>402</b> 5:12 12:8 <b>405</b> 21:20 <b>48</b> 5:8		
<hr/> <b>W</b> <hr/>	<b>1</b> 12:10 <b>1:00</b> 6:19 <b>10:13</b> 2:2 <b>10:30</b> 23:3 <b>10:57</b> 23:4 <b>11-251</b> 2:5 <b>11-251-000197</b> 22:3 <b>11:08</b> 35:22 <b>14th</b> 1:14 <b>1604</b> 32:9	<hr/> <b>5</b> <hr/> <b>5</b> 12:13		
<b>waive</b> 3:3 <b>want</b> 14:22 16:12 16:17 24:13 29:1 30:19 33:13 34:17 <b>wanted</b> 31:10 33:6 <b>wants</b> 23:1 <b>Washington</b> 1:15 <b>wasn't</b> 14:14 34:22 <b>way</b> 21:3 <b>week</b> 18:14,17,18 <b>welcome</b> 3:19 4:1 21:8 <b>well-versed</b> 34:8 <b>we're</b> 14:5,6 18:16 <b>wholeheartedly</b> 24:16 <b>wondering</b> 34:21 <b>word</b> 32:15 33:14 33:14 34:12 <b>words</b> 5:12 <b>working</b> 15:1 <b>works</b> 9:4 <b>writing</b> 23:8,11 <b>written</b> 4:6	<hr/> <b>2</b> <hr/> <b>2</b> 12:5 <b>2A</b> 9:14 14:14 <b>2B</b> 9:14 <b>2:00</b> 6:20 <b>20</b> 14:6 <b>2000</b> 1:14 <b>20009</b> 1:15 <b>2010</b> 21:21 <b>2011</b> 5:11 12:7 <b>2011-402</b> 6:18 9:20 10:13 11:5 14:21 <b>2012</b> 1:12 <b>2147</b> 1:7 <b>23</b> 32:5 <b>25</b> 5:2 33:1 <b>26</b> 28:18 <b>28</b> 27:13 28:1,8,11 28:14,16 29:9,10 29:14,19,19 30:2 30:4 31:3,7	<hr/> <b>6</b> <hr/> <b>6</b> 12:17 16:9 <b>60695</b> 1:8 2:7 <b>67</b> 3:16		
<hr/> <b>Y</b> <hr/>		<hr/> <b>7</b> <hr/> <b>7-0</b> 31:22		
<b>year</b> 5:18 15:1		<hr/> <b>8</b> <hr/> <b>8</b> 1:12 <b>800</b> 32:6 <b>801.1</b> 32:6 <b>802</b> 33:9		
<hr/> <b>P</b> <hr/>				
<b>p</b> 1:4,11				
<hr/> <b>\$</b> <hr/>	<hr/> <b>3</b> <hr/> <b>3</b> 12:13 25:15 <b>30</b> 4:17 5:7 8:12,14 9:3 13:18 14:1 15:13,18 17:22 23:16,17,21 29:8 29:9,10 <b>31st</b> 9:3			
<b>\$1,000</b> 32:12 <b>\$2,000</b> 27:14,18 28:1 29:17,18 30:4 31:7 32:13				
<hr/> <b>#</b> <hr/>				
<b>#11-251-000197</b> 1:9				
<hr/> <b>0</b> <hr/>	<hr/> <b>4</b> <hr/> <b>4</b> 12:13 19:3 25:16 <b>400S</b> 1:15			
<b>000197</b> 2:6				