

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Krakatoa, Inc. t/a
Chief Ike's Mambo Room Show Cause
1723 Columbia Road, NW Hearing
Retailer CT - ANC-1C
License No. 17940
Case #12-CMP-00393(a)

(Failed to Post in a
Conspicuous Place the Name
of the Licensee, Substantial
Change in Operation Without
Board Approval)

March 26, 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
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

MICHAEL STERN, OAG

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

(11:10 a.m.)

CHAIRPERSON MILLER: Okay. The next case is Case No. 12-CMP-00393(a), Chief Ike's Mambo Room located at 1723 Columbia Road, N.W., License No. 17940.

MR. STERN: Michael Stern representing the District of Columbia.

MR. KLINE: Andrew Kline on behalf of the applicant.

MR. JIRAKOWIC: My name is Allan Jirakowic. I'm the owner of Chief Ike's Mambo Room.

CHAIRPERSON MILLER: Okay. Any preliminary matters in this case?

MR. STERN: There are not.

CHAIRPERSON MILLER: All right. So we are ready whenever the Government is ready to give an opening statement.

MR. STERN: Yes.

CHAIRPERSON MILLER: Okay.

MR. STERN: The Government's

1 evidence will show that on July 27, 2012, at
2 approximately 1:10 a.m., Investigators were in
3 the 1700 Block of Columbia Road, N.W., when
4 they observed patrons consuming alcoholic
5 beverages on the establishment's sidewalk
6 cafe.

7 The Investigators went into the
8 establishment, spoke with the ABC Manager
9 there and noticed that the ABC License was not
10 posted as required.

11 The Investigators asked the
12 manager to show them the license and he pulled
13 it from behind several rows of bottles behind
14 the bar.

15 In review of the voluntary
16 agreement -- excuse me. In reviewing the
17 license, the Investigators determined that the
18 sidewalk cafe was supposed to be closed at
19 1:00 a.m. The voluntary agreement was
20 incorporated into the license by order of the
21 Board.

22 At the conclusion of the case, we

1 are going to ask that the establishment be
2 found for failing to properly display their
3 license under glass and post it conspicuously
4 and for failure to obtain Board approval
5 before a substantial change, that being use
6 after hours. That would be the Government's
7 case.

8 CHAIRPERSON MILLER: Okay. Mr.
9 Kline?

10 MR. KLINE: Yes. Good morning,
11 Board Members. First, I want to do something
12 I haven't done in a long time and don't do
13 often enough and that is to thank all of you
14 for the time that you spend here every
15 Wednesday and your time on the Board.

16 In viewing that, you are charged
17 with an important responsibility, which is to
18 hear cases such as this one and apply the law
19 to the facts. Now, what that means is at the
20 conclusion of the evidence, rather than
21 looking at it and in your own mind thinking
22 well, gee, they did something wrong, we should

1 punish them. We have to look at the law and
2 see if there is a violation under the law or
3 regulation with which the licensee has been
4 charged.

5 That's not always so easy. I know
6 only one of you is an attorney and not that
7 attorneys are any smarter than anybody else.
8 We are trained to think in a different way and
9 it would be like me trying to solve an
10 engineering problem or a statistical problem
11 or an economics problem and not really being
12 trained to do it. I could do it, but I would
13 have to focus on what the rubric is.

14 So I'm going to ask at the
15 conclusion of the case that the Board keep
16 that in mind.

17 In terms of the evidence itself, I
18 would note that there are two charges, as Mr.
19 Stern indicated. One is failure to properly
20 and conspicuously post the license. I don't
21 know that there is going to be much dispute of
22 the evidence about that, but at the conclusion

1 of the case, we will ask that this licensee,
2 who you will note from its record and will be
3 part of the record, has never had a violation.

4 And certainly the Board is aware
5 of the history of the requirement of warnings
6 that goes back five years yesterday, the 25th
7 of March of 2009.

8 And, secondly, with respect to the
9 other charge, the charge is making a
10 substantial change without Board approval.
11 Now, that requires something more than seeing
12 something different than what one normally
13 sees, but we will hear the evidence and we'll
14 make closing arguments with respect to that
15 issue. Thank you.

16 MR. STERN: The District will call
17 it's first witness.

18 CHAIRPERSON MILLER: Good morning.

19 MR. LAWSON: Good morning, Madam
20 Chair.

21 Whereupon,

22 TYRONE LAWSON

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. Good
6 to see you.

7 DIRECT EXAMINATION

8 MR. STERN: Can you give us your
9 name, spelling your last name, please?

10 MR. LAWSON: Tyrone Lawson, L-A-W-
11 S-O-N.

12 MR. STERN: Thank you. And, Mr.
13 Lawson, are you employed?

14 MR. LAWSON: Yes.

15 MR. STERN: Where are you employed
16 right now?

17 MR. LAWSON: With the District of
18 Columbia Department of Consumer and Regulatory
19 Affairs.

20 MR. STERN: Okay. Going back to
21 July 27, 2012, were you employed at that time?

22 MR. LAWSON: Yes.

1 MR. STERN: Where were you
2 employed then?

3 MR. LAWSON: With the Alcoholic
4 Beverage Regulation Administration as an
5 Investigator.

6 MR. STERN: And as part of your
7 duties on that date, did you become familiar
8 with an establishment known as Chief Ike's
9 Mambo Room?

10 MR. LAWSON: Yes.

11 MR. STERN: Can you tell me what
12 drew your attention to that establishment?
13 How you became involved?

14 MR. LAWSON: Well, specifically, I
15 was assigned to monitor the Adams Morgan
16 Corridor, including 18th Street, Columbia
17 Road. And Chief Ike's had particularly become
18 of interest to my patrols because I had
19 noticed on a few occasions that there were
20 patrons that appeared to be consuming
21 alcoholic beverages in the sidewalk cafe after
22 the approved -- the Board-approved hours.

1 MR. STERN: I'm sorry, were these
2 occasions before the 27th of July?

3 MR. LAWSON: Yes, yes.

4 MR. STERN: Okay. And --

5 MR. LAWSON: On some occasions I
6 did enter the establishment and speak to ABC
7 Manager regarding the violations.

8 MR. STERN: Okay. On the 27th what
9 happened?

10 MR. LAWSON: On the 27th, I was
11 actually -- I was training Investigator Brian
12 Molloy and we visited the establishment to
13 conduct a regulatory inspection.

14 MR. STERN: Okay. And tell me
15 what happened.

16 MR. LAWSON: When we approached
17 the establishment, we observed patrons that
18 were on the sidewalk cafe consuming alcoholic
19 beverages.

20 MR. STERN: What made you believe
21 they were alcoholic beverages?

22 MR. LAWSON: Because we saw beer

1 bottles, bottles of beer and what appeared to
2 be mixed cocktails in glasses used to serve
3 and consume mixed cocktails.

4 MR. STERN: Okay. And about what
5 time was this?

6 MR. LAWSON: I don't have a
7 recollection.

8 MR. STERN: Did you write a report
9 on this matter?

10 MR. LAWSON: I believe
11 Investigator Molloy wrote the report.

12 MR. STERN: We'll show you what is
13 in the record already, but I'll have marked
14 Government's Exhibit No. 1 and ask you to take
15 a look at that.

16 (Whereupon, the document was
17 marked as Government Exhibit 1 for
18 identification.)

19 MR. KLINE: I'm going to object.
20 If the witness isn't familiar with the report,
21 then I mean we can all read it, but I mean, if
22 he is going to do nothing more than read it,

1 I don't understand why it's proper for him to
2 be given the report to read it. We can all do
3 that. And the witness has indicated he didn't
4 write it. Unless there is some other
5 foundation for him to review the report and
6 testify about it, I believe it's improper.

7 MR. STERN: First, as counsel
8 well-knows, you can use anything to refresh
9 your recollection. I can give him a pizza pie
10 and ask him if it refreshes his recollection
11 about what he did on a date 10 years before.
12 So I can sue it to refresh his recollection,
13 whether he wrote it or not.

14 Second, once he looks at it, I
15 believe he will testify that he did write
16 this.

17 CHAIRPERSON MILLER: Okay.
18 Objection overruled.

19 MR. STERN: Can you take a look at
20 this report?

21 MR. LAWSON: Yes.

22 MR. STERN: Can you take a look at

1 the last page and tell me if your signatures
2 appears on that?

3 MR. LAWSON: Yes, this is my
4 signature.

5 MR. STERN: Did you write that
6 report?

7 MR. LAWSON: Yes.

8 MR. STERN: Now, can you look at
9 the report and does it refresh your
10 recollection as to what time it was when you
11 saw the patrons outside the establishment?

12 CHAIRPERSON MILLER: I'm sorry,
13 your voice dropped.

14 MR. STERN: I said does it refresh
15 your recollection about what time it was when
16 you first encountered patrons outside the
17 establishment?

18 MR. LAWSON: Yes. 1:10 a.m.

19 MR. STERN: Now, on these previous
20 occasions when you stopped by and you saw
21 patrons outside, were they -- what times,
22 approximately? Were they before or after the

1 establishment was allowed to have patrons?

2 MR. LAWSON: It was after, because
3 I spoke to the managers on duty and the
4 security and as soon as I spoke to the
5 managers on duty, most of the time I entered
6 the establishment the ABC Manager on duty was
7 performing as the disc jockey or he was
8 playing music. So I had to get his attention
9 from the disc jockey booth. And once I
10 informed him about the violation and warned
11 him about the violation, he had his security
12 people clear the people from the sidewalk cafe
13 and tell them or take -- well, not necessarily
14 take the drinks from them, but tell them that
15 they had to reenter the establishment to
16 consume the alcohol.

17 MR. STERN: And did that happen
18 only one time?

19 MR. LAWSON: No, I actually told
20 them probably about two times, at least.

21 MR. STERN: Okay. And then that
22 was before this date?

1 MR. LAWSON: Yes.

2 MR. STERN: Okay. Now, on this
3 date, what happened when you went in the
4 establishment, first of all?

5 MR. LAWSON: I entered the
6 establishment and asked to see the ABC Manager
7 or owner.

8 MR. STERN: Okay. And did you?

9 MR. LAWSON: Yes.

10 MR. STERN: And what happened?

11 MR. LAWSON: And I spoke to Ryan,
12 a Mr. Ryan.

13 MR. STERN: Okay.

14 MR. LAWSON: And he, if I vaguely
15 remember, is not the same ABC Manager that was
16 the disc jockey.

17 MR. STERN: All right. Okay.

18 MR. LAWSON: But I informed him
19 that we were there to conduct a regulatory
20 inspection and I asked to see the ABC License,
21 his ABC License, his ABC Manager's License and
22 to show a copy of the voluntary agreement.

1 MR. STERN: And did you notice
2 where the license was?

3 MR. LAWSON: I noticed where he
4 went to get the license.

5 MR. STERN: Yes.

6 MR. LAWSON: The board that it was
7 posted on behind the bar.

8 MR. STERN: Okay. Could you see
9 it from where you were standing?

10 MR. LAWSON: No.

11 MR. STERN: Could you see it from
12 generally within the bar?

13 MR. LAWSON: No. We couldn't -- I
14 couldn't even see it when he put the board on
15 the table on the bar. So I asked him where it
16 was and he -- I think there was maybe a part
17 of it, a portion of it shown where you could
18 see the outline. And I asked him to display
19 the license. And he had to take the board
20 apart to get to other papers that was in front
21 of it to remove it to display the license.

22 MR. STERN: Okay.

1 MR. LAWSON: I'm just -- this is a
2 while ago, so --

3 MR. STERN: Right, no, I do --

4 MR. LAWSON: -- I do remember this
5 activity, but --

6 MR. STERN: Now, can you tell us
7 how -- if you determined that when -- well, if
8 you determined when patrons were supposed to
9 be off the sidewalk cafe?

10 MR. LAWSON: I don't know exactly
11 off the top of my head when their voluntary
12 agreement -- I know that it was --

13 MR. STERN: No. First, how did
14 you determine what time it would be?

15 MR. LAWSON: It would be on the
16 license.

17 MR. STERN: Okay. Did you have an
18 opportunity to look at the voluntary
19 agreement?

20 MR. LAWSON: Yes. I was very
21 familiar with the voluntary agreement in terms
22 of the hours of sidewalk cafe, the approved-

1 hours of the sidewalk cafe operation.

2 MR. STERN: I'm going to ask you
3 to look again in Exhibit 1 and tell me whether
4 the voluntary agreement, which is there, is
5 the voluntary agreement you are talking about.

6 MR. LAWSON: Yes, this is the
7 voluntary agreement.

8 MR. STERN: Thank you. And go to
9 Section 2 of the voluntary agreement. Does
10 that indicate what times the sidewalk cafe was
11 allowed to stay open?

12 MR. LAWSON: Yes.

13 MR. STERN: And what time is that?

14 MR. LAWSON: It says the sidewalk
15 cafe shall close at 1:00 a.m. Sunday through
16 Friday and shall close at 2:00 a.m. Saturday.

17 MR. STERN: And this was a Friday?

18 MR. LAWSON: Yes.

19 MR. STERN: Now, in your review of
20 the record for doing this report, did you
21 determine if the Board had adopted that
22 voluntary agreement as order of the Board?

1 MR. LAWSON: Yes.

2 MR. STERN: And was that to become
3 part of their license?

4 MR. LAWSON: Yes.

5 MR. STERN: Did you look to see
6 whether there was any request to deviate from
7 that time from -- by the establishment?

8 MR. LAWSON: Yes.

9 MR. STERN: And was there?

10 MR. LAWSON: You said deviate?

11 MR. STERN: Make -- was there any
12 request by the establishment in the records
13 when you were --

14 MR. LAWSON: No.

15 MR. STERN: -- there for them to
16 expand the time?

17 MR. LAWSON: No.

18 MR. STERN: About how many people
19 were outside?

20 MR. LAWSON: I don't recall.

21 MR. STERN: Okay.

22 MR. LAWSON: I think I mentioned

1 how many. I may have taken pictures.

2 MR. STERN: Okay. Well, look at
3 the Exhibit 1 again and tell me whether or not
4 there are -- if it refreshes your recollection
5 as to whether there were pictures.

6 CHAIRPERSON MILLER: I'm sorry,
7 your voice dropped again.

8 MR. STERN: I said whether it
9 refreshes your recollection whether or not he
10 took any pictures.

11 CHAIRPERSON MILLER: Okay.

12 MR. LAWSON: Yes.

13 MR. STERN: Okay. And are those
14 pictures attached to the report?

15 MR. LAWSON: Yes.

16 MR. STERN: Can you tell us by
17 going through them one at a time, the first
18 one up, what it depicts?

19 MR. LAWSON: Well, the first
20 picture, Exhibit 3, it displays patrons that
21 were on the sidewalk cafe consuming alcoholic
22 beverages. It's not a very good picture, but

1 you can see there are several people in the
2 photograph on the -- to the right and to the
3 left of the door. And those were -- this was
4 a picture that I took as evidence of the
5 consumption of alcoholic beverages on the
6 sidewalk cafe after hours.

7 MR. STERN: I would --

8 MR. LAWSON: Well, actually, I'm
9 sorry.

10 CHAIRPERSON MILLER: Can you --

11 MR. LAWSON: Investigator Molloy--

12 CHAIRPERSON MILLER: I'm sorry.

13 Can you identify what picture you are looking
14 at?

15 MR. LAWSON: Exhibit 3.

16 CHAIRPERSON MILLER: Exhibit 3 to
17 the --

18 MR. LAWSON: Yes, ma'am.

19 CHAIRPERSON MILLER: --

20 investigation?

21 MR. LAWSON: The first photograph.

22 CHAIRPERSON MILLER: Okay.

1 MR. LAWSON: Actually, I had
2 Investigator Molloy take the picture of the
3 patrons that were on the sidewalk cafe
4 consuming alcoholic beverages as we approached
5 the establishment.

6 CHAIRPERSON MILLER: Could you
7 hold that up?

8 MR. KLINE: And that's what
9 exhibit?

10 CHAIRPERSON MILLER: Okay. That
11 is --

12 MR. STERN: Exhibit of the --

13 MR. LAWSON: Well, Exhibit 3 of
14 the report. I'm sorry. I don't know what
15 the --

16 CHAIRPERSON MILLER: Our's is
17 Exhibit 2. Our's is Exhibit 2.

18 MR. LAWSON: Yeah.

19 CHAIRPERSON MILLER: But --

20 MR. LAWSON: Yeah, I don't know
21 what the OAG's exhibit number of -- but
22 Exhibit 3 of the investigative report.

1 CHAIRPERSON MILLER: Okay. So at
2 least we are looking at the same picture, at
3 least. Okay.

4 MR. KLINE: You're looking at
5 this?

6 CHAIRPERSON MILLER: Yes.

7 MR. STERN: It will be part of
8 Exhibit 1, which --

9 CHAIRPERSON MILLER: Our Exhibit
10 2. Does your's say Exhibit 2?

11 MR. KLINE: Yes, it says Exhibit
12 2.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: Mr. Stern, our's
15 is labeled Exhibit 2 in the reports that we
16 have before us.

17 MR. LAWSON: Right.

18 MR. STERN: Well --

19 CHAIRPERSON MILLER: Attached to
20 the case report.

21 MR. STERN: Okay. In the report
22 that I have, Exhibit 2 is labeled the

1 regulatory inspection. And Exhibit 1 is the
2 Certificate of Occupancy. But it's the first
3 picture.

4 MR. LAWSON: Yes.

5 MEMBER ALBERTI: He is under oath.

6 CHAIRPERSON MILLER: Yes, the
7 first picture.

8 MR. STERN: And the second
9 picture, what was that?

10 MR. LAWSON: This is a photograph
11 of the board that the license was located or
12 the ABC -- their licenses were located,
13 business license and Certificate of Occupancy
14 and so forth.

15 MR. STERN: And that was taken
16 when?

17 MR. LAWSON: On --

18 MR. STERN: In the sequence of
19 events, when was it taken?

20 MR. LAWSON: Once we entered the
21 establishment.

22 MR. STERN: Was this taken after

1 the board -- you said the board was taken down
2 in order to show it to you or was -- there
3 was --

4 MR. LAWSON: No, that was where it
5 was.

6 MR. STERN: Okay.

7 MR. LAWSON: It was in the -- I
8 think I stopped him and said hang on before he
9 got the board.

10 MR. STERN: Okay.

11 MR. LAWSON: Took it down.

12 MR. STERN: And the next picture
13 would be Picture 3. What's that picture?

14 MR. LAWSON: I'm not sure if this
15 is a picture of the -- I believe this is once
16 he took the board down and moved it.

17 MR. STERN: Also of the license?

18 MR. LAWSON: Yes.

19 MR. STERN: Okay.

20 MR. LAWSON: Yes, they were -- the
21 pictures were much better. I don't know what
22 happened.

1 MR. STERN: And the last picture
2 in the set, can you tell me what that is?

3 MR. LAWSON: Yes. That was a
4 picture of the location of the board that was
5 behind the bottles of alcoholic beverages
6 behind the bar.

7 MR. STERN: And that --

8 MR. LAWSON: Where the license was
9 located, the board.

10 MR. STERN: That was before you
11 approached them and asked them to -- that's
12 where the license was located before you
13 approached and asked --

14 MR. LAWSON: No. I think I asked
15 him to put it back where it was.

16 MR. STERN: So you could take a
17 picture?

18 MR. LAWSON: Yes, so I could take
19 a picture.

20 MR. STERN: Okay. I believe it's
21 already part of the record, because it's part
22 of the report, but was removed, Exhibit 1, in

1 its entirety, which is the report.

2 CHAIRPERSON MILLER: Which is the
3 case report.

4 MR. STERN: Yes.

5 CHAIRPERSON MILLER: Did you want
6 to call it Government's Exhibit 1?

7 MR. STERN: Government's Exhibit
8 1, yes.

9 CHAIRPERSON MILLER: Okay. I
10 mean, yes, it's in the record. There is no
11 objection, is there, Mr. Kline? Is there to
12 the case report going in?

13 MR. KLINE: No. Thank you.

14 CHAIRPERSON MILLER: Okay.

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

18 MR. STERN: That's all I have.
19 Thank you.

20 CROSS-EXAMINATION

21 MR. KLINE: Investigator, so you
22 were there on a Friday night/Saturday morning,

1 correct?

2 MR. LAWSON: Yes.

3 MR. KLINE: All right. So you got
4 there Friday night and this was Saturday
5 morning that this occurred?

6 MR. LAWSON: Yes, 1:00 Saturday
7 morning.

8 MR. KLINE: Okay. And you, I
9 think, testified that this was quite a while
10 ago, correct?

11 MR. LAWSON: Yes.

12 MR. KLINE: In fact, a year and a
13 half, two years ago?

14 MR. LAWSON: Um-hum.

15 MR. KLINE: Yes?

16 MR. LAWSON: Yes.

17 MR. KLINE: And you have testified
18 concerning the report, correct?

19 MR. LAWSON: Yes.

20 MR. KLINE: The report is accurate
21 in terms of the events concerning this
22 violation?

1 MR. LAWSON: Yes.

2 MR. KLINE: The report is complete
3 with respect to the events concerning this
4 violation?

5 MR. LAWSON: Yes, to my
6 recollection.

7 MR. KLINE: Okay. And in terms of
8 the -- and you testified that the manager that
9 you dealt with this night was different than
10 the previous manager, this Mr. Ryan?

11 MR. LAWSON: Yes.

12 MR. KLINE: What was the name of
13 the previous manager that you indicated that
14 you dealt with?

15 MR. LAWSON: I don't recall. If I
16 heard his name again, I probably would. I
17 believe there were three different ABC
18 Managers that I dealt with at Chief Ike's.

19 MR. KLINE: All right. Turning
20 your attention to Exhibit 2 --

21 MR. LAWSON: I don't have it.

22 MR. KLINE: -- to the report. You

1 don't have it?

2 MR. LAWSON: Okay.

3 MR. KLINE: Can you tell me how
4 many people are on the -- allegedly on the
5 sidewalk cafe area, based on that exhibit?

6 MR. LAWSON: No.

7 MR. KLINE: Can you --

8 MR. LAWSON: I can tell you how
9 many I see or how many appear, but based --
10 this photograph does not show me -- it is not
11 a very good photograph of -- or copy, a very
12 good copy of the photograph that I -- the
13 original photographs were a lot more clear.

14 MR. KLINE: This is the photograph
15 that's in evidence today. Ms. Miller, is that
16 correct?

17 CHAIRPERSON MILLER: Yes.

18 MR. KLINE: Okay.

19 MR. LAWSON: Um-hum.

20 MR. KLINE: Can you tell from that
21 photograph whether that is even the interior
22 or the exterior of the establishment?

1 MR. LAWSON: Yes. It's the
2 exterior.

3 MR. KLINE: That's the exterior?
4 And based on a review of that photograph you
5 know that how exactly?

6 MR. LAWSON: It was outside. No.
7 Yes, this was taken outside the door and the
8 establishment is in the background.

9 MR. KLINE: Now, you observed the
10 frame where the licenses were contained?

11 MR. LAWSON: Yes.

12 MR. KLINE: All right. And it's
13 visible, isn't it, in Exhibit 3? You don't
14 have Exhibit 3. I'm sorry.

15 MR. LAWSON: Yes.

16 MR. KLINE: All right. And it's
17 clear from the photo and it was clear when you
18 were there that night that that was a frame
19 containing licenses? Is that correct?

20 MR. LAWSON: Um-hum, yes, that's
21 correct.

22 MR. KLINE: All right. And in

1 fact, the ABC License was in this frame,
2 wasn't it?

3 MR. LAWSON: That's correct.

4 MR. KLINE: All right. And this
5 frame had glass on the front of it, didn't it?

6 MR. LAWSON: I don't know if it
7 was glass or plastic, but it was covered.

8 MR. KLINE: Okay. So it was
9 covered in accordance with the requirements of
10 the regulation, correct?

11 MR. LAWSON: Yes, it was. Well --

12 MEMBER JONES: Yes or no? Just
13 answer the question.

14 MR. LAWSON: It wasn't visibly
15 posted, but it was in a glass frame.

16 MR. KLINE: The question was
17 whether it was -- whether there was glass, or
18 as you indicated perhaps plastic, over the
19 front of the frame?

20 MR. LAWSON: Yes.

21 MR. KLINE: All right. And the
22 frame, I think you have indicated, was

1 conspicuous and you can see it in this
2 picture, correct?

3 MR. LAWSON: You can see the frame
4 behind the bottles that was -- yes.

5 MR. KLINE: All right. Great. I
6 don't have anything further. Thank you.

7 CHAIRPERSON MILLER: Okay. Board
8 questions? Yes, Mr. Alberti?

9 MEMBER ALBERTI: Investigator,
10 good morning.

11 MR. LAWSON: Good morning, Mr.
12 Alberti.

13 MEMBER ALBERTI: Good to see you.
14 You said that the frame was visible behind the
15 bottles. That was your last statement. Is
16 that correct?

17 MR. LAWSON: Yes, you could see
18 the frame. You could see the frame. You
19 could see that there was a frame that appeared
20 to have licenses.

21 MEMBER ALBERTI: So what do you
22 mean by behind the bottles? Can you describe?

1 Can you tell me a little bit what that means,
2 behind the bottles?

3 MR. LAWSON: There was -- their
4 stack, the bottles that were on top of the
5 shelf in the bar.

6 MEMBER ALBERTI: Um-hum.

7 MR. LAWSON: And the frame was
8 laying behind the stack of the bottles.

9 MEMBER ALBERTI: Okay.

10 MR. LAWSON: And you could see
11 enough of the frame, the top of the frame
12 where you could tell that there was a frame,
13 a license board, if you will.

14 MEMBER ALBERTI: Were any of the
15 licenses or documents, any of the documents
16 within that frame obscured by bottles?

17 MR. LAWSON: Yeah. Well, yes, all
18 of them were.

19 MEMBER ALBERTI: So --

20 MR. LAWSON: All of them were
21 obscured.

22 MEMBER ALBERTI: -- were there any

1 documents in there that you could easily see?

2 MR. LAWSON: No. Only -- the only
3 way that I could tell, honestly, is because of
4 my familiarity with the kind of licenses that
5 were there, business license and Certificate
6 of Occupancy. I know what they look like. So
7 I knew from the images beyond the bottles what
8 they were.

9 MEMBER ALBERTI: What do you mean
10 beyond the bottles?

11 MR. LAWSON: Well, if, for
12 example, the outline of the ABRA License, the
13 trim around the ABRA License, I could just see
14 that and know it's an ABRA License.

15 MEMBER ALBERTI: Okay. If the
16 bottles had an obscured -- if there were no
17 bottles obscuring that frame or any of the
18 licenses in that frame --

19 MR. LAWSON: Um-hum.

20 MEMBER ALBERTI: -- would you have
21 been able to read the ABRA License in its
22 entirety unobstructed?

1 MR. LAWSON: No.

2 MEMBER ALBERTI: Okay. And why is
3 that?

4 MR. LAWSON: Because it was
5 covered by -- partially covered by other
6 documents in front of it, on top of it.

7 MEMBER ALBERTI: Okay. Thank you.
8 I have no further questions.

9 CHAIRPERSON MILLER: Oh, wait a
10 second. Mr. Brooks?

11 MEMBER BROOKS: Yes. Thank you,
12 Madam Chair. Investigator Lawson?

13 MR. LAWSON: Yes.

14 COURT REPORTER: Could you turn on
15 your microphone, please?

16 MEMBER BROOKS: Is that better?

17 COURT REPORTER: Yes, thank you.

18 MEMBER BROOKS: Okay. You spoke
19 with the ABC Manager, Michael Ryan?

20 MR. LAWSON: Yes.

21 MEMBER BROOKS: And what did you
22 tell him about the outside patio for seating,

1 at the time?

2 MR. LAWSON: I don't -- I recall
3 that I spoke to him in regards to -- this was
4 another occasion that I came in there to have
5 to tell them about the after hours sidewalk
6 cafe use. And I asked them -- I said that--
7 I asked them for the voluntary agreement to
8 show them again what the hours of operation
9 for the -- in the voluntary agreement and I
10 believe on the license.

11 And it was some time during the
12 inspection of the license that I had the
13 discussion with them.

14 MEMBER BROOKS: Okay.
15 Approximately, what time was this?

16 MR. LAWSON: It was probably about
17 1:15 in the morning.

18 MEMBER BROOKS: And how many
19 people did you observe on the sidewalk cafe?

20 MR. LAWSON: I don't remember how
21 many exactly that I observed from -- unless I
22 indicated it in my report.

1 MEMBER BROOKS: Okay. And did you
2 observe them with alcoholic beverages on their
3 tables in front of them or --

4 MR. LAWSON: Yes.

5 MEMBER BROOKS: -- consuming
6 alcohol?

7 MR. LAWSON: I think they had them
8 in their hands. They were -- again, as I
9 recall, there were people holding glasses and
10 having conversations.

11 MEMBER BROOKS: And what was Mr.
12 Ryan's response to you after you brought this
13 to his attention about the after hours?

14 MR. LAWSON: They went and cleared
15 the people from the -- he talked to, I guess,
16 his security people they had and had started
17 clearing the sidewalk cafe.

18 MEMBER BROOKS: So they did that
19 immediately?

20 MR. LAWSON: Yes, I would say it
21 was immediately.

22 MEMBER BROOKS: Okay. Thank you,

1 Madam Chair.

2 CHAIRPERSON MILLER: Okay. Mr.
3 Rodriguez?

4 MEMBER RODRIGUEZ: Yes. Good
5 morning Investigator Lawson. How are you?
6 I'm referring to Exhibit No. 3 here, which,
7 you know, I have a hard time seeing, but I can
8 make it out. In terms of the bottles that
9 were in front of the license, right?

10 MR. LAWSON: Yes.

11 MEMBER RODRIGUEZ: Were those
12 bottles partially used or were they full?

13 MR. LAWSON: I don't recall. You
14 mean if they had --

15 MEMBER RODRIGUEZ: Liquor in them.

16 MR. LAWSON: They had liquor in
17 them. How much, I don't recall.

18 MEMBER RODRIGUEZ: From the
19 picture I see that they were partially used,
20 that those bottles may have been used.

21 MR. LAWSON: That may be. I don't
22 have the picture in front of me. I'm sorry.

1 MEMBER RODRIGUEZ: Okay. If they
2 were partially used, from what I see here,
3 somebody can correct me, would you say that
4 that would be an advertent -- inadvertent
5 placement of the bottles or would you say that
6 those bottles had been placed there for a
7 while?

8 MR. LAWSON: No, I would say it
9 would be an inadvertent. That they
10 consistently take the bottles to use them for
11 making alcoholic beverages and replace them.

12 MEMBER RODRIGUEZ: So I gather
13 then that that could have been an inadvertent
14 placement of bottles in the restaurant
15 business and not possibly an intentional
16 obscuring of the license?

17 MR. LAWSON: Well, as I understand
18 your question, I think the problem is that
19 because they were all lined up stacked next to
20 each other. An advertent to me would mean
21 that if it is like one or two bottles that
22 were kind of placed and it wasn't a row of

1 them that was intentionally put there as
2 storage.

3 MEMBER RODRIGUEZ: Right.

4 MR. LAWSON: So if they were just
5 accidentally putting them up there for the
6 moment, I can't see it being a whole row of
7 them, maybe one or two, yes. But the way they
8 were stocked, I would have to say that it was
9 intentional.

10 MEMBER RODRIGUEZ: So would you
11 say that that was an intentional placement or
12 that it was an inadvertent?

13 MR. LAWSON: I would say it's an
14 intentional placement based on the description
15 as I recall the photograph and that the
16 bottles were lined up along side each other.

17 MEMBER RODRIGUEZ: I have no more
18 questions, at this time.

19 CHAIRPERSON MILLER: Yes, Mr.
20 Short?

21 MEMBER SHORT: Yes. Good morning,
22 Investigator. The law statute about placement

1 of licenses --

2 MR. LAWSON: Yes.

3 MEMBER SHORT: -- supposed to be
4 in a clear and unobstructed view of the
5 public.

6 MR. LAWSON: As I recall, the law
7 thinks that it must be conspicuously displayed
8 on the premises. And by conspicuously it
9 means what we always told licensees, that
10 meant for the public to view not for your
11 employees, not for you, but for the public
12 viewing of the license.

13 MR. KLINE: Objection. I ask that
14 it be stricken. It's a legal conclusion in
15 terms of what it means. That's for the Board
16 to determine what it means, not for the
17 witness to determine.

18 CHAIRPERSON MILLER: Okay. I'm
19 not going to strike it. I mean, he was
20 answering, being responsive to a Board
21 Member's question, but I also think there is
22 a little leeway in that Investigators have to

1 interpret the law a little bit when they go
2 out as well. So go ahead, it's not stricken.

3 Anything else, Mr. Short?

4 MEMBER SHORT: No, thank you very
5 much.

6 CHAIRPERSON MILLER: Any other
7 questions? I have just a couple, Mr. Lawson.

8 MR. LAWSON: Yes, ma'am.

9 CHAIRPERSON MILLER: All right. I
10 think you made reference to previous visits to
11 this establishment.

12 MR. LAWSON: Yes, ma'am.

13 CHAIRPERSON MILLER: Okay. Did
14 you ever check on the posting of the license
15 in another visit?

16 MR. LAWSON: No, ma'am. No,
17 ma'am.

18 CHAIRPERSON MILLER: Okay. And
19 one other question. I think you made
20 reference to some type of cocktail glass that
21 you knew. You saw beer, I think, and then --

22 MR. LAWSON: I think maybe a beer

1 bottle or two and the cocktail glasses I'm
2 referring to are the short gobblers that are
3 usually used for mixed cocktails.

4 CHAIRPERSON MILLER: Are they only
5 used for alcoholic beverages?

6 MR. LAWSON: No, no, I wouldn't
7 say that.

8 CHAIRPERSON MILLER: Okay. Okay.
9 Any follow-up on Board questions?

10 MR. KLINE: I don't have anything.

11 MR. STERN: Nothing at this --

12 CHAIRPERSON MILLER: Oh, one more
13 question. I'm sorry.

14 MEMBER RODRIGUEZ: Yes.

15 Investigator, did you find that the personnel
16 from the establishment were cooperative with
17 you with your questions, with your concerns?

18 MR. LAWSON: Yes, I would say they
19 were cooperative.

20 MEMBER RODRIGUEZ: They were
21 cooperative?

22 MR. LAWSON: And they were

1 responsive.

2 MEMBER RODRIGUEZ: They answered
3 your questions?

4 MR. LAWSON: Yes.

5 MEMBER RODRIGUEZ: Thank you.

6 CHAIRPERSON MILLER: I have one
7 other question.

8 MR. LAWSON: Yes.

9 CHAIRPERSON MILLER: Did you do a
10 follow-up check on the posting?

11 MR. LAWSON: I believe I did at a
12 later date enter the establishment through --
13 to issue an, I think it was, extended holiday,
14 extended hour notice and I did, at that point,
15 observe that the license was posted.

16 CHAIRPERSON MILLER: And was it
17 conspicuously posted, at that point?

18 MR. LAWSON: As I recall.

19 CHAIRPERSON MILLER: Okay. Any
20 other Board questions? Okay. Thank you very
21 much.

22 MR. STERN: The Government would

1 ask the Board to take judicial notice that
2 July 2012, July 27, 2012 at 1:00 a.m. is a
3 Friday night. And I have a copy of the
4 calendar here. The Board can take judicial
5 notice of that.

6 CHAIRPERSON MILLER: I --

7 MR. KLINE: I don't have any
8 objection to notice of the calendar, but that
9 doesn't -- well, we will argue the witness'
10 testimony. That's fine.

11 MR. STERN: Unfortunately, I can't
12 bring it out here.

13 CHAIRPERSON MILLER: What are you
14 showing the Board?

15 MR. STERN: The July 27, 2012,
16 1:10 a.m.

17 CHAIRPERSON MILLER: Oh.

18 MR. STERN: Is a Friday.

19 MR. KLINE: I would dispute that
20 1:10 a.m. is on the calendar.

21 MR. STERN: No, but --

22 CHAIRPERSON MILLER: Right.

1 MR. STERN: -- the entire day is
2 on the calendar.

3 MR. KLINE: Correct.

4 MR. STERN: From 12:00 a.m. to --

5 MR. KLINE: We will stipulate that
6 July 27th --

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: -- is a Friday.

9 CHAIRPERSON MILLER: Okay. I
10 think we can continue.

11 MR. KLINE: Of 2012. There is not
12 -- it's not an issue.

13 MR. STERN: Okay.

14 CHAIRPERSON MILLER: July 27.
15 You're stipulating July 27th is a Friday?

16 MR. KLINE: Yes, I'll stipulate to
17 that, but --

18 CHAIRPERSON MILLER: Okay. But
19 not the hour. Okay. All right.

20 MR. KLINE: I'm difficult, but not
21 that difficult.

22 MR. STERN: Okay. Thank you.

1 That's all the questions I have.

2 CHAIRPERSON MILLER: Okay. Thank
3 you very much.

4 MR. LAWSON: You're welcome.

5 MR. STERN: Thank you.

6 (Whereupon, witness was excused.)

7 CHAIRPERSON MILLER: Okay. Mr.
8 Kline?

9 MR. KLINE: The Government rests?

10 MR. STERN: Yes.

11 MR. KLINE: We will move to
12 dismiss Charge 2. The clear testimony of the
13 witness was that he was there Friday night and
14 Saturday morning. And it is true the 27th is
15 a Friday. The 28th would have been Saturday.
16 But the witnesses testimony establishes that
17 he was there, Friday night and Saturday
18 morning.

19 Now, the agreement, which is
20 what's in evidence at this point with respect
21 to the hours, says that the sidewalk cafe
22 shall close at 2:00 a.m. on Saturday. So

1 indeed, based on the witness' testimony when
2 he observed patrons in the sidewalk cafe area
3 at 1:10 a.m., it was not Friday. It was
4 Saturday, according to the witnesses very
5 clear unambiguous testimony in terms of when
6 he was there, which was Friday night and
7 Saturday morning.

8 So under the circumstances, there
9 isn't even a prima facie case that the
10 licensee was operating beyond the hours
11 authorized by the voluntary agreement, which
12 is the only thing that is in evidence with
13 respect to its ability to operate sidewalk
14 cafe during certain hours.

15 So we would move that that charge
16 be dismissed.

17 MR. STERN: If I may, there is
18 actually two reasons that's incorrect. The
19 first is that there isn't -- that isn't the
20 only evidence there is. There is the case
21 report. The case report says clearly and
22 unambiguously that it was Friday at 1:10 a.m.

1 Friday at 1:10 a.m. as has been
2 graciously conceded was a Friday. The witness
3 may well have been wrong. So the question
4 becomes do we take his recollection today of
5 what happened two years ago or do we take his
6 recollection which was written down by him,
7 what, not more than a couple of months --
8 excuse me, I can actually give you the exact
9 date, approximately, less than a month after
10 the events actually occurred.

11 There is conflicting evidence when
12 looking at both those things, but on the
13 whole, I think the weight of the evidence
14 shows that this occurred on a Friday at 1:10
15 p.m.

16 So the second part of that is the
17 voluntary agreement says that on the date --
18 basically says that, and I think should be
19 interpreted as meaning, on the days you are
20 open, Sunday, Monday, Tuesday, Wednesday,
21 Thursday and Friday, you must close by 1:00
22 a.m.

1 So even if the Board found that
2 this occurred at 1:00 a.m. on Saturday, this
3 was the day they were open. They didn't close
4 at 12:00 midnight and then reopen and then
5 make the mistake. This was the day they were
6 open on Friday. They didn't close by 1:00
7 a.m.

8 So I think under either
9 interpretation, there is no cause for
10 dismissal. In fact the Government has proven
11 that case.

12 CHAIRPERSON MILLER: Okay.
13 Anything else?

14 MR. KLINE: I'm looking at the
15 voluntary agreement. I have it in front of
16 me. It's an exhibit to the report. It says
17 shall close at 1:00 Sunday through Friday,
18 shall close at 2:00 a.m. Saturday. It doesn't
19 say anything about the day that you are open.
20 It seems to reference the day. Again, it's
21 ambiguous, but I mean it's the Government's
22 burden to prove that this licensee was in

1 violation.

2 And the Government's argument
3 raises another issue. I mean, we have what is
4 in essence hearsay, which is liberally
5 accepted in administrative proceedings.
6 However, we had a live witness who testified.
7 And the live witness testified that he was
8 there Friday night/Saturday morning.

9 So his testimony must necessarily
10 be given. He didn't say he didn't remember.
11 That's what he said. So his testimony must
12 necessarily be given greater weight than the
13 hearsay testimony represented by the report.
14 And I suspect that given the way these things
15 go, yeah, he was there Friday night/Saturday
16 morning. I think it would have been a bigger
17 deal if he would have been there Thursday
18 night/Friday morning.

19 So I just think it is -- there is
20 no reason to believe that he was there any
21 other time other than Friday night/Saturday
22 morning, which is what he testified to, and

1 given the language of the agreement, which is
2 the only thing that has been tendered in this
3 case with respect to the permissible hours,
4 the licensee is not in violation. And that
5 charge should be dismissed.

6 CHAIRPERSON MILLER: Okay. So we
7 hear your arguments. I don't suggest -- I
8 think that we should break and go consider
9 this issue, unless -- is there more of your
10 case that --

11 MR. KLINE: Well, that depends on
12 how the Board rules on the motion. I mean,
13 our position is that the Government has not
14 met their prima facie case. Therefore, there
15 is no reason for the respondent, the licensee
16 to go forward. If the Government has some
17 proven facts that give rise to a violation,
18 which is what our argument is, then there is
19 no need for us to put on anything further, if
20 we were going to do so.

21 So we are asking that the Motion
22 to Dismiss be ruled on, so we can determine

1 whether we should put on other evidence or
2 not.

3 CHAIRPERSON MILLER: Okay.

4 MR. STERN: Just for the Board's
5 information, whether or not to rule on the
6 motion is within the discretion of the Board.
7 Whether you -- you may rule on it now. You
8 may defer ruling. You may defer ruling until
9 after the case is completed.

10 So an attempt to avoid putting
11 additional information on by the respondent is
12 misplaced. He can put on other information if
13 he wants to or not. It depends on what the
14 Board wants to do. It's with the
15 administration of the Board.

16 MEMBER ALBERTI: Madam Chair,
17 actually, I agree with Mr. Stern. I would
18 think it would be most efficient for us just
19 to proceed with the defendant's case, at this
20 point, and rule on the motion later when we
21 consider the entire case.

22 CHAIRPERSON MILLER: Any other

1 comments on that?

2 MEMBER BROOKS: I agree with that,
3 Madam Chair.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER RODRIGUEZ: I do, too.

6 CHAIRPERSON MILLER: Okay. I
7 would be inclined as well. Not to minimize
8 the argument, I think, it's an important
9 argument that we will look at first, you know,
10 before we get to any other evidence that you
11 put on. But I think it would work best for
12 the Board's efficiency in the case to continue
13 forward.

14 MR. KLINE: So the Board is
15 deferring ruling on the Motion to Dismiss?

16 CHAIRPERSON MILLER: Yes.

17 MR. KLINE: We are going to rest
18 and make closing argument after the Government
19 does.

20 CHAIRPERSON MILLER: Okay.

21 MR. STERN: The Government
22 believes that we have proven both of our --

1 the charges. As to the first charge, the
2 relevant phrase in the statute, which the
3 Board must interpret, is conspicuously. I
4 think both sides agree about that.

5 And the former Investigator
6 explained why the Agency interprets
7 conspicuously to mean readable by the public,
8 because that's why we tell them to post the
9 license. We don't tell them to post the
10 license so that they know it's there, then it
11 could be kept in a drawer.

12 Similarly, they don't post it --
13 ask them to post the license so the employees
14 know it's there, because then it could be
15 posted in the back. It is asked to be posted
16 conspicuously under glass, so the customers,
17 so the patrons can see it.

18 In this case, it just wasn't. It
19 wasn't even hanging. It was seated behind the
20 bar, behind bottles where all you could see
21 was the outline. If you were an expert and
22 have some history with what licenses look

1 like, you can see that there was a license
2 back there of some sort. You can't read what
3 it says, which is an essential element of
4 conspicuous posting as well.

5 So we believe we have proven that
6 portion of the charge.

7 As to the second charge, we have
8 been through this on the Motion to Dismiss.
9 The clear evidence is that not only on this
10 night, but on several nights, the
11 Investigators were there, told this
12 establishment to -- not to allow people after
13 hours to be drinking.

14 Every time they comply and then
15 the next day they decide to do it again. This
16 is the textbook example of the Rumors case
17 where the Court of Appeals said you have to
18 have a history of -- excuse me, I maybe cited
19 the wrong case.

20 But it's a textbook example of the
21 case where the Court of Appeals has said the--
22 you have to have some sort of showing that

1 there is a continued pattern of conduct. In
2 this case, there was clearly a continual
3 pattern of conduct, which we have shown.

4 Additionally, the respondent would
5 like to hide behind a catch-22, even the
6 respondent agrees that how it is read is
7 important. It's in the prohibition of when he
8 can stay open, when he can't is ambiguous.

9 The respondent would have you
10 believe that he should be able to stay open
11 both Friday and Saturday because of this
12 ambiguity. When they come in today, they will
13 say oh, but this occurred at 1:00 Saturday
14 morning, so you can't hold us. When they come
15 in Saturday, because they have been found to
16 have violated on a Saturday, they are going to
17 come in and say yeah, but this -- we were open
18 Saturday and we just didn't close. We were
19 allowed to close at 2:00 on Saturday night.

20 Our common usage really is what
21 dictates here. And the common usage is when
22 you say on Monday you have to close at 10:00,

1 you mean Monday night at 10:00. When you say
2 Monday you have to close at 12:00, you mean
3 Monday at 12:00 midnight.

4 You don't mean Tuesday morning at
5 12:00 midnight. Okay? When you say Monday at
6 1:00 a.m., you mean Monday -- when you are
7 open Monday it's 1:00 a.m. the next day. That
8 day that you are open Monday, you just close
9 by 1:00 a.m., otherwise there is no closing.
10 The same thing is here.

11 What this clearly meant because
12 only one day was included, remember Saturday
13 was not included, Saturday was included,
14 excuse me, but Saturday night was not
15 included, otherwise. So clearly, what was
16 intended here was that when you are open on
17 Friday, you must close by 1:00 a.m. That I
18 believe is the most obvious reading of this.

19 Additionally, as I said, even if
20 that wasn't the obvious reading, there is
21 ample evidence in the record that shows that
22 this occurred at 1:00 a.m. on Friday. That

1 was what the investigator wrote and you have
2 to ask yourself does he remember it better now
3 two years later or did he remember it better
4 on the day he wrote it?

5 Is he more accurate now two years
6 later or was he more accurate on the day he
7 wrote it? And I think that you have to
8 conclude that he was more accurate on the day
9 he wrote it.

10 We are asking for a fine of \$2,000
11 for violation of Count 2 and a fine of \$500
12 for a violation of Count 1, totalling \$2,500.

13 MR. KLINE: Madam Chair, Members
14 of the Board, it is disappointing that here we
15 are five years later and we are still talking
16 about warnings on minor offense -- minor first
17 offenses.

18 As the Board knows, and I'm
19 speaking to Charge 1 with respect to
20 conspicuously posting a license, the Council
21 passed a law five years ago, more than five
22 years ago which directed the Board to pass

1 regulations by March 25, 2009, which was five
2 years ago yesterday, requiring a schedule of
3 warnings for minor first offenses.

4 Now, the Board has done that. It
5 took some time to do it. Unfortunately, it
6 didn't get done until the fall of this year.
7 And in doing so -- these rules took effect
8 September 25, 2013.

9 In doing so, the Board indicated
10 and requires on a first offense failure to
11 post and carry licenses a mandatory warning in
12 such situation. Now, the Government will
13 undoubtedly argue this occurred before
14 September 25, 2013, therefore, no warning is
15 mandatory.

16 However, prior to that date, a
17 warning was permissive. So a warning was
18 allowed. We would argue, and I think we have
19 argued in at least one other case, that for
20 the Board to say well, gee, this happened
21 before September 25, 2013, therefore, we are
22 not going to give a warning, that's the very

1 definition of arbitrary and capricious.

2 It's just like yeah, it took us
3 five years to get around to it. We finally
4 did it, but you are not going to get the
5 benefit of it, because we didn't pass it in
6 time for you to get the benefit of it.

7 And you know, unless there is some
8 compelling reason, then this licensee should
9 get a warning on that offense. Now, there is
10 no compelling reason. Look at the
11 investigative history, that's attached to the
12 report, and you will find a grand total of
13 zero violations, not one.

14 The report goes back to 2005, the
15 Investigator's report, there were several
16 incidents that are there. They are all no
17 further action or dismissed or what have you.
18 This licensee has a perfect record in terms of
19 violations.

20 If there is someone other than
21 this licensee that you give a warning to with
22 respect to a minor offense where the licenses

1 were there. It wasn't like it wasn't on the
2 premises. It was obscured. I don't know who
3 that would be, because it seems to me this is
4 the case that we are talking about when the
5 Investigator comes in and says hey, your
6 license is supposed to be posted
7 conspicuously. You need to move it from
8 behind the bar and put it on the wall, so
9 everybody can see it. It's really pretty
10 simple.

11 So if the Board finds and I'm not
12 even going to -- I'll let the Board decide
13 whether this frame, which can be seen from
14 behind the bar, is conspicuous or not. I'll
15 leave that to the Board. I'm not going to
16 spend time on that.

17 But if the Board finds that there
18 is a violation, it seems to be it would be
19 reversible error to give this licensee
20 anything other than a warning simply because
21 this occurred before September 22, 2013, but
22 more than four years after the Board was

1 supposed to have promulgated a schedule of
2 warnings.

3 So we would ask that the Board
4 look at that and if the Board determines that
5 the licensee is liable on that count, issue a
6 warning.

7 Let's turn to the more important
8 offense, because it is a primary tier, which
9 is making a substantial change in operation
10 which must be approved. Now, let's keep in
11 mind, that's the charge. Were this a simple
12 hours violation, then perhaps the Government
13 made out its case.

14 But this is not a simple hours
15 violation. 25-762 says the following:
16 "Before a licensee may make a change in the
17 interior or exterior," we don't have any
18 allegation of that, "where change in format of
19 any licensed establishment which would
20 substantially change the nature of the
21 operation of the licensed establishment as set
22 forth in the initial application for license,

1 the licensee shall obtain the approval of the
2 Board.

3 We don't have any testimony
4 concerning any change in format. We don't
5 have any testimony concerning anything that
6 substantially changed the nature of the
7 operation. At best, what we have is a simple
8 hours violation. Even if the Board agrees
9 whether it was Friday or Saturday or what have
10 you, that's what we have.

11 Now, with respect to Mr. Stern's
12 argument, well, the witness testified very
13 clearly that this went on and happened a
14 number of times. There is nothing of that in
15 the report. There is no mention of any prior
16 issues with this establishment. The witness
17 admits that his memory of this is hazy.

18 When asked who the manager is that
19 he talked to on the prior occasion, he doesn't
20 know. When asked whether the report was
21 accurate. He said that it was. When asked if
22 the report was complete with respect to the

1 violations that are charged, he said it was.

2 So is he telling the truth when he
3 said it was complete or is he telling the
4 truth with this hazy memory that he was there
5 a number of times?

6 Now, in terms of the previous
7 times that he was allegedly there, we don't
8 know what day of the week he was there. We
9 don't know what time he was there. We don't
10 have any of this information. So how does
11 that support a charge that the licensee made
12 a change in format which substantially changed
13 the nature of the operation?

14 Now, this goes to what I told you
15 at the outside of this case. At the
16 conclusion of this case, I'm going to ask you
17 to apply the law and you may say well, it
18 seems to me there is an hours violation.
19 Maybe. That's not what they are charged with.

20 They are charged with making a
21 substantial change in the nature of their
22 operation. If the come in night after night

1 and it's like well, they are continually
2 operating until 2:00 in the morning, then
3 yeah, that makes the case. If there are hours
4 posted that said sidewalk cafe open until
5 2:00, that makes the case.

6 Coming in one night and seeing
7 people there 10 minutes after the closing hour
8 does not make out this violation. So under
9 those facts and under the arguments that have
10 been made, the facts that have been induced at
11 this hearing, we would ask that you dismiss
12 the charge related to making a substantial
13 change without Board approval. Thank you.

14 CHAIRPERSON MILLER: Okay. I
15 would like to just ask you a question, Mr.
16 Kline. If this is a simple hours violation
17 and they can't bring the charge now, what law
18 should they have charged under?

19 MR. KLINE: I don't know. That's
20 their job.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: Not mine. I mean, I

1 haven't looked. I really don't know.

2 CHAIRPERSON MILLER: Okay. I
3 didn't know if you, you know, oh, it should
4 have been this or this. Okay. Is there any
5 rebuttal?

6 MR. STERN: Yes. I find it
7 interesting that Mr. Kline uses the same
8 argument he intended to use before we
9 presented the evidence, that there is no
10 evidence that this was an ongoing operation;
11 that this wasn't a change in the format.
12 There is evidence. There was testimony. He
13 wasn't unclear. He didn't say he didn't
14 remember. He spoke to the -- he said he spoke
15 to the alcohol managers at least twice. Both
16 times he was there, people were outside.

17 He was there again a third time.
18 I mean, how many times do we warn people
19 before it's a change in their format? One of
20 the factors that the counsel made out in --
21 whether it is a substantial change and a
22 change in their format is whether the hours

1 have been expanded. And that's what happened
2 here.

3 The hours of operation -- just in
4 terms of that rebuttal, I think that's --
5 often does not -- doesn't comply with what the
6 facts were.

7 CHAIRPERSON MILLER: Okay. I'm
8 going to close the record now in this case.
9 Does anyone wish to file proposed findings of
10 fact and conclusions of law?

11 MR. KLINE: No, we don't.

12 CHAIRPERSON MILLER: Or waive your
13 right to do so.

14 MR. KLINE: We will waive.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Stern?

17 MR. STERN: Yes, I'm sorry.

18 CHAIRPERSON MILLER: Do you waive
19 your right to file --

20 MR. STERN: Yes.

21 CHAIRPERSON MILLER: -- proposed
22 findings of fact and conclusions of law?

1 MR. STERN: Yes.

2 CHAIRPERSON MILLER: Okay. So I'm
3 just going to read the instructions and take
4 a vote on deliberating in closed session for
5 this case and another case that we heard this
6 morning that is going to deliberation. Okay.

7 As Chairperson of the Alcoholic
8 Beverage Control Board for the District of
9 Columbia and in accordance with DC Official
10 Code Section 2-574(b) of the Open Meetings
11 Act, I move that the ABC Board hold a closed
12 meeting for the purpose of seeking legal
13 advice from our counsel on Case No. 12-CMP-
14 00678, Merkato Ethiopian Restaurant, and Case
15 No. 12-CMP-00393(a) Chief Ike's Mambo Room --

16 MEMBER BROOKS: Second it.

17 CHAIRPERSON MILLER: Wait I didn't
18 finish. That's okay.

19 Pursuant to Section 2-574(b)(4) of
20 the Open Meetings Act and deliberating upon
21 this case for the reasons cited in Section 2-
22 574(b)(13) of the Open Meetings Act.

1 MEMBER RODRIGUEZ: Second it.

2 CHAIRPERSON MILLER: Thank you.

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

6 Mr. Brooks?

7 MEMBER BROOKS: I agree.

8 CHAIRPERSON MILLER: Mr. Alberti?

9 MEMBER ALBERTI: I agree.

10 CHAIRPERSON MILLER: Mr.

11 Rodriguez?

12 MEMBER RODRIGUEZ: I agree.

13 CHAIRPERSON MILLER: Ms. Miller
14 agrees.

15 Mr. Silverstein?

16 MEMBER SILVERSTEIN: I agree.

17 CHAIRPERSON MILLER: And, Mr.

18 Short?

19 MEMBER SHORT: I agree.

20 CHAIRPERSON MILLER: Mr. Jones?

21 MEMBER JONES: I agree.

22 CHAIRPERSON MILLER: Okay. It

1 appears that the motion has passed by a vote
2 of 7-0-0.

3 I hereby give notice that the ABC
4 Board will hold a closed session to deliberate
5 these cases pursuant to Section 2-574(b) of
6 the Open Meetings Act and we will issue a
7 decision within 90 days.

8 MR. KLINE: Okay. Thank you.

9 CHAIRPERSON MILLER: Thank you.

10 MR. STERN: Thank you.

11 CHAIRPERSON MILLER: Okay. That
12 completes our hearings for the morning
13 calendar. And we will return at 1:30 p.m.

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

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