

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

IN THE MATTER OF:

Mama Chuy DC, Inc.
t/a Mama Chuy
2620 Georgia Ave., NW
Retailer CR - ANC-1B
License No. 86892
Case #12-CMP-00568
Case #12-CMP-00456
(Failure to Pay a Fine
Pursuant to an OIC dated
July 10, 2013)

Show Cause
Hearing

March 12, 2014

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:

WALTER ADAMS, OAG

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

(11:29 a.m.)

CHAIRPERSON MILLER: Okay. The next case on our calendar is Case No. 12-CMP-00568, Mama Chuy located at 2620 Georgia Avenue, N.W., License No. 86892, in ANC-1B.

MR. ADAMS: Good morning, Madam Chairman. This is Walter Adams representing the District of Columbia.

CHAIRPERSON MILLER: Good morning.

MR. OROZCO: Good morning, Board Members. My name is Jose Orozco. I represent Mama Chuy DC.

CHAIRPERSON MILLER: I'm sorry, what is your name again?

MR. OROZCO: Jose Orozco.

CHAIRPERSON MILLER: Okay. And you are the owner?

MR. OROZCO: I am one of the owners.

CHAIRPERSON MILLER: All right. So you are here for a Show Cause Hearing. Are

1 there any preliminary matters in this case?

2 MR. ADAMS: There are. There is
3 not an offer in compromise.

4 CHAIRPERSON MILLER: Wait a
5 second. I just want everybody's attention
6 before you --

7 MR. ADAMS: That's okay.

8 CHAIRPERSON MILLER: Do I have
9 everybody's attention?

10 MEMBER RODRIGUEZ: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. ADAMS: I do not have an offer
13 in compromise. A couple preliminary matters.
14 Number one, the case on the -- the next case
15 on the Board's calendar is for the same
16 establishment, for Mama Chuy. Would the Board
17 prefer that both cases be heard at the same
18 time?

19 CHAIRPERSON MILLER: Well, we
20 usually hear them one at a time.

21 MR. ADAMS: Okay.

22 CHAIRPERSON MILLER: If there is

1 some reason that you need to address both?

2 MR. ADAMS: No, that's fine.

3 CHAIRPERSON MILLER: Okay.

4 MR. ADAMS: I just wanted to --
5 well, I'll say this, Madam Chairman. This is
6 a -- well, this -- it might relate.

7 CHAIRPERSON MILLER: Okay.

8 MR. ADAMS: For both the cases,
9 the -- in terms of the facts, I believe that
10 the parties -- that the respondent is willing
11 to stipulate to the facts and this is really
12 a discussion.

13 CHAIRPERSON MILLER: Okay. If you
14 think it would work better, I can call the
15 second case as well. The parties are the same
16 and then we will just be -- clearly
17 differentiate when we --

18 MR. ADAMS: The parties are the
19 same and really the charge is the same.

20 CHAIRPERSON MILLER: Okay. All
21 right. So the other case that is involved
22 here is Case No. 12-CMP-00456. Okay. For

1 Mama Chuy. All right.

2 MR. ADAMS: Madam Chairman, as I
3 stated, I would like to, for both the cases,
4 discuss stipulations. I can make it clear in
5 terms of what the stipulation, proposed
6 stipulations are.

7 CHAIRPERSON MILLER: Okay.

8 MR. ADAMS: This case involves --
9 well, looking at the notice itself, turning
10 specifically to Case No. 12-CMP-00568, the
11 charge here is that the establishment failed
12 to follow a settlement agreement or a Board
13 Order. In this case, specifically, on July
14 10, 2013, Mr. Orozco signed a Hearing
15 Disposition Form wherein he agreed to pay \$500
16 by no later than September 10, 2013.

17 On or about September 18th, ABRA
18 sent a Notice of Delinquency that allowed him
19 to pay that fine within five days. And the
20 establishment failed to pay within that five
21 day period.

22 Similarly, for Case No. 12-CMP-

1 00456, which is a separate matter, the
2 establishment, for that notice -- again on
3 July 10, 2013, the establishment signed a
4 Hearing Disposition Form wherein it agreed to
5 pay \$350 by no later than August 1, 2013. And
6 on September -- and they failed to do so.

7 And on September 18, 2013, the
8 ABRA sent Notice of Delinquency to the
9 establishment and the establishment failed to
10 pay within five days after receiving that.

11 And I believe I can stipulate as well that the
12 establishment did receive the Notice of
13 Delinquency letters.

14 If the Board would like, we can --
15 I can have the Notice of Delinquency letters
16 moved into evidence, if that would help, but
17 we are --

18 CHAIRPERSON MILLER: Okay. I
19 thought we were hearing a preliminary issue.

20 MR. ADAMS: No, I was just --

21 CHAIRPERSON MILLER: We are not
22 hearing --

1 MR. ADAMS: -- giving the
2 stipulations, the facts that are being
3 stipulated to.

4 CHAIRPERSON MILLER: Okay. But
5 are we moving towards a preliminary issue or
6 are we moving towards the hearing?

7 MR. ADAMS: Well, as -- I consider
8 it a preliminary matter from the standpoint
9 that we don't have to -- I don't have to put
10 on witnesses --

11 CHAIRPERSON MILLER: Okay.

12 MR. ADAMS: -- to prove both if
13 the Board agrees that both parties have
14 stipulated to the facts of the case.

15 CHAIRPERSON MILLER: Okay. We are
16 not going to be hearing an offer in compromise
17 then?

18 MR. ADAMS: No, you're not going
19 to hear that.

20 CHAIRPERSON MILLER: Okay. So
21 okay, all right. So I wasn't really thinking
22 along those terms when you -- during the

1 stipulation. But the stipulations, they are
2 similar. Okay. The facts are a little bit
3 different for each case.

4 MR. ADAMS: Exactly. A little bit
5 different, but they are similar.

6 CHAIRPERSON MILLER: So then when
7 you go forward with your case, you are just
8 going to be arguing?

9 MR. ADAMS: We will just have --

10 CHAIRPERSON MILLER: Do you have
11 any witness? You're going to put on a witness
12 and everything?

13 MR. ADAMS: Assuming that the
14 Board -- assuming that Mr. Orozco accepts the
15 proposed stipulations and the Board accepts
16 them --

17 CHAIRPERSON MILLER: You won't
18 need.

19 MR. ADAMS: -- what I was planning
20 to do is that we can just move straight to
21 arguing the penalty phase.

22 CHAIRPERSON MILLER: Okay. Okay.

1 MR. ADAMS: Of the case.

2 CHAIRPERSON MILLER: Okay. Well,
3 let me ask Mr. Chuy, do you stipulate to those
4 facts that Mr. Adams just articulated with
5 respect to what you agreed to pay, when and
6 when it wasn't paid by?

7 MR. OROZCO: I do accept that
8 that's all true. The only thing that he
9 mentioned that I never -- I don't have a
10 record of is the five day notice. But the
11 truth is that that is -- I actually called in.
12 I knew that I needed to pay and I made -- I
13 tried to make an arrangement to extend it a
14 bit.

15 They agreed to put it on the side
16 of their desk for a couple of weeks.
17 Unfortunately, my financial situation didn't
18 allow me to come up with the money in time and
19 they had to move it forward. When I did have
20 the money together, a couple of -- actually a
21 few --

22 CHAIRPERSON MILLER: Okay. Wait.

1 MR. OROZCO: -- weeks later, they
2 would not accept the fine at that point.

3 CHAIRPERSON MILLER: Okay. So he
4 is not agreeing to the exact stipulation, so
5 do you want to change it at all or --

6 MR. ADAMS: I'll tell you what, if
7 it makes it easier what I'll do is I'll just
8 put on -- I'll do the case very quickly.

9 CHAIRPERSON MILLER: All right.
10 Okay. All right. Let's take it one at a time
11 then.

12 MR. ADAMS: Okay. We will take it
13 one at a time. All right. So for -- the
14 first case is 12-CMP-00568 and, please, pardon
15 me, Madam Chairman, for the confusion on that.

16 CHAIRPERSON MILLER: That's okay.
17 So I just want to explain, if you haven't been
18 here before, how this works. Okay. So this
19 is a hearing and witnesses get put under oath.
20 The Government has the burden of proof, so Mr.
21 Adams will go forth with his case. You will
22 have a chance to cross-examine his witness and

1 so will we.

2 And then you will have a chance to
3 put yourself on as a witness or however you
4 choose to defend your case.

5 MR. OROZCO: Okay. Thank you.

6 CHAIRPERSON MILLER: Okay. And
7 then there will be closing. Okay.

8 MR. ADAMS: All right.

9 CHAIRPERSON MILLER: So, Mr.
10 Adams, we are going to go forward with 00568,
11 right?

12 MR. ADAMS: Yes, Your Honor.

13 CHAIRPERSON MILLER: Okay.

14 MR. ADAMS: Yes, Madam Chairman.

15 CHAIRPERSON MILLER: Okay.

16 MR. ADAMS: And the -- Members of
17 the Board, I will waive the opening statement
18 for the case.

19 CHAIRPERSON MILLER: Okay. You're
20 not waiting for me, are you?

21 MR. ADAMS: Yes, I am.

22 CHAIRPERSON MILLER: Oh, my

1 goodness. Go ahead. Call your first witness.

2 MR. ADAMS: All right. I assume,
3 Mr. Orozco doesn't have a witness.

4 CHAIRPERSON MILLER: Oh, opening
5 statement.

6 MR. ADAMS: Yes. The District --

7 CHAIRPERSON MILLER: You can do an
8 opening statement just to be -- he said he is
9 not doing one, which would explain what you
10 want to prove in this case, but you can do it
11 now or not at all or you can do it when it is
12 your turn to start your case.

13 MR. OROZCO: That would be fine.
14 If I can do it when I start my case, I'll do
15 it then.

16 CHAIRPERSON MILLER: Yes, that's
17 what I figured. Okay. Go ahead.

18 MR. ADAMS: All right. Mr. Hager?

19 CHAIRPERSON MILLER: Good morning.

20 MR. HAGER: Good morning.

21 Whereupon,

22 BILL HAGER

1 was called as a witness by Counsel for the
2 Government, and having been first duly sworn,
3 assumed the witness stand and was examined and
4 testified as follows:

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 DIRECT EXAMINATION

8 MR. ADAMS: Good morning, Mr.
9 Hager. Could you, please, state your name and
10 spell it for the record?

11 MR. HAGER: Bill Hager, H-A-G-E-R.

12 MR. ADAMS: All right. And you
13 are employed with the Alcoholic Beverage
14 Regulation Administration?

15 MR. HAGER: Correct.

16 MR. ADAMS: And what is your
17 position?

18 MR. HAGER: I'm the Public
19 Information Officer.

20 MR. ADAMS: All right. Can you
21 tell the Board what is your role as a Public
22 Information Administrator?

1 MR. HAGER: As Public Information
2 Officer, one role is I'm the custodian of the
3 ABRA Record.

4 MR. ADAMS: Okay. And explain to
5 the Board and describe for the record what
6 does it mean to be the custodian of records
7 for ABRA.

8 MR. HAGER: Well, as custodian of
9 the ABRA Record, I'm responsible for all of
10 the Agency's records, all the Board's records,
11 so any kind of signed agreements or Board
12 Orders that have come through the Agency, I'm
13 responsible for management of.

14 MR. ADAMS: So as part of your
15 role, do you keep track or is part of your
16 role to keep track of the letters that are
17 sent out by the Agency in terms of the payment
18 of fines?

19 MR. HAGER: Yes, that is
20 maintained within the files that we keep.

21 MR. ADAMS: Okay. And so as part
22 of your role, do you check files to verify

1 whether -- what documents are within the
2 files?

3 MR. HAGER: Yes.

4 MR. ADAMS: And you also check to
5 see whether payments have been made?

6 MR. HAGER: Yes.

7 MR. ADAMS: Are you familiar with
8 an establishment by the name of Mama Chuy?

9 MR. HAGER: Yes.

10 MR. ADAMS: All right. With the
11 establishment of Mama Chuy, this case is
12 specifically for 12-CMP-00568, are you aware
13 of whether any documentation was sent to this
14 establishment?

15 MR. HAGER: Well, yeah. Are you--
16 so following the initial offer in compromise?

17 MR. ADAMS: Yes.

18 MR. HAGER: Okay. Yes, there was
19 a Notice of Delinquency that was sent on
20 September 10, 2013. I'm sorry, September 18,
21 2013 requesting payment of the \$500 fine
22 within five days.

1 MR. ADAMS: All right. I'm going
2 to provide to Mr. Orozco a copy of the Letter
3 of Delinquency. I would like to approach the
4 witness.

5 CHAIRPERSON MILLER: Okay.

6 MR. HAGER: Thank you.

7 MR. ADAMS: No problem. Mr.
8 Hager, is that -- do you recognize that
9 document?

10 MR. HAGER: Yes, I do.

11 MR. ADAMS: Is that the document,
12 the Notice of Delinquency that was sent by the
13 Agency?

14 MR. HAGER: Yes, it is.

15 MR. ADAMS: All right. And
16 according to that document, it states that the
17 establishment entered into an offer in
18 compromise July 10th. Is that correct?

19 MR. HAGER: Um-hum, that is
20 correct.

21 MR. ADAMS: And was supposed to
22 pay or make a payment of fine by September 10,

1 2013?

2 MR. HAGER: Yes, sir.

3 MR. ADAMS: What's your knowledge
4 about whether or not payment was ever made?

5 MR. HAGER: Payment has not been
6 made.

7 MR. ADAMS: Very well. Is this a
8 true and accurate representation of the Notice
9 of Delinquency letter?

10 MR. HAGER: Yes, it is.

11 MR. ADAMS: I would like to move
12 District Exhibit 1 into evidence.

13 CHAIRPERSON MILLER: Did you show
14 it to Mr. Chuy?

15 MR. ADAMS: Yes, I did. I showed
16 it to Mr. Orozco.

17 CHAIRPERSON MILLER: Okay. Any
18 objection?

19 MR. OROZCO: No objection to the
20 letter. I did not personally receive this
21 letter.

22 CHAIRPERSON MILLER: Okay. Oh,

1 I'm sorry, what?

2 MR. OROZCO: I did not personally
3 receive this letter.

4 CHAIRPERSON MILLER: Okay.

5 MR. OROZCO: You can testify when
6 you get up there.

7 MR. OROZCO: Okay.

8 CHAIRPERSON MILLER: Okay. Okay.

9 MR. ADAMS: I have no further
10 questions for Mr. Hager.

11 CHAIRPERSON MILLER: All right.
12 Then I'm going to accept this into evidence as
13 Plaintiff's Exhibit No. 1 or Government's
14 Exhibit No. 1.

15 (Whereupon, the document was
16 marked for identification as
17 Government Exhibit 1 and was
18 received in evidence.)

19 MR. ADAMS: Thank you, Madam
20 Chairman.

21 CHAIRPERSON MILLER: The Notice of
22 -- oh, didn't you move it in? It's getting

1 late in the morning. Okay.

2 MR. ADAMS: I apologize. I'm
3 sorry for jumping the gun.

4 CHAIRPERSON MILLER: Okay.
5 Proceed. Okay.

6 MR. ADAMS: I have no further
7 questions for Mr. Hager.

8 CHAIRPERSON MILLER: Okay. Do you
9 have any questions, sir?

10 MR. OROZCO: Yes.

11 CROSS-EXAMINATION

12 MR. OROZCO: My only question is I
13 see this was sent to the business address.

14 MR. HAGER: Um-hum.

15 MR. OROZCO: We have a P.O. Box
16 that is filed where we receive all our
17 business letters. Was that also sent to our
18 P.O. Box?

19 MR. HAGER: To my knowledge, it
20 was only sent to the business address at 2620
21 Georgia Avenue, N.W.

22 MR. OROZCO: That would explain

1 why I might have missed it. I might have not
2 gotten it.

3 CHAIRPERSON MILLER: Oh, okay.

4 MR. OROZCO: That's all.

5 CHAIRPERSON MILLER: Any other
6 questions?

7 MR. OROZCO: That will be all.

8 CHAIRPERSON MILLER: All right.
9 Any Board questions? Thank you.

10 MR. HAGER: Thank you.

11 (Whereupon, witness was excused.)

12 CHAIRPERSON MILLER: Okay. Okay.
13 Any other witnesses?

14 MR. ADAMS: I have no other
15 witnesses. The District rests its case.

16 CHAIRPERSON MILLER: Okay. Mr.
17 Chuy, why don't you come -- go take a seat in
18 the witness stand.

19 Whereupon,

20 JOSE OROZCO

21 was called as a witness by Counsel for the
22 licensee, and having been first duly sworn,

1 assumed the witness stand and was examined and
2 testified as follows:

3 CHAIRPERSON MILLER: Okay. So you
4 should start by giving your name again.

5 MR. OROZCO: My name is Jose
6 Orozco and I represent Mama Chuy DC.

7 CHAIRPERSON MILLER: Okay. So now
8 you can testify to anything you want to tell
9 us.

10 DIRECT EXAMINATION

11 MR. OROZCO: Okay. I guess I
12 would like to start with the facts that we
13 were currently discussing.

14 CHAIRPERSON MILLER: Can you speak
15 up?

16 MR. OROZCO: I did make an
17 agreement to pay. I do recognize that and it
18 was my full intention to pay the fine as it
19 was assessed. When I initially came in, I
20 thought that I would be okay with the three
21 months. We hit a rough patch and it put me a
22 bit behind. I fell behind in rent and we got

1 to the point where if I didn't make some sort
2 of, you know, adjustment in the way I paid
3 things out, I was going to have a difficult
4 time.

5 The landlord wasn't giving me much
6 leeway as far as waiting. In fact, he took me
7 to Court. I was able to settle that out and
8 get caught up, you know, through getting a
9 couple of loans. I spoke with, it was, Ms.
10 Tesha Anderson before the fine was due and I
11 told her that I was going -- that I was having
12 a tough time getting it all together.

13 She agreed to, I guess, informally
14 put the file to the side for a couple of weeks
15 for me and asked me to contact her back as
16 soon as I had the money together. A bit
17 before the two weeks, I called her and told
18 her that I was still a bit behind and she
19 informed me that there was not much more that
20 she can hold off on.

21 I told her I understood and I
22 explained that I apologized and that I would

1 get the money together as soon as possible.
2 I got the money together probably about three
3 or four weeks later and I attempted to make a
4 payment and it was not accepted. I was told
5 that, at that point, I needed to come to the
6 hearing to settle that out. And that payment
7 was refused by a Mr. Gethers. I believe it
8 is. I have a signature, it's a signed
9 signature. I can't exactly make it out, but
10 I believe his name is Mr. Gethers.

11 I would also like to point out
12 that these two violations occurred when we
13 first incorporated. We had not opened the
14 business yet and initially, this is my first
15 business, I was not aware that I needed to
16 file. I was made aware of that and that's why
17 I accepted the fine and moved forward to try
18 to pay it.

19 But I guess what I'm trying to say
20 is that this is not something that once we
21 began and operated, we have never had any
22 other problems. We have never had any

1 violations. In fact, quite to the contrary,
2 we have received a letter from ABRA about an
3 undercover investigation that was happening in
4 the neighborhood congratulating us on how we
5 do card all the minors, because we are across
6 the street from Howard University.

7 My point being that we -- I try to
8 comply in everything as best as I can and this
9 was strictly a matter of it being a financial
10 burden that I just couldn't meet.

11 I would also like to say that
12 those first two quarterly reports, which I
13 agree I did not file in time, had a zero
14 balance. There was no sales at that time, no
15 money made at that time. It was simply a
16 filing error, honestly in ignorance on my
17 part.

18 And I would like to say that I did
19 not receive that notice, although the truth is
20 that I knew that I owed the money, so I don't
21 know that that really makes that much of a
22 difference.

1 CHAIRPERSON MILLER: Okay. Are
2 you ready for questions?

3 MR. ADAMS: Yes.

4 CHAIRPERSON MILLER: All right.
5 Mr. Adams?

6 CROSS-EXAMINATION

7 MR. ADAMS: The only question I
8 have is, Mr. Orozco, are you in position to
9 pay a fine, at this point, for this case?

10 MR. OROZCO: I can pay the agreed
11 upon fine. I have got enough money to cover
12 that. Anything else I would need a little bit
13 more time to get together if something was
14 added. Things are beginning to improve now
15 that we are getting -- usually by January we
16 are doing better, but this weather has been
17 really tough on us. It's just starting to
18 warm up and we are beginning to get going.
19 But honestly, it's been really bad.

20 MR. ADAMS: No further questions
21 for Mr. Orozco.

22 CHAIRPERSON MILLER: Okay. Board

1 questions? Mr. Silverstein?

2 MEMBER SILVERSTEIN: Mr. Orozco,
3 it is your contention that you had a permit to
4 sell alcohol, but you were not open? You did
5 not do any business or you did not do any
6 alcohol business during the first quarterly
7 period where you did not file?

8 MR. OROZCO: Yes, sir, because we
9 received -- when we first leased our -- the
10 property that we are at now and began the
11 process of licensing and setting up, we
12 anticipated that the liquor license would be
13 a little bit more complicated than the other
14 procedures and it turned out that the liquor
15 license came through in a more efficient
16 manner than we went through the whole
17 permitting process.

18 So we were in permitting. We
19 anticipated being able to be open three months
20 after we applied for everything. We didn't
21 get open until about 10 months. So we didn't
22 have any sales.

1 MEMBER SILVERSTEIN: So you were
2 not open at all. Did you know? I mean --

3 MR. OROZCO: I didn't know we were
4 supposed to even file until we assumed -- and
5 like I said, that's based on ignorance on my
6 part. It's my first business. I'm sort of
7 learning --

8 MEMBER SILVERSTEIN: Yes.

9 MR. OROZCO: -- the ropes.

10 MEMBER SILVERSTEIN: You are
11 responsible for that, but it's still a fact of
12 the case.

13 MR. OROZCO: Yes, it is a fact of
14 the case. I agree. I did not file those as
15 they were supposed to be filed. When I
16 learned that they were supposed to be filed,
17 I file everything on time now. I have done
18 everything correctly afterwards. It as those
19 first two, but no, there were no sales then.

20 MEMBER SILVERSTEIN: What were the
21 periods that you did not file for? For which
22 you did not file.

1 MR. OROZCO: It would have -- you
2 know what, I apologize, I don't have the exact
3 dates and I don't want to mislead you.

4 MEMBER SILVERSTEIN: Could you --

5 MR. OROZCO: I can tell you we --

6 MEMBER SILVERSTEIN: -- give us
7 what you think they were?

8 MR. OROZCO: Yes. We leased the
9 place in the summer of 2011 and we didn't get
10 our licensing until December of that year and
11 we didn't end up -- we didn't get going with
12 everything until, I believe, it was April of
13 that year.

14 MEMBER SILVERSTEIN: Okay. So you
15 did not sell before December, the period
16 ending December 31st maybe?

17 MR. OROZCO: No.

18 MEMBER SILVERSTEIN: And the
19 period ending March 31st. Would it be those
20 two quarters? Is that what you are saying?

21 MR. OROZCO: We weren't even open
22 then.

1 MEMBER SILVERSTEIN: You weren't.
2 And you opened when?

3 MR. OROZCO: We opened -- we
4 attempted a soft-opening in January and we
5 ended up opening in April. We just weren't
6 ready.

7 MEMBER SILVERSTEIN: So the Jan/
8 Feb/March period you didn't have any sales?

9 MR. OROZCO: No sales.

10 MEMBER SILVERSTEIN: And what was
11 one of the periods where you say --

12 MR. OROZCO: Both periods that the
13 -- that are -- that we received the fine for,
14 we weren't open yet. We received the notices,
15 I believe it was, well after. Somebody came
16 into the establishment and met with me and
17 explained to me the whole situation on how it
18 was supposed to be filed and that's when I
19 moved forward and began to file them.

20 MEMBER SILVERSTEIN: So you had a
21 license from ABRA, but what was it DCRA that
22 hadn't --

1 MR. OROZCO: The permitting. I
2 guess the -- what it was is there was a fast-
3 food type restaurant there before and I
4 converted it into a full-service restaurant
5 and there was -- it was Howard -- I was led to
6 believe that it would be a more streamlined
7 process.

8 Once I began and I was already
9 committed, I was told that it wasn't as
10 streamlined as I believed and I had to get an
11 architect and a mechanical engineer, a whole
12 lot of things that I didn't anticipate
13 getting. And then finally when I was able to
14 get everything together, they allowed me to
15 get the permitting.

16 So I did have the -- we had the
17 permit or the ABRA license. I guess it came
18 through a lot smoother than the other thing,
19 than the --

20 MEMBER SILVERSTEIN: You filed
21 everything on time since then?

22 MR. OROZCO: Everything. We have

1 missed nothing ever since.

2 MEMBER SILVERSTEIN: Why didn't
3 you pay the fines on these things on time?

4 MR. OROZCO: It was my intention
5 to. It was fully my intention to, we just hit
6 a rough patch and it got to the point where if
7 I paid these fines, my landlord wasn't giving
8 me any kind of leeway. And since I had
9 already taken longer to open up than I
10 anticipated, his patience had run thin.

11 So I'm not blaming him. It's not
12 his fault, you know, it's just the way things
13 went.

14 MEMBER SILVERSTEIN: Anything else
15 you want to add to me?

16 MR. OROZCO: I just plead for
17 leniency.

18 MEMBER SILVERSTEIN: No further
19 questions. Thank you, Mr. Orozco.

20 CHAIRPERSON MILLER: Others? I
21 have a follow-up on that. So you didn't open
22 until April 2013? Is that what we are talking

1 about?

2 MR. OROZCO: Yes.

3 CHAIRPERSON MILLER: Okay. So you
4 had -- you got your license in?

5 MR. OROZCO: The ABRA license?

6 CHAIRPERSON MILLER: ABRA license.
7 December?

8 MR. OROZCO: No.

9 CHAIRPERSON MILLER: No.

10 MR. OROZCO: We had it well before
11 that.

12 CHAIRPERSON MILLER: Well before
13 that.

14 MR. OROZCO: Yeah. I think we
15 were set to go with everything just waiting on
16 our Certificate of Occupancy. They just
17 needed to see that to finalize and I think we
18 were set to go within two and a half months.
19 So in the summer, we already had the license,
20 but we weren't able to open until, basically,
21 the next spring.

22 CHAIRPERSON MILLER: Summer, okay.

1 Did you purchase alcohol? You said you didn't
2 sell any, but did you purchase? No?

3 MR. OROZCO: We purchased -- what
4 we purchased initially was just to do our
5 recipe testing to figure out what our -- you
6 know, what our drinks would be. You know, we
7 sat down with staff and granted we ended up
8 having to do it twice, because the staff that
9 we initially planned to open with just wasn't
10 available by the -- you know, months later.
11 They had to move on.

12 So we ended up doing it twice,
13 but, yes, we had purchased alcohol previously
14 to do some recipe testing as well as some food
15 to do the same.

16 CHAIRPERSON MILLER: Okay. Do you
17 remember when that was?

18 MR. OROZCO: Wow, I started
19 purchasing food probably in April, March of
20 2011, so it would have been a year before then
21 I started doing my recipe testing,
22 anticipating that it would move along a lot

1 faster than it did.

2 CHAIRPERSON MILLER: Okay. And
3 when you talked about your soft-opening, did
4 you serve alcohol at that?

5 MR. OROZCO: No.

6 CHAIRPERSON MILLER: No.

7 MR. OROZCO: We did not. It was
8 just food.

9 CHAIRPERSON MILLER: Okay. So you
10 never served -- you didn't serve alcohol until
11 April 2013?

12 MR. OROZCO: Yes. No, we never
13 sold alcohol until we were open and ready to
14 go.

15 CHAIRPERSON MILLER: Okay.

16 MR. OROZCO: In fact, our soft-
17 opening, we didn't charge anything. It was
18 basically friends, family and neighborhood,
19 the people from the neighborhood.

20 CHAIRPERSON MILLER: Okay. All
21 right. Others?

22 MEMBER SILVERSTEIN: Any other

1 questions?

2 MEMBER RODRIGUEZ: Any questions?

3 No questions.

4 CHAIRPERSON MILLER: Mr. Adams,
5 any follow-up?

6 MR. ADAMS: No follow-up
7 questions.

8 CHAIRPERSON MILLER: Okay. Then
9 you can sit down unless there is anything else
10 you want to say?

11 MR. OROZCO: No, I think I said
12 everything.

13 CHAIRPERSON MILLER: Okay. You
14 will get a chance to do like a closing from
15 there as well.

16 MR. OROZCO: Okay. Well, thank
17 you.

18 CHAIRPERSON MILLER: Okay. You
19 don't have any documents you want to put in
20 the record, do you?

21 MR. OROZCO: No. I think I --
22 like I said, all the facts are right. I'm

1 not, you know, contesting any of that.

2 CHAIRPERSON MILLER: Okay. We
3 have your official record also with your
4 quarterly statement filings or whatever.

5 MR. OROZCO: Okay.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Adams?

8 MR. ADAMS: Yes. In closing,
9 Madam Chairman, essentially, the District's
10 case is that, from a factual standpoint, this
11 is a prima facie case of a violation from the
12 standpoint that there was an OIC and the
13 establishment did not, you know, regardless of
14 the circumstances, pay at the time of the
15 agreement nor pay within the grace period.

16 So as a result, the District --
17 there is a case where the establishment did
18 not comply with the Board's Order. So as a
19 result, this being a primary tier offense, the
20 District would recommend a fine of \$1,000 plus
21 the payment of the original fine, which was
22 \$500, and that would be the first primary tier

1 violation for the establishment. That's the
2 District's recommendation.

3 CHAIRPERSON MILLER: Okay. Do you
4 have any closing remarks?

5 MR. OROZCO: I would only like to
6 say that, as I said, we have no negative
7 history, except for those first two. I accept
8 that we made a mistake. I just hope that you
9 will find it possible to give us a break. We,
10 like I said, are struggling and we really
11 can't afford any more in fines.

12 CHAIRPERSON MILLER: Okay.

13 MR. OROZCO: Not to say that that
14 would be unfair. That's not what I'm saying.

15 CHAIRPERSON MILLER: It's not to
16 say what?

17 MR. OROZCO: That what he is
18 saying isn't right and that I didn't -- I
19 accept that.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. All right. Then I'm going to close the
22 record in this case and ask if the parties

1 want to file proposed findings of fact and
2 conclusions of law?

3 MR. ADAMS: The District waives
4 proposed findings of fact and conclusions of
5 law.

6 CHAIRPERSON MILLER: Do you
7 understand the question?

8 MR. OROZCO: I do not.

9 CHAIRPERSON MILLER: Okay. It's a
10 formality and in most cases parties don't do
11 it. It's mainly in complex cases, but you
12 have the right if you wanted to to file like
13 a legal brief, which would advise the Board as
14 to what you thought we should find with
15 respect to the facts in this case and what
16 legal conclusions we should draw.

17 MR. OROZCO: I'll forego that.
18 I'll waive --

19 CHAIRPERSON MILLER: Okay.

20 MR. OROZCO: -- doing that.

21 CHAIRPERSON MILLER: All right.
22 Okay. So what is going to happen is we will

1 deliberate on this case and issue an order
2 within 90 days. And I'm going to hold off on
3 taking a vote on that and vote on it for both
4 cases, so we can consolidate as much as we can
5 here, so we don't get too repetitive.

6 MR. OROZCO: Yes.

7 CHAIRPERSON MILLER: All right.
8 And I see Mr. Hager has left the boardroom.

9 MR. ADAMS: He has? Oh, my gosh.

10 CHAIRPERSON MILLER: Now, I would
11 ask -- I think that some of his testimony, I
12 think that we could just --

13 MR. ADAMS: Yes. This is --

14 CHAIRPERSON MILLER: --
15 incorporate here again, who he is and what his
16 job is, etcetera, so we don't have to repeat
17 all that. But if you would agree and then
18 just get him to address the facts in this
19 case?

20 MR. ADAMS: That will be fine.

21 CHAIRPERSON MILLER: Assuming you
22 are going to call him. I'm going to call Case

1 No. 00456. This is Mama Chuy's second case.

2 Okay.

3 MR. ADAMS: Walter Adams
4 representing the District of Columbia.

5 MR. OROZCO: Jose Orozco
6 representing Mama Chuy DC.

7 CHAIRPERSON MILLER: Okay. Any
8 openings?

9 MR. ADAMS: The District waives
10 opening statement in this matter.

11 CHAIRPERSON MILLER: Okay. Mr.
12 Hager is back.

13 MR. ADAMS: All right. Hello, Mr.
14 Hager.

15 CHAIRPERSON MILLER: You have
16 already -- I'll swear you in again.

17 Whereupon,

18 BILL HAGER
19 was called as a witness by Counsel for the
20 Government, and having been first duly sworn,
21 assumed the witness stand and was examined and
22 testified as follows:

1 CHAIRPERSON MILLER: Good. Thank
2 you. We were just saying in your absence that
3 we don't think that you need to reiterate, you
4 know, your job.

5 MR. HAGER: Okay.

6 CHAIRPERSON MILLER: And we can,
7 you know, incorporate what was said in the
8 previous case to this case about your general
9 duties. And if you can just, Mr. Adams will
10 take you through it, but, address the facts of
11 this case specifically.

12 MR. HAGER: Okay.

13 CHAIRPERSON MILLER: Okay.

14 MR. HAGER: Thank you.

15 DIRECT EXAMINATION

16 MR. ADAMS: All right. Mr. Hager,
17 you work for ABRA as a Public Information
18 Officer. As part of your duties, you are
19 custodian of records, correct?

20 MR. HAGER: Correct.

21 MR. ADAMS: And in the case of
22 Mama Chuy, in this case, which is 12-CMP-

1 00456, have you had a chance to review the
2 files for that case?

3 MR. HAGER: Yes.

4 MR. ADAMS: And I would like to
5 present to you what is marked as Government's
6 Exhibit No. 1, a Notice of Delinquency, for
7 Case No. 12-CMP-00456. I'm going to approach
8 Mr. Hager.

9 MR. HAGER: Thank you.

10 MR. ADAMS: Mr. Hager, you
11 recognize that document, don't you?

12 MR. HAGER: I do.

13 MR. ADAMS: And do you recognize
14 it's a Notice of Delinquency for this case?

15 MR. HAGER: I do.

16 MR. ADAMS: And this case
17 establishes that on July 10th the
18 establishment entered into an offer in
19 compromise in which it was to pay \$350. Is
20 that correct?

21 MR. HAGER: Correct.

22 MR. ADAMS: It was supposed to pay

1 it by August 1, 2013?

2 MR. HAGER: That is correct.

3 MR. ADAMS: And according to this
4 letter of September 18th, it asks Mr. Orozco
5 to pay within -- to pay a fine within five
6 days of September 18th, correct?

7 MR. HAGER: That's correct.

8 MR. ADAMS: And have you received
9 any payment of fine in this case?

10 MR. HAGER: Not to date, no.

11 MR. ADAMS: All right. I have no
12 further -- oh, before I do that. Is this a
13 true and accurate version of the Notice of
14 Delinquency that was within the ABRA's files?

15 MR. HAGER: Yes.

16 MR. ADAMS: And I would like to
17 have -- ask for the District Exhibit No. 1,
18 the Notice of Delinquency, to be entered into
19 evidence.

20 CHAIRPERSON MILLER: Do I have it?

21 MR. ADAMS: No, you don't.

22 CHAIRPERSON MILLER: Oh, okay.

1 And have you shown it to the licensee? Mr.
2 Adams, did you show it to him?

3 MR. ADAMS: Sure, I did. He --

4 CHAIRPERSON MILLER: Okay.

5 MR. ADAMS: -- has one here.

6 CHAIRPERSON MILLER: Okay. Good.

7 MR. ADAMS: Thank you.

8 CHAIRPERSON MILLER: Any
9 objections? You don't have any objections?
10 Okay.

11 MR. ADAMS: Thank you.

12 CHAIRPERSON MILLER: Okay. Then
13 this letter is admitted as Government's
14 Exhibit No. 1.

15 (Whereupon, the document was
16 marked for identification as
17 Government Exhibit 1 and was
18 received in evidence.)

19 MR. ADAMS: I have no further
20 questions for Mr. Hager.

21 CHAIRPERSON MILLER: Do you?

22 MR. OROZCO: Yes, I would like to.

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CROSS-EXAMINATION

MR. OROZCO: I just want to confirm that both letters, Notices of Delinquency, were sent on the same day?

MR. HAGER: Yes.

MR. OROZCO: Okay. And my second question is are -- is it normal procedure not to accept payment after the grace period, even if they are attempted to be made?

MR. HAGER: Well, I'm not aware of that process. I don't actually process the payments.

MR. OROZCO: That will be all.

CHAIRPERSON MILLER: Okay. Board questions? I just have a question about the address. That -- this came up earlier.

MR. HAGER: Right.

CHAIRPERSON MILLER: I mean, in the previous case. And I forgot to clarify there. The address that you sent the notice to, whose address is that?

MR. HAGER: 2620 Georgia Avenue,

1 N.W., to my recollection, that is the
2 establishment's address.

3 CHAIRPERSON MILLER: Okay. That's
4 where the restaurant is operating?

5 MR. HAGER: Correct.

6 CHAIRPERSON MILLER: Okay. And I
7 can ask the licensee, but do you understand
8 what he was -- what address he was referring
9 to before, that he didn't get the -- that he
10 should have gotten it?

11 MR. HAGER: In the previous
12 hearing -- I'm sorry.

13 CHAIRPERSON MILLER: That he
14 should have gotten the notice at?

15 MR. HAGER: In the previous
16 hearing, he made mention of a P.O. Box.

17 CHAIRPERSON MILLER: Okay.

18 MR. HAGER: I'm not sure if that
19 is -- if that P.O. Box is on file as the
20 recipient address within our records.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. Okay. How do you determine what address

1 to send a Notice of Delinquency to?

2 MR. HAGER: Generally, it's the
3 establishment's address or the address that is
4 provided to us within the record.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. Any other questions? Any follow-up, Mr.
7 Adams?

8 MR. ADAMS: I have no further
9 follow-up.

10 CHAIRPERSON MILLER: Okay. Any
11 questions related, based on the Board
12 questions?

13 MR. OROZCO: I guess.

14 RECROSS-EXAMINATION

15 MR. OROZCO: Yes, I would like to
16 know whether it is in your file, whether our
17 P.O. Box is in your file, because that is
18 where we receive most of our official
19 correspondence. And typically when we receive
20 any type of notices, we have had someone come
21 into the establishment and have me sign for
22 them. Did anyone sign for these? These were

1 mailed, right? So they wouldn't have been
2 signed for.

3 MR. HAGER: Correct. There was no
4 service form that accompanied these.

5 MR. OROZCO: Okay. And I guess my
6 original question was do you have a record of
7 my P.O. Box where we receive our official
8 correspondence?

9 MR. HAGER: We may. I don't have
10 that knowledge with me right now.

11 MR. OROZCO: Okay. I guess that's
12 all.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 MR. HAGER: Thank you.

16 MR. ADAMS: And I would like to
17 excuse Mr. Hager as a witness. And the
18 District will close its case.

19 (Whereupon, witness was excused.)

20 CHAIRPERSON MILLER: Okay. Do you
21 want to take the stand again and testify on
22 something related to this case?

1 MR. OROZCO: I would say that I
2 think that the facts are very similar. If
3 there -- if I -- if you need me to step up and
4 repeat that, then I'm more than willing. If
5 you will accept my previous testimony as --
6 that it applies to this case also, then that
7 would be fine with me.

8 CHAIRPERSON MILLER: Okay.
9 Because we are accepting Mr. Hager's previous
10 testimony as well. So there is no need to
11 repeat and I don't have to make you get up
12 there. However, I would like to ask you a
13 question about this P.O. Box issue.

14 Is it your testimony that you
15 received other official documents from ABRA at
16 the P.O. Box number?

17 MR. OROZCO: You know what, I am
18 not going to say that I have received from
19 ABRA. I know I have received from the other
20 Government Agencies. I know that that's the
21 address -- that's our correspondence address.
22 The reason we don't like to receive address at

1 the restaurant is because we tend to get a lot
2 of marketing materials there and a lot of that
3 stuff gets tossed, that's why we intentionally
4 set up a P.O. Box for security purposes also.

5 CHAIRPERSON MILLER: Okay. I
6 would tell you that in the future, if that's
7 where you want the notices to go, you can let
8 ABRA know that.

9 MR. OROZCO: I'm sure that we have
10 -- as our official correspondence address, we
11 set that up, because that -- right from the
12 beginning we have had that same P.O. Box and
13 that's what we have used everywhere. We don't
14 normally receive correspondence from ABRA.

15 Like I said, when we have gotten
16 things from them, notices, any type of
17 official -- someone comes in and has us sign
18 for them and that's how I know I have received
19 something from them. So I wouldn't
20 necessarily expect to receive a formal letter
21 from them through just regular mail.

22 CHAIRPERSON MILLER: Okay. Any

1 other questions? Mr. Adams, any questions on
2 Board questions or cross or --

3 MR. ADAMS: Oh, just to clarify.

4 CHAIRPERSON MILLER: Yes.

5 REDIRECT EXAMINATION

6 MR. ADAMS: Mr. Orozco, but you
7 have been in contact with Ms. Anderson from
8 ABRA a few days before providing --

9 MR. OROZCO: I have been in
10 contact with Ms. Anderson.

11 CHAIRPERSON MILLER: Now, I have
12 one more question. Were you aware that if you
13 didn't pay your fines, that you would be
14 subject to penalties?

15 MR. OROZCO: I didn't realize. I
16 thought that I might -- I thought that I would
17 be given some -- a little bit of time to
18 extend. You know, I figured the fine was
19 already set up. I tried to communicate that
20 I was behind. I figured that, you know, there
21 would be a little bit of an extension given.
22 I didn't realize that there was -- you know,

1 that -- I guess if I hadn't communicated, I
2 would expect that, you know, that would
3 happen. But I thought that by trying to
4 communicate and explain my situation, that
5 that might buy me a little bit of time to get
6 the money together, but that was not the case.

7 CHAIRPERSON MILLER: Okay. All
8 right. If there aren't any other closing
9 statements or --

10 MR. ADAMS: Well --

11 CHAIRPERSON MILLER: Yes, go
12 ahead.

13 MR. ADAMS: Yes. The District's
14 closing argument again is that, essentially,
15 the facts are proven here that the
16 establishment failed to pay the fine in the
17 amount of \$350 within the allotted time
18 period. And also did not pay it -- well, the
19 owner has already admitted that he didn't pay
20 the fine within the allotted period of the
21 order.

22 So there is no dispute in terms of

1 that. So for this case, if the Board were to
2 find in the District's favor, technically, it
3 would be the second primary tier violation of
4 the statute that would require a minimum of
5 \$2,000, plus the payment of the \$350 fine.
6 And the District has no further comments.

7 CHAIRPERSON MILLER: Do you have
8 any closing statement?

9 MR. OROZCO: I guess I would like
10 to say that I don't know that legally it makes
11 much difference, I guess, but it is very
12 difficult to open a business, as most of us
13 probably know. I would expect that, you know,
14 with us trying to provide jobs and tax
15 revenue, that we would get -- we would be
16 given a little bit of leeway, especially when
17 we make good faith attempts to settle these
18 type of situations.

19 I understand that that's not
20 always the case and these procedures have to
21 be encased, but I would argue that it's
22 difficult enough to run a business. You know,

1 any kind of hurdles that are put in front of
2 us, just make it that much more difficult. I
3 would just plead for leniency.

4 CHAIRPERSON MILLER: Okay. All
5 right. No more documents to put into
6 evidence? Okay. We've got the Delinquency
7 Notice, that's it?

8 MR. ADAMS: Outside of that,
9 that's the only -- that's the District's only
10 exhibit.

11 CHAIRPERSON MILLER: Okay. So I'm
12 going to close the record and ask the parties
13 if they want to file proposed findings of
14 facts and conclusions of law or waive your
15 right to do so?

16 MR. ADAMS: The District waives
17 its right to file the findings of fact and
18 conclusions of law document.

19 CHAIRPERSON MILLER: Do you also?

20 MR. OROZCO: I apologize. I'm
21 sorry?

22 CHAIRPERSON MILLER: I'm asking

1 the question that I asked the last case, do
2 you want to file proposed findings of facts
3 and conclusions of law?

4 MR. OROZCO: I will forego that.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. Okay. So I'm going to read the
7 instructions and take a vote on hearing this--
8 considering this case in closed session. And
9 you can expect an order, written order within
10 90 days.

11 As Chairperson of the Alcoholic
12 Beverage Control Board for the District of
13 Columbia and in accordance with Section 405 of
14 the Open Meetings Amendment Act of 2010, I
15 move that the ABC Board hold a closed meeting
16 for the purpose of seeking legal advice from
17 our counsel on Case Nos. 12-CMP-00568 and 12-
18 CMP-00456, Mama Chuy, per Section 405(b)(4) of
19 the Open Meetings Amendment Act of 2010, and
20 deliberating upon these cases for the reasons
21 cited in Section 405(b)(13) of the Open
22 Meetings Amendment Act of 2010.

1 Is there a second?

2 MEMBER RODRIGUEZ: Second.

3 CHAIRPERSON MILLER: Mr. Rodriguez
4 has seconded the motion. I'll now call a roll
5 call vote on the motion now that it has been
6 seconded.

7 Mr. Brooks?

8 MEMBER BROOKS: I agree.

9 CHAIRPERSON MILLER: Mr. Alberti?

10 MEMBER ALBERTI: I agree.

11 CHAIRPERSON MILLER: Mr.

12 Rodriguez?

13 MEMBER RODRIGUEZ: I agree.

14 CHAIRPERSON MILLER: Ms. Miller
15 agrees.

16 Mr. Silverstein?

17 MEMBER SILVERSTEIN: I agree.

18 CHAIRPERSON MILLER: Mr. Short?

19 MEMBER SHORT: I agree.

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

22 I hereby give notice that the ABC

1 Board will hold this closed meeting session
2 pursuant to the Open Meetings Amendment Act of
3 2010 and we will issue an order within 90
4 days.

5 Okay. Thank you very much.

6 MR. OROZCO: Thank you.

7 MR. ADAMS: Thank you.

8 CHAIRPERSON MILLER: Okay. I
9 believe that concludes our morning session.
10 Thank you.

11 And we will be back for our 1:30
12 hearing. Okay. So we are adjourned right
13 now.

14 (Whereupon, the Show Cause Hearing
15 in the above-entitled matter was concluded at
16 12:13 p.m.)

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