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

(5:43 p.m.)

CHAIRPERSON MILLER: Okay. We are back on the record for our last case of the afternoon and that is Case No. 12-CMP-00281, Queen Makeda located at 1917 9th Street, N.W., License No. 60510 in ANC-1B.

Would the parties identify themselves for the record, please?

MR. SOFONIAS: Amde Sofonias.

CHAIRPERSON MILLER: And you are the owner, sir? Okay.

MR. STERN: Good afternoon, Michael Stern representing the District of Columbia.

CHAIRPERSON MILLER: Good afternoon. Okay. So you all are here for a Show Cause Hearing.

Are there any preliminary matters, Mr. Stern?

MR. STERN: There are as a matter of fact. The parties have entered into a

1 stipulation regarding the facts of the fact.

2 CHAIRPERSON MILLER: Okay.

3 MR. STERN: The parties leave it
4 up to the Board to determine the appropriate
5 penalty, though each party will have its own
6 recommendation on that for the Board.

7 In other words, we haven't agreed
8 as to what -- it's not an offer in compromise,
9 because we haven't agreed to a compromise on
10 the penalty.

11 CHAIRPERSON MILLER: Right.

12 MR. STERN: However, we have
13 agreed on the facts of each of the cases,
14 which we are submitted to the Board to support
15 our recommendations on the penalty.

16 CHAIRPERSON MILLER: Okay.

17 MR. STERN: The parties agree that
18 in Case No. 12-AUD-00026(a) the facts at trial
19 would be that on February 1, 2012, Compliance
20 Analyst Adejunmobi --

21 CHAIRPERSON MILLER: Excuse me.

22 MR. STERN: What?

1 CHAIRPERSON MILLER: You don't
2 happen to have that for the Board to follow
3 along, do you?

4 MR. STERN: It's -- I'm reading
5 from the case report.

6 CHAIRPERSON MILLER: You're
7 reading it from what?

8 MR. STERN: From the case report.

9 CHAIRPERSON MILLER: Oh, the case
10 report. Okay. Thank you.

11 MR. STERN: We have agreed that
12 the report, the facts in the case report are
13 accurate.

14 CHAIRPERSON MILLER: Okay.

15 MR. STERN: Adejunmobi --

16 MEMBER ALBERTI: Do you want a
17 copy?

18 CHAIRPERSON MILLER: No, I have
19 it.

20 MR. STERN: -- provided the ABRA
21 Enforcement Division with a list of
22 establishments that failed to file quarterly

1 reports for the period October through
2 December 2011. One of the establishments was
3 Queen Makeda.

4 As Compliance Analyst Adejunmobi
5 determined that as of June -- July 6, 2012,
6 Queen Makeda had five delinquent quarterly
7 reports that had not been filed. Among those
8 the report for October through December 2011.

9 We can also stipulate that that
10 report was first filed this morning.

11 CHAIRPERSON MILLER: Which report?

12 MR. STERN: The report for October
13 through December 2011.

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 MR. STERN: The quarterly report
17 which would have been due on January 30, 2012.

18 In Case No. 12-CMP-00281, the
19 parties have agreed that if this case went to
20 trial, the facts would have been that on
21 Saturday, July 7, 2012 at approximately 3:25
22 a.m., Investigator Shakoor of the Alcoholic

1 Beverage Regulation Administration visited the
2 establishment, Queen Makeda, located at 1917
3 9th Street, N.W., to check, for after-hours
4 violations.

5 Investigator Shakoor observed a
6 large number of people on the sidewalk and in
7 front of the establishment with the open sign
8 still on. Investigator Shakoor entered the
9 establishment and observed 20 to 30 patrons on
10 the second floor smoking a hookah, purchasing
11 and drinking alcoholic beverages.

12 Investigator Shakoor observed that
13 the establishment appeared to be in full
14 operation. Investigator Shakoor, himself,
15 ordered a Heineken beer from the bartender and
16 paid \$5 for the Heineken beer and received the
17 alcoholic beverage.

18 At, approximately -- that was,
19 approximately, 3:25. At, approximately, 3:35,
20 Investigator Shakoor and Butler observed
21 patrons continuing to enter.

22 At that time, Investigator Butler,

1 in the presence of Investigator Shakoor,
2 identified himself and requested to speak to
3 an ABC manager or owner. In the presence of
4 Investigator Shakoor, Mr. Eyob Amde stated
5 that his brother was the owner and that he was
6 the manager, but he did not have an ABC
7 Manager's License and the owner was not
8 present. A short while later, the owner was
9 contacted and arrived at the premises.

10 Those are the facts that the
11 parties have agreed to or stipulated to would
12 have been proven if witnesses were called and
13 the trial would have been had.

14 CHAIRPERSON MILLER: Okay. Mr.
15 Sofonias, do you agree to that stipulation of
16 the facts?

17 MR. SOFONIAS: Yes, I do, I
18 believe. It's just the date that we were
19 open, it was actually the Ethiopian Festival
20 was going on and everybody was open. The
21 Ethiopian Festival was going on and everybody
22 was open.

1 CHAIRPERSON MILLER: Okay. Wait a
2 second.

3 MR. SOFONIAS: All the other
4 restaurants around --

5 CHAIRPERSON MILLER: Okay. Wait.

6 MR. SOFONIAS: -- the --

7 CHAIRPERSON MILLER: Wait, wait.
8 Please, stop. Okay. So, first of all, Mr. --

9 MR. SOFONIAS: I do agree to
10 everything.

11 CHAIRPERSON MILLER: You agree to
12 what he said?

13 MR. SOFONIAS: Yes, ma'am.

14 CHAIRPERSON MILLER: Okay. And
15 what he said also though is that you agree
16 that those would be the only facts that we
17 would hear, not that we would hear additional
18 facts. Is that right, Mr. Stern, or not?

19 MR. STERN: I believe those --
20 that's the stipulation that those are the
21 facts that would have been presented, yes.

22 CHAIRPERSON MILLER: Okay.

1 Because it sounded to me like Mr. Sofonias,
2 who is not an attorney, right?

3 MR. SOFONIAS: No, no.

4 CHAIRPERSON MILLER: Started to go
5 into all the facts.

6 MR. STERN: Yes, I think that what
7 he is attempting to do is provide an
8 explanation which he, I think, can do as part
9 of his closing argument of their
10 circumstances. None of that, that's my
11 understanding, negates the essential facts
12 that we have agreed to.

13 He is not attempting to negate any
14 of these that I mentioned.

15 CHAIRPERSON MILLER: Right.

16 MR. SOFONIAS: No, I'm not.

17 CHAIRPERSON MILLER: So you agree
18 to all of his facts?

19 MR. SOFONIAS: Yes, I agree to
20 everything.

21 CHAIRPERSON MILLER: But --

22 MR. STERN: He may have other

1 information --

2 CHAIRPERSON MILLER: -- if he has
3 other facts --

4 MR. STERN: -- for the Board to
5 consider in considering a penalty, which I
6 think would be allowed, if we had had a trial.
7 But they are not essential facts for the
8 violation.

9 CHAIRPERSON MILLER: And why
10 wouldn't we need to have him go under oath --

11 MR. STERN: The Board has to make
12 -- use its own judgment in determining what
13 penalty they would impose and if -- indeed, if
14 the facts as alleged create a violation as
15 charged by the Government.

16 This is a trial. It's still a
17 trial.

18 CHAIRPERSON MILLER: Right.

19 MR. STERN: The facts are
20 stipulated. He can add additional state of
21 mind criteria for purpose of allocating on an
22 appropriate penalty.

1 CHAIRPERSON MILLER: But isn't
2 that evidence? So wouldn't we need to just
3 put him under oath if he wants to add some
4 other evidence?

5 MR. STERN: No. I think there is
6 a difference between allocution and evidence
7 at trial. I don't -- I'm sure I don't have an
8 objection to him being put under oath and I'm
9 sure he would not have an objection to
10 swearing to the facts, either, but I think
11 there is -- personally, I think this is a
12 difference between allocution and trial
13 evidence.

14 This is the trial evidence. What
15 he wants to talk to you about, I believe, is
16 allocution because the real difference between
17 the parties was how much the penalty should
18 be.

19 CHAIRPERSON MILLER: Okay. Let me
20 just ask you what kind of -- what type of
21 information you want to give us? Do you want
22 to give us information about what happened

1 that night or do you just want to give us
2 argument about the penalty?

3 MR. SOFONIAS: I'm not disagreeing
4 to the facts as he stated on the paper. But
5 I'm just saying why we were open at that day
6 when it was nothing -- I understand we were
7 open past the time, the allowed time, I guess,
8 and we were wrong.

9 MEMBER ALBERTI: Could you speak
10 up a little bit or move that --

11 MR. SOFONIAS: That we --

12 CHAIRPERSON MILLER: Right.

13 MEMBER ALBERTI: -- microphone
14 closer. Yes, sir.

15 MR. SOFONIAS: I understand the
16 fact that we were open, you know, exceeding
17 the allowed time. It's just I was trying to
18 explain that there was a festival going on and
19 everybody was open, all the other places were
20 open at the same time. We just thought it was
21 allowed for that day because of the festival--

22 CHAIRPERSON MILLER: Okay. Wait a

1 second.

2 MR. SOFONIAS: -- going on, but --

3 CHAIRPERSON MILLER: Okay.

4 MR. SOFONIAS: -- we were wrong.

5 We agree to that.

6 CHAIRPERSON MILLER: Okay.

7 MR. SOFONIAS: That's all I wanted

8 to say.

9 CHAIRPERSON MILLER: That's all?

10 MR. SOFONIAS: Yes.

11 CHAIRPERSON MILLER: All right.

12 Okay. Then I don't think we need to put you

13 under oath then. Okay.

14 So those are the facts. Did you

15 want to do closing arguments?

16 MR. STERN: Yes. The District of

17 Columbia believes that the facts as stipulated

18 provide a basis for the Board to find by clear

19 and convincing evidence that the respondents

20 failed to file a timely quarterly report and

21 that on -- separately in the other case on

22 July 7, 2012, after the allowable hours of

1 3:00, the establishment was open for business
2 and serving alcohol.

3 And at the time they were doing
4 so, they did not have an owner or ABC manager
5 on the premises.

6 We believe that in light of these
7 three violations and the prior history of this
8 establishment, we are asking for a fine of
9 \$6,000, that is \$2,000 for each of the
10 violations.

11 CHAIRPERSON MILLER: This covers
12 both cases or just one?

13 MR. STERN: That covers both
14 cases.

15 CHAIRPERSON MILLER: Okay.

16 MR. STERN: There are three
17 charges.

18 CHAIRPERSON MILLER: Okay.

19 MR. STERN: \$6,000 divided by each
20 of the charges. \$2,000 for each of the
21 charges.

22 CHAIRPERSON MILLER: Okay. And

1 would you like to address, I guess, a closing
2 statement as to, you know, the penalty or in
3 general like Mr. Stern did?

4 MR. SOFONIAS: Well, like I said
5 before, I think it's all about the amount.
6 The amount is --

7 CHAIRPERSON MILLER: Wait, wait.
8 Can you --

9 MR. SOFONIAS: What I was saying
10 was that the amount that -- it's just too
11 much.

12 CHAIRPERSON MILLER: It's too
13 much?

14 MR. SOFONIAS: I feel like it's a
15 lot. It's too much money. I do agree to the
16 fact that it's -- it was our mistake. We
17 really apologize, but this is not something we
18 plan on doing again. It's just that \$6,000
19 fine is extremely a little too much.

20 CHAIRPERSON MILLER: So let me
21 just ask though, are there some outstanding
22 quarterly statements?

1 MR. STERN: There are other cases
2 that have been filed or are being filed --

3 CHAIRPERSON MILLER: Oh, okay.

4 MR. STERN: -- regarding other
5 quarterly statements.

6 CHAIRPERSON MILLER: But the one
7 in this --

8 MR. STERN: Yes, and there are two
9 of those four that were already adjudicated,
10 I believe.

11 CHAIRPERSON MILLER: Okay. The
12 one at issue in this case was filed today?

13 MR. STERN: That's my
14 understanding it was filed today, yes.

15 CHAIRPERSON MILLER: Okay. Okay.
16 That completes your case then. Do you want to
17 file proposed findings of facts and
18 conclusions of law?

19 MR. STERN: We will waive.

20 CHAIRPERSON MILLER: Do you? Do
21 you understand the question?

22 MR. SOFONIAS: Yes.

1 CHAIRPERSON MILLER: Do you want
2 to file a written brief? No. Okay. So you
3 waive your right to do so?

4 MR. SOFONIAS: Yes.

5 CHAIRPERSON MILLER: Okay. All
6 right. Then the Board will consider this case
7 in closed deliberation and issue an order
8 within 90 days. Okay.

9 MR. STERN: Thank you.

10 CHAIRPERSON MILLER: Thank you.

11 MR. SOFONIAS: Thank you.

12 CHAIRPERSON MILLER: As
13 Chairperson of the Alcoholic Beverage Control
14 Board for the District of Columbia and in
15 accordance with Section 405 of the Open
16 Meetings Amendment Act of 2010, I move that
17 the ABC Board hold a closed meeting for the
18 purpose of seeking legal advice from our
19 counsel on Case Nos. 12-CMP-00281 and 12-AUD-
20 00026(a) per Section 405(b)(4) of the Open
21 Meetings Amendment Act of 2010, and
22 deliberating upon these cases for the reasons

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

3 Is there a second?

4 MEMBER BROOKS: Second.

5 CHAIRPERSON MILLER: Mr. Brooks
6 has seconded the motion. I'll now take a roll
7 call vote. Mr. Brooks?

8 MEMBER BROOKS: I agree.

9 CHAIRPERSON MILLER: Mr. Alberti?

10 MEMBER ALBERTI: I agree.

11 CHAIRPERSON MILLER: Ms. Miller
12 agrees.

13 Mr. Silverstein?

14 MEMBER SILVERSTEIN: I agree.

15 CHAIRPERSON MILLER: Mr. Jones?

16 MEMBER JONES: I agree.

17 CHAIRPERSON MILLER: So the vote
18 is 5-0-0. The motion is passed.

19 I hereby give notice that the ABC
20 Board will hold a closed meeting in the ABC
21 Board conference room pursuant to the Open
22 Meetings Amendment Act of 2010 either today or

1 next Wednesday.

2 Okay. And that concludes our
3 hearings for February 20, 2013. And the Board
4 is adjourned.

5 (Whereupon, the Show Cause Hearing
6 in the above-entitled matter was concluded at
7 5:57 p.m.)

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