

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

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IN THE MATTER OF: :
: :
Khan's BBQ, Inc. :
t/a Khan's :
1125 H Street, NE :
Retailer CR :
License No. 84082 : Show Cause
Case No. 11-CMP-00488 : Hearing
Case No. 11-CMP-00415 :
Case No. 11-CMP-00301 :
ANC 6A :
Violation of Settlement :
Agreement, Failed to Obtain a :
Sidewalk Caf, or Summer Garden: :
Endorsement, Violation of :
Settlement Agreement (Use of :
Sandwich Board and Failed to :
Post Required Signs) :
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MARCH 27, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT
LOUISE PHILLIPS, OAG
TYRONE LAWSON, ABRA

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement for the Government. 17
Closing Statement for the Government. 71

WITNESSES

Tyrone Lawson 19
James Lee 59

EXHIBITS

Government 's

1-9 Investigative report. 22
10 Notice adding sidewalk caf, to license. . 31

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

9:58 a.m.

CHAIRPERSON MILLER: Next case on our calendar is a show cause hearing involving three cases, Case No. 11-CMP-00488, 11-CMP-00415, 11-CMP-00301, Khan's located at 1125 H Street, N.E., License No. 84082 in ANC 6A.

MEMBER BROOKS: Got to move the hand up there, right?

CHAIRPERSON MILLER: I know, we're a minute ahead of schedule.

MS. PHILLIPS: That's all right. Organization with three files is a little difficult and I thought I'd left one in the other side and sent somebody out to get it.

CHAIRPERSON MILLER: All right.

MS. PHILLIPS: But I do have them all.

CHAIRPERSON MILLER: Also, do we have an interpreter here for this case?

MS. PHILLIPS: I was told that one was requested and we talked about it

1 yesterday. Whether they got notified of the
2 new time --

3 CHAIRPERSON MILLER: Well, you
4 need to introduce -- well, can you introduce
5 yourself for the record so the transcript
6 reflects --

7 MS. PHILLIPS:

8 CHAIRPERSON MILLER: I know, I
9 know. Actually, since you're speaking we
10 might as well for the record, for the
11 transcript.

12 MS. PHILLIPS: Louise Phillips
13 representing the District of Columbia.

14 CHAIRPERSON MILLER: Thank you.
15 Ms. Gephardt, what's the situation? It was
16 requested?

17 MS. PHILLIPS: Excuse me, Ms.
18 Phillips.

19 CHAIRPERSON MILLER: Ms. Phillips.

20 MS. PHILLIPS: After all these
21 years.

22 CHAIRPERSON MILLER: No, just a

1 continuation from a previous case.

2 MS. PHILLIPS: I talked -- when
3 the time was changed, I had looked at the file
4 and I noted that they required -- and the
5 office needed to know that there was an
6 interpreter. They said it was ordered, but I
7 was getting a call to change the time from
8 11:00 to 10:00.

9 CHAIRPERSON MILLER: Right.

10 MS. PHILLIPS: So --

11 CHAIRPERSON MILLER: Okay.

12 MS. PHILLIPS: I don't notify
13 people, so I don't know whether they got --

14 CHAIRPERSON MILLER: All right.
15 Okay. Let me check with my staff then.

16 All right. Yes, our office did
17 notify the interpreter and was informed that
18 the interpreter would be here at 10:00, so it
19 could be any minute. However, you know, we
20 can break until the interpreter gets here.
21 We're not going to proceed right now without
22 an interpreter. So if you want to take a

1 little time to do whatever you needed to do
2 and someone will alert us when the interpreter
3 is here.

4 MS. PHILLIPS: Long as it's not
5 11:00, Madam Chair, because --

6 CHAIRPERSON MILLER: Right.

7 MS. PHILLIPS: -- I mean, I know
8 that you're going to be here all day, but --

9 CHAIRPERSON MILLER: Okay. All
10 right. So it's only 10:01, so --

11 MS. PHILLIPS: I don't have any
12 problem waiting a little bit.

13 CHAIRPERSON MILLER: Okay. All
14 right. So I think we'll take a short recess
15 also while we're waiting.

16 (Whereupon, at 10:02 a.m. off the
17 record until 10:17 a.m.)

18 CHAIRPERSON MILLER: Okay. We're
19 back on the record. I just want to put
20 something on the record with respect to a case
21 that we had previously while we're waiting for
22 the parties in the Khan case. Just want to go

1 back to Case 12-251-00352, Odalis Restaurant
2 and state that the matter is set for a show
3 cause hearing on April 24th, 2013 at 11:00
4 a.m. Thank you.

5 MS. PHILLIPS: We're you calling
6 me? I'd like a minute more. Okay. Somebody
7 just told me you were --

8 CHAIRPERSON MILLER: I was just
9 correcting something.

10 MS. PHILLIPS: Okay. That's fine.
11 Somebody told me you were calling me.

12 CHAIRPERSON MILLER: No.

13 MS. PHILLIPS: May I have a moment
14 more?

15 CHAIRPERSON MILLER: Sure.

16 (Whereupon, at 10:21 a.m. off the
17 record until 10:44 a.m.)

18 CHAIRPERSON MILLER: Okay. We're
19 back on the record in the Khan's cases and I
20 just want to start with the introduction of
21 the parties beginning with the interpreter
22 who's here. What's your name?

1 INTERPRETER: Jon Whong, W-H-O-N-
2 G.

3 CHAIRPERSON MILLER: Okay. You're
4 ready. Do you affirm that you will faithfully
5 and accurately interpret the proceedings in
6 this matter from Korean into English and from
7 English into Korean to the best of your
8 ability?

9 INTERPRETER: Yes, I do.

10 CHAIRPERSON MILLER: Thank you.
11 Okay. And could you identify yourself, or
12 your --

13 WHEREUPON,

14 JAMES LEE

15 was called for examination by Counsel for the
16 Government and, having first been duly sworn,
17 assumed the witness stand, was examined and
18 testified as follows. NOTE: UNLESS OTHERWISE
19 NOTED, ALL ANSWERS ARE GIVEN THROUGH THE
20 TRANSLATOR, JON WHONG, WHO WAS ALSO FIRST DULY
21 SWORN.

22 MR. LEE: (In English) My name is

1 James Lee --

2 MR. LEE: Yes, my name is James
3 Lee, spelled L-E-E.

4 CHAIRPERSON MILLER: And he is the
5 owner, correct?

6 MR. LEE: Owner of Khan's, K-H-A-
7 N-S.

8 CHAIRPERSON MILLER: Okay. Thank
9 you.

10 MS. PHILLIPS: Louise Phillips,
11 Assistant Attorney General for the District of
12 Columbia.

13 CHAIRPERSON MILLER: Okay. So
14 where are we on this case?

15 MS. PHILLIPS: Thank you for your
16 indulgence. It was helpful to try this one
17 more time with an interpreter. We have Offers
18 in Compromises on two of the cases to present
19 to the Board and we'll be trying the third.
20 Shall I go by number?

21 CHAIRPERSON MILLER: Yes, start
22 with the Offer in Compromise.

1 MS. PHILLIPS: Yes, that's what I
2 thought.

3 CHAIRPERSON MILLER: Okay.

4 MS. PHILLIPS: The Offer in
5 Compromise on Case 11-CMP-00415, we have an
6 Offer in Compromise of 350 to be paid in 30
7 days.

8 MEMBER ALBERTI: How much?

9 MS. PHILLIPS: Three fifty.

10 MEMBER ALBERTI: And that's what,
11 415?

12 CHAIRPERSON MILLER: Four one
13 five. Quarterly statements, correct?

14 MS. PHILLIPS: Let's see. I don't
15 have them memorized.

16 CHAIRPERSON MILLER: Okay. Three
17 hundred and fifty dollars within 30 days?

18 MS. PHILLIPS: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MS. PHILLIPS:
21 The quarterly statement one, you are correct.

22 CHAIRPERSON MILLER: All right.

1 Why don't we just deal with them one at time
2 then?

3 MS. PHILLIPS: I think that's
4 best.

5 CHAIRPERSON MILLER: Yes. Okay.
6 So we're looking at Case No. 11-CMP-00415.
7 And it involves a violation regarding filing
8 of quarterly statement.

9 The Government has represented
10 that there is an Offer in Compromise in the
11 amount of \$350 to settle this case to be paid
12 within 30 days. Is that what the Licensee
13 agrees to?

14 MR. LEE: Yes, Your Honor.

15 CHAIRPERSON MILLER: Okay. And
16 does he understand that he waives his right to
17 a hearing if he accepts this Offer in
18 Compromise?

19 MR. LEE: Yes, he does.

20 CHAIRPERSON MILLER: Okay.

21 MS. PHILLIPS: And for the record,
22 Madam Chair, my understanding from the auditor

1 is that the quarterly statement has been
2 filed, but it was significantly late. It was
3 filed in I believe September of 2009.

4 CHAIRPERSON MILLER: Okay. Any
5 questions by Board Members?

6 (No audible response.)

7 CHAIRPERSON MILLER: All right.
8 We have an Offer in Compromise of \$350 to be
9 paid within 30 days to settle this case, and
10 I move that we approve this Offer in
11 Compromise. Do I have a second?

12 MEMBER BROOKS: Second.

13 CHAIRPERSON MILLER: Mr. Brooks
14 has seconded the motion. Any other questions
15 or comments?

16 (No audible response.)

17 CHAIRPERSON MILLER: Okay. All
18 those in favor of the motion, say aye?

19 (Chorus of ayes.)

20 CHAIRPERSON MILLER: All those
21 opposed?

22 (No audible response.)

1 CHAIRPERSON MILLER: All those
2 abstaining?

3 (No audible response.)

4 CHAIRPERSON MILLER: The motion
5 passes by a vote of 5-0-0 to accept this Offer
6 in Compromise.

7 Okay. What's the other one for
8 Offer in Compromise?

9 MS. PHILLIPS: This is Case 11-
10 CMP-00488, violation of a voluntary agreement
11 involving signage. And in addition to the
12 Offer in Compromise I have suggested that we
13 have an investigator come out and show him
14 exactly where these signs that he has a
15 question about can go given the amount of
16 glass in his front door, etcetera. And he has
17 agreed to that and I've got the interpreter
18 here to tell him that.

19 In addition, the Offer in
20 Compromise that we have to present to the
21 Board is another fine of \$350 to be paid in 30
22 days.

1 CHAIRPERSON MILLER: Okay. All
2 right. I'm going to ask the Licensee if he
3 agrees to that Offer in Compromise of a fine
4 of \$350 to be paid within 30 days. And this
5 is for 00488 regarding violation of the
6 voluntary agreement and signs.

7 MR. LEE: Yes, Your Honor.

8 CHAIRPERSON MILLER: Yes? Okay.
9 And does he know that he waives his right to
10 a hearing by accepting this?

11 MR. LEE: Yes.

12 CHAIRPERSON MILLER: Okay. Any
13 questions by Board Members?

14 (No audible response.)

15 CHAIRPERSON MILLER: Not hearing
16 any, I move that we approve this Offer in
17 Compromise of \$350 to be paid within 30 days
18 for Case No. 00488. Do I have a second?

19 MEMBER SILVERSTEIN: Second.

20 CHAIRPERSON MILLER: Mr.
21 Silverstein has seconded the motion. All
22 those in favor, say aye?

1 (Chorus of ayes.)

2 CHAIRPERSON MILLER: All those
3 opposed?

4 (No audible response.)

5 CHAIRPERSON MILLER: All those
6 abstaining?

7 (No audible response.)

8 CHAIRPERSON MILLER: Then the
9 motion passes by a vote of 5-0-0 to approve
10 the Offer in Compromise.

11 MS. PHILLIPS: The Government is
12 ready to proceed on Case No. 11-CMP-00301, if
13 the Board is ready.

14 CHAIRPERSON MILLER: Okay. I just
15 want to briefly tell the Licensee how this is
16 going to proceed. He hasn't done a hearing
17 before.

18 The Government has the burden of
19 proof, so Ms. Phillips will start, if she
20 wants, with an opening statement explaining
21 her case. Okay. She will call any witness
22 that she wants in her case. He will have an

1 opportunity to question that witness after
2 her, as will the Board.

3 Mr. Lee will have the opportunity
4 to put on his case afterwards, after the
5 Government.

6 MR. LEE: Yes, he would like to.

7 CHAIRPERSON MILLER: Right. Okay.
8 And he will have a choice. He can make an
9 opening statement right after the Government
10 makes its opening statement. Or when the
11 Government is all done with their case, he can
12 then make his opening statement and present
13 his case.

14 MR. LEE: I will wait until the
15 Government is finished with --

16 CHAIRPERSON MILLER: Yes. Okay.
17 Right. Okay. And then finally, both parties
18 will have a chance to make closing arguments
19 at the end.

20 MR. LEE: Yes.

21 CHAIRPERSON MILLER: If he has any
22 questions, you know, feel free to ask me.

1 MR. LEE: No, no question.

2 CHAIRPERSON MILLER: Okay. All
3 right, Ms. Phillips.

4 MS. PHILLIPS: Thank you, Madam
5 Chair.

6 CHAIRPERSON MILLER: Okay.

7 MS. PHILLIPS: This matter comes
8 before the Board on a notice which has two
9 charges. One was failure to uphold a
10 voluntary agreement which discusses the level
11 of noise that can emanate from an operating
12 establishment at certain times of the day,
13 etcetera, and that was violated.

14 And then the second charge is
15 failure to obtain complete sidewalk caf, and
16 summer garden endorsements, and that too can
17 be proved that they did not have the proper
18 paperwork. And at the end of the day the
19 Government will move that these charges be
20 upheld and that fines be given. Thank you.

21 CHAIRPERSON MILLER: And at any
22 time if she's going too quickly, let us know.

1 If she goes too quickly for you to translate,
2 let us know.

3 INTERPRETER: Okay.

4 CHAIRPERSON MILLER: Okay.

5 MS. PHILLIPS: Sorry.

6 INTERPRETER: Yes, thank you.

7 MR. LEE: No problem so far.

8 CHAIRPERSON MILLER: Okay. Good.

9 All right. Do you have a witness? Would you
10 like to call a witness?

11 MS. PHILLIPS: I would.

12 CHAIRPERSON MILLER: All right.

13 MS. PHILLIPS: The Government
14 calls ABRA Investigator Lawson, please, to the
15 stand.

16 CHAIRPERSON MILLER: Good morning.

17 INVESTIGATOR LAWSON: Good
18 morning.

19 CHAIRPERSON MILLER: You swear to
20 tell the truth, the whole truth, nothing but
21 the truth?

22 INVESTIGATOR LAWSON: Yes, ma'am.

1 CHAIRPERSON MILLER: Thank you.

2 MS. PHILLIPS: And if I may
3 approach just right now to give him a copy of
4 the investigative report and the pictures that
5 are attached in the exhibits? I have given a
6 copy already prior to this hearing to the
7 establishment owner.

8 CHAIRPERSON MILLER: Thank you.

9 Okay.

10 MS. PHILLIPS: Good morning.

11 Would you state your name for the record and
12 spell it for the court reporter, please?

13 INVESTIGATOR LAWSON: Tyrone
14 Lawson. T-Y-R-O-N-E, L-A-W-S-O-N.

15 MS. PHILLIPS: And you're here
16 today in what capacity? What is your job
17 title?

18 INVESTIGATOR LAWSON: Investigator
19 with the Alcohol Beverage Regulation
20 Administration.

21 MS. PHILLIPS: And how long have
22 you been an investigator?

1 INVESTIGATOR LAWSON:

2 Approximately three-and-a-half years.

3 MS. PHILLIPS: And prior to being
4 an investigator for ABRA did you do other work
5 in which you conducted investigations?

6 INVESTIGATOR LAWSON: I was a
7 police officer for approximately 18 years, a
8 little over 18 years.

9 MS. PHILLIPS: Eighteen years?
10 Even I'm having trouble hearing you, Mr.
11 Lawson. I'm sorry.

12 INVESTIGATOR LAWSON: Oh, I'm
13 sorry.

14 MS. PHILLIPS: Okay.

15 INVESTIGATOR LAWSON: That's a
16 first.

17 (Laughter.)

18 MS. PHILLIPS: Thank you. So when
19 you came to ABRA, and I actually am sure when
20 you were a police officer, you -- in the usual
21 course and scope of your business, after
22 conducting an investigation, you would reduce

1 your findings to a report. Is that fair?

2 INVESTIGATOR LAWSON: That's
3 correct.

4 MS. PHILLIPS: And in this case
5 did you --

6 CHAIRPERSON MILLER: Wait. Wait.
7 I'm just worried you're going too fast. Is
8 she going --

9 MS. PHILLIPS: Too fast?

10 CHAIRPERSON MILLER: The
11 translator --

12 MS. PHILLIPS: I just can't see
13 him, so --

14 MR. LEE: He understands most of
15 it.

16 CHAIRPERSON MILLER: Oh, okay.
17 All right. Fine.

18 MS. PHILLIPS: All right. I'll
19 try -- I apologize.

20 CHAIRPERSON MILLER: But he said
21 he understands most of it.

22 MR. LEE: He will ask if he has

1 questions of the proceedings.

2 CHAIRPERSON MILLER: Okay. Go
3 ahead.

4 MS. PHILLIPS: I'll try to go
5 slower because when you have an interpreter,
6 if they don't interpret everything exactly,
7 then we can't be sure that they actually got
8 what I said because the interpreter can't keep
9 with me.

10 CHAIRPERSON MILLER: Yes.

11 MS. PHILLIPS: I will now go
12 slowly because I insist on behalf of the
13 Government that every word be translated in
14 both directions, please. And that way we will
15 have a clear record and no misunderstanding.

16 CHAIRPERSON MILLER: Good.

17 MS. PHILLIPS: And it's very
18 difficult for me to go slowly, but I will try.

19 (Laughter.)

20 MS. PHILLIPS: So, Investigator
21 Lawson, I have handed you a piece of paper.
22 Is that your investigative report?

1 INVESTIGATOR LAWSON: Yes, ma'am.

2 MS. PHILLIPS: And I have that it
3 is three pages long.

4 INVESTIGATOR LAWSON: Yes, ma'am.

5 CHAIRPERSON MILLER: And is that
6 your signature on the last page?

7 INVESTIGATOR LAWSON: Yes, ma'am.

8 MS. PHILLIPS: And the date of
9 your signature is what?

10 INVESTIGATOR LAWSON: September
11 8th, 2011.

12 MS. PHILLIPS: And there is
13 another signature on the last page.

14 INVESTIGATOR LAWSON: Yes, ma'am.

15 MS. PHILLIPS: And whose signature
16 is that?

17 INVESTIGATOR LAWSON: Johnnie
18 Jackson, chief of Enforcement Division.

19 MS. PHILLIPS: Okay. And attached
20 to this report are nine exhibits.

21 INVESTIGATOR LAWSON: Yes.

22 MS. PHILLIPS: Could you briefly

1 just explain to me what the exhibits are?

2 INVESTIGATOR LAWSON: Okay.

3 Exhibit 1 is a photocopy of the ABC license
4 that was provided and posted at Khan's BBQ at
5 1125 H Street, N.E. Exhibit 2 is a copy of
6 Khan's voluntary agreement. And Exhibit 3 is
7 a picture that I took on July 2nd, 2011 that
8 shows the sidewalk caf, at Khan's. Exhibit 4
9 is another photograph that I took on July 2nd,
10 2011 at Khan's, a different angle of the
11 sidewalk caf,. Okay. Exhibit No. 5 is a
12 picture that I took on July 2nd, 2011 that
13 shows Khan's side door propped open. Exhibit
14 No. 6 is a copy of the final inspection that
15 Investigator Earl Jones conducted at Khan's.
16 Exhibit No. 7 is a photocopy which was part of
17 the final inspection packet that Investigator
18 Jones provided when he conducted the final
19 inspection at Khan's. Exhibit No. 8 is --

20 MS. PHILLIPS: What date was that
21 taken, does it say?

22 INVESTIGATOR LAWSON: Yes, I

1 can't --

2 MS. PHILLIPS: It was a later
3 date. Would that be fair?

4 INVESTIGATOR LAWSON: Yes. I
5 can't make out the date because half of this
6 -- it looks like 2/11 or 2/10/2011.

7 MS. PHILLIPS: So earlier?

8 INVESTIGATOR LAWSON: Yes.

9 MS. PHILLIPS: Okay.

10 INVESTIGATOR LAWSON: Yes, 2/10 or
11 5/10. Yes, 5/10/2011 was the date of the
12 final inspection.

13 And Exhibit 8 is a photocopy of
14 the Department of Transportation sidewalk caf,
15 permit that was provided to Khan's.

16 MS. PHILLIPS: Which was issued on
17 it looks like July 6th, 2011. Is that what
18 that says?

19 INVESTIGATOR LAWSON: Yes, ma'am.

20 MS. PHILLIPS: Okay.

21 INVESTIGATOR LAWSON: It's dated
22 July 6th, 2011. And Exhibit 9 is the copy of

1 the Khan's ABC license after the sidewalk caf,
2 endorsement was added.

3 MS. PHILLIPS: Okay. All right.
4 So the first exhibit that you had was a
5 license, and that was the license that was in
6 effect at the time that you visited, which I
7 recollect was July 2nd, 2011. Is that fair?

8 INVESTIGATOR LAWSON: Yes, ma'am.

9 MS. PHILLIPS: So on July 2nd,
10 2011 you conducted an inspection. Why did you
11 go there?

12 INVESTIGATOR LAWSON: I actually
13 went -- Supervisory Investigator Craig Stewart
14 had went to Khan's to check for compliance
15 with ABRA regulations and he observed the
16 violations and called me to come out and
17 assist him with the inspection. And I went to
18 Khan's and conducted the inspection and spoke
19 with Mr. Khan -- I mean, sorry, Mr. Lee
20 regarding his doors being propped open and use
21 of the sidewalk caf,.

22 MS. PHILLIPS: So when you went to

1 the scene on July 2nd, 2011, what time did you
2 arrive?

3 INVESTIGATOR LAWSON: I arrived
4 approximately 12:50 a.m.

5 MS. PHILLIPS: And that was, looks
6 like what, 20 minutes after Mr. Stewart,
7 Investigator Stewart arrived?

8 INVESTIGATOR LAWSON: Yes, ma'am.

9 MS. PHILLIPS: And you saw all the
10 violations that are reported in this report.
11 Is that fair?

12 INVESTIGATOR LAWSON: Yes, ma'am.

13 MS. PHILLIPS: Okay. What did you
14 observe when you first came to the scene?

15 INVESTIGATOR LAWSON: When I first
16 came I observed the sidewalk caf,. That was
17 pretty obvious.

18 MS. PHILLIPS: Right. And then
19 what did you do next?

20 INVESTIGATOR LAWSON: I identified
21 myself to Mr. Lee and spoke to him. I
22 actually took photographs of the sidewalk caf,

1 and the door propped open. Then I spoke with
2 -- I identified to Mr. Lee. I had prior
3 contact with Mr. Lee regarding his
4 establishment, so I was familiar with him.

5 MS. PHILLIPS: So I see that you
6 took a picture, and it's Exhibit 5. Is that
7 the exhibit that shows the door propped open?

8 INVESTIGATOR LAWSON: Yes, ma'am.

9 MS. PHILLIPS: And what did you do
10 next?

11 INVESTIGATOR LAWSON: Well, I
12 spoke to Mr. Lee regarding the sidewalk caf,,
13 I think he told me that -- he said that his
14 lawyer had told him he had been approved for
15 a sidewalk caf,, and I explained that he did
16 not have a sidewalk caf, endorsement on his
17 license. And I think I asked -- Mr. Khan had
18 his voluntary agreement out, which I reviewed
19 that with him and showed him where his
20 voluntary agreement indicated that he was not
21 permitted to have his doors propped open and
22 that sounds from the establishment could not

1 be audible from the center line on H Street.

2 And at that point Investigator Stewart left in
3 his car and went on H Street, on the opposite
4 side of H Street and called me and said that
5 he could hear the noise emanating from Khan's.

6 MS. PHILLIPS: Now just to clear
7 up any point, because I'm not particularly
8 familiar with the location of this
9 establishment, were there other establishments
10 there that could have been the source of the
11 noise other than Khan's from your
12 investigation?

13 MR. LEE: Yes, there was -- it's
14 right next door to Twelve Restaurant & Lounge,
15 which is a tavern.

16 MS. PHILLIPS: So were you able to
17 distinguish that the noise was definitely
18 coming from Khan as opposed to both places, or
19 the other place?

20 INVESTIGATOR LAWSON: Yes, it was
21 pretty obvious that the noise was coming from
22 Khan's, the door that was propped open. One

1 of the things that Investigator Stewart
2 stated, he indicated that there was a
3 particular song that was playing that was
4 playing in Khan's at the time that he checked
5 for distance of the noise being audible.

6 MS. PHILLIPS: All right. And
7 during the usual scope and course of your
8 business as an investigator for ABRA, probably
9 with other investigators, do you as part of
10 your customary practice rely on the statements
11 of other investigators to both make citations
12 or make charges and write reports?

13 INVESTIGATOR LAWSON: Yes,
14 particularly with noise complaints, because
15 one -- it's beneficial that one investigator
16 remain at the establishment and another
17 investigator determine how -- if the noise is
18 audible from a certain location, if it can be
19 heard, and if the noise is the same, the song
20 is the same, and just an approximate range of
21 how loud the noise is. And the only way to do
22 that is to have two investigators, one at the

1 establishment and one at a distance from the
2 establishment communicating.

3 MS. PHILLIPS: Now I asked you to
4 check the records, if you would, to find out
5 when Exhibit 1 was put into effect and when it
6 ended, and when Exhibit 9 was put into effect.
7 And we know that it has not ended. Were you
8 able to do that prior to coming here today?

9 INVESTIGATOR LAWSON: Well, I was
10 able to do that on July 8th, 2011.

11 MS. PHILLIPS: Okay.

12 INVESTIGATOR LAWSON: And that's
13 because I spoke with Licensing Specialist
14 Benny Harper regarding this very issue, and
15 Khan's was issued a revised license that
16 included the sidewalk caf, permit on July
17 11th, 2011.

18 MS. PHILLIPS: Let me show you
19 this, what you gave me. I'm going to show it
20 to -- I didn't have copies because I just got
21 it this morning. This is a copy of when the
22 license period was effective with the sidewalk

1 caf,.

2 MR. LEE: What is he to do?

3 MS. PHILLIPS: Oh, he's just to
4 look at it, because I can't -- all right. May
5 I have it back, please?

6 I'm going to label it Exhibit 10.
7 You can have this copy. Then if you have one
8 in front of you, if you'll label that Exhibit
9 10. I think you misspoke because you said
10 July 11th, 2011. I think this says July 8th,
11 2011.

12 INVESTIGATOR LAWSON: Yes, I said
13 July 8th, 2011.

14 MS. PHILLIPS: Oh, okay. That's
15 your copy. So at the time of the
16 investigation prior to writing the report you
17 had not only inspected the copy of the license
18 at the establishment, but you came back --

19 INVESTIGATOR LAWSON: Yes.

20 MS. PHILLIPS: -- to ABRA and
21 pulled the records --

22 INVESTIGATOR LAWSON: Yes.

1 MS. PHILLIPS: -- and made a
2 determination that was in effect --

3 INVESTIGATOR LAWSON: Yes, ma'am,
4 that's correct.

5 MS. PHILLIPS: -- at the time?

6 INVESTIGATOR LAWSON: I pulled the
7 record and I spoke with the Licensing Division
8 regarding the status of the sidewalk caf,
9 permit.

10 MS. PHILLIPS: So to sum up, you
11 were there on July 2nd and the licensing
12 endorsement packet was complete for ABRA on
13 July 8th?

14 INVESTIGATOR LAWSON: Yes, it was
15 approved on July 8th, 2011.

16 MS. PHILLIPS: Okay. Therefore on
17 July 2nd it was a violation?

18 INVESTIGATOR LAWSON: Yes.

19 MS. PHILLIPS: Is there anything
20 else that you need to say with regard to your
21 investigation that I have not asked you about
22 or we have not discussed?

1 INVESTIGATOR LAWSON: No, only
2 that I did go back to Khan's and I did inform
3 Mr. Lee that he needed to obtain a sidewalk
4 caf, permit from the Department of
5 Transportation.

6 MS. PHILLIPS: But as of July 8th
7 were all the packets complete?

8 INVESTIGATOR LAWSON: On July 8th,
9 2011.

10 CHAIRPERSON MILLER: I couldn't
11 hear that last answer, Mr. Lawson.

12 INVESTIGATOR LAWSON: Okay. On
13 July 7th I did go back to Khan's and spoke
14 with Mr. Lee regarding his need for a sidewalk
15 caf, permit from the Department of
16 Transportation. And the final approval was
17 made on July 8th, 2011 after Mr. Lee obtained
18 a sidewalk caf, permit from the Department of
19 Transportation.

20 CHAIRPERSON MILLER: Thank you.
21 Okay.

22 MS. PHILLIPS: Are there any more

1 comments that you feel need to be in evidence
2 other than what we've covered?

3 INVESTIGATOR LAWSON: No, ma'am.

4 MS. PHILLIPS: All right. That
5 concludes the Government's case. I would like
6 to admit Exhibit 10 because it's not a part of
7 the investigative report.

8 CHAIRPERSON MILLER: What is it?
9 I haven't seen it.

10 MS. PHILLIPS: That's right, you
11 haven't. I just admitted it during my
12 evidentiary presentation.

13 CHAIRPERSON MILLER: Right.

14 MS. PHILLIPS: And so, I will --

15 CHAIRPERSON MILLER: I know you
16 only have one copy or something, so --

17 MS. PHILLIPS: And it turns out I
18 do.

19 CHAIRPERSON MILLER: Oh, okay.

20 MS. PHILLIPS: So I would like to
21 take it back. And I'd really like to keep it
22 until such time as I close, but if you need to

1 look at it --

2 CHAIRPERSON MILLER: Okay. How
3 about I'll take a look at it for the
4 evidentiary ruling and then hand it back to
5 you?

6 MS. PHILLIPS: Right.

7 MEMBER ALBERTI: Shouldn't we find
8 out if there's any objections before we --

9 MS. PHILLIPS: We should.

10 MEMBER ALBERTI: Thank you.

11 MS. PHILLIPS: But I didn't
12 know --

13 MEMBER ALBERTI: Before the Board
14 sees it I think we should find out if there's
15 any objections, is my point.

16 CHAIRPERSON MILLER: Not before I
17 see it, no.

18 MS. PHILLIPS: No, usually the
19 fact finders --

20 CHAIRPERSON MILLER: Do you have
21 another copy for the Licensee?

22 MS. PHILLIPS: I've already given

1 him --

2 CHAIRPERSON MILLER: The Licensee
3 has a copy of this?

4 MS. PHILLIPS: I've already given
5 him a copy of it.

6 CHAIRPERSON MILLER: Okay.

7 MS. PHILLIPS: I had two and I
8 kept none for myself, which is why I wanted
9 that one back after objections are ruled upon.

10
11 CHAIRPERSON MILLER: Okay. Great.
12 So the question is whether Mr. Lee has any
13 objection to this exhibit being entered into
14 the record. Exhibit 10. Government's
15 Proposed Exhibit 10.

16 MR. LEE: Yes, he has objection to
17 it becoming part of the --

18 CHAIRPERSON MILLER: And what is
19 the objection?

20 MR. LEE: Yes, I had the license
21 at the time of --

22 CHAIRPERSON MILLER: Okay. Wait,

1 I just want to tell him, this is just his
2 objecting that the document be a part of
3 record. He'll have an opportunity to address
4 the significance of it in his case.

5 MR. LEE: No, no objection.

6 CHAIRPERSON MILLER: Right. Okay.
7 Good. All right. Yes, this is just an
8 issuance notice of License No. 084082. Is
9 that regarding the sidewalk caf,?

10 Ms. Phillips, is that what this
11 issuance --

12 MS. PHILLIPS: That is. That's
13 from the ABRA files that discuss when the
14 endorsement was effective.

15 CHAIRPERSON MILLER: Okay. All
16 right. Then I'll admit this Exhibit No. 10,
17 which is an issuance and notice into the
18 record as Government's Exhibit No. 10, adding
19 the sidewalk caf, to the license. Okay.

20 MS. PHILLIPS: And it's my
21 understanding that the investigative report
22 with all of its attached Exhibits 1 through 9

1 is already part of the record. That's
2 correct.

3 CHAIRPERSON MILLER: That's
4 correct. All right. Exhibits 1 through 9,
5 she said, they're already in the Board's
6 record, but if you have any objection you can
7 note it. But it's the case reports. It's the
8 official record.

9 MR. LEE: No objection.

10 CHAIRPERSON MILLER: All right.
11 Thank you. All right. That completes the
12 case --

13 MS. PHILLIPS: It does indeed --

14 CHAIRPERSON MILLER: -- with Mr.
15 Lawson?

16 MS. PHILLIPS: -- Madam Chair.

17 CHAIRPERSON MILLER: Okay. Do you
18 have any questions now for Mr. Lawson based on
19 what he just testified to or these exhibits?

20 MR. LEE: Yes.

21 CHAIRPERSON MILLER: Okay. Now
22 you can ask them.

1 MR. LEE: Investigator Lawson, I
2 do take objection -- exception to your
3 characterization that --

4 CHAIRPERSON MILLER: I'm going to
5 interrupt you just for one second. Okay? You
6 may be leading to a question, but this is a
7 time for questions for Mr. Lawson, not for his
8 testimony. He'll have that chance under your
9 case of what he disagrees with. The question.

10 MR. LEE: (In English) Okay. I
11 try. My English very poor, but I try to say
12 in English, but sometimes I have a hard time.
13 I ask him.

14 CHAIRPERSON MILLER: Okay.

15 MR. LEE: (In English)
16 Investigator, you told me heard a lot of noise
17 from my restaurant, but I think the noise
18 coming from my neighbor, Twelve Restaurant,
19 not my restaurant. Twelve Restaurant is a
20 club. My restaurant is a restaurant. We
21 cannot turn the music -- not loud because my
22 customer want to hear the quiet music, not

1 loud. It's a restaurant.

2 CHAIRPERSON MILLER: Okay. Let me
3 just stop you, okay, for one minute. Just so
4 you understand the process herecess here. You are going
5 to testify next after they're finished. Now
6 is not a time to debate Mr. Lawson. Now is if
7 you have any questions.

8 MR. LEE: (In English) When did
9 you come to my restaurant?

10 INVESTIGATOR LAWSON: July 2nd,
11 2011.

12 MR. LEE: Yes, thank you. Thank
13 you.

14 CHAIRPERSON MILLER: Okay. Board
15 questions?

16 MEMBER ALBERTI: Yes, I have.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER ALBERTI: Just give me one
19 moment. Good morning, Mr. Lawson,
20 Investigator Lawson. You may have covered
21 this already, but I'm not sure I heard it.
22 Exhibit 8 in your investigative report -- and

1 I -- you'll forgive me because I think you
2 alluded to what my questions are, the answers
3 to what my questions are, but I'm not sure I
4 heard specifically the answers to my concerns.
5 All right. So Exhibit 8, what is that?

6 INVESTIGATOR LAWSON: That's a
7 Department of Transportation sidewalk caf,
8 permit.

9 MEMBER ALBERTI: Okay. And the
10 date on which it was issued?

11 INVESTIGATOR LAWSON: The date was
12 July 6th, 2011.

13 MEMBER ALBERTI: Okay. Which is
14 four days after you were there?

15 INVESTIGATOR LAWSON: Yes. Well,
16 yes, what happened was when I went back to
17 Khan's on 7th, Mr. Lee provided me this.

18 MEMBER ALBERTI: Okay.

19 INVESTIGATOR LAWSON: Or he showed
20 me this.

21 MEMBER ALBERTI: Okay.

22 INVESTIGATOR LAWSON: And he told

1 me had gone to Department of Transportation on
2 the 6th of July and obtained this.

3 MEMBER ALBERTI: I just want on
4 the record because I hadn't heard it
5 specifically the date that this was issued,
6 this permit was issued.

7 Now when you were there do you
8 remember -- I know this was a long time ago,
9 all right, and we have pictures of quite a
10 large crowd outside. I mean it looks like the
11 patio, you know, pretty close to -- the
12 sidewalk caf, is pretty close to capacity.
13 Would you agree with that?

14 INVESTIGATOR LAWSON: Yes.

15 MEMBER ALBERTI: Okay. Do you
16 remember how many people were -- patrons were
17 inside?

18 INVESTIGATOR LAWSON: Inside?

19 MEMBER ALBERTI: Yes.

20 INVESTIGATOR LAWSON: It wasn't a
21 whole lot of people inside, if I recall.

22 MEMBER ALBERTI: What's a whole

1 lot?

2 INVESTIGATOR LAWSON: Maybe about
3 -- I want to say 10, something --

4 MEMBER ALBERTI: About 10 people
5 inside as compared to --

6 INVESTIGATOR LAWSON: I mean
7 mostly everybody was outside. Most of all the
8 patrons were --

9 MEMBER ALBERTI: -- the large
10 crowd I see on the sidewalk caf,, is that
11 correct?

12 INVESTIGATOR LAWSON: Yes.

13 MEMBER ALBERTI: Okay. Thank you
14 very much. No further questions.

15 CHAIRPERSON MILLER: Other
16 questions?

17 (No audible response.)

18 CHAIRPERSON MILLER: I just have a
19 couple. So do you know how long it takes to
20 get an endorsement for a sidewalk caf, from
21 ABRA and the ABC Board?

22 INVESTIGATOR LAWSON: No, ma'am.

1 CHAIRPERSON MILLER: No? It takes
2 more than two days though from filing to --

3 INVESTIGATOR LAWSON: Well, in
4 this case his application was approved. The
5 Board had already approved it. So he was just
6 waiting for the Department of Transportation
7 permit. And soon as he bought that, it was
8 approved and then placed on his license --

9 CHAIRPERSON MILLER: Okay.

10 INVESTIGATOR LAWSON: -- by the
11 licensing specialist.

12 CHAIRPERSON MILLER: Do you know
13 the date that it was approved?

14 INVESTIGATOR LAWSON: The date
15 that the application was approved?

16 CHAIRPERSON MILLER: For the
17 sidewalk caf, from ABRA?

18 INVESTIGATOR LAWSON: September
19 15th, 2010.

20 CHAIRPERSON MILLER: Do you have
21 any knowledge as to how long it takes to get
22 a public space permit?

1 INVESTIGATOR LAWSON: No, ma'am, I
2 don't, but whatever -- I don't know if Mr. Lee
3 had -- because I think they have to submit
4 diagrams and they have to come out and be
5 inspected. But whatever Mr. Lee had already
6 had processed, because he went down there on
7 the 6th and got it the same day, I mean it
8 wasn't issued -- I'm sure it wouldn't be
9 issued the same day.

10 CHAIRPERSON MILLER: Right. With
11 respect to the noise did you or Mr. Stewart
12 ask Mr. Lee to turn down the noise or close
13 the door?

14 INVESTIGATOR LAWSON: Well, I
15 think we kind of left that to Mr. Lee, because
16 after I reviewed the voluntary agreement with
17 him and, you know, told him that he was in
18 violation because his door was propped open,
19 he did close the door, because I think there
20 was a hanger or something that was propping
21 the door open. But after Investigator Stewart
22 left and went down to H Street to see if he

1 could hear the noise. And then I explained to
2 Mr. Lee that the noise could be heard. It was
3 audible. And I showed him where in the
4 voluntary agreement that he was not allowed to
5 do that. He understood and he closed the
6 door.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 MEMBER ALBERTI: I have one
10 question.

11 CHAIRPERSON MILLER: Okay. Mr.
12 Alberti?

13 MEMBER ALBERTI: Just one more
14 quick question. I believe it was your
15 testimony that while you remained at the
16 establishment Investigator Stewart walked some
17 distance away and you communicated with him,
18 and in that communication you confirmed that
19 the song you were hearing was what he was
20 hearing some distance away. Is that correct?

21 INVESTIGATOR LAWSON: That's
22 correct.

1 MEMBER ALBERTI: Okay. Do you
2 know how far away he was?

3 INVESTIGATOR LAWSON: He actually
4 went to the center line, the street center
5 line on H Street because the voluntary
6 agreement says that the noise cannot be
7 audible at that distance. And I would imagine
8 that the distance is -- from the sidewalk caf,
9 it was at least probably about 50 feet.

10 MEMBER ALBERTI: All right. Do
11 you know about how wide that sidewalk is there
12 in front of --

13 INVESTIGATOR LAWSON: Where the
14 sidewalk caf, is located?

15 MEMBER ALBERTI: Yes, on H Street.
16 The sidewalk that is in front of the sidewalk
17 caf,. You know how wide that sidewalk is
18 there?

19 INVESTIGATOR LAWSON: Probably 15
20 feet.

21 MEMBER ALBERTI: Okay.

22 INVESTIGATOR LAWSON: Probably

1 average-sized sidewalk. And you mean the
2 front of the establishment on H Street?

3 MEMBER ALBERTI: No, that
4 sidewalk, it's the same sidewalk that's in
5 front of the front door of Twelve?

6 INVESTIGATOR LAWSON: Yes. Yes.
7 Yes.

8 MEMBER ALBERTI: Okay. That's the
9 one we're talking about.

10 INVESTIGATOR LAWSON: Yes.

11 MEMBER ALBERTI: Correct? All
12 right. It's about 15 feet.

13 INVESTIGATOR LAWSON: The sidewalk
14 itself is probably eight feet and then there's
15 an easement for trees and whatnot.

16 MEMBER ALBERTI: Okay. So the
17 distance from the building to the street is 15
18 feet?

19 INVESTIGATOR LAWSON: Probably
20 about --

21 MEMBER ALBERTI: Is that correct?

22 INVESTIGATOR LAWSON: Yes, sir.

1 MEMBER ALBERTI: Okay. And H
2 Street is how many lanes in each direction
3 there?

4 INVESTIGATOR LAWSON: Two lanes.

5 MEMBER ALBERTI: Two lanes in each
6 direction? And you said Mr. Stewart was in
7 the center line of the street, is that
8 correct?

9 INVESTIGATOR LAWSON: He was on
10 the opposite side of the street at the center
11 line, so opposite of where Twelve and Khan's
12 is located.

13 MEMBER ALBERTI: He was --

14 INVESTIGATOR LAWSON: He was on H
15 Street, but on the opposite side of H Street.

16 MEMBER ALBERTI: Oh, he had
17 actually crossed the street?

18 INVESTIGATOR LAWSON: Yes.

19 MEMBER ALBERTI: So he was
20 actually four lanes of traffic beyond the
21 sidewalk?

22 INVESTIGATOR LAWSON: At least

1 three.

2 MEMBER ALBERTI: At least three?

3 INVESTIGATOR LAWSON: Yes.

4 MEMBER ALBERTI: Okay. So at
5 least three lanes of traffic beyond the
6 sidewalk in front of Khan's, is that correct?

7 INVESTIGATOR LAWSON: That's
8 correct.

9 MEMBER ALBERTI: Thank you.

10 CHAIRPERSON MILLER: Others?

11 (No audible response.)

12 CHAIRPERSON MILLER: All right.
13 I'll just want to ask a couple too then. With
14 respect to the noise was there a noise
15 complaint by someone?

16 INVESTIGATOR LAWSON: No, ma'am.

17 CHAIRPERSON MILLER: Okay. And
18 this is the first time I've seen where noise
19 is like measured from outside from a distance
20 as opposed to within residents' premises. Do
21 you have any idea how that compares? Is it
22 harder to hear within someone's premises or

1 outside that great distance? Or this may --

2 MS. PHILLIPS: I'd like to --

3 CHAIRPERSON MILLER: -- be too

4 general.

5 MS. PHILLIPS: When you're

6 finished I want to place an objection on the

7 record --

8 CHAIRPERSON MILLER: Okay.

9 MS. PHILLIPS: -- to the Board's

10 question because I think that's --

11 CHAIRPERSON MILLER: Speculative?

12 MS. PHILLIPS: -- right,

13 speculative, beyond the scope and --

14 CHAIRPERSON MILLER: Fine. I'll

15 withdraw it.

16 MS. PHILLIPS: But you are the

17 fact finder --

18 CHAIRPERSON MILLER: No, I don't

19 need to have it.

20 MS. PHILLIPS: -- so you can ask

21 whatever you want really.

22 CHAIRPERSON MILLER: I don't need

1 to have it. It's just the first --

2 MS. PHILLIPS: Okay.

3 CHAIRPERSON MILLER: -- I've seen
4 this kind of measurement.

5 INVESTIGATOR LAWSON: Well, if it
6 will help, Madam Chair, the voluntary
7 agreement specifically says that the noise
8 can't be heard, and that's what we were
9 investigating at the time. It wasn't a
10 specific complaint. I think what triggered --
11 the sidewalk caf, triggered --

12 CHAIRPERSON MILLER: Right.

13 INVESTIGATOR LAWSON: -- the
14 investigation of all of this.

15 CHAIRPERSON MILLER: Right.

16 INVESTIGATOR LAWSON: And as a
17 result of the investigation the door was
18 observed being propped open. And when we
19 reviewed the voluntary agreement there was a
20 clause in there that said that they could not
21 prop their doors open and that the noise could
22 not be audible from the establishment at the

1 center line of H Street.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. That's helpful.

4 Okay. Anything else?

5 (No audible response.)

6 CHAIRPERSON MILLER: Okay. Do the
7 parties have any questions based on the
8 Board's questions?

9 MS. PHILLIPS: I do.

10 CHAIRPERSON MILLER: Okay.

11 MS. PHILLIPS: If you look at
12 Exhibit 10, which I don't believe you have a
13 copy of anymore, so I'll give you the one we
14 appear to be sharing, there's a signature at
15 the bottom of that document. Whose signature
16 does it say it is?

17 INVESTIGATOR LAWSON: It's printed
18 James Lee, owner.

19 MS. PHILLIPS: And what is the
20 date of that signature on that document,
21 Exhibit 10?

22 INVESTIGATOR LAWSON: July 8th,

1 2011.

2 MS. PHILLIPS: Which is the date
3 that the packet was approved to go into effect
4 for the garden?

5 INVESTIGATOR LAWSON: The sidewalk
6 caf, endorsement on the license was issued on
7 July 8th, 2011.

8 MS. PHILLIPS: Thank you.

9 CHAIRPERSON MILLER: Finished?
10 Okay. Do you have any questions based on the
11 Board's questions?

12 MR. LEE: Yes.

13 CHAIRPERSON MILLER: Okay. And
14 it's just limited to the subject matter that
15 the Board questioned. Okay.

16 MR. LEE: (In English) Okay. I
17 just heard you can hear this noise from my
18 restaurant. How could you do that, because
19 all the noise is coming from the nightclub
20 next door? How do you find out this noise is
21 coming from my restaurant or my neighbor club
22 noisy? How could you find it out? Because my

1 restaurant is very -- just regular music. My
2 neighbor is a club. They have a -- they got
3 a noisy. I'm just wondering how can you find
4 out which one is which outside in the street?
5 I think it's very -- not easy to -- this music
6 is coming from my restaurant or my neighbor
7 because I usually -- just my place is a
8 restaurant. We usually turn down the noisy.
9 Most of my neighbor complains about the noise
10 from my restaurant, never noise coming from my
11 restaurant. My neighbor club.

12 CHAIRPERSON MILLER: Okay.

13 MR. LEE: (In English) I'm just
14 wondering why.

15 CHAIRPERSON MILLER: Okay. We --

16 MR. LEE: (In English) That's my
17 question.

18 CHAIRPERSON MILLER: Do you
19 understand the question, Mr. Lawson?

20 INVESTIGATOR LAWSON: Yes.

21 CHAIRPERSON MILLER: Okay.

22 INVESTIGATOR LAWSON: Yes. I

1 vividly remember the night that we were there
2 and honestly we did not hear any noise coming
3 from Twelve Restaurant & Lounge. And when
4 Investigator Stewart left the establishment
5 and went to the center line on H Street, we
6 specifically were trying to identify that the
7 particular noise was coming from Khan's
8 Restaurant. And that's what was done.

9 MR. LEE: Understood. Thank you.

10 CHAIRPERSON MILLER: Okay. Thank
11 you very much.

12 MS. PHILLIPS: Thank you. Can you
13 bring me all of that that you have up there?
14 Thank you so much. That concludes the
15 Government's case. Thank you, Board Members.

16 CHAIRPERSON MILLER: Thank you.
17 Is Mr. Lee the only person who will testify?
18 You don't have another witness, do you? Just
19 you?

20 MR. LEE: No. No, he just by
21 himself.

22 CHAIRPERSON MILLER: Okay. All

1 right. So I'm going to swear you in. And,
2 well, you can either go over there or if it's
3 easier for you to hear --

4 MS. PHILLIPS: The Government
5 would actually prefer if he and the
6 interpreter --

7 CHAIRPERSON MILLER: Stay
8 together?

9 MS. PHILLIPS: -- were contiguous.

10 CHAIRPERSON MILLER: That's right.

11 MEMBER ALBERTI: Or very close
12 together.

13 CHAIRPERSON MILLER: Right. So if
14 you're more comfortable there, that's okay.
15 You can both sit then.

16 Okay. So I'm going to swear you
17 in. Do you swear to tell the truth, the whole
18 truth, nothing but the truth?

19 MR. LEE: Yes.

20 CHAIRPERSON MILLER: Okay. So now
21 is your opportunity to give your side of the
22 story, yes.

1 MR. LEE: (In English) We already
2 -- we are talking about the third case. Third
3 case problem is I don't have a license. I
4 have a license at the time. And the second
5 problem is we made -- we create a lot of
6 noisy, but I don't think so. Because as I
7 told you, this is a restaurant, not a club.
8 My sound level is not loud. If loud, my
9 customer cannot have a conversation. That's
10 we obey the law. And my neighbor never
11 complained about a noise problem my
12 restaurant. All my neighbor complain about my
13 neighbor from the club. They make a live
14 music, very loud. That's why we have a hard
15 time from the restaurant, too.

16 During the business hour all the
17 time I go to there to plea, there is the bass
18 sound, because my restaurant is shaking. I
19 hate the noisy. We never create the noise
20 from the restaurant. Because if you're loud,
21 customer complain because they want to have a
22 conversation in my restaurant. And I don't

1 know. Because still they make a lot of noisy,
2 the club.

3 So I complain to the inspector our
4 neighbor just make a noisy. I don't know why.
5 Because I just turn on the music a little bit.
6 Inspector, everybody came in to inspect my
7 restaurant, but they still make a noisy for
8 longer than three years. Still make a lot of
9 noisy. I don't know why. Because I'm a
10 minority. Because they have a problem? I
11 don't know why. They still have a being
12 noisy. I just turn on the some music. It
13 make a lot of problem.

14 So at the time inspector came in I
15 have a license. And he told him -- I open the
16 door for the sidewalk caf, because the
17 sidewalk caf, -- side entrance is occurring to
18 the sidewalk caf,. So sometimes they bring a
19 lot of -- some water glasses like this.
20 Somebody must have hold sometimes. Then we
21 close. And he heard some noise from the
22 center of the H Street. Pizza House, they

1 turn much louder than my restaurant to attract
2 the customer. But how -- and they wonder how
3 could you identify my noisy on the street? All
4 kinds of pass in the street, a lot of pizzas
5 -- some -- Pizza House, all the noise is
6 coming from all over there. I think it's not
7 possible. And at the time I have a license,
8 too. That's it.

9 MR. LEE: May he approach?

10 CHAIRPERSON MILLER: No, Ms.

11 Walker will get that piece of paper. Is that
12 something you want to put in evidence? No,
13 don't give it to me. Wait a second.

14 Ms. Phillips, have you seen the
15 document that he's referring to?

16 MS. PHILLIPS: Yes, it's is the
17 same as Exhibit 9 to the investigation report.

18 CHAIRPERSON MILLER: Oh, so it's
19 already in evidence then.

20 Ms. Phillips, do you have any
21 questions, cross-exam?

22 MS. PHILLIPS: No, thank you,

1 Madam Chair.

2 CHAIRPERSON MILLER: Okay. Ms.
3 Phillips, I'd like to see Exhibit 10 again if
4 I could. Can we make a copy of that or
5 something?

6 MS. PHILLIPS: I thought they made
7 a copy and I thought --

8 CHAIRPERSON MILLER: Oh, we did?

9 MS. PHILLIPS: Your copy's up
10 there.

11 CHAIRPERSON MILLER: There you go.
12 Okay. Thank you. You have no questions.
13 Board questions?

14 MEMBER ALBERTI: No questions.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER ALBERTI: Thank you.

17 CHAIRPERSON MILLER: I have a
18 couple questions. For the noise do I
19 understand that it was music that was playing?
20 Was the music from a radio, or where was the
21 music playing from?

22 MR. LEE: (In English) It's kind

1 of some iPad.

2 MR. LEE: iPad recorded music --

3 MR. LEE: (In English) iPad

4 recorded music.

5 CHAIRPERSON MILLER: Okay.

6 MR. LEE: -- Madam Chair.

7 CHAIRPERSON MILLER: Okay. And do
8 you know how far away this center line -- I
9 think Mr. Alberti might have asked that of Mr.
10 Lawson. Where they measured how far away was
11 that from your restaurant?

12 MR. LEE: (In English) H Street
13 had three lane. This way there's two, three
14 lane. So you can imagine each lane has maybe
15 -- and the side boardwalk, sidewalk and the
16 three lane.

17 CHAIRPERSON MILLER: Okay.

18 MR. LEE: (In English) So the
19 center line is maybe four lane --

20 CHAIRPERSON MILLER: Okay.

21 MR. LEE: (In English) -- to reach
22 there.

1 CHAIRPERSON MILLER: Thank you.

2 MR. LEE: (In English) Each lane
3 something like that.

4 MS. PHILLIPS: Calls for
5 speculation apparently. I'm objecting because
6 it seems like the question is calling for
7 speculation because he can't give an answer.

8 CHAIRPERSON MILLER: Oh, okay. So
9 that is based on his knowledge of where it was
10 related to his restaurant. That's all I'm
11 asking. If you don't know, you don't know.
12 That's fine.

13 MR. LEE: (In English) No, I think
14 I can calculate.

15 CHAIRPERSON MILLER: So when --

16 MR. LEE: Eighty feet. Came up
17 with 80 feet. Eighty feet.

18 CHAIRPERSON MILLER: Eighty feet.
19 Okay. You're estimating 80 feet? Okay.

20 MR. LEE: Yes.

21 CHAIRPERSON MILLER: So is it your
22 understanding that Exhibit 9 gave you

1 permission to use this sidewalk caf,?

2 MR. LEE: Yes. Yes, Madam Chair.

3 CHAIRPERSON MILLER: Okay. Had

4 Mr. Lee seen Exhibit 10 prior to today?

5 MS. PHILLIPS: This one.

6 MR. LEE: Yes.

7 CHAIRPERSON MILLER: When did you

8 see that?

9 MR. LEE: No, he just -- he had
10 not seen this before coming here today.

11 CHAIRPERSON MILLER: Okay.

12 MS. PHILLIPS: May I have a
13 follow-up question that that question before
14 we get lost? If you ask another question,
15 then --

16 CHAIRPERSON MILLER: All right.

17 Then I'm looking --

18 MS. PHILLIPS: -- it won't be
19 contiguous.

20 CHAIRPERSON MILLER: Okay. I'm
21 looking.

22 MS. PHILLIPS: Mr. Lee, at the

1 bottom of Exhibit 10 there is your signature,
2 or what purports to be your signature. Is
3 that correct?

4 MR. LEE: Yes.

5 MS. PHILLIPS: And the date is
6 July 8th, 2011. Is that correct?

7 MR. LEE: Yes.

8 MS. PHILLIPS: And so at the time
9 that you signed this document on July 8th,
10 2011 you saw the document. Would that be
11 fair?

12 MR. LEE: Yes.

13 MS. PHILLIPS: Thank you, Madam
14 Chair.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER ALBERTI: I have a question
17 when you're done.

18 CHAIRPERSON MILLER: All right.
19 Go ahead. Go ahead, Mr. Alberti.

20 MEMBER ALBERTI: No, that's okay.
21 Please, when you're done.

22 CHAIRPERSON MILLER: No, I think

1 I'm done.

2 MEMBER ALBERTI: You're done?

3 CHAIRPERSON MILLER: Yes.

4 MEMBER ALBERTI: Okay. Mr. Lee --

5 MR. LEE: (In English) Yes, sir?

6 MEMBER ALBERTI: -- I'd like to
7 follow up on a question that Ms. Miller asked,
8 and she asked where the music was coming from.
9 And I believe you responded that it was coming
10 from an iPod. Is that correct?

11 MR. LEE: Yes.

12 MEMBER ALBERTI: Okay. Was this
13 an iPod that was being operated by you or
14 someone in your establishment?

15 MR. LEE: Yes, I was operating it.

16 MEMBER ALBERTI: Okay. Thank you.
17 No further questions.

18 CHAIRPERSON MILLER: Okay. All
19 right. I just have a couple more. And I
20 believe on July 6th Mr. Lawson said you picked
21 up your public space permit for the sidewalk
22 caf,. Right?

1 MR. LEE: July 6th.

2 MS. PHILLIPS: For the record,
3 that's Exhibit 8 if he needs to look at it.

4 CHAIRPERSON MILLER: Thank you.

5 MR. LEE: Yes.

6 CHAIRPERSON MILLER: Okay. Why
7 didn't you have the public space permit
8 earlier on July 2nd?

9 MR. LEE: (In English) May I
10 explain about this situation for two or three
11 minute? I try to make it very short. Okay.
12 I opened my restaurant end of the March, but
13 I can open up my patio end of July. That
14 means maybe five or six months is delayed
15 because of Department of Transportation,
16 because they want make a street care on H
17 Street and they need install the big
18 transformer on some spot.

19 But I want to make a sidewalk caf,
20 and I ask them please give me information
21 about your transformer. They never give me
22 information. They don't care. I draw the

1 picture. I wrote to the DDoT. I submit all
2 kind of picture, information about my sidewalk
3 caf,. DDoT say almost approve the --
4 everything okay. Then Department of
5 Transportation objected. You cannot make it
6 like that because we have to install the big
7 transformer in your spot.

8 So I order the redrawings again.
9 It cost a lot of money. And I wrote the DDoT.
10 But DDoT say I want some conversation because
11 I already spend \$10,000 for drawing. So we
12 had a meeting at the DCRA. That's why it's
13 all kind of schedule delays. Nobody care
14 about my loss. That's why just I can't get a
15 license very late. So I complain there. They
16 say, okay, we'll think about your
17 conversation, but nobody give me a money. And
18 just later I just got a penalty. I think it's
19 not fair.

20 Because end of next month they're
21 going to -- my patio digging again. I have to
22 draw the picture again. So I complain the

1 Transportation. They don't care. So if I go
2 to DCRA, they ask me you have to draw the
3 picture again. All loss is mine. And all
4 penalties mine. I think it's not fair to me.
5 That's what I want to say. That's why all
6 your dating delayed. That's why I open a
7 cafeteria. Maybe four or five months it's
8 delayed. That's the main reason.

9 CHAIRPERSON MILLER: So how did
10 you finally get it on the 6th?

11 MR. LEE: (In English) Yes, at
12 last I got it.

13 CHAIRPERSON MILLER: Okay. All
14 right. Any other questions?

15 (No audible response.)

16 CHAIRPERSON MILLER: Okay. Do you
17 have anything else? Do you rest your case?
18 Anything else you want to say for your case
19 before closing? We're doing to do closing
20 afterwards, but any other testimony? Okay.

21 MR. LEE: (In English) I want to
22 say one more thing. I think law must be fair

1 to everybody and to any situation, but in my
2 case it's not far. All loss is mine. Noisy
3 is not coming from my restaurant. If they
4 want to control the noise of the restaurant,
5 they must control the other restaurant, too.
6 Only why they purpose for my restaurant. My
7 restaurant is not club. It's only a
8 restaurant. All inspector focus on my
9 restaurant. I don't know why.

10 CHAIRPERSON MILLER: Okay. Ms.
11 Phillips, do you have a closing argument?

12 MS. PHILLIPS: Yes, Madam Chair.

13 CHAIRPERSON MILLER: Okay.

14 MS. PHILLIPS: This, as I said in
15 the beginning, is a two-count notice. The
16 first charge is violation of a voluntary
17 agreement. Whether you agree with voluntary
18 agreements or you don't agree with voluntary
19 agreements, they have specific negotiated
20 tenets between the establishment -- in this
21 case if you look at the exhibit that is the
22 voluntary agreement, it is actually Khan's

1 voluntary agreement. They didn't inherit it
2 from somebody else. So it's a negotiated
3 agreement which says you can't have sound
4 outside at a certain place.

5 You heard Investigator Lawson
6 testify that they went to the certain place
7 listed in the voluntary agreement, which is a
8 negotiated agreement between the neighborhoods
9 and the owner, and they listened and
10 identified -- Mr. Lawson identified the song
11 that was playing inside Khan's, or wherever
12 that music was located, and Investigator
13 Stewart could hear that very song at the place
14 designated in the voluntary agreement.

15 Since it meets all of the
16 criteria, eliminating other establishments,
17 eliminating traffic noise, going to the spot
18 mentioned in the voluntary agreement -- the
19 criteria and the test for affirming that
20 charge have been met and they -- and did --
21 and the Board should find, in fact must find
22 that that charge is upheld.

1 The second charge is a charge for
2 failure to have the proper licensing for a
3 sidewalk caf,. As we all know, there are many
4 steps to obtaining approval for a sidewalk
5 caf,. DCRA is one of them. I had no idea
6 DDoT was one of them, but in this case DDoT
7 was one of them. And ABRA is one of them. We
8 have given proof as to when the final piece of
9 approval was given. The document is Exhibit
10 10, which is actually signed and contained in
11 the ABRA file on this establishment. It is
12 signed by the owner Mr. Lee on 7/8/2011, which
13 is six days after the investigator came to the
14 establishment, and therefore the violation has
15 been proven and the charge must be upheld.

16 Whether or not he received the
17 approval from DDoT in one day or six months,
18 as he said in his testimony, is not relevant
19 to the case at hand, which shows in Exhibit 10
20 that the -- and Exhibit 8, that Exhibit 8
21 shows that the last piece was obtained on July
22 6th and the license was actually issued on

1 July 8th, all proven by documents, the last of
2 which showing July 8th is the effective date
3 of the license for the sidewalk caf, being
4 signed by the owner. And he has acknowledged
5 that this is his signature.

6 Therefore, the Government has
7 presented the evidence which should allow for
8 the upholding of the charges and recommends a
9 fine of \$1,000 for both.

10 CHAIRPERSON MILLER: Each, or to
11 cover both? Total. Total?

12 MS. PHILLIPS: Total.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: Could you give a
15 breakdown?

16 MS. PHILLIPS: You know, I always
17 break things up 50/50, Mr. Alberti.

18 MEMBER ALBERTI: Okay. That's
19 fair. Just so I know. And that would make
20 sense. Thank you. Sorry for that.

21 CHAIRPERSON MILLER: Does Mr. Lee
22 have a closing statement?

1 MR. LEE: Thank you very much.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. I'm going to ask you if anyone wants to
4 file written proposed findings of fact and
5 conclusions of law?

6 MS. PHILLIPS: The Government
7 graciously declines. He may not know what
8 that is.

9 CHAIRPERSON MILLER: I know. It's
10 like filing a written brief after the case.
11 You read the transcript and then you write it
12 all. And it's to what you think the Board
13 should find and conclude as a matter of law.
14 And the Government is waiving that. Most of
15 the parties before us waive it, don't do it,
16 but some do.

17 MR. LEE: The Licensee agrees with
18 the Government.

19 CHAIRPERSON MILLER: Okay. So he
20 waives his right to file a written pleading as
21 well. Okay. Thank you.

22 So that concludes this hearing.

1 The Board will issue an order in writing
2 within 90 days.

3 MR. LEE: Within 90 days?

4 CHAIRPERSON MILLER: Ninety.
5 Within.

6 MR. LEE: He has a question.

7 CHAIRPERSON MILLER: Okay.

8 MR. LEE: Ninety days means you
9 are going to send me --

10 CHAIRPERSON MILLER: A written
11 order.

12 MR. LEE: -- written notice
13 whereby he pays the fine? You'll going to
14 send me a paper? His question is does he have
15 90 days to pay his fine?

16 CHAIRPERSON MILLER: No, we issue
17 an order in 90 days as to whether we find him
18 liable, you know, guilty of these charges or
19 not. We'll make a decision about what our
20 findings are. And then if we were to say that
21 he did violate these charges, then we could
22 assess a penalty. And then in that order we

1 would tell him how long he has to pay the
2 penalty.

3 MR. LEE: Yes, understood.

4 CHAIRPERSON MILLER: Okay. Good.
5 All right. So the only thing I'm going to do
6 now is we're going to take a vote to make the
7 decision in a closed meeting. So there's
8 nothing more for you to do, but that's what
9 I'm going to do at this point, because we're
10 going to vote, we're going to deliberate in a
11 closed meeting on this and then issue a
12 written order.

13 MS. PHILLIPS: So we'll sit here
14 while you read that into the record, correct?

15 CHAIRPERSON MILLER: You can.

16 MS. PHILLIPS: Or you're excusing
17 us?

18 CHAIRPERSON MILLER: You don't
19 have to listen to this. I'm reading it.
20 It'll be in the record.

21 MS. PHILLIPS: Okay.

22 CHAIRPERSON MILLER: So however

1 you choose.

2 MS. PHILLIPS: I choose to leave.

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

5 MR. LEE: I feel dismissed.

6 CHAIRPERSON MILLER: Thank you.
7 Thank you very much.

8 Okay. As Chairperson of the
9 Alcoholic Beverage Control Board for the
10 District of Columbia and in accordance with
11 Section 405 of the Open Meetings Amendment Act
12 of 2010, I move that the ABC Board hold a
13 closed meeting for the purpose of seeking
14 legal advice from our counsel on Case No. 11-
15 CMP-00488, Khan's, per Section 405(b) of the
16 Open Meetings Amendment Act of 2010 and
17 deliberating upon this case for the reasons
18 cited in Section 405(b)(13) of the Open
19 Meetings Amendment Act of 2010. Is there a
20 second?

21 MEMBER SILVERSTEIN: Second.

22 CHAIRPERSON MILLER: Mr.

1 Silverstein has seconded the motion. I'll now
2 take a roll call vote. Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Ms. Miller
7 agrees. Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: It appears
10 that the motion has passed by a vote of 4-0-0.
11 I hereby give notice that the ABC Board will
12 hold a closed meeting in the ABC Board
13 conference room today or next week pursuant to
14 the Open Meetings Amendment Act of 2010 and
15 issue an order within 90 days.

16 And I believe that completes all
17 the cases on our morning agenda, and the Board
18 will now recess.

19 (Whereupon, the hearing was
20 concluded at 11:59 a.m.)

21
22

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