

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
Pennsylvania Rail, Inc., :
t/a Remington's :
639 Pennsylvania Avenue, SE :
Retailer Class CN : Fact Finding
License No. 9238 : Hearing
Case No. 11-CMP-00476 :
ANC 6B :
Assault Inside of the :
Establishment; Transferred :
Security Responsibilities to a :
Third Party; Substantial :
Change (Expansion) :
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FEBRUARY 15, 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
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- HERMAN JONES, Member
- JEANNETTE MOBLEY, Member
- CALVIN NOPHLIN, Member
- MIKE SILVERSTEIN, Member

ALSO PRESENT

FELICIA MARTIN, ABRA

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

2 3:29 p.m.

3 CHAIRPERSON MILLER: Okay. The
4 next case on the calendar is case No. 11-CMP-
5 00476. It's Remington's at 639 Pennsylvania
6 Avenue, S.E. in ANC 6B. And this is also a
7 fact finding hearing. And it's regarding an
8 assault that occurred inside the establishment
9 and whether there was a substantial change.

10 Would the parties introduce
11 themselves for the record, please?

12 MR. FONSECA: Michael Fonseca for
13 the Licensee. With me is its principal and
14 vice-president,

15 MR. BOGAEV: My name's Mr. Bogaev.

16 MR. FONSECA: Spell it.

17 MR. BOGAEV: It's B-O-G-A-E, V as
18 in Victor.

19 MR. FONSECA: And for the court
20 reporter, I was the first signee this morning
21 so you'll have the spelling of my name.

22 CHAIRPERSON MILLER: Okay.

1 INVESTIGATOR MARTIN: ABRA

2 Investigator Felicia Martin.

3 CHAIRPERSON MILLER: Okay. Ms.

4 Martin, you're on.

5 INVESTIGATOR MARTIN: On Thursday,
6 November 10th of 2011, I received direction
7 from Supervisory ABRA Investigator Jermaine
8 Matthews to visit Remington's regarding a
9 complaint about the establishment permitting
10 unauthorized nude performances, and that came
11 on October -- correction, on November the
12 10th.

13 On Thursday, November 17th, 2011,
14 I received a complaint, an assault complaint
15 filed by Cecelia Ford who stated that she was
16 a patron at Remington's on October 16th, 2011,
17 and while being a patron inside of the
18 establishment she was assaulted by a former
19 friend.

20 Ms. Ford stated that she went to
21 Remington's to meet with other friends and
22 when she arrived she saw her former friend

1 sitting at a nearby table. Ms. Ford stated
2 that she took a position at a nearby table and
3 at such time her former friend approached her
4 from behind and struck her in the head hard
5 enough causing her hat to fly through the air
6 and land on the stage. Ms. Ford stated that
7 the MC witnessed what happened and made
8 comment to what he observed over the speaker.

9 Ms. Ford stated that she walked
10 away and then she returned and confronted her
11 friend and stated to her not to strike her
12 again, don't ever do that again, at which time
13 Ms. Ford's friend leaped to her feet and tried
14 to strike her. And her friend also was in the
15 company of her nephew and her nephew also
16 tried to assault her. Ms. Ford went on to say
17 that friends of hers intervened to stop her
18 friend and the nephew from attacking her.

19 Shortly thereafter, Ms. Ford
20 stated that she was approached by a male who
21 stated to her that she had to follow him. Ms.
22 Ford stated that she was confused because she

1 didn't know who the gentleman was and asked
2 him who was he. She didn't recognize him as
3 -- he wasn't dressed in an attire that would
4 help her to identify him as security. The
5 gentleman identified himself as security and
6 escorted Ms. Ford out the door. Ms. Ford
7 reluctantly complied.

8 Ms. Ford stated that on the night
9 of the incident she visited the 5th District
10 Police Station and filed a report. Ms. Ford
11 also stated that the establishment failed to
12 assist her when she was being assaulted.

13 On Saturday, November 19th of
14 2011, I telephonically interviewed Douglas
15 Bogaev who is the vice-president of
16 Remington's. Mr. Bogaev stated that he was
17 not working on the night of the incident, but
18 was advised by two of his employees that Ms.
19 Ford was the aggressor and hence the reason
20 why she was ejected from the establishment.

21 I asked Mr. Bogaev about the
22 security, what type of security that the

1 establishment utilizes, and Mr. Bogaev stated
2 that the venue that they had on the night,
3 which was called Maxine Blue & the Divas,
4 provided their own security and they were
5 responsible for the security on the night of
6 the assault.

7 On Wednesday, November 23rd, I
8 physically visited the establishment and I met
9 with Rick -- excuse me a second. Yes, I met
10 with Mr. Rindskopf, also known as Rick. He
11 assisted me with the regulatory inspection.

12 During the regulatory inspection I
13 requested to see the Certificate of Occupancy
14 and I gave pause because I realized the
15 establishment's square feet was much bigger
16 than what was actually listed on the
17 Certificate of Occupancy. I noticed that on
18 the Certificate of Occupancy the true address
19 for Remington's is 639 Pennsylvania Avenue,
20 however, standing with my back facing the back
21 of the establishment to the left of the
22 building is 637 and to the right of the

1 building is 639.

2 I can see that there was obviously
3 a wall that was still obstructed which
4 actually divided both sides, however, there
5 was also a portion of the wall that has been
6 removed. Mr. Bogaev advised that he has been
7 associated with the establishment for
8 approximately 15 years and the establishment
9 is in the same condition that it was since he
10 has been associated with the business.

11 Mr. Rindskopf and Ms. Nagy, who
12 are also employees of the establishment, when
13 I asked them about the assault, both of them
14 contradicted Mr. Bogaev and stated that
15 nothing happened on the night of the incident.

16 And that's the end of my
17 testimony.

18 CHAIRPERSON MILLER: Thank you.
19 We have another individual who's joined us at
20 the table.

21 Could you introduce yourself,
22 ma'am?

1 MS. FORD: Yes, Cecelia Ford.

2 CHAIRPERSON MILLER: Okay. And
3 you were the victim that night?

4 MS. FORD: Yes.

5 CHAIRPERSON MILLER: Is there
6 something you'd like to say at this point, or
7 just respond to questions?

8 MS. FORD: I can respond to
9 questions. She's pretty much covered it.

10 CHAIRPERSON MILLER: Okay. She
11 accurately covered what she said you said?

12 MS. FORD: Yes.

13 CHAIRPERSON MILLER: Okay. Are
14 there any Board questions right now?

15 MEMBER ALBERTI: yes, I do.

16 CHAIRPERSON MILLER: Okay.

17 MEMBER ALBERTI: Investigator?

18 INVESTIGATOR MARTIN: Yes, sir?

19 MEMBER ALBERTI: I'm a little
20 confused about your reports and maybe you can
21 clear this up for me. It says under
22 "Summary" --

1 INVESTIGATOR MARTIN: Yes, sir?

2 MEMBER ALBERTI: -- like the third
3 line from the bottom of that paragraph --

4 INVESTIGATOR MARTIN: Yes.

5 MEMBER ALBERTI: -- it says
6 specifically the establishment transferred
7 security responsibilities to a third party.
8 That I understand. And Remington's expanded
9 the operation of the licensed establishment to
10 another floor. Moreover, the establishment
11 expanded the area of the establishment in
12 which live entertainment was performed.

13 INVESTIGATOR MARTIN: Yes.

14 MEMBER ALBERTI: In your report
15 that you just gave you talked about them
16 expanding to like an adjacent space, an
17 adjacent address.

18 INVESTIGATOR MARTIN: yes.

19 MEMBER ALBERTI: So I'm trying to
20 understand the basis for your report here.
21 Are you saying that the second floor is not
22 licensed, or are you saying that the -- what

1 you -- appears to be the adjacent address is
2 not licensed. What portion are you saying is
3 not licensed?

4 INVESTIGATOR MARTIN: Yes, what I
5 forgot to mention is that on my visit on, I
6 believe it was November 23rd, I entered into
7 an atmosphere of festivities. There was some
8 dancing going on. The initial complaint was
9 about the nude dancing. And so before I was
10 met by Mr. Bogaev or Mr. Rick, I took a look
11 at the entire establishment just to see what
12 activity was going on to confirm or deny the
13 allegations of nude dancing.

14 So on the right side of the
15 establishment, with my back facing, is the
16 portion that is authorized by the city to be
17 Remington's. However, on the left side there
18 were patrons sitting and there was dancers who
19 were coming around dancing for the patrons who
20 were sitting on the left side of the
21 establishment that's set up to be -- has a bar
22 on that side and a customer seating area.

1 MEMBER ALBERTI: Yes, I've been in
2 there, so I'm familiar with that.

3 INVESTIGATOR MARTIN: Okay.

4 MEMBER ALBERTI: Okay. All right.
5 So what does their license say about capacity?
6 You talked about DCRA. What does their
7 license say about capacity?

8 INVESTIGATOR MARTIN: I would have
9 to look at the file again, but if my memory
10 serves me correctly, for the actual address
11 there are only 46 patrons permitted on that
12 first level.

13 MEMBER ALBERTI: On their license?

14 INVESTIGATOR MARTIN: Yes. I may
15 be wrong, but it's a very low number for
16 occupancy.

17 MEMBER ALBERTI: Okay. Well, the
18 Board will have to take a look at that.

19 INVESTIGATOR MARTIN: Yes.

20 MEMBER ALBERTI: We'll take a
21 look. Did you take a look at their security
22 plan?

1 INVESTIGATOR MARTIN: I don't
2 believe I did.

3 MEMBER ALBERTI: Okay. Thank you.

4 INVESTIGATOR MARTIN: Yes.

5 MEMBER ALBERTI: No further
6 questions.

7 CHAIRPERSON MILLER: Any other
8 Board questions right now?

9 (No audible response.)

10 CHAIRPERSON MILLER: Okay. Mr.
11 Fonseca?

12 MR. FONSECA: Yes, just to clarify
13 because I think you probably misspoke.

14 INVESTIGATOR MARTIN: Okay.

15 MR. FONSECA: If you're looking at
16 the space in the doors, the addresses really
17 run higher going to the left. So 637's really
18 on the right side, 639 on the left. Isn't
19 that correct?

20 INVESTIGATOR MARTIN: Well, we --

21 MR. FONSECA: I think you've been
22 -- talking about it it's been swapped over.

1 INVESTIGATOR MARTIN: Are we
2 speaking from looking at the building from the
3 outside looking in, or --

4 MR. FONSECA: Correct.

5 INVESTIGATOR MARTIN: -- inside?
6 From outside looking in 639 is to the right.

7 MR. FONSECA: To the left.

8 MEMBER ALBERTI: To the left.

9 MR. FONSECA: It has --

10 INVESTIGATOR MARTIN: To the left.
11 Yes, you're right. 639 is to the left.

12 MR. FONSECA: I just wanted to
13 make sure. Because if you're really familiar
14 with the space, does that change what's laid
15 out in your mind then? I mean, you know, has
16 it been transposed so that once you're in
17 there what you're thinking now, because you've
18 been going -- right and left being swapped
19 over? What activities go on on which side?

20 INVESTIGATOR MARTIN: No.

21 MR. FONSECA: Okay.

22 INVESTIGATOR MARTIN: I'm very

1 clear.

2 MR. FONSECA: Okay. Did you ever
3 talk to the police officer who took the
4 report, because your report does have a 251?

5 INVESTIGATOR MARTIN: Yes, I did
6 speak to the officer.

7 MR. FONSECA: And to your
8 knowledge did the officer eve identify any
9 conversation with the alleged assailant?

10 INVESTIGATOR MARTIN: No, it does
11 not.

12 MR. FONSECA: Well, I know the
13 report doesn't, but you had a conversation
14 with the officer. Did you ever ask, you know,
15 what was the result of your investigation?
16 Anything along those lines?

17 MR. BOGAEV: No.

18 MR. FONSECA: Do you have any
19 knowledge of whether or not this alleged
20 assailant has ever been arrested or further
21 investigated by ABRA or MPD?

22 INVESTIGATOR MARTIN: I know I

1 have not done any further investigation,
2 however, Ms. Ford did advise me that the case
3 did go to court and she was able to obtain a
4 restraining order against the suspect.

5 MR. FONSECA: Did you eve see
6 that?

7 INVESTIGATOR MARTIN: The actual
8 restraining order?

9 MR. FONSECA: Right.

10 INVESTIGATOR MARTIN: No, sir.

11 MR. FONSECA: Did she ever offer
12 to you a phone number or an address where you
13 could -- how you contact this individual?

14 INVESTIGATOR MARTIN: No. Once
15 she advised me that there was a restraining
16 order given, our policy is not to speak to
17 defendants.

18 MR. FONSECA: Okay. Well, I guess
19 that begs the question does it appear that
20 this individual is a defendant, to your
21 knowledge, right? She's never been arrested,
22 prosecuted?

1 INVESTIGATOR MARTIN: Well, I
2 don't know if she's been arrested or not.

3 MR. FONSECA: Okay.

4 INVESTIGATOR MARTIN: I'm just
5 going off the Complainant's statement.

6 MR. FONSECA: Did you speak to
7 others in ABRA to try to confirm this
8 expansion, any record keeping on the
9 expansion?

10 INVESTIGATOR MARTIN: I did.

11 MR. FONSECA: To whom did you
12 speak?

13 INVESTIGATOR MARTIN: I asked
14 general counsel, Ms. Martha Jenkins, because
15 Mr. Bogaev stated that Ms. Jenkins was aware
16 that the establishment was trying to correct
17 the Certificate of Occupancy.

18 MR. BOGAEV: That's the wrong Ms.
19 Jenkins.

20 MR. FONSECA: Whoa, whoa, whoa.

21 MR. BOGAEV: Okay.

22 MR. FONSECA: I guess this is the

1 question: Did Mr. Bogaev ever say the word
2 "Martha," or did he say Ms. Jenkins?

3 INVESTIGATOR MARTIN: No, he said
4 Martha Jenkins.

5 MR. FONSECA: Okay. Did you ever
6 seek out Patricia Jenkins on the licensing
7 staff?

8 INVESTIGATOR MARTIN: No, sir.

9 MR. FONSECA: Okay. I mean, this
10 is a fact finding hearing. I always try to be
11 helpful and to the extent I can, just
12 testifying, but it's first-hand knowledge.

13 I spoke to Ms. Jenkins. I frankly
14 -- and it's funny -- I sent an email first to
15 Patricia Jenkins thinking that, because as one
16 starts to put in a name, the name pops up. I
17 hit to send, and I sent it to Martha Jenkins.
18 So it's very easy to misidentify the two. And
19 I'm saying this really totally understanding.
20 He could have said Martha Jenkins.

21 The reality is Patricia Jenkins
22 not only has the file in her possession,

1 Patricia Jenkins was straightening out officer
2 information because Steven Smith, who was the
3 former president that passed away -- it was
4 about two years ago --

5 MR. BOGAEV: I think 10 months
6 ago.

7 MR. FONSECA: -- 10 months ago.
8 And I go back to 1987-1990 being the staff
9 director of the then Alcoholic Beverage
10 Control Division of DCRA. I knew Steven. I
11 know about this establishment. I don't have
12 knowledge of the expansion. Patricia Jenkins
13 has over the years handled that and other
14 things and became aware of it. And we both
15 looked through the file and it's -- I would
16 say -- I can't find where I could identify a
17 transactional document, an approval letter.

18 But having said that, there's
19 clearly a lot to be said of what's in that
20 file, including older voluntary agreements
21 closer to the time frame; which we'll have
22 others come up and testify today to assist the

1 Board with knowledge, going back at least to
2 '94 that had already occurred, and a voluntary
3 agreement that was for noise-related issues
4 for mechanicals that goes back to and
5 including -- language for that time was not
6 common where it talked about, you know, in the
7 event of an expansion you come back to the
8 ANC.

9 So we're comfortable that the
10 space has been opened, we believe, since prior
11 to 1994, perhaps '92, '93 at the latest. And
12 the question really is documented in ABRA's
13 files and whether those files have been lost,
14 if they were ever filed. Because that was
15 back when the Agency, the DCRA, which this was
16 a part of, was in Chinatown at 614 8th Street.
17 And when they moved in 2000-2001 to 940 -- to
18 920 North Capital they sent all of -- every --
19 DCRA sent so many documents to Texas to be
20 scanned and then they were sent back or not
21 and filed, were reassembled. So we've been
22 trying to put this history together in a very

1 short time frame and we can't get our arms
2 around it. I'll say that.

3 CHAIRPERSON MILLER: Could you
4 just state for the record who Patricia Jenkins
5 is?

6 MR. FONSECA: Patricia Jenkins is
7 a licensing specialist who's been with the
8 Agency or prior Agency going back to at least
9 1987. For the record, I hired her, so I know
10 it goes back to 1987.

11 CHAIRPERSON MILLER: And you're
12 saying that she has confirmed that -- no?

13 MR. FONSECA: No.

14 CHAIRPERSON MILLER: So what --

15 MR. FONSECA: No, she -- no, we --
16 she had the file and in front of her I went
17 through it this morning.

18 CHAIRPERSON MILLER: Okay.

19 MR. FONSECA: I could not find
20 anything, but I'm comfortable of the facts
21 that show a series of things that suggest that
22 perhaps not all documents that should be in

1 the file are necessarily in the file. So, no,
2 I don't -- believe me, I would produce that.
3 I would have then gotten Bill Hager, the
4 Agency's records manager, to come in, take the
5 file, make a copy and then be able to provide
6 it. So I'm going to nip that in the bud.

7 But having said that, we're
8 talking about something that has been open and
9 notorious, not in a pejorative sense, since no
10 less than 1994 to the public, including in the
11 security plan that shows the layout, which
12 shows -- I mean, this is not something that's
13 been hidden to the world. It's a question of
14 what's been documented and approved, which I
15 understand, and is a subject of this fact
16 finding.

17 So I tried to summarize that and
18 maybe help the Board. And also I will put --
19 you know, I could put three witnesses who
20 could all go back at least to '94. I will put
21 another witness on in addition going to the
22 incident and to the transferring of security

1 personnel and that potential issue.

2 So I have no other questions of
3 the investigator, but if the Board's not going
4 to question the Complainant, I may have a
5 couple questions for her.

6 MEMBER ALBERTI: Just a quick
7 question, a real quick question that has to do
8 with size. Okay. You've got those two halves
9 at the bottom. Are there two halves up on the
10 top level?

11 MR. BOGAEV: Yes.

12 MEMBER ALBERTI: Okay. But
13 basically it was originally two properties.
14 Now it's been -- the wall goes through and it
15 occupies both of those spaces, is that
16 correct?

17 MR. FONSECA: And the same
18 landlord, yes.

19 MEMBER ALBERTI: I was there 10
20 years ago, but I don't think it was like that
21 then. I'm not sure. It was about that time.

22 All right. So that's not my

1 question. My question is what does your --
2 DCRA say is your occupancy?

3 MR. FONSECA: I've not been able
4 to locate in this short time. We met on
5 Monday. We've been talking informally, but
6 Monday I began to try to get my arms around
7 this. But with the exception of the original
8 1985 Certificate of Occupancy, which the
9 investigators reference in their report, which
10 is in the file, that's what we see. I haven't
11 had an opportunity to try and go and --

12 MEMBER ALBERTI: And what's it
13 say?

14 MR. FONSECA: -- investigate at
15 DCRA.

16 MEMBER ALBERTI: What's it say?

17 MR. FONSECA: It has 639
18 Pennsylvania Avenue. It shows restaurant, 42
19 on first; 30 on the second floor. At the top
20 it says first, second and basement for the use
21 of the building.

22 MEMBER ALBERTI: Yes.

1 MR. FONSECA: And then the known
2 as premises 639; purpose, restaurant; 42 on
3 first,; 30 on second floor.

4 MEMBER ALBERTI: Mr. Fonseca, I
5 think you alluded to this; that these records
6 need to get cleared up. The license needs to
7 be corrected at the very least here. But you
8 need to clear this up with DCRA. We need to
9 correct your license. All right? Because
10 it's clear to me that you have originally 70
11 on one half and you've got probably that
12 potential on that other half. All right?

13 MR. FONSECA: Correct.

14 MEMBER ALBERTI: Your license is a
15 CN-01.

16 MR. FONSECA: Correct.

17 MEMBER ALBERTI: Mr. Fonseca knows
18 where I'm going, which is you're paying a fee
19 for 99 or fewer. I got to wonder if your
20 occupancy is really larger than that and if
21 you should really legitimately -- you probably
22 legitimately want to be licensed so that we

1 don't come in and ding you for exceeding your
2 license.

3 MR. BOGAEV: Understood.

4 MEMBER ALBERTI: It's in your best
5 interest to get this all straightened up and
6 as quickly as possible, and then get your
7 license class straightened up. I know it's
8 going to be a little bit more money, but it's
9 cheaper than a fine.

10 MR. FONSECA: Right. We'll work
11 that out.

12 MR. BOGAEV: Understood.

13 CHAIRPERSON MILLER: I'm just
14 curious, is there a voluntary agreement with
15 this?

16 MR. FONSECA: There is, and it's
17 the only one. When I requested this from the
18 records manager, there was one with a Board
19 order that is a September 29, '05 agreement,
20 Board order October 12th, 2005. And it looks
21 to have been with the ANC 6B and -- well, we
22 gather probably representatives of a group of

1 five, two individuals. I have my copy and I
2 don't know if the Board needs to see this now.
3 I'll make additional copies.

4 CHAIRPERSON MILLER: Well, I was
5 asking because I was wondering if there was an
6 expansion that wasn't authorized.

7 MR. FONSECA: No, I looked at some
8 older ones and it didn't -- it's never been
9 addressed, other than there was language going
10 back in the early '90s with one agreement. It
11 didn't touch on any other subject matter.
12 They referenced you know, effectively in the
13 event of an expansion, you know, you need to
14 come back to the ANC, you know, to see -- you
15 know, to request, which I just -- what went
16 through my mind was back then that wasn't a
17 common paragraph. You find that a lot more
18 often now.

19 CHAIRPERSON MILLER: That's not in
20 that --

21 MR. FONSECA: That is not in this
22 one either, the 2005. This really dealt with

1 issues dealing with noise, trash and debris.
2 This is really specifically to deal with D.C.
3 Code 25-725.

4 CHAIRPERSON MILLER: Okay.

5 MR. FONSECA: And noise decibels.

6 CHAIRPERSON MILLER: Okay.

7 MR. FONSECA: So this looks like
8 this was part of the renewal going back to, I
9 guess, 2005.

10 CHAIRPERSON MILLER: All right.

11 MR. FONSECA: And it's a very
12 short one.

13 CHAIRPERSON MILLER: Do any Board
14 members want to question Ms. Ford at this
15 time?

16 MEMBER BROOKS: Yes, I do.

17 CHAIRPERSON MILLER: Okay. Mr.
18 Brooks?

19 MEMBER BROOKS: Thank you, Madam
20 Chair.

21 Ms. Ford, I have a copy of the
22 letter that you wrote to ABRA back in October.

1 MS. FORD: Yes.

2 MEMBER BROOKS: 2011. And you
3 describe being assaulted to a point that
4 someone hit you in the back of the head and
5 your cap flew off.

6 MS. FORD: Yes.

7 MEMBER BROOKS: At that point did
8 you notify security that you had been
9 assaulted?

10 MS. FORD: I didn't know they had
11 security to notify.

12 MEMBER BROOKS: Did you notify
13 management?

14 MS. FORD: No, I did not.

15 MEMBER BROOKS: Why not?

16 MS. FORD: It happened in such a
17 short amount of time. After the assault, I
18 went around to the side of the establishment.
19 I got a drink, a beer through the bar, and I
20 then I saw the person return to the table at
21 which time I approached them and asked them
22 not to put their hands on me again. At that

1 time they jumped up and tried to assault me
2 again and verbally abused me. And then that's
3 when a gentleman approached me asking me to
4 follow him. And I asked him why, and he says
5 just follow me. You must follow me.

6 So I complied, followed him to the
7 door. I said what is the problem? And he
8 says you have to leave the establishment. And
9 I said why? And he said I was told you cursed
10 someone, and I said I did not curse anyone.
11 He says, well, you have to step outside the
12 establishment. You cannot return and you must
13 leave your beer here.

14 MEMBER BROOKS: And did that
15 gentleman identify himself as security?

16 MS. FORD: He did at that time.

17 MEMBER BROOKS: Okay. And did he
18 have "security" on a T-shirt or a jacket or --

19 MS. FORD: Not visible to me, no.

20 MEMBER BROOKS: Nothing visible to
21 you?

22 MS. FORD: Yes.

1 MEMBER BROOKS: Okay. So at no
2 time did you realize that they had security
3 and nor did you approach management and made
4 a -- I guess inform management that you were
5 assaulted, basically?

6 MS. FORD: No, I did not.

7 MEMBER BROOKS: Okay. Thank you,
8 Madam Chair.

9 CHAIRPERSON MILLER: Okay. Any
10 other questions? Mr. Jones?

11 MEMBER JONES: Thank you, Madam
12 Chair.

13 This is for the Licensee. What is
14 your understanding of your occupancy?

15 MR. BOGAEV: The way I understood
16 it was that there's a capacity of 99 on the
17 637 side. There's a placard up on top of the
18 bar. And as long as I've known it, that's
19 what it was. Because I -- Mr. Smith had
20 always taken care of all of the licensing and
21 such.

22 MEMBER JONES: Okay. So you said

1 it was 99?

2 MR. BOGAEV: Ninety-nine on the
3 right side, six-thirty-seven, and seventy-two
4 on the left.

5 MEMBER JONES: Okay. So 99 and
6 37?

7 MR. BOGAEV: Ninety-nine and
8 seventy-two.

9 MEMBER JONES: Ninety-nine and
10 seventy-two?

11 MR. BOGAEV: Yes.

12 MEMBER JONES: Okay. And is that
13 what you convey to your staff, your security
14 staff?

15 MR. BOGAEV: Yes.

16 MEMBER JONES: Okay. And how do
17 you keep track of that?

18 MR. BOGAEV: Keep track --

19 MEMBER JONES: Like on day-to-day,
20 yes. So --

21 MR. BOGAEV: How many people are
22 in there?

1 MEMBER JONES: Correct.

2 MR. BOGAEV: Just like a count of
3 like 10 at a time, but there's -- the crowds
4 aren't like they used to be and there's never
5 even 100 people in there usually. So, I mean,
6 it's easy to count.

7 MEMBER JONES: So you count 10 at
8 a time?

9 MR. BOGAEV: If you count -- like
10 heads, 10. Steve taught me to count like
11 that, like a quick count.

12 MEMBER JONES: Oh, just a quick
13 count? So you don't have a counter at the
14 entrance and a counter at the exit to keep
15 track of how many people come in?

16 MR. BOGAEV: We have one. I don't
17 carry a counter with me. There's -- the door
18 person has a counter -- as people enter.

19 MEMBER JONES: Okay. But you
20 don't have a corresponding exit counter?

21 MR. BOGAEV: No.

22 MEMBER JONES: Okay. Okay. Thank

1 you, Madam Chair.

2 CHAIRPERSON MILLER: Okay. Yes,
3 Mr. Brooks?

4 MEMBER BROOKS: Thank you again,
5 Madam Chair.

6 Does Remington's security staff
7 have any identifying apparel that they wear?

8 MR. BOGAEV: No.

9 MEMBER BROOKS: No?

10 MR. BOGAEV: He's there at the
11 door and usually the clientele that comes in
12 on Sunday nights know him as security because
13 he's always there and it's usually the same
14 group coming in on Sunday.

15 MEMBER BROOKS: Okay. I'm looking
16 at the first page of your security plan and it
17 indicates that at times you wear Remington's
18 issued shirts. And I'm trying to find out
19 what that means.

20 MR. FONSECA: Did you prepare the
21 security plan?

22 MR. BOGAEV: No, I did not.

1 MR. FONSECA: Who did?

2 MR. BOGAEV: Steve.

3 MR. FONSECA: That was your former
4 partner?

5 MR. BOGAEV: Yes.

6 MR. FONSECA: I'm sorry --

7 MEMBER BROOKS: I missed something
8 here.

9 MR. FONSECA: Yes, Steven Smith,
10 who ran the business day-to-day as opposed to
11 Doug here, who was a partner, passed away 10
12 months ago.

13 MEMBER BROOKS: I see. Okay.

14 MR. FONSECA: So he's having to
15 full time work and run the business.

16 MR. BOGAEV: I'm learning.

17 MR. FONSECA: Along with Mr.
18 Rindskopf, who's a manager and very
19 knowledgeable in running this type of an
20 operation. So I know he has to answer these
21 questions, but --

22 MEMBER BROOKS: Sure.

1 MR. FONSECA: -- he can't help but
2 make missteps because, you know, he has --
3 unfortunately, he did not prepare this.

4 And to your knowledge does any
5 staff continue to wear Remington's -- with the
6 name Remington on their shirts, security or
7 not?

8 MR. BOGAEV: They used to wear the
9 shirts. They don't wear the shirts now. It's
10 more like street clothes.

11 MEMBER BROOKS: Okay. And --

12 MR. FONSECA: Do you have anyone
13 who has the function of security that the
14 Board member's asking about who is on the
15 premises that are known to be the security?

16 I believe. Is that what your
17 looking for, Mr. Brooks?

18 MEMBER BROOKS: That's right.
19 That's right.

20 MR. BOGAEV: We have -- we pay
21 someone for security, kind of -- but they're
22 not -- they don't have a -- I don't think that

1 they have a shirt that has "security" or any
2 kind of labeling or anything that's security.

3 MEMBER BROOKS: Okay. Well, Mrs.
4 Ford indicates in her letter a gentleman
5 approached her with a hooded sweatshirt.
6 Would that be someone from your staff?

7 MR. BOGAEV: Who was --

8 MEMBER BROOKS: Dressed like that?

9 MR. BOGAEV: Yes.

10 MEMBER BROOKS: It would be?

11 MR. BOGAEV: Well, that's -- it
12 was a security guy.

13 MEMBER BROOKS: It was security
14 personnel?

15 MR. BOGAEV: Yes, that --

16 MEMBER BROOKS: And how would she
17 have known that?

18 MR. BOGAEV: -- that approached
19 her. Well, he introduced himself as security
20 to her.

21 MEMBER BROOKS: Okay. Well, she's
22 shaking her head no.

1 MR. BOGAEV: Well, she said a
2 minute ago that he said he was security.

3 MEMBER BROOKS: Okay.

4 MS. FORD: After I questioned who
5 he was and why he was asking me what he was
6 asking me. That is when he identified
7 himself.

8 MEMBER BROOKS: I have no more
9 questions.

10 CHAIRPERSON MILLER: Yes, Mr.
11 Jones?

12 MEMBER JONES: Thank you, Madam
13 Chair.

14 Just to piggyback off Mr. Brooks'
15 question, I know you're saying you're kind of
16 new to running the day-to-day operations, but
17 you did indicate you were somewhat familiar
18 with the security plan, or is that not a true
19 statement?

20 MR. BOGAEV: I'm not really
21 familiar with the security plan.

22 MEMBER JONES: Okay. Should you

1 be familiar with the security plan?

2 MR. BOGAEV: I should be now, yes.

3 MEMBER JONES: Okay. On page 1,
4 paragraph 2, it says all on-staff personnel
5 and staff are attired in a manner to readily
6 identify them as such; e.g., western attire or
7 Remington's-issued shirts.

8 MR. BOGAEV: They used to wear
9 Remington's-issued shirts because it was
10 country and western. On these particular
11 nights it's not country western. It's a drag
12 show. So there's --

13 MEMBER JONES: So the attire of
14 your security personnel will change based on
15 what the theme of the night is at your
16 establishment?

17 MR. BOGAEV: Well, the security
18 personnel -- we pay someone else for security.
19 They brings security with them and he's not --
20 definitely country western attire.

21 MEMBER JONES: Okay.

22 MR. BOGAEV: He wears street

1 clothes, as do the bartenders.

2 MEMBER JONES: So you're
3 bartender --

4 MR. FONSECA: Explain to him how
5 many nights a week.

6 MEMBER JONES: So who dresses in
7 this attire? To whom does this apply? It
8 says staff. All on-staff personnel. So your
9 security isn't on-staff?

10 MR. BOGAEV: Not directly. We
11 have the ABC managers as like backup security.

12 MEMBER JONES: So let me ask it a
13 different way: To whom would this line item
14 in your security plan apply?

15 MR. FONSECA: The door person.

16 MR. BOGAEV: The door person.

17 MEMBER JONES: And the door person
18 is a staff person that is directly hired and
19 is under your employ, or is that outsourced?

20 MR. BOGAEV: Outsourced.

21 MEMBER JONES: Okay. So the door
22 person, is he a security person?

1 MR. BOGAEV: Yes.

2 MEMBER JONES: So your security
3 staff should follow the guidelines of your
4 security plan and thus should be attired
5 appropriately?

6 MR. BOGAEV: Should be, yes; and
7 will be.

8 MEMBER JONES: Okay. How many
9 security staff did you have on duty on October
10 16th of 2011?

11 MR. BOGAEV: Three, I think.

12 MEMBER JONES: You had three?

13 MR. BOGAEV: We had the back door
14 and then the bartenders would be backup
15 security.

16 MEMBER JONES: Okay. So you only
17 had one dedicated security person?

18 MR. BOGAEV: One dedicated, yes.

19 MEMBER JONES: Okay. All right.

20 Thank you, Madam Chair.

21 CHAIRPERSON MILLER: Mr.
22 Silverstein?

1 MEMBER SILVERSTEIN: Mr. Bogaev,
2 how many people were there that night?

3 MR. BOGAEV: At 8:30 I would say
4 -- well, I don't know for a fact, because I
5 was not there, but I heard there was maybe 50
6 at 8:30.

7 MEMBER SILVERSTEIN: You've heard
8 Ms. Ford's comments, I would imagine, and I'm
9 sure you've read the letter. What's your
10 reaction to all this? What went wrong? How
11 could this have occurred?

12 MR. BOGAEV: I don't believe that
13 it did.

14 MEMBER SILVERSTEIN: Go on.

15 MR. BOGAEV: What I heard was that
16 it was like a verbal confrontation and I
17 didn't hear anything about an assault until we
18 got this letter. And all I understood it was
19 was a verbal confrontation and before it got
20 physical, that Ms. Ford was escorted out.
21 That's what I understood and that's all I
22 understood.

1 MEMBER SILVERSTEIN: And I would
2 ask this question to Ms. Martin and to you: Is
3 there any evidence that either of you could
4 present that this either did or didn't happen?
5 Let's start with Mr. Bogaev.

6 MR. FONSECA: We have a witness.

7 MR. BOGAEV: A witness.

8 MR. FONSECA: He wasn't there and
9 Ms. Rindskopf, who is here, was the manager
10 behind the bar. He would testify he never
11 saw. He wasn't aware of it other than the
12 ejectment later. But we have the host of the
13 event who was seated nearby; and this is the
14 host that does it five days a week, here and
15 can testify to what he observed.

16 MEMBER SILVERSTEIN: And,
17 Investigator Martin, is there anything beyond
18 this he said/she said?

19 INVESTIGATOR MARTIN: Yes, the MC
20 who made the announcement, because he saw Ms.
21 Ford get slapped. And the reporting officer
22 stated when Ms. Ford, as she was making the

1 report inside the 5th District, one of Ms.
2 Ford's friends telephoned her and she put the
3 call on speaker and Officer Flores stated that
4 she heard the friend ask her why would someone
5 do -- why would she do that to you?

6 MEMBER SILVERSTEIN: Very well.
7 No further questions.

8 CHAIRPERSON MILLER: Ms. Ford, you
9 didn't go to a hospital or anything did you?

10 MS. FORD: No, I did not.

11 CHAIRPERSON MILLER: Okay. You
12 were slapped on the head?

13 MS. FORD: Yes.

14 CHAIRPERSON MILLER: Is your
15 complaint?

16 MS. FORD: Yes.

17 CHAIRPERSON MILLER: And then were
18 you also complaining as to the manner in which
19 you were escorted out, or no?

20 MS. FORD: Yes, I was. I thought
21 it was very inappropriate to be escorted out
22 on hearsay that was inaccurate, to say the

1 least.

2 CHAIRPERSON MILLER: Okay. So
3 it's the fact that you were escorted out for
4 that reason as opposed to they weren't -- the
5 security person wasn't too roughly when he was
6 escorting you out?

7 MS. FORD: No, he never touched me
8 or anything of that nature. He simply made
9 verbal requests.

10 CHAIRPERSON MILLER: Okay. Other
11 questions up here? Yes, Mr. Nophlin?

12 MEMBER NOPHLIN: A question,
13 please. Ms. Ford, have you visited this place
14 before, or this was your first time?

15 MS. FORD: I've only been in
16 Remington's to conduct business for bowling
17 league contributions that I founded and that
18 was several years ago.

19 MEMBER NOPHLIN: That was your
20 first time?

21 MS. FORD: This was my first time
22 visiting the establishment socially, yes.

1 MEMBER NOPHLIN: Okay. Thank you,
2 Madam Chair.

3 CHAIRPERSON MILLER: Okay.

4 MR. FONSECA: May I ask --

5 CHAIRPERSON MILLER: Yes, go
6 ahead.

7 MR. FONSECA: Ms. Ford, when you
8 were escorted out, based on your letter --
9 this is correct. Your letter said at
10 approximately 8:15 is when you came into the
11 establishment.

12 MS. FORD: Correct.

13 MR. FONSECA: And that within
14 minutes of taking your seat is when you were
15 struck?

16 MS. FORD: Correct.

17 MR. FONSECA: And then by 8:35 you
18 were escorted out?

19 MS. FORD: Correct.

20 MR. FONSECA: Did you ever make an
21 effort once escorted out to hail a police
22 officer or a scout car?

1 MS. FORD: No, at 8:30 at night
2 I'm standing in the middle of Pennsylvania
3 Avenue sidewalk being evicted from an
4 establishment for no reason that I could see
5 and that didn't quite dawn on me at the time.
6 I think it was -- I was in total shock so I
7 didn't know exactly what to do. I had several
8 blocks to walk back to my car alone, which was
9 very uncomfortable. I didn't feel I should
10 have been put in that situation. If I was
11 allowed to leave later, I would have had
12 friends walking with me. At least I would
13 have felt better. So I just felt Remington
14 put me in a very unsafe situation.

15 MR. FONSECA: Did you walk alone
16 to enter the establishment?

17 MS. FORD: Yes, I did.

18 MR. FONSECA: Thirty minutes or
19 twenty minutes earlier?

20 MS. FORD: Yes, I did.

21 MR. FONSECA: Okay.

22 MS. FORD: At a much earlier time

1 in the evening.

2 MR. FONSECA: But isn't it a fact
3 that you waited three hours to go to the 5th
4 District Police Station to then file this
5 report, at almost midnight?

6 MS. FORD: Yes.

7 MR. FONSECA: Okay. And you
8 alleged an assault. Did you follow up with
9 that police officer to see if they were going
10 to arrest her?

11 MS. FORD: An arrest warrant was
12 supposed to be issued with that. My lawyer
13 informed me that I will be informed when that
14 takes places and --

15 MEMBER SILVERSTEIN: Please speak
16 up.

17 MS. FORD: An arrest warrant was
18 supposed to have been issued with the report.
19 I was told I would be informed when that
20 arrest would take place and further actions
21 would follow that action. So I've been
22 waiting for my lawyer's word on the next step

1 from that. And I did file a restraining order
2 the following Monday, a protective order.

3 MR. FONSECA: Do you reside in the
4 5th District?

5 MS. FORD: Yes, I do.

6 MR. FONSECA: Okay. I was just
7 trying to -- just out of -- curious because of
8 the distance. I don't have any other
9 questions.

10 CHAIRPERSON MILLER: Ms. Ford, you
11 knew the person who struck you, is that
12 correct?

13 MS. FORD: Actually, that is my
14 wife.

15 CHAIRPERSON MILLER: Okay. Are
16 there other questions? Ms. Mobley?

17 MEMBER MOBLEY: On the night in
18 question, because it's not clear to me,
19 October the 16th, did you in fact have
20 security on premise?

21 MR. BOGAEV: Yes, the other guy
22 was -- we talked about an approach for on the

1 stage.

2 MEMBER MOBLEY: Okay. Was that
3 security your security, or according to the
4 investigative report this group Maxine Blue &
5 The Divas had been providing security for a
6 year?

7 MR. BOGAEV: Yes, we paid Maxine
8 Blue & The Divas a fee to bring their
9 security.

10 MEMBER MOBLEY: Okay. So their
11 security, not your security?

12 MR. BOGAEV: No, and they handpick
13 their security because of the event.

14 MEMBER MOBLEY: Okay. And was it
15 one of these individuals that had the hoodie
16 on that escorted you out of -- off the
17 premises?

18 MR. BOGAEV: That's the one.

19 MS. FORD: I assumed they worked
20 with them, yes. From what I'm being told they
21 were hired by the organization holding the
22 affair.

1 MEMBER MOBLEY: Okay. And then
2 according to the report when you were slapped
3 in the head, the MC who was on the microphone
4 made an announcement that someone had been
5 severely slapped?

6 MS. FORD: Yes.

7 MEMBER MOBLEY: Did anyone, the
8 ABC manager or anybody, staff, come to your
9 aid or say anything, or follow up, or
10 questioning anything?

11 MR. FONSECA: to our knowledge,
12 no.

13 MS. FORD: No.

14 MEMBER MOBLEY: No? Okay. No
15 further questions.

16 MR. FONSECA: To our knowledge it
17 was never said. Never said to raise an alarm.

18 MEMBER MOBLEY: It was never said?

19 MR. FONSECA: Yes.

20 MEMBER MOBLEY: No further
21 questions, Madam Chair.

22 CHAIRPERSON MILLER: Okay.

1 MR. FONSECA: Can I call a
2 witness?

3 CHAIRPERSON MILLER: Sure.

4 MR. FONSECA: Obviously Mr. Bogaev
5 is still available. And if you need, Richard
6 Rindskopf will be ready to -- is the general
7 manager who was there. I would just aver to
8 the attention, he would say he didn't hear the
9 -- to make this short; and I'll call him up if
10 you need, he'd testify that he didn't hear the
11 DJ make that announcement. He didn't know
12 there was a slap. He wasn't aware actually
13 that there was an incident until after he
14 happened to confirm that there was a person
15 put out, which would have been appropriate.

16 But I'm going to call a witness
17 that has first-hand knowledge and control of
18 the situation for security.

19 I call to the stand Arthur
20 Phillips, please.

21 Would you give your name and what
22 your stage name is, please?

1 MR. PHILLIPS: Okay. My name is
2 Arthur Phillips and my stage name is Maxine
3 Blue.

4 Okay. On the night in question it
5 was my birthday party. The reason she was
6 escorted out is --

7 CHAIRPERSON MILLER: Wait, could
8 you establish who you are with respect to the
9 establishment, what your relationship is? I
10 missed it.

11 MR. PHILLIPS: My name is Arthur
12 Phillips. My legal name.

13 CHAIRPERSON MILLER: Yes, your
14 legal name.

15 MR. PHILLIPS: My stage name
16 Maxine Blue. I do drag shows.

17 CHAIRPERSON MILLER: Oh, it was
18 your show that night?

19 MR. PHILLIPS: Yes, it was my
20 birthday party.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. Go ahead.

1 MR. FONSECA: How many times a
2 week do you have the drag shows at
3 Remington's?

4 MR. PHILLIPS: I have drag shows
5 five nights a week at Remington's.

6 MR. FONSECA: For how long?

7 MR. PHILLIPS: Since October 3rd,
8 2010. I've been doing drag 20 years though,
9 if that makes a difference.

10 CHAIRPERSON MILLER: Okay.

11 MR. PHILLIPS: On the night in
12 question when the incident happened, I was
13 sitting directly across from where the
14 incident happened. Like she stated, which is
15 could be true, could not be true; I didn't see
16 it, she didn't contact anyone to say that she
17 had been assaulted. But the other person had
18 contacted a security guard and said that she
19 had assaulted her. So that's why the security
20 guard asked her to leave, because she didn't
21 report the incident when the other person did.
22 So that's how come she was asked to leave.

1 And because we're an older crowd,
2 because we're an older established crowd and
3 everyone that comes is over 40, I didn't want
4 it to be police state. And the reason I asked
5 them could we use our security instead of
6 theirs is because our security was older, and
7 he was a big teddy bear and he was mainly
8 familiar with everyone. And I just find it
9 easier to de-escalate a situation than to
10 escalate a situation.

11 If you're involved -- from what I
12 know, if you're involved, big guys in a gay
13 bar full of gay men and gay lesbians that are
14 old and sometimes grumpy; pardon me, it
15 escalates into more than it really needs to
16 be. And 9 times out of 10 most people's
17 opinions are just hurt because there's never
18 been any violence. It's just I'm embarrassed
19 and now I'm mad. And the way that we handle
20 that is we separate the parties and I ask
21 whichever party the security guard sees as the
22 aggressor to leave. And that's all that

1 really happened.

2 And I did see when he walked up to
3 her and asked her to leave, because there was
4 another ruckus. But I guess it was her son or
5 her nephew or someone had went to the security
6 guard and said that she was harassing the
7 other lady. We didn't see the slap or
8 anything like that. All we know is someone
9 had been informed that someone is harassing
10 someone. And that's how it occurred.

11 MR. FONSECA: Did you hear the DJ
12 say anything about the slap?

13 MR. PHILLIPS: The DJ doesn't talk
14 on the microphone. And the MCs in question
15 wouldn't have said that. It's completely out
16 of --

17 MR. FONSECA: I'm sorry. The MC
18 is who I meant.

19 MR. PHILLIPS: Yes, the MCs in
20 question, it was completely out of their
21 character. And I was sitting there and I
22 didn't hear that said, because if I heard that

1 said, I would have got up and interjected
2 myself. Nine times out of ten we don't need
3 security for anything. Most of the people I
4 know. I've been, like I said, doing drag
5 since 2000. I've grown old with all of these
6 people, so we all know each other. So 9 times
7 out of 10 we can just talk to each other. So
8 no one would have said you just got slapped.
9 It's just not -- it's just out of our
10 character.

11 CHAIRPERSON MILLER: Are you the
12 performer or are you in charge of the event?

13 MR. PHILLIPS: I'm the performer
14 and in charge of the event.

15 CHAIRPERSON MILLER: So were you
16 performing when this --

17 MR. PHILLIPS: No, I was not.

18 CHAIRPERSON MILLER: Okay.

19 MR. PHILLIPS: I was sitting there
20 watching someone else perform.

21 CHAIRPERSON MILLER: Oh, you were
22 watching? How do you know that it actually

1 occurred?

2 MR. PHILLIPS: I heard -- I was
3 sitting here like this and they was there at
4 another table like this. And you heard a loud
5 noise and security was taking someone out. I
6 never seen anything occur. It happened within
7 -- all of this happened within 45 seconds.
8 The only reason I even remember it, it
9 happened so quick, is because it was my
10 birthday. Other than that, it happened so
11 quickly and it was so -- over so quickly,
12 nothing so happened, it wouldn't have jogged
13 my memory except for the fact that it was my
14 birthday.

15 CHAIRPERSON MILLER: Okay. So
16 what did you say happened very quickly was the
17 slap and then the escort out?

18 MR. PHILLIPS: No. No. No, no,
19 no. What I said is they came -- I seen two
20 people -- someone get into an argument. I
21 never seen any slap.

22 CHAIRPERSON MILLER: Okay.

1 MR. PHILLIPS: But I saw the
2 security telling one person to leave.

3 CHAIRPERSON MILLER: Okay.

4 MR. PHILLIPS: And we just
5 continued on with the show. And this all
6 happened in the space of 45 seconds.

7 MR. FONSECA: How far away were
8 you from the table they were sitting at?

9 MR. PHILLIPS: My table would have
10 been here. Their table would have been here.

11 MR. FONSECA: And was it to your
12 right, left, in front of you, behind you?

13 MR. PHILLIPS: I was sitting this
14 way and they were sitting that way. So it's
15 just like this. Say like this table was gone.
16 They would have been sitting right there.

17 MR. FONSECA: Do you recall what
18 the name of your security person is and what
19 he was wearing that evening?

20 MR. PHILLIPS: His name is Rick.
21 He's 6'3", weigh 280 pounds, and a teddy bear.
22 And he was wearing some kind of white jacket

1 because it was cold. And he escorted her to
2 the front door.

3 CHAIRPERSON MILLER: Okay. Any
4 questions? Yes, Mr. Brooks?

5 MEMBER BROOKS: Yes, thank you,
6 Madam Chair.

7 Do you know Ms. Ford?

8 MR. PHILLIPS: No, I don't.

9 MEMBER BROOKS: You don't? And
10 the other lady involved, do you know her?

11 MR. PHILLIPS: No, I don't.

12 MEMBER BROOKS: Okay. So both
13 strangers to you?

14 MR. PHILLIPS: Yes, they were.

15 MEMBER BROOKS: Thank you.

16 MR. PHILLIPS: I guess I'm just
17 famous. They came out to see me. I don't
18 know.

19 MEMBER BROOKS: Maybe so.

20 CHAIRPERSON MILLER: Any
21 questions? Okay. Mr. Silverstein?

22 MEMBER SILVERSTEIN: Just one

1 question for everyone here, and I'll start
2 with Ms. Ford. Was there any foreseeability
3 to this? You know, you say you were smacked
4 on the head. Was there anyway that the
5 establishment could have known in advance or
6 you could have known in advance that this was
7 going to happen?

8 MS. FORD: No, I had not spoken to
9 the individual or seen her for three months.

10 MEMBER SILVERSTEIN: So there's
11 nothing they could have done to prevent this
12 from happening?

13 MS. FORD: No, I would have never
14 guessed that they'd put their hands on me.
15 They'd never done that in a three-year
16 relationship. So I was totally shocked, so
17 were the people that were at the table.

18 MEMBER SILVERSTEIN: And this
19 whole event only lasted maybe a minute or two?

20 MS. FORD: A minute. I came in.
21 I spoke to everyone at the table. I sat down.
22 I got smacked. I got up. Walked around the

1 side. Came back. Asked her not to touch me.
2 She jumps up. Swings and curses at me. Then
3 I'm asked to leave.

4 MEMBER SILVERSTEIN: And was there
5 anything that they could have done afterwards
6 that would have made it --

7 MS. FORD: They -- I thought they
8 could required the people that --

9 MEMBER SILVERSTEIN: -- other than
10 -- obviously you were -- you know, were
11 assaulted, according to you, but you can't un-
12 ring that bell. I mean, that was done and
13 there was nothing that they could have done to
14 stop it. What could they -- woulda, coulda,
15 shoulda done?

16 MS. FORD: Find out who should
17 have been escorted from the club.

18 MEMBER SILVERSTEIN: Okay. That's
19 it. I think I've had all my questions
20 answered.

21 CHAIRPERSON MILLER: I just have a
22 couple. I think, Mr. Fonseca, the

1 investigator cites D.C. Code 25-797(A)(b),
2 limitation on transfer of responsibility for
3 the license. It doesn't say security. Can
4 you address whether it was, you know, improper
5 for the establishment to have different
6 security that night?

7 MR. FONSECA: I don't know that
8 for a fact that that is improper, because in
9 the end there is indirect supervision still
10 going on by the establishment. And there is
11 a payment, which I don't think was put on the
12 record, the amount, but a payment from the
13 establishment to the host and a concurrence by
14 the establishment that that particular
15 security person was authorized to conduct
16 that.

17 CHAIRPERSON MILLER: Well, what
18 was the supervision, or who supervised the
19 security?

20 MR. FONSECA: Well, it would have
21 been Mr. Rindskopf, who's the general manager.
22 In essence, what you have here is because of

1 the nature of the crowd that comes in and the
2 host's preference to use this, that person was
3 screened and acceptable to the establishment.

4 In the end the establishment;
5 that's why we're here, is responsible for
6 everything that occurs on its premises. So I
7 believe they're still going to indirectly
8 supervise that person. So if the general
9 manager felt that the actions were
10 inappropriate, we'd be handling this
11 completely differently right now.

12 And I think under the
13 circumstances one could disagree as to who was
14 the aggressor, but there appeared to be enough
15 going on that the security person under the
16 circumstances believed taking that person out
17 was the better choice to be done and labeling
18 that person as the aggressor.

19 You know, I think this Board has
20 seen stuff like this more times than I have in
21 my life. It had to delve through it. And it
22 isn't as simple as there's an aggressor and

1 there's someone passive. There's some serious
2 in-your-face yelling or arguing. I'm not
3 saying that's what happened here, but what
4 goes on and one tries to remove the other is
5 what's going to take the worst of this
6 possible explosion off of the floor and calm
7 this down? And that is what goes on. I mean,
8 that's just the nature of -- when you have
9 some unruliness happening, that's what you do.

10 And that's why the other thing
11 that happens oftentimes is if there is an
12 ability to take two that are just -- you lead
13 them both off the premises, you take them out
14 and you exit them through different exits and
15 you march them in opposite directions. And if
16 you believe the police don't need to be
17 called, that's another way of handling it.
18 This hadn't gone to that extreme.

19 So I think in fairness one has to
20 allow an establishment to make those
21 decisions. And that's what occurred here.
22 And we understand Ms. Ford was offended. And

1 I can understand under the circumstances, if
2 the facts were as she alleges, yes, there's an
3 offense that was taken, but not one that
4 objectively looking at it maybe was not an
5 unfair misunderstanding.

6 CHAIRPERSON MILLER: Okay.
7 Anything else anyone wants to add, or
8 questions?

9 (No audible response.)

10 CHAIRPERSON MILLER: Okay. I'm
11 going to just suggest that the Board discuss
12 this briefly in a closed meeting.

13 As chairperson of the Alcoholic
14 Beverage Control Board for the District of
15 Columbia and in accordance with Section 405 of
16 the Open Meetings Amendment Act of 2010, I
17 move that the Board hold a closed meeting for
18 the purpose of seeking legal advice from your
19 counsel on investigation No. 11-CMP-00476 and
20 render an opinion per Section 405(b)(4) of the
21 Open Meetings Amendment Act of 2010.

22 Okay. Do I have a second?

1 MEMBER NOPHLIN: Second.

2 CHAIRPERSON MILLER: Mr. Nophlin?

3 MEMBER NOPHLIN: I agree.

4 CHAIRPERSON MILLER: Mr. Brooks?

5 MEMBER BROOKS: I agree.

6 CHAIRPERSON MILLER: Mr. Alberti?

7 MEMBER ALBERTI: I agree.

8 CHAIRPERSON MILLER: Ms. Miller

9 agrees.

10 Mr. Silverstein?

11 MEMBER SILVERSTEIN: I agree.

12 CHAIRPERSON MILLER: Ms. Mobley?

13 MEMBER MOBLEY: I agree.

14 CHAIRPERSON MILLER: Mr. Jones?

15 MEMBER JONES: I agree.

16 CHAIRPERSON MILLER: Okay. Then

17 the vote is 7-0 to recess to a closed meeting.

18 And we'll be at least 5 or 10 minutes; if you

19 want to take a break as well, and then we'll

20 come back.

21 (Whereupon, at 4:24 p.m. off the

22 record until 4:49 p.m.)

1 CHAIRPERSON MILLER: Okay. We're
2 back on the record.

3 And we heard a lot from all the
4 parties here, and what I would say is, Ms.
5 Ford, I mean, it did sound like you had an
6 upsetting incident and it may be unfortunate
7 that you may have been the one that was
8 escorted out, but as I've seen security plans
9 in general, the appropriate thing is for
10 fighting parties to be separated, and that's
11 what occurred with you.

12 So, I wouldn't recommend that we
13 take any action against the establishment
14 related to that incident.

15 And a lot of issues were raised in
16 the case report. And from listening to the
17 testimony, it appears that there is an issue
18 with respect to the expansion between the two
19 addresses that does not seem to have been
20 resolved, and also the number that is on the
21 Certificate of Occupancy. And I would
22 recommend that we advise the establishment to

1 take action to cure that, to update the
2 license so that it is in fact accurate. And
3 in so doing I believe that the Licensee may
4 also need to go to DCRA and make sure the
5 Certificate of Occupancy is also accurate.

6 Therefore, I would move that we
7 take no further action at this time on this
8 case report that the Licensee -- that we will
9 -- we would hold the record open. We would
10 like the Licensee to come back and report to
11 us within 90 days with respect to the status
12 of the license, whether it has been so located
13 and what actions have been taken.

14 Do I have a second on that?

15 MEMBER SILVERSTEIN: Second.

16 CHAIRPERSON MILLER: Are there
17 comments as to that motion?

18 MEMBER ALBERTI: Madam Chair, I'd
19 just like to know from Mr. Fonseca whether he
20 or the Licensee has any questions about what's
21 been moved here.

22 MR. FONSECA: As I understand it,

1 the Board's not going to take further action,
2 but we are to attempt to either correct, or
3 obtain, or find a Certificate of Occupancy
4 that might satisfy the actual expansion, or
5 the increase in capacity, and/or both, and
6 supplement the record. And I think at that
7 time seek Board approval of an existing
8 expansion of some time in duration.

9 I'm not sure in the meantime
10 between now and that 90 days what this means,
11 but I think I understand what we are
12 affirmatively to do, if that's correct.

13 MEMBER ALBERTI: Madam Chair, my
14 understanding of your motion is is that this
15 -- the record will be held open on this and we
16 will make no decision on this case right now.
17 The record will be held open. The Licensee
18 will come back in 30 days -- in 90 days.

19 During that time we expect for the
20 Licensee to take whatever steps that are
21 necessary to update the ABRA records so that
22 it accurately reflects the capacity and the

1 physical layout of the establishment as it
2 exists today. That may mean going to DCRA and
3 correcting those records. It certainly means
4 coming to ABRA and correcting the records
5 here. However that's done, you need to talk
6 to ABRA staff to figure out how that needs to
7 get done.

8 But in 90 days the Licensee must
9 come back and show and affirmatively that they
10 have it done or are making progress and
11 explain -- if it isn't done, explain to us why
12 it's not done, and what steps -- where they
13 are in the process. So have of a status
14 report in 90 days.

15 MR. FONSECA: Is a status report
16 going to -- you're going to schedule a
17 hearing?

18 CHAIRPERSON MILLER: Right, just
19 like this.

20 MEMBER ALBERTI: Yes, just like
21 this.

22 CHAIRPERSON MILLER: But it should

1 be simpler.

2 MR. FONSECA: Understood.

3 CHAIRPERSON MILLER: Yes.

4 MR. FONSECA: Yes, we hope.

5 CHAIRPERSON MILLER: Or a shorter
6 duration, yes. Okay.

7 MR. FONSECA: Hopefully. Perhaps
8 in advance I'll attempt to provide some form
9 of a summary, talking points so that maybe
10 we'll end up with other areas we need to come
11 up to. Or everything will be satisfied
12 because the Board maybe has taken that action
13 that we requested.

14 MEMBER ALBERTI: Yes, and then
15 we're done.

16 MR. FONSECA: Then we're done.

17 MEMBER ALBERTI: Thank you.

18 MR. FONSECA: Exactly.

19 Understood.

20 CHAIRPERSON MILLER: Any other
21 comments? Yes, Mr. Jones?

22 MEMBER JONES: Thank you, Madam

1 Chair. I think it needs to be noted though
2 and be very clear that although Board Member
3 Alberti indicated that success could be
4 defined as either completing the action or
5 demonstrating progress towards completing the
6 action, I think given the fact that the
7 Licensee was put on notice back in November of
8 the need to get an updated Certificate of
9 Occupancy with the updated numbers, that the
10 expectation and desire is that completion of
11 the task is most desirable by the next time we
12 meet.

13 MR. FONSECA: Understood.

14 MEMBER JONES: Thank you, Madam
15 Chair.

16 CHAIRPERSON MILLER: You're
17 welcome. Anything else? Mr. Silverstein?

18 MEMBER SILVERSTEIN: Ms. Ford,
19 thank you for coming forward.

20 MS. FORD: Thank you.

21 MEMBER SILVERSTEIN: Domestic
22 violence is a plague on all communities.

1 MS. FORD: Yes.

2 MEMBER SILVERSTEIN: You have our
3 respect and concern as far as that is
4 concerned. There was no foreseeability and the
5 important thing for the establishment is that
6 they separated the two parties so that no harm
7 could come to either. It's not up to us or
8 them to determine who's right or who's wrong.

9 MS. FORD: That's understandable.

10 MEMBER SILVERSTEIN: But it is to
11 protect all so that nothing awful happens.

12 MS. FORD: Yes.

13 MEMBER SILVERSTEIN: Mr. Bogaev,
14 your establishment has an exemplary record.
15 We hope that you're able to continue that
16 record and that it stood you in good stead,
17 but I echo Board Member Jones' comments, let's
18 get this done quickly. Thank you very much,
19 all of you.

20 CHAIRPERSON MILLER: Now we need
21 to vote. Anything else? Anybody else?

22 (No audible response.)

1 CHAIRPERSON MILLER: Okay.

2 MEMBER ALBERTI: I'll second the
3 motion.

4 CHAIRPERSON MILLER: There's a
5 motion on the table. It's been seconded. All
6 in those in favor, say aye? Aye.

7 MEMBER ALBERTI: Aye.

8 MEMBER BROOKS: Aye.

9 MEMBER MOBLEY: Aye.

10 MEMBER NOPHLIN: Aye.

11 MEMBER SILVERSTEIN: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed?

14 MEMBER JONES: Nay.

15 CHAIRPERSON MILLER: All those
16 abstaining?

17 (No audible response.)

18 CHAIRPERSON MILLER: Okay. The
19 motion passes. The vote is 6-1.

20 Thank you very much.

21 (Whereupon, the hearing was
22 concluded at 4:57 p.m.)

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