

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

IN THE MATTER OF:

Howard Theatre Entertainment,
LLC t/a Howard Theatre Show Cause
602 T Street, NW Hearing
Retailer CX - ANC-1B
License No. 88646
Case #14-CMP-00240,
Case #14-251-00220 and
Case #14-251-00238

(No Manager on Duty (three
counts), Operating After
Hours, Interfered with an
Investigation (two counts),
Allowed the Establishment to
be Used for an Unlawful or
Disorderly Purpose)

February 18, 2015

The Alcoholic Beverage Control Board
met in the Alcoholic Beverage Control Hearing
Room, Reeves Building, 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
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member

JAMES SHORT, Member

ALSO PRESENT:

FERNANDO RIVERO, OAG

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

2 11:25 a.m.

3 CHAIRPERSON MILLER: Okay. We are
4 back on the record for a Show Cause Hearing, Case
5 No. 14-CMP-00240, No. 14-251-00229 and No. 14-
6 251-00238, Howard Theatre Entertainment, LLC t/a
7 Howard Theatre, 620 T Street, N.W., License No.
8 88646, in ANC-1B.

9 And when the parties are ready, would
10 you --

11 MR. RIVERO: Good morning, Board
12 Members. Fernando Rivero for the District of
13 Columbia.

14 MR. KLINE: Good morning. Andrew
15 Kline on behalf of the licensee.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: Madam Chair, Chip Ellis on
18 behalf of the licensee is due here. He had
19 texted me at 10:53 and said he would be here at
20 11:15. I'm not sure where he is or why he is not
21 here yet.

22 CHAIRPERSON MILLER: Is he an owner?

1 MR. KLINE: Yes, he is an owner.

2 CHAIRPERSON MILLER: Okay. Good. All
3 right. Would Board Members like to recess again
4 and come back when Mr. Ellis is here?

5 MEMBER ALBERTI: No.

6 CHAIRPERSON MILLER: No? All right.
7 You don't want to.

8 MEMBER ALBERTI: This was scheduled --

9 CHAIRPERSON MILLER: Can I hear from
10 others?

11 MEMBER ALBERTI: I will just say this
12 was scheduled for 11:00. It is now 11:26.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER SILVERSTEIN: Should we recess
15 for five minutes?

16 CHAIRPERSON MILLER: Well, if -- sure
17 we can recess for as long as we want.

18 MEMBER ALBERTI: Well, could we just
19 deal with the preliminary matter here while we
20 are waiting for 11:30, if that's what your -- I
21 have a question.

22 CHAIRPERSON MILLER: My question

1 though, Mr. Alberti, is that sometimes Board
2 Members want the owner here and so I wanted to
3 double check whether the Board wanted to proceed
4 without the owner.

5 MEMBER ALBERTI: Well, they haven't
6 made a representation and I believe we can agree
7 to proceed ex parte or assume that they have
8 legal representation.

9 MR. KLINE: I hope it wouldn't be ex
10 parte.

11 CHAIRPERSON MILLER: No, no, okay.

12 MEMBER ALBERTI: I know. I'm just
13 saying that -- I mean, we have done that before.
14 And I realize they have -- that's why I said my
15 first sentence was they have legal
16 representation.

17 MR. KLINE: Thank you, Mr. Alberti.

18 CHAIRPERSON MILLER: All right.

19 MEMBER ALBERTI: I made my -- I didn't
20 make my point very well and I apologize --

21 MR. KLINE: Absolutely.

22 MEMBER ALBERTI: -- Mr. Kline. But I

1 have a question.

2 CHAIRPERSON MILLER: Okay. Is it
3 related to that issue, because I just want to --

4 MEMBER ALBERTI: No.

5 CHAIRPERSON MILLER: No. Okay. So
6 are there any other preferences on that issue
7 whether to recess again until Mr. Ellis comes?

8 All right. Well, let's continue. If
9 you have another question right now?

10 MEMBER ALBERTI: So, Mr. Rivero, we
11 have how many eight charges, seven charges.
12 Seven Charges? Can you, at some point, tell us
13 which charges go with which case?

14 MR. RIVERO: Absolutely.

15 MEMBER ALBERTI: Delineate which
16 charges go with which case?

17 MR. RIVERO: We have an Offer in
18 Compromise to present to the Board and we would
19 include that information.

20 MEMBER ALBERTI: Great. Thank you
21 very much.

22 CHAIRPERSON MILLER: Okay. Mr. Kline,

1 do you have a preference as to whether you would
2 like the Board to wait?

3 MR. KLINE: In the interest of the
4 Board's time, if the Board is willing to consider
5 the OIC with the understanding that I know the
6 Board expects the licensee to confirm that they
7 accept it either before you or in writing, if
8 that's the Board's preference, then I'm happy to
9 proceed now.

10 CHAIRPERSON MILLER: Okay. All right.
11 So there is no issue with respect to the
12 presentation of the OIC, at this point. Okay.

13 MEMBER BROOKS: Madam Chair, I just
14 have one question of Mr. Kline. Are you in
15 contact with him by phone?

16 MR. KLINE: Yes. I have been. I
17 texted him this morning. As I said earlier, he
18 texted me last at 10:53 and said he would be here
19 at 11:15. I have texted him again. I have not
20 heard back from him, at this point.

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

1 CHAIRPERSON MILLER: Okay.

2 MR. KLINE: I could step out and call
3 him if that's the Board's preference.

4 MEMBER SHORT: That might be -- well,
5 I don't know because this is important for him to
6 be here. I don't know.

7 MEMBER BROOKS: Very important. I
8 think it's good that he be here.

9 CHAIRPERSON MILLER: Okay. That's
10 two.

11 MEMBER ALBERTI: Well --

12 CHAIRPERSON MILLER: Okay.

13 MEMBER SHORT: I know he has counsel
14 present.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER ALBERTI: He has counsel.

17 CHAIRPERSON MILLER: I know, but --

18 MEMBER ALBERTI: How about we move
19 things forward?

20 CHAIRPERSON MILLER: What? We have
21 three. One, two are concerned. You have -- Mr.
22 Silverstein, do you have an opinion?

1 MEMBER BROOKS: How about we move on?

2 CHAIRPERSON MILLER: Are you ready to
3 move on?

4 MEMBER SILVERSTEIN: I'm ready to move
5 on also, Madam Chair.

6 MEMBER BROOKS: I just wanted to
7 express my concerns about this.

8 CHAIRPERSON MILLER: All right.
9 Well --

10 MEMBER SHORT: Maybe we can move on,
11 Madam Chair.

12 CHAIRPERSON MILLER: As long as Mr.
13 Kline isn't expressing concerns. So at this
14 point, we are not -- we are only going to hear
15 about the Offer in Compromise. Okay.

16 MR. RIVERO: So we have an Offer in
17 Compromise to present to the Board, at this time.

18 CHAIRPERSON MILLER: Okay.

19 MR. RIVERO: And there are photocopies
20 of the terms available for the Board Members.

21 CHAIRPERSON MILLER: Okay. You can
22 bring that up. Do you want to get that? Thank

1 you. So whenever you are ready.

2 MR. RIVERO: Thank you.

3 CHAIRPERSON MILLER: Okay. Oh, we
4 just lost Mr. Alberti.

5 MR. RIVERO: Okay. I'm happy to wait.

6 CHAIRPERSON MILLER: Okay. All right.
7 I understand he is listening in the back.

8 MR. RIVERO: Okay then.

9 CHAIRPERSON MILLER: Okay.

10 MR. RIVERO: So this Offer in
11 Compromise comprises three distinct case reports.
12 The first case report is 14-CMP-00240, which is
13 for an incident that took place on May 18, 2014.

14 The second case report is for Case 14-
15 251-00229 and that is for an incident that took
16 place on July 10th.

17 And then the third case report is for
18 14-251-00238 and that is for an incident that
19 took place on June 27, 2014.

20 All incidents were last year. The
21 document that you have before you underline lists
22 all three cases reports. Underlined below that

1 it lists the incident dates that comprise this
2 case.

3 The first charge in the Notice to Show
4 Cause is not having an ABC manager on duty. That
5 was Charge 1 in the Notice to Show Cause
6 pertaining to May 18th. Charge 2 in the Notice to
7 Show Cause --

8 MEMBER SHORT: Madam Chair, here he
9 comes.

10 CHAIRPERSON MILLER: Yes, let's wait
11 a minute. He can put his name on the record.

12 MEMBER SILVERSTEIN: Mr. Rivero, when
13 you say Case 2 or Charge 2, is that a second
14 charge on the first case or is that a second
15 case?

16 MR. RIVERO: No. As I indicated,
17 since the Notice to Show Cause combines all three
18 reports, Charge 1 relates to May 18th. Charge 2
19 relates to May 18th as well.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER SILVERSTEIN: Charge 2?

22 MR. RIVERO: Relates to May 18th as

1 well. And it is exceeding the hours of
2 operation.

3 CHAIRPERSON MILLER: Mr. Ellis? Would
4 you identify yourself for the record?

5 MR. ELLIS: Hi, Chip Ellis from Howard
6 Theatre Entertainment.

7 CHAIRPERSON MILLER: And you are the
8 owner?

9 MR. ELLIS: I am the owner.

10 CHAIRPERSON MILLER: Okay. Thank you.
11 We want to recognize for the record that you are
12 here now.

13 MR. ELLIS: Yes, sorry for my delay.

14 CHAIRPERSON MILLER: Okay. All right.
15 So --

16 MR. RIVERO: So as I was saying,
17 Charge 1, no ABC manager on duty.

18 CHAIRPERSON MILLER: Okay.

19 MR. RIVERO: That relates to May 18th.

20 CHAIRPERSON MILLER: Right.

21 MR. RIVERO: Charge 2, operating
22 beyond the allowed hours, that also relates to

1 the same date.

2 CHAIRPERSON MILLER: Okay.

3 MR. RIVERO: Charge 3 is no ABC
4 manager on duty, that relates to June 27th.

5 CHAIRPERSON MILLER: Okay. All right.

6 MR. RIVERO: Charge 4 is interference
7 with an investigation, that relates to June 27th.

8 Charge 5, no ABC manager on duty and
9 that relates to July 10.

10 Charge 6 is interference with an
11 investigation, that relates to July 10.

12 Finally, Charge 7 is permitting the
13 establishment to be used for an unlawful or
14 disorderly purpose and that relates to all the
15 three dates.

16 CHAIRPERSON MILLER: All of them?

17 MR. RIVERO: All three dates in this
18 case.

19 CHAIRPERSON MILLER: Okay.

20 MR. RIVERO: So those are the charges.
21 The incidents dates to which those respective
22 charges relate. And I described or labeled the

1 three different investigative reports from which
2 the charges in the Notice to Show Cause derive.

3 Now, the Offer in Compromise has the
4 following terms and you have copies of those
5 before you:

6 (1) Charges 4 and 6 will be dismissed.

7 (2) The licensee will pay a fine
8 within 60 days in total amount of \$5,500. The
9 fine is broken down as follows:

10 Charges 1, 3 and 5, those are the ABC
11 manager charges, each one \$500.

12 Charge 2, which is exceeding the hours
13 of operation, that is \$2,000.

14 And Charge 7, the disorderly purpose
15 charge, that is \$2,000.

16 For a total of \$5,500. Failure to pay
17 the fine within 60 days will result in the
18 suspension of the license until the payment is
19 received.

20 The next term, the licensee's license
21 shall be suspended for five days, all days stayed
22 for a period of one year pending no further

1 violations. The suspension dates break down as
2 follows:

3 Three days of the five relate to
4 Charge 2, which is exceeding the hours of
5 operation. And two days relate to Charge 7.
6 There is a typo there actually that I just
7 caught.

8 CHAIRPERSON MILLER: Okay.

9 MR. RIVERO: It's the disorderly
10 charge.

11 CHAIRPERSON MILLER: All right. Where
12 is the typo? The Charge 3?

13 MR. RIVERO: It's No. 3.

14 CHAIRPERSON MILLER: It says 3 instead
15 of 7?

16 MR. RIVERO: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. RIVERO: 7.

19 CHAIRPERSON MILLER: All right.

20 MR. RIVERO: Next, the licensee shall
21 maintain a currently licensed ABC manager at the
22 establishment while alcoholic beverages are being

1 sold, served or consumed.

2 Next, the licensee shall file a
3 security plan with the Board that complies with
4 D.C. Official Code Title 25 within 45 days.

5 My understanding is that the licensee
6 late last year filed a security plan, but the
7 purpose of this term is for the Government to
8 assure itself that as a result of these matters,
9 that there is a plan filed in conformance with
10 the law.

11 I'm on the second page now. Next term
12 is that the licensee shall ensure that all
13 employees are trained within 45 days on when to
14 call the police or seek medical assistance, what
15 situations arise that would require those calls.

16 The next term is that the licensee
17 shall ensure that security personnel employed at
18 events have received training within the last
19 year.

20 And finally, the licensee shall ensure
21 that security personnel employed at events wear
22 clothing with tags or insignia identifying them

1 as security personnel.

2 Those are the terms of the Offer in
3 Compromise. They relate to the facts of each of
4 the three cases and the dismissal of the charges
5 also include an assessment by the Government
6 about the strength of its evidence. And that
7 concludes the presentation of the Offer in
8 Compromise and I can answer any questions.

9 MR. RIVERO: Well, let me ask, Mr.
10 Kline, do you have any comments on this?

11 MR. KLINE: Yes, just a couple. First
12 of all, yes, this Offer in Compromise is
13 acceptable to the licensee if it's accepted by
14 the Board and the licensee understands that if
15 the Board accepts the Offer in Compromise, it
16 waives its right to a hearing and its right to
17 appeal.

18 Substantively, the Board is aware that
19 this licensee went through a rocky period last
20 year. We were before you for a Fact-Finding
21 Hearing at which these issues were discussed and
22 addressed. We believe that the situation has

1 dramatically improved there.

2 The things that were relayed to you
3 during the Fact-Finding Hearing have been done.
4 And specifically, the Items 5, 6, 7 and 8 of the
5 Offer in Compromise have already been done. So I
6 mean, this says that they will be done within 45
7 days. I want the record to reflect that they
8 have been done and then there has been
9 compliance. So we certainly have no issue with
10 them being included in the Offer in Compromise.

11 The licensee does not dispute, as did
12 not at the Fact-Finding Hearing, that it went
13 through a troublesome period. However, with
14 respect to the charges and the cases, Mr. Rivero
15 and I have worked to achieve a compromise,
16 because if these cases go to hearing, there are
17 defenses to various specific charges. I'm not
18 going to say all of them, but I again remind the
19 Board that an Offer in Compromise in many cases
20 represents a compromise, that's the term as it is
21 an Offer in Compromise, of the charges that have
22 been brought.

1 And the fact that certain charges are
2 being dropped and the amounts of the fines, all
3 of those reflect an effort on the part of Mr.
4 Rivero and on the part of our office to arrive at
5 a compromise of the charges. And we would hope
6 that the Board would accept those charges knowing
7 that this licensee is aware of the Board's
8 concerns that it understandably had with respect
9 to the incidents of last spring and last summer.

10 But I think Mr. Ellis can assure you
11 that that -- that they are doing a much better
12 job in terms of running the establishment and
13 making sure that we do not have a repeat of
14 anything similar to what had gone on last year.
15 Thank you..

16 CHAIRPERSON MILLER: Okay. Thank you.
17 Board questions? Yes, Mr. Alberti?

18 MEMBER ALBERTI: So, Mr. Rivero, Item
19 4, "The licensee shall maintain a currently
20 licensed ABC manager at the establishment when
21 alcoholic beverages are being sold, served or
22 consumed."

1 I mean, other than the fact that an
2 owner can be there, this still is the law.

3 MR. RIVERO: Correct.

4 MEMBER ALBERTI: So why -- what's the
5 purpose of having it as part of this Offer in
6 Compromise? And you know, are we really being
7 offered anything? I mean, I hate to put it that
8 way, but --

9 MR. RIVERO: Well, the Offer in
10 Compromise consists of eight different terms.

11 MEMBER ALBERTI: I got that, yes.

12 MR. RIVERO: So that's one of eight.
13 The Offer in Compromise consists of a suspension
14 and a fine elements, right, which are customarily
15 what the Board sees. So anything actually beyond
16 the suspension and the fine is above and beyond
17 what the Board customarily sees, since Offers in
18 Compromise are presented with those two terms and
19 not in writing. They are usually oral
20 presentations.

21 So the fact that there are additional
22 terms that require this document to be reduced in

1 writing already shows that with respect to the
2 usual cases that come in front of this Board,
3 this document is above and beyond all of that.

4 All of the terms relate to facts in
5 each of the three cases. If you look at Charge
6 7, and this is the direct answer to your
7 question, the Government's theory was that the
8 method of operation of this establishment was
9 conducive to a disorderly, but also a lawful
10 purpose.

11 And the case law says, essentially,
12 you have got to look at the way they do business
13 and how would we look at and say that an
14 establishment is running its operations in a way
15 that is conducive to an unlawful purpose. Well,
16 it's unlawful not to have an ABC manager on duty.

17 And consistently, this was something
18 that the facts show. And so it will be part of
19 the Government's theory that as it relates to the
20 way they were doing business, it was part of the
21 business not to have someone present. And so
22 that particular charge doesn't necessarily only

1 relate to what the law requires, but it relates
2 to that other charge that I just mentioned, which
3 is a little bit more tricky to prove sometimes
4 when it goes and when it comes to a hearing.

5 MEMBER ALBERTI: So let me put a note
6 -- what I'm hearing is sort of an acknowledgement
7 by the licensee that Items 4 and 5 are required.

8 MR. RIVERO: Oh absolutely.

9 MEMBER ALBERTI: So this is kind of an
10 acknowledgement. Here they are acknowledging
11 that fact.

12 MR. RIVERO: But beyond that, it is
13 the Government's contention --

14 MEMBER ALBERTI: I understand.

15 MR. RIVERO: -- that they relate
16 directly to the facts that --

17 MEMBER ALBERTI: Fine.

18 MR. RIVERO: -- relate to how this
19 establishment, at least during the period of time
20 last year, was running business in a way that it
21 was just either disorderly or unlawful as the
22 facts warranted in each of the three cases.

1 MEMBER ALBERTI: All right. Thank you
2 very much.

3 MR. RIVERO: Sure.

4 MEMBER ALBERTI: Appreciate that.

5 CHAIRPERSON MILLER: Are there other
6 questions?

7 Mr. Kline, I want to ask you about the
8 training, because you said 6 and 7 had already
9 had the training. So can you tell us who trained
10 them, what the training consisted of?

11 MR. ELLIS: We had a private company
12 come in and actually train and we ended up
13 bringing that private consultant in and he
14 assembled an actual team. So we have an in-house
15 security team that is trained, certified and is
16 meeting all the standards that you all laid out
17 for operation.

18 CHAIRPERSON MILLER: And who was that?
19 Do you remember?

20 MR. ELLIS: I could not give you the
21 exact name right now, but I could give that to
22 you.

1 CHAIRPERSON MILLER: You could give us
2 verification of the training, a certificate?

3 MR. ELLIS: Oh, most definitely.

4 CHAIRPERSON MILLER: Certificates?

5 MR. ELLIS: I believe we even supplied
6 that last year.

7 CHAIRPERSON MILLER: Okay. All right.

8 MR. KLINE: It was supplied in
9 connection with the Fact-Finding Hearing.

10 CHAIRPERSON MILLER: So that's the
11 training? Okay. And No. 7, that training is
12 that different? The security personnel training,
13 it's specific to them? Is that right?

14 MR. KLINE: Right. I mean, there are
15 two elements of training. One is 7, which is
16 more general, 6 is more specific, that they be
17 trained as they went to Metropolitan Police for
18 assistance. The word there, I may not recall,
19 these additional that are used in connection
20 with this establishment, they use SPOs, correct?

21 So these SPOs in connection with
22 security at the establishment, so the level of

1 involvement and level of training is even higher
2 than what the Board normally sees in connection
3 for the establishments that may not use them at
4 that point.

5 MR. ELLIS: And we are working even
6 closer now than we were before with the
7 Metropolitan Police in terms of their presence
8 outside of the venue. But one thing that, you
9 know, we are not doing any more is having these
10 private events that attract young go-go crowds
11 that, you know, sometimes can get out of hand in
12 a late night situation.

13 We are still doing some older go-go
14 acts, you know, where people are in the,
15 probably, 50s at this point, because we feel like
16 that's a demographic that, you know, is not
17 necessarily going to get out of control.

18 And but that's the limit to which we
19 are really hosting these, you know, kind of later
20 night events.

21 CHAIRPERSON MILLER: Okay. Other
22 questions? Mr. Brooks?

1 MEMBER BROOKS: Yes. You mentioned
2 working closer with the Metropolitan Police
3 Department. Do you mean that you have a
4 reimbursable detail?

5 MR. ELLIS: We don't have a detail.
6 We just have a relationship with the actual local
7 police officers that are on that beat for that
8 area to actually police the actual outside. We
9 have -- we feel very comfortable with a solid
10 security team now. We fired all of our "security
11 people." They to us when we first started out
12 were just more hosts than they were security.

13 Now, we have an entire security team
14 that is trained and certified that is working in
15 conjunction with the local police outside of the
16 venue. And that's really where all these
17 incidents, if we go back to cases that were, you
18 know, put forth, they were incidents that
19 literally took place outside of the venue.

20 They weren't inside the venue. There
21 was probably only one incident, there was one
22 situation where it was inside. Most of them, all

1 of them were things that resulted from people
2 coming out and then getting into some sort of
3 altercation outside.

4 So we are making certain that we work
5 very closely with the MPD to let them know that
6 when we let out, that, you know, hopefully there
7 will be a presence there for them.

8 MEMBER BROOKS: Thank you, Madam
9 Chair.

10 CHAIRPERSON MILLER: Okay. Mr. Short?

11 MEMBER SHORT: Good morning again.
12 I'm just a little concerned, you are saying that
13 the police officers who were on the beat were the
14 same ones when you were having problems outside.
15 Are you going to do something different now?
16 What difference are they going to be doing?

17 MR. ELLIS: You said the police
18 officers?

19 MEMBER SHORT: Yes, you said you had
20 a relationship with MPD.

21 MR. ELLIS: Well, we just -- we have
22 come up with and coordinated with the MPD to let

1 them know either -- because in the past, it
2 wasn't completely coordinated. Like letting them
3 know exactly when, you know, we were going to be
4 letting out, letting them know that, you know,
5 this is what we expect, just closer cooperation.

6 We also have a number of the MPD
7 coming in to the actual venue and, you know, just
8 hanging out, which is always a good thing.

9 MEMBER SHORT: Which brings me back to
10 a question about the RDO. Have you considered
11 them?

12 MR. ELLIS: We have considered them,
13 but because of the cost of what we have taken on,
14 in terms of the security team that we already
15 have in place now, before, like I said, we were
16 trying to rely on hosts and, you know, converting
17 them into being security people, but now with the
18 new approach that we are taking for all events
19 having a security team in place, a private
20 contracting firm that we are taking on, you know,
21 eight, nine new people, that cost right now for
22 us is as much as we can take on.

1 MEMBER SHORT: Okay. Well, if the
2 cost of the RDO were a little more manageable,
3 would you consider it then?

4 MR. ELLIS: I mean, you know, I would
5 talk to, you know, our staff and talk to our
6 people and see if it's possible, you know, for
7 one person to potentially be, you know, present.

8 MEMBER SHORT: Well, I would think
9 with the history that you have, an RDO would be
10 something that you should strongly consider.
11 Strongly. Thank you, Madam Chair. That's all I
12 have.

13 CHAIRPERSON MILLER: Okay. Others?
14 Mr. Rodriguez?

15 MEMBER RODRIGUEZ: Mr. Ellis, on No.
16 8, "The licensee shall ensure that security
17 personnel employed at events wear clothing with
18 tags or insignia." Currently, what kind of tag
19 or insignia are they wearing?

20 MR. ELLIS: They are wearing actual
21 jackets and shirts that actually say security on
22 their backs.

1 MEMBER RODRIGUEZ: Right.

2 MR. ELLIS: And have security on their
3 front.

4 MEMBER RODRIGUEZ: Right.

5 MR. ELLIS: So they are very easily
6 identified.

7 MEMBER RODRIGUEZ: Is that what they
8 will be wearing all the time?

9 MR. ELLIS: That's what they wear all
10 the time now. Not -- it doesn't matter what
11 event it is, even if it's a private, you know,
12 fundraiser, banquet or something like that and we
13 feel like security is needed, then that's what
14 they would wear.

15 MEMBER RODRIGUEZ: Do you think that
16 will make a difference?

17 MR. ELLIS: I think it has made a
18 difference already. I think it has made -- you
19 know, they are very identifiable now. And I
20 think the training has -- having well-trained
21 security people has definitely helped the
22 situation now.

1 MEMBER RODRIGUEZ: And I do want to
2 echo Member Short's question about the RDO and
3 the importance of that, you know, in light of,
4 you know, past situations.

5 MR. ELLIS: Yes.

6 MR. KLINE: Madam Chair, if I may? I
7 want to remind -- because I know the Board hears
8 lots of cases every week and we did spend quite a
9 bit of time on this case several months ago when
10 we had the Fact-Finding Hearing. And I want to
11 note that it was acknowledged by the licensee, at
12 that time, that they had a manager that was in
13 charge that was not paying attention to business,
14 not doing what he was supposed to do.

15 And the sergeant in the area was
16 actually here that day and you heard from her.
17 We had an opportunity after that hearing to meet
18 in the hall and talk about the situation. She
19 and Mr. Ellis exchanged phone numbers.
20 Apparently, they have known each other for some
21 time.

22 And I think you will note the absence

1 of subsequent serious investigative reports in
2 connection with this establishment. This place
3 it a blip in the road. They had a bad manager.
4 As we relayed to the Board the last time we were
5 here, Mr. Ellis' partner, who was on the license
6 in this venture, is a company out of New York
7 that runs venues all over the world, and they
8 sent one of their people down here to make sure
9 that we don't see here what went on.

10 We are mindful of Mr. Short and Mr.
11 Rodriguez' comments about the value of a
12 reimbursable detail. And if anything close or
13 similar to what we saw last spring or last summer
14 occurs or looks like it is headed in that
15 direction, I know the licensee, at this point,
16 now that they have hands-on management, will
17 seriously consider that as an alternative, if
18 they feel like the current level of security and
19 SPO officers on-site are insufficient to handle
20 the situation.

21 Keep in mind that this is not, I know
22 the Board knows this, but let me state the

1 obvious, a nightclub. It's a theatre. It is for
2 events. So this isn't the Friday and Saturday
3 night nightclub. It's a little different in
4 terms of type of venue.

5 MR. ELLIS: Yeah, I would just add
6 that, you know, we will like I said seriously
7 curtail any events like that with, you know,
8 musical acts that we believe could attract that
9 type of crowd. And we have completely curtailed
10 that.

11 If you look at what we did this past
12 weekend, we had a woman by the name of Lauryn
13 Hill for the entire weekend, Saturday, Sunday and
14 we had Stephanie Mills on Sunday. So -- or
15 Friday, Saturday and then we had her on Sunday.
16 So I mean, this venue is a venue for music and
17 food and 95 percent of the time, it is a venue
18 that, you know, has jazz, rhythm and blues, acts
19 that really attract the older demographic and not
20 this younger crowd. And that's not what we are
21 really seeking out to begin with.

22 CHAIRPERSON MILLER: Okay. Well, Mr.

1 Kline, could you just confirm that manager you
2 referred to who was not paying attention that has
3 been terminated?

4 MR. KLINE: His name is Melvin Harris.

5 CHAIRPERSON MILLER: And the position?
6 Is he no longer in that position?

7 MR. ELLIS: He was the general manager
8 at the time.

9 CHAIRPERSON MILLER: Is he gone?

10 MR. ELLIS: He has been gone for,
11 approximately, eight months now.

12 MEMBER ALBERTI: He was gone by the
13 Fact-Finding, wasn't he?

14 MR. KLINE: Yes, he was.

15 MR. ELLIS: Yes.

16 MR. KLINE: Yes, sir.

17 CHAIRPERSON MILLER: Okay. So have
18 any of these incidents occur after he was gone?
19 No?

20 MR. ELLIS: We haven't had any
21 incidents.

22 CHAIRPERSON MILLER: Okay. Other

1 questions?

2 MEMBER ALBERTI: A quick question.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MEMBER ALBERTI: Mr. Rivero, I want to
5 sort of get your opinion. We have three cases
6 here and seven charges, sir. In the future, how
7 will these cases be looked at in terms of
8 escalation fines, prior violations? Will they
9 have three secondaries and two primaries if we
10 are looking at future cases?

11 MR. RIVERO: The law is not clear on
12 that and here is why. One of the important
13 things to think about is notice to the person who
14 is the subject of the Show Cause Hearing to be
15 able to defend against. And so you have got all
16 of the -- if these matters had been brought up in
17 separate Show Cause Notices and separate
18 drafting, there would be no question about that
19 escalation.

20 There is an argument, however, to be
21 made that still even with respect to the charges
22 that are here today, we could have the three

1 secondaries and you could have two primaries,
2 perfectly fine with that.

3 The situation is more clear when they
4 are all separately addressed. One of the reasons
5 why the Government brought forth all of the cases
6 at once, and this may be of interest to the Board
7 actually, there is a case out there called Rumors
8 that was decided by the Court of Appeals that
9 concerns how establishments are to be disciplined
10 for having, you know, crazy ways in which to
11 operate or how we adhere to their security plans.

12 And so this case is very much, at
13 least in my mind, mindful of what the D.C. Court
14 of Appeals has setup there about how and I'm sure
15 every Court is -- the Board is aware of this case
16 and I don't need to go into great detail about
17 that, but it was certainly something.

18 You know, I have declined cases in the
19 past when they come in and I say oh, Rumors will
20 dispense with this case, you know. And on the
21 one hand, that's not the best of situations, as
22 the Board will understand. We certainly don't

1 want to see case, after case, after case until
2 such time as something happens to change what the
3 D.C. Court of Appeals has said.

4 On the other hand, this case, I
5 thought the way that it was constructed and
6 brought by the Government, was mindful of the
7 state of the law up there.

8 Okay. As a result, I can't give you
9 a crisp and clean answer to your question, but
10 certainly an argument can be made you do have
11 three secondaries and two primaries.

12 MEMBER ALBERTI: At least for the
13 secondaries, because there are three separate
14 dates. I mean, that argument could be made.

15 MR. RIVERO: Argument could be made.

16 MEMBER ALBERTI: Thank you.

17 MR. RIVERO: But the correct answer to
18 your question is the law is not clear on that.

19 CHAIRPERSON MILLER: Yes.

20 MEMBER ALBERTI: I got that. Thank
21 you.

22 MEMBER SILVERSTEIN: The correct

1 answer to the question is?

2 MR. RIVERO: The law is not clear on
3 that.

4 MEMBER SILVERSTEIN: All right.

5 CHAIRPERSON MILLER: Okay. Any other
6 questions? All right. Then I think it's the
7 Board's preference that we will recess and take a
8 careful look at the OIC and get back to you
9 shortly.

10 So I'm going to take a vote on
11 considering this OIC in closed session.

12 As Chairperson of the Alcoholic
13 Beverage Control Board for the District of
14 Columbia and in accordance with Section 405 of
15 the Open Meetings Amendment Act of 2010, I move
16 that the ABC Board hold a closed meeting for the
17 purpose of seeking legal advice from our counsel
18 on Case No. 14-CMP-00240, 14-251-00229 and 14-
19 251-00238, Howard Theatre, per Section 405(b)(4)
20 of the Open Meetings Amendment Act of 2010, and
21 deliberating upon the OIC presented to us at this
22 hearing for the reasons cited in Section

1 405(b)(13) of the Open Meetings Amendment Act of
2 2010.

3 Is there a second?

4 MEMBER SILVERSTEIN: Second.

5 CHAIRPERSON MILLER: Mr. Silverstein
6 seconded the motion. I'll now take a roll call
7 vote on the motion before us now that it has bee
8 seconded.

9 Mr. Brooks?

10 MEMBER BROOKS: I agree.

11 CHAIRPERSON MILLER: Mr. Alberti?

12 MEMBER ALBERTI: I agree.

13 CHAIRPERSON MILLER: Mr. Rodriguez?

14 MEMBER RODRIGUEZ: I agree.

15 CHAIRPERSON MILLER: Ms. Miller

16 agrees.

17 Mr. Silverstein?

18 MEMBER SILVERSTEIN: I agree.

19 CHAIRPERSON MILLER: Mr. Short?

20 MEMBER SHORT: I agree.

21 CHAIRPERSON MILLER: It appears the
22 motion has passed by a vote of 6-0-0.

1 I hereby give notice that the ABC
2 Board will recess this proceeding to hold a
3 closed meeting in the ABC Board conference room
4 and we will return shortly.

5 Yes?

6 MR. RIVERO: I do want to be clear,
7 because I want to make sure that I have answered
8 expansively the question before me. That it is,
9 in my view, the case that Chapter 800 of Title 25
10 could be read to permit that particular reading.

11 And my basis why an argument could be
12 made is, in my view, permitted by the reading of
13 Chapter 800.

14 CHAIRPERSON MILLER: Okay.

15 MEMBER ALBERTI: Thank you.

16 CHAIRPERSON MILLER: Actually, I just
17 wanted to correct. I think I might have
18 referenced this proceeding as a hearing and it's
19 not a hearing. It's just a presentation of an
20 OIC.

21 MR. RIVERO: Sure.

22 CHAIRPERSON MILLER: So okay. We can

1 now recess and be back shortly.

2 (Whereupon, the above-entitled matter
3 went off the record at 12:03 p.m. and resumed at
4 12:22 p.m.)

5 CHAIRPERSON MILLER: Okay. We are
6 back on the record. The Board had an opportunity
7 to consider the Offer in Compromise and consult
8 with counsel. And the counsel for the
9 respondent, Howard Theatre, has indicated that
10 the owner understands that if the Board accepts
11 the Offer in Compromise, that there is no
12 recourse for appeal of the Offer in Compromise
13 and there is no hearing.

14 Okay. So I'm going to reiterate the
15 Offer in Compromise and then make a motion. So
16 the Offer in Compromise is as follows:

17 No. 1, that Charges 4 and 6 of the
18 Notice of Status and Show Cause Hearings are
19 dismissed.

20 No. 2, Howard Theatre Entertainment,
21 LLC t/a Howard Theatre licensee shall pay a fine
22 of \$5,500. \$500 for Charges 1, 3 and 5 each,

1 \$2,000 for Charge 2 and \$2,00 for Charge 7 within
2 60 days. Failure to timely pay the fine will
3 result in suspension of the license until payment
4 of the fine.

5 No. 3, licensee's license shall be
6 suspended for five days, all days stayed for a
7 period of one year pending no further violations.
8 Three days for Charge 2 and two days for Charge
9 7.

10 No. 4, licensee shall maintain a
11 currently licensed ABC manager at the
12 establishment while alcoholic beverages are being
13 sold, served or consumed.

14 No. 5, licensee shall file a security
15 plan with the Board that complies with D.C.
16 Official Code Title 25 within 45 days.

17 No. 6, licensee shall ensure that all
18 employees are trained within 45 days on when to
19 call police or seek medical assistance.

20 No. 7, licensee shall ensure that
21 security personnel employed at events have
22 received training within the last year.

1 And No. 8, licensee shall ensure that
2 security personnel employed at events wear
3 clothing with tags or insignia identifying them
4 as security personnel.

5 Okay. So I would move that we accept
6 this Offer in Compromise as read. However, I
7 want to add a caveat that came up in the Board's
8 discussion of this Offer in Compromise in closed
9 session.

10 And that is as to how the Board will
11 treat the secondaries and primaries for penalty
12 purposes. And that is as three separate
13 secondaries and two separate primaries.

14 I guess before we vote on the motion,
15 I want to make sure that the --

16 MEMBER ALBERTI: So, Ms. Miller, can
17 I make sure I understand your statement?

18 CHAIRPERSON MILLER: -- still -- you
19 know --

20 MEMBER ALBERTI: So this is in
21 considering the penalty for future adjudicative
22 cases, we would treat these three secondaries as

1 three separate secondaries committed on three
2 separate days, so that if there was a future
3 secondary charge that was adjudicated and found
4 guilty, this would become -- it would -- within a
5 specified time period, it would become the fourth
6 secondary.

7 Likewise, the two primaries would be
8 treated as two separate primaries that occurred
9 on two separate dates. Is that what you are
10 saying?

11 CHAIRPERSON MILLER: I believe. I am
12 -- I was trying to represent the consensus of the
13 Board, so I believe that's what I was saying.

14 MEMBER ALBERTI: I think that's what
15 I heard from my fellow Board Members. I'm
16 getting nods. Okay.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER ALBERTI: Great. Thank you.

19 CHAIRPERSON MILLER: Okay. Great. So
20 I wanted to make sure before we vote on this, I
21 guess, to offer the parties that --

22 MR. RIVERO: Right. According to --

1 CHAIRPERSON MILLER: -- in case they
2 don't want us to vote on it because of that.

3 MR. RIVERO: Well, according to the
4 Government, that's actually, as I said before, a
5 reading that is permitted by Chapter 800, Title
6 25. But furthermore, I say now that this action
7 is entirely within the purview of the Board, even
8 if the parties agreed to the treatment --

9 CHAIRPERSON MILLER: Okay.

10 MR. RIVERO: -- in any way, the law,
11 Title 25 gives that function entirely over to the
12 Board. It is discretionary for the Board's part.

13 MEMBER ALBERTI: But, Mr. Rivero, we
14 wanted to make sure that before the licensee
15 accepted the OIC finally, that they understood
16 what the future ramifications might be and that
17 was our purpose in making that clear.

18 MR. KLINE: But presumably, the Board
19 is not reaching that issue only telling the
20 parties how it would intend to rule if the issue
21 came up in the future.

22 CHAIRPERSON MILLER: That's correct.

1 MEMBER SILVERSTEIN: Yes.

2 CHAIRPERSON MILLER: That's correct.

3 Okay. That's correct. Okay. All right. Right.

4 It's not before us right now, but the Board
5 wanted --

6 MEMBER ALBERTI: I mean, there are no
7 future charges before us.

8 CHAIRPERSON MILLER: Right.

9 MEMBER ALBERTI: So it's a moot point.

10 CHAIRPERSON MILLER: Yes.

11 MR. KLINE: Right.

12 CHAIRPERSON MILLER: Okay.

13 MR. KLINE: I just wanted to clarify.

14 CHAIRPERSON MILLER: Okay. All right.

15 Okay. Then at this point then, I would move
16 approval of the Offer in Compromise. Do I have a
17 second?

18 MEMBER SHORT: Second.

19 CHAIRPERSON MILLER: Mr. Short has
20 seconded the motion.

21 All those in favor say aye.

22 MEMBER SILVERSTEIN: Aye.

1 CHAIRPERSON MILLER: Aye.

2 MEMBER SHORT: Aye.

3 MEMBER BROOKS: Aye.

4 MEMBER RODRIGUEZ: Abstain.

5 CHAIRPERSON MILLER: All those

6 opposed?

7 MEMBER ALBERTI: Opposed.

8 CHAIRPERSON MILLER: What? Did you?

9 Mr. Rodriguez, I think you voted twice.

10 MEMBER RODRIGUEZ: Abstain.

11 CHAIRPERSON MILLER: Abstain. Mr.

12 Alberti?

13 MEMBER ALBERTI: I oppose.

14 CHAIRPERSON MILLER: Okay.

15 MEMBER ALBERTI: So the vote is 4-2 --

16 4-1-1.

17 CHAIRPERSON MILLER: Okay. 4-1-1.

18 Mr. Alberti dissents and Mr. Rodriguez abstains.

19 Okay. All right. Then I believe that

20 completes --

21 MEMBER SILVERSTEIN: I have a comment.

22 CHAIRPERSON MILLER: Yes, Mr.

1 Silverstein?

2 MEMBER SILVERSTEIN: Mr. Ellis, you
3 have spoken to the burden of paying for an RDO on
4 all occasions and that's certainly understandable
5 if you are having a play or a poetry reading.
6 I'm not sure that you are going to need police
7 out there, although I have heard some pretty bad
8 poems.

9 But there is another financial burden
10 here and that is this theatre is a gem that
11 underwent a \$29 million renovation, as you know,
12 and more than \$10 million of that, I believe, was
13 underwritten by the D.C. taxpayers.

14 And any incident that involves a
15 patron there, if that patron has to be
16 hospitalized, might well involve thousands of
17 dollars of unreimbursed medical expenses, which
18 will also eventually be paid by D.C. taxpayers.

19 I would urge you not to be penny-wise
20 and pound-foolish at this point. That if you do
21 have any event that is going to sell out the
22 theatre where there is any possibility of

1 something happening outside, and by now you
2 should know the red flags, please, take action to
3 safeguard our investment, both financial and in
4 our heart, to a theatre that means a lot to this
5 community.

6 You are the steward of that. Please
7 be a good steward, sir.

8 MR. ELLIS: I will definitely take
9 that advice and we will do our best to, you know,
10 make certain that inside the venue and outside of
11 the venue is very secure and that the community
12 is safe in our establishment.

13 MEMBER SHORT: Madam Chair?

14 CHAIRPERSON MILLER: Yes, Mr. Short?

15 MEMBER SHORT: Also, Mr. Ellis, your
16 ability to be the steward of the future of the
17 historic Howard Theatre and, as Board Member
18 Silverstein has said, it's in your hands. We
19 expect a lot out of you and we know the hard work
20 you did to get that theatre back open and how you
21 went down to our counsel and we are grateful to
22 you for that.

1 But for now, it's time to, all those
2 things that you said at those hearings, get it
3 back open. Make it come true for us. That's all
4 I have, Madam Chair.

5 CHAIRPERSON MILLER: Okay. Any
6 others? Okay. Well, thank you very much.

7 MR. KLINE: Thank you.

8 MR. ELLIS: Thank you.

9 MEMBER ALBERTI: Thank you.

10 MR. RIVERO: Sign the form here for
11 the -- for it to take.

12 CHAIRPERSON MILLER: Okay.

13 MR. RIVERO: The OIC.

14 MR. KLINE: Great. Thank you.

15 CHAIRPERSON MILLER: I have to sign.

16 MR. KLINE: Thank you, sir.

17 MR. ELLIS: Thank you.

18 CHAIRPERSON MILLER: Okay. Okay. So
19 the Board will be issuing an order in this case.
20 And we are adjourning for our lunchtime recess.

21 MR. KLINE: Okay.

22 CHAIRPERSON MILLER: Okay.

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MR. KLINE: Thank you, sir.

(Whereupon, the Show Cause Hearing in
the above-entitled matter was concluded at 12:34
p.m.)

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