

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
Garay Corporation :
t/a Corina's Restaurant: Show Cause
831 Kennedy Street, NW : Hearing
Retailer CR - ANC-4D :
License No. 79873 :
Case #12-251-00206 :
 :
(Operating After Board :
Approved Hours) :
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April 10, 2013

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

ALSO PRESENT:

AMY SCHMIDT, OAG

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

(4:38 p.m.)

CHAIRPERSON MILLER: All right.

I'm going to call our 4:30 case, that's Case No. 12-251-00206, Corina's Restaurant located at 831 Kennedy Street, N.W., License No. 79873 in ANC-4D.

Okay. When you are ready, if you would introduce yourself for the record, please?

MS. SCHMIDT: Good afternoon, Amy Schmidt, Assistant Attorney General on behalf of the District of Columbia. My God you had everyone here today, I see.

CHAIRPERSON MILLER: Right, yes, except the licensee in this case. I don't see them.

MS. RODRIGUEZ: Restaurante Corina's.

MS. SCHMIDT: They are here.

CHAIRPERSON MILLER: Great. Okay. Good morning. If you could identify yourself

1 for the record?

2 MS. GARAY: Yes, my name is Sylvia
3 Garay. I represent Corina's, Garay
4 Corporation t/a Corina's Restaurant.

5 CHAIRPERSON MILLER: Okay.

6 MS. GARAY: At 831 Kennedy Street,
7 N.W., Washington, D.C. 20011.

8 CHAIRPERSON MILLER: All right.

9 And?

10 MS. RODRIGUEZ: My name is Sindy
11 Rodriguez. I'm a friend of Sylvia Garay and
12 a client of her's for many years.

13 CHAIRPERSON MILLER: Okay. Good.
14 All right. So this is a Show Cause Hearing.
15 Are there any preliminary matters?

16 MS. SCHMIDT: None for the
17 Government. However, I believe that the
18 licensee may have a preliminary matter.

19 CHAIRPERSON MILLER: Okay.

20 MS. RODRIGUEZ: Is it okay if I
21 speak for her? She is a little nervous. It's
22 her first time.

1 CHAIRPERSON MILLER: Sure.

2 MS. RODRIGUEZ: Okay. What she
3 would like is to actually get another hearing,
4 so she can get an attorney, because she just
5 found out through the attorney that there is
6 other pending violations, which she is not
7 aware of. She hasn't received any notices.

8 And so if that's the case, she
9 would like to get representation.

10 CHAIRPERSON MILLER: Okay. She
11 did get notice of this hearing?

12 MS. RODRIGUEZ: This one, yes.
13 And so she -- this is the fourth time that she
14 comes and the officer, I believe, asked for --

15 MEMBER SILVERSTEIN: Put the
16 microphone closer to you.

17 MS. RODRIGUEZ: Okay.

18 MEMBER SILVERSTEIN: We are having
19 trouble hearing you.

20 MS. RODRIGUEZ: Yes. She does
21 have a notice for this hearing.

22 CHAIRPERSON MILLER: Yes.

1 MS. RODRIGUEZ: This is the fourth
2 time that she comes and for whatever reasons,
3 the officer postponed four times. But this is
4 -- today is the first time that she is
5 informed that there are other violations,
6 which, like I said, she has never received a
7 notice yet of any of them. So if that's the
8 case, she would like to get an attorney to see
9 what's going on.

10 CHAIRPERSON MILLER: Okay. Are
11 there Board questions?

12 MEMBER ALBERTI: May I ask? Ms.
13 Schmidt, I'm going to ask you a question.

14 MS. SCHMIDT: I can clarify.

15 MEMBER ALBERTI: Because this has
16 to do with -- it's my understanding that it
17 was back in February the Government asked for
18 a continuance?

19 MS. SCHMIDT: The first time the
20 officer was out of time -- out of town. I'm
21 sorry.

22 MEMBER ALBERTI: Okay.

1 MS. SCHMIDT: And the second time
2 is because the officer just had just been
3 promoted to investigator and he had some
4 mandatory training in connection with that
5 promotion on the dates of the hearing.

6 MEMBER ALBERTI: Okay. Okay.
7 Thank you for clarifying that for me.

8 Madam Chair, I'll just state and,
9 Ms. Garay, any pending matters that occurred
10 after this -- after the matter that we are
11 here for today are irrelevant to this case.
12 So your need to have an attorney to deal with
13 the pending matters, because that's what I'm
14 hearing you say, because of pending matters
15 you want to have an attorney.

16 It's, to me, irrelevant because
17 any pending matters are not -- do not bear --
18 have any bearing on this matter that we are
19 here for today. So I'm not seeing a need.
20 I'm not understanding the need to have an
21 attorney.

22 MS. RODRIGUEZ: Well, the reason

1 was because I believe that -- I'm sorry, I
2 don't know.

3 MS. SCHMIDT: If I may, there was
4 an OIC. And in order to explain the OIC, I
5 gave the example of there was -- part of the
6 OIC would have been a suspended day.

7 MEMBER ALBERTI: Well, whoa, whoa,
8 whoa, wait. I don't want to hear any
9 negotiations.

10 MS. SCHMIDT: No, it's not -- no,
11 it's not negotiation. This is an explanation.
12 I'm trying to explain that -- I'm trying to
13 explain what that would mean. I'm not giving
14 you the amount of any of that.

15 I referenced the fact that any --
16 that if there were to be any suspension of
17 time, in a hypothetical world, there would be
18 only if the violation occurred from tonight
19 on. And that anything that was in the
20 pipeline would not be affected by anything by
21 this today.

22 MEMBER ALBERTI: Right. And so

1 there is nothing in those -- the outcome of
2 those pending cases will have no influence on
3 our decision today or the outcome of anything
4 that is decided today.

5 MS. RODRIGUEZ: Right. We
6 understand that. But the way she stated it
7 was that if she doesn't -- she could take a
8 plea and if she doesn't, that there are other
9 pending violations that could affect if she
10 doesn't take the plea. So she --

11 MEMBER ALBERTI: They cannot
12 affect this case in any way.

13 MS. RODRIGUEZ: Well, I know, but
14 we were told by her that there are other
15 violations at her desk, so if there are, which
16 she hasn't received any notice, then she would
17 like an attorney, because it seems like they
18 would affect whether she decides to plea to --
19 to accept the plea today or not. So that is
20 what is confusing us.

21 MEMBER ALBERTI: Okay. I can
22 understand that. I have no further questions.

1 Although, I will tell you that the pending
2 matters, the outcome of the pending matters
3 will not affect anything that is decided
4 today.

5 So let's say theoretically there
6 was a plea, all right, and there was a penalty
7 that came from that plea today. Any of the
8 pending matters that you are talking about,
9 would not affect or would not be affected by
10 or would not affect the penalty that would
11 come out of your plea today.

12 MS. RODRIGUEZ: Yes, she would
13 still like another hearing to get -- to be
14 represented.

15 CHAIRPERSON MILLER: I just want
16 to clarify for the record. The reason you are
17 asking now as opposed to the previous times
18 that you were here, I guess, is because of
19 just hearing about other possible violations
20 and you are concerned about the whole big
21 picture?

22 MS. RODRIGUEZ: Picture, yes.

1 CHAIRPERSON MILLER: Okay. Ms.
2 Schmidt, are you opposed to an extension, to
3 a continuance?

4 MS. SCHMIDT: As I -- as Member
5 Alberti already stated, it does not affect --
6 whatever is going to happen today is not going
7 to have any affect on the future cases. So
8 we --

9 CHAIRPERSON MILLER: That's not
10 true.

11 MS. SCHMIDT: -- would -- we are
12 ready to proceed. However, we do recognize
13 her right to an attorney.

14 CHAIRPERSON MILLER: Okay. Mr.
15 Jones?

16 MEMBER JONES: Just I'm asking
17 this from the standpoint of just logistics.
18 In your case were you intending on putting on
19 a witness from MPD?

20 MS. SCHMIDT: Yes.

21 MEMBER JONES: Okay. And is that
22 MPD officer or individual here today?

1 MS. SCHMIDT: Yes, he is.

2 MEMBER ALBERTI: So let's go
3 forward.

4 MEMBER JONES: Thank you, Madam
5 Chair.

6 CHAIRPERSON MILLER: Okay. Okay.
7 It just seems like, I think, an outcome might
8 affect the future case. If the penalty is
9 considered for a future case --

10 MEMBER ALBERTI: That's why we
11 count the cases today.

12 CHAIRPERSON MILLER: I have one
13 more question for Ms. Schmidt. When you say
14 the right to an attorney, where is that right?

15 MS. SCHMIDT: I understand --
16 okay. I understand that this is not a Court.
17 However, I feel uncomfortable telling someone
18 maybe it's not a -- I'm not a prosecutorial
19 scholar, but it just doesn't feel it would be
20 right to me telling someone you can't have an
21 attorney.

22 CHAIRPERSON MILLER: Right, right.

1 MEMBER ALBERTI: Well, we are not
2 telling anyone they can't have an attorney.
3 The licensee has had how many months to hire
4 counsel? And that's all we are saying is that
5 there is no bias in terms of the outcome of
6 this case from what is pending allegations.

7 MS. SCHMIDT: Well, I agree with
8 you, but on the other hand, I'm uncomfortable.
9 I will be quite frank with you, I do agree.
10 In principle, I agree with you 100 percent.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER ALBERTI: Let's go forward.

13 CHAIRPERSON MILLER: I think we
14 have different opinions on this, so I'm just
15 going to set mine down and others can set
16 their's down and then we will see whether we
17 are proceeding.

18 I pretty much agree with Ms.
19 Schmidt that, you know, when someone asks for
20 an attorney, I would prefer to continue.

21 On the other hand, I do understand
22 that we do have an MPD officer who has, you

1 know, taken out time to be here and stuff.

2 But that's where I fall on this.

3 Do others want to speak to that?

4 MEMBER JONES: Just for
5 clarification, I'm not clear where you fall.

6 CHAIRPERSON MILLER: I fall on
7 continuing, so she can get an attorney.

8 MEMBER JONES: Okay.

9 MEMBER SILVERSTEIN: Are you
10 saying that we have, Madam Chair, a
11 responsibility to provide one?

12 CHAIRPERSON MILLER: No. Just
13 give her the time.

14 MEMBER SILVERSTEIN: Does she have
15 the responsibility to get one?

16 CHAIRPERSON MILLER: Does she have
17 the responsibility to get one? Yes.

18 MEMBER SILVERSTEIN: Did she have
19 that responsibility prior to this hearing?

20 CHAIRPERSON MILLER: Well, what I
21 heard her say, you know, is that she didn't
22 appreciate that she would need one until today

1 when she heard about other violations that
2 give her concern.

3 So I know this is a close one.

4 MEMBER SILVERSTEIN: It's a close
5 call. It's a difficult call.

6 CHAIRPERSON MILLER: This is a
7 close one.

8 MEMBER ALBERTI: Madam Chair?

9 CHAIRPERSON MILLER: Yes?

10 MEMBER ALBERTI: If I understood
11 her concerns about why she needed an attorney,
12 they did not sway me as accurate concerns. I
13 mean, I don't see them as accurate --- her
14 concerns as being accurate.

15 How do I say this? I think they
16 are misplaced. They are misplaced. And if I
17 thought they weren't misplaced, then I would
18 say well, there is -- we should allow her to
19 get an attorney.

20 But the concerns that she
21 expressed to me are misplaced. I mean, there
22 is no effect on this case from the future

1 cases, and that's why she wants an attorney is
2 to protect her from the effect that future
3 cases may have on this and there is none.

4 And so I would say that the
5 licensee has had several months to hire an
6 attorney for this case and we should move
7 forward.

8 CHAIRPERSON MILLER: All right. I
9 guess then I'll just do a motion and then we
10 can move on this.

11 I would move to grant the request
12 for a continuance.

13 MEMBER BROOKS: I second.

14 CHAIRPERSON MILLER: Okay. Mr.
15 Brooks has seconded. Any other comments?
16 Okay. There is a motion that has been
17 seconded.

18 All those in favor say aye.

19 MEMBER BROOKS: Aye.

20 CHAIRPERSON MILLER: Aye. All
21 those opposed?

22 MEMBER JONES: Oppose.

1 MEMBER ALBERTI: Opposed.

2 MEMBER SILVERSTEIN: Opposed.

3 CHAIRPERSON MILLER: Okay. Then
4 the motion fails by a vote of 2-3-0.

5 Okay. That means we are going
6 forward with her case. Okay. Wait let me
7 explain.

8 I don't know if you know the
9 hearing process, do you?

10 MS. GARAY: No.

11 CHAIRPERSON MILLER: Okay.

12 MS. GARAY: First time.

13 CHAIRPERSON MILLER: So the
14 Government has the burden of proof. She is
15 going to be trying to prove the case that was
16 set forth in your notice of what the charges
17 are. And so she goes first. She will make an
18 opening statement.

19 At that time, you can make an
20 opening statement after her if you want or
21 wait until it's your turn to do your whole
22 case, which might be better, but you will see.

1 It just says what the case -- what she is
2 going to try to prove in the case. You know,
3 what it is going to show.

4 Then she can call her first
5 witness, who will testify and answer questions
6 from the Government. You will get a chance to
7 cross-examine that witness and the Board will
8 also get a chance to ask questions.

9 When she is done with all her
10 witnesses and documents, it will be your turn.
11 And if all you are doing is testifying, then
12 you will, you know, take the stand and testify
13 what the facts are or if you have a witness,
14 you can a witness.

15 And then you too will have a
16 chance to do closing arguments, you know,
17 arguing what you did, what you showed in the
18 case. And if you have any questions along the
19 way, just ask me. Okay. We do have plenty of
20 cases where there aren't attorneys, so, okay.

21 All right. Ms. Schmidt?

22 MS. SCHMIDT: Yes. The Government

1 calls Investigator Hrebenak.

2 CHAIRPERSON MILLER: Okay.

3 Whereupon,

4 INVESTIGATOR PAUL HREBENAK

5 was called as a witness by Counsel for the
6 Government, and having been first duly sworn,
7 assumed the witness stand and was examined and
8 testified as follows:

9 CHAIRPERSON MILLER: Thank you.

10 Okay.

11 DIRECT EXAMINATION

12 MS. SCHMIDT: Investigator, please
13 state your name and by whom you are employed
14 for the record.

15 INVESTIGATOR HREBENAK: Paul
16 Hrebenak and I'm with Metropolitan Police
17 Department.

18 MS. SCHMIDT: And on Saturday,
19 June 9, 2012, were you on duty in the vicinity
20 of, one second, 831 Kennedy Street, N.W.?

21 INVESTIGATOR HREBENAK: Yes.

22 MS. SCHMIDT: And what is at that

1 location?

2 INVESTIGATOR HREBENAK: Corina's
3 Bar & Restaurant.

4 MS. SCHMIDT: And do you -- and
5 were you there and do you, approximately,
6 remember what time you were there?

7 INVESTIGATOR HREBENAK: It was
8 around 2:30.

9 MS. SCHMIDT: And --

10 INVESTIGATOR HREBENAK: A.m.,
11 sorry.

12 MS. SCHMIDT: -- at that time,
13 what did you observe? What did you see as you
14 were walking by?

15 INVESTIGATOR HREBENAK: There is a
16 large plate glass window at the restaurant.
17 I observed two tables with, approximately, 10
18 people and at the tables they were seated and
19 they were consuming alcoholic beverages,
20 specifically Corona and Heineken beer bottles.

21 MS. SCHMIDT: Okay. I'm going to
22 show you -- did you fill out a report that

1 night?

2 INVESTIGATOR HREBENAK: I did.

3 MS. SCHMIDT: May I approach the
4 witness?

5 CHAIRPERSON MILLER: Yes.

6 MS. SCHMIDT: What type of -- is
7 this the report that you filled out?

8 INVESTIGATOR HREBENAK: Yes,
9 ma'am.

10 MS. SCHMIDT: And, approximately,
11 what time did the event occur?

12 INVESTIGATOR HREBENAK: 2:37
13 hours, which is 2:37 a.m. on the night of --

14 MS. SCHMIDT: Okay. So that was
15 the time? Does that accurately reflect the time
16 you were there?

17 INVESTIGATOR HREBENAK: Yes.

18 CHAIRPERSON MILLER: The --

19 MS. SCHMIDT: I'm going to show it
20 to her.

21 CHAIRPERSON MILLER: Thank you.

22 What is it actually you are showing?

1 MS. SCHMIDT: This is the
2 investigative report, his 251.

3 CHAIRPERSON MILLER: Okay.

4 MS. SCHMIDT: So going back to
5 that time, what happened when you went into
6 the restaurant or when you went to the
7 establishment?

8 INVESTIGATOR HREBENAK: I
9 proceeded to the back to speak with an ABC
10 manager on duty and to check the license,
11 because previous knowledge --

12 MEMBER SILVERSTEIN: Can you speak
13 up, please?

14 INVESTIGATOR HREBENAK: Yes. I
15 went to the rear of the establishment to find
16 the ABC manager and to see if I could verify
17 the license, because I had previous knowledge
18 that the license to sell liquor and alcoholic
19 beverages ended at 2:00 a.m., so I wanted to
20 confirm it on the license.

21 MS. SCHMIDT: And were you able to
22 confirm that?

1 INVESTIGATOR HREBENAK: Yes.

2 MS. SCHMIDT: And how were you
3 able to confirm that?

4 INVESTIGATOR HREBENAK: I asked
5 the ABC manager, Ms. Garay, to show me the
6 license, which is in a large plastic frame
7 above the cash register.

8 MS. SCHMIDT: And what -- and do
9 you remember what that license said?

10 INVESTIGATOR HREBENAK: 2:00 is
11 when they were licensed to stop selling.

12 MS. SCHMIDT: Okay. And so can
13 you, please, describe more specifically what
14 did you see when you walked in there again?

15 INVESTIGATOR HREBENAK: There were
16 some people at the tables. They were
17 consuming alcoholic beverages. And I also saw
18 people at the bar signing -- being handed
19 credit card receipts and handed drinks and
20 paying for their drinks and their tabs.

21 MEMBER SILVERSTEIN: Excuse me,
22 you are putting the paper on --

1 MS. SCHMIDT: Oh, I'm sorry. I
2 apologize.

3 MEMBER SILVERSTEIN: Okay. Thank
4 you.

5 MS. SCHMIDT: And have you been to
6 that establishment in the past before?

7 INVESTIGATOR HREBENAK: Yes,
8 several times.

9 MS. SCHMIDT: And so why were you
10 there at that time?

11 INVESTIGATOR HREBENAK: Over the
12 past two years prior to that, there had been
13 some assaults either out in front of there or
14 inside and also 9th and Kennedy, which is a
15 block away, is a very hot spot for robberies,
16 so I patrol there and it's also next to
17 another ABC establishment which has had
18 problems in the past, Odalis. So it's a busy
19 location.

20 MS. SCHMIDT: No further
21 questions, at this time.

22 CHAIRPERSON MILLER: Okay. Do you

1 have some questions?

2 MS. GARAY: For the officer?

3 CHAIRPERSON MILLER: Yes, based on
4 his testimony, yes.

5 MS. GARAY: Just one question for
6 him.

7 CROSS-EXAMINATION

8 MS. GARAY: You say you saw people
9 drinking Heinekens and Coronas?

10 INVESTIGATOR HREBENAK: Yes.

11 MS. GARAY: At 2:37?

12 INVESTIGATOR HREBENAK: Yes.

13 MS. GARAY: But you didn't see the
14 manager on duty selling alcohol at that time?
15 They was just there drinking?

16 INVESTIGATOR HREBENAK: As I
17 mentioned to the attorney, I walked to the
18 rear and saw money and credit card slips and
19 the ABC manager, yourself, handing plastic
20 cups full of a yellow liquid to patrons.

21 MS. GARAY: So they were like
22 paying their tabs, that's what you stated?

1 INVESTIGATOR HREBENAK: Yes.

2 MS. GARAY: Okay. No more
3 questions.

4 CHAIRPERSON MILLER: Okay. Board
5 questions? I just have one. So were you in
6 uniform or not?

7 INVESTIGATOR HREBENAK: Yes,
8 ma'am. At that time, I was an officer in full
9 uniform.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. All right.

12 MEMBER ALBERTI: I have a
13 question.

14 CHAIRPERSON MILLER: Mr. Alberti?

15 MEMBER ALBERTI: Officer Hrebenak,
16 you stated that you had prior reason to know
17 the hours of operation for this establishment.
18 How did you come to know that?

19 INVESTIGATOR HREBENAK: With prior
20 incidents that we have had there. I have
21 checked the license before and I just wanted--
22 I always confirm, whenever I have an ABRA

1 incident, the hours that are actually on the
2 license that is shown.

3 MEMBER ALBERTI: Okay.

4 INVESTIGATOR HREBENAK: I've known
5 in the past it can sometimes be confused.

6 MEMBER ALBERTI: Okay. And do you
7 remember what the license said?

8 INVESTIGATOR HREBENAK: I believe
9 it said 2:00 a.m.

10 MEMBER ALBERTI: For?

11 INVESTIGATOR HREBENAK: For sale
12 and you can remain open until 2:30 or 3:00.

13 MEMBER ALBERTI: Okay.

14 INVESTIGATOR HREBENAK: I can't
15 remember. I know at 2:00 is the --

16 MEMBER ALBERTI: For sale.

17 INVESTIGATOR HREBENAK: For sale.

18 And then I don't remember when the actual hard
19 close is.

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

22 CHAIRPERSON MILLER: When Board

1 Members are finished. Any other questions?

2 MEMBER BROOKS: A quick question
3 here.

4 CHAIRPERSON MILLER: Yes, Mr.
5 Brooks?

6 MEMBER BROOKS: Yes. Officer did
7 you talk to anyone that is working for the
8 licensee?

9 INVESTIGATOR HREBENAK: I spoke
10 specifically to the licensee.

11 MEMBER BROOKS: You did?

12 INVESTIGATOR HREBENAK: To Ms.
13 Garay, yes. Ms. Sylvia Garay. She was there
14 at the time.

15 MEMBER BROOKS: Okay. And you
16 told her that she was in violation of the law?

17 INVESTIGATOR HREBENAK: I didn't
18 explain to her that she was specifically in
19 violation of the law. I said that her closing
20 time was at 2:00. She was -- or her liquor
21 sales had to end at 2:00 and that I would be
22 contacting an ABC Investigator.

1 MEMBER BROOKS: Okay.

2 INVESTIGATOR HREBENAK: I didn't
3 specifically tell her that she was in
4 violation of the law.

5 MEMBER BROOKS: Okay.

6 INVESTIGATOR HREBENAK: I think.

7 MEMBER BROOKS: Sure. And what
8 was her response?

9 INVESTIGATOR HREBENAK: Her
10 response -- I did actually speak to another
11 person there that night. I spoke to a
12 security guard that night. Her response was
13 she continued to sell the tabs and everything.
14 And then I later spoke to a security guard as
15 I quoted in the report that said, excuse my
16 language, "We don't give a fuck, you know, how
17 we do." And that was his response and he was
18 the gentleman who stands at the front door of
19 the establishment.

20 MEMBER BROOKS: And that was the
21 security guard?

22 INVESTIGATOR HREBENAK: That was

1 the person she employs for security, yes.

2 MEMBER BROOKS: Okay. All right.

3 Thank you, Madam Chair.

4 MEMBER ALBERTI: I have an
5 additional question, if I may.

6 CHAIRPERSON MILLER: You have more
7 questions?

8 MEMBER ALBERTI: Yes.

9 CHAIRPERSON MILLER: Sure. Go
10 ahead.

11 MEMBER ALBERTI: Officer Hrebenak?

12 INVESTIGATOR HREBENAK: Yes.

13 MEMBER ALBERTI: So you said -- I
14 think you testified that you saw people paying
15 their bill.

16 INVESTIGATOR HREBENAK: Yes.

17 MEMBER ALBERTI: Did you see
18 anyone receiving alcohol, being served?

19 INVESTIGATOR HREBENAK: Yes. I
20 saw Ms. Garay hand a plastic container with a
21 yellow liquid that had the odor of an
22 alcoholic beverage. It wasn't particularly

1 labeled as an alcoholic beverage say like a
2 beer bottle, but that was along with the tabs
3 and the bills that were being passed back and
4 forth at the bar.

5 MEMBER ALBERTI: So you believe
6 you witnessed them delivering alcohol to a
7 patron?

8 INVESTIGATOR HREBENAK: Yes, but I
9 can't confirm the contents of the plastic cup.

10 MEMBER ALBERTI: All right. But
11 it was yellow and you -- again, I think you
12 stated that it had the odor of alcohol?

13 INVESTIGATOR HREBENAK: Yes, sir.

14 MEMBER ALBERTI: Thank you.

15 CHAIRPERSON MILLER: Yes?

16 MEMBER SILVERSTEIN: Very briefly.
17 This was July 9th? This was a Monday?

18 INVESTIGATOR HREBENAK: Yes. I
19 can't --

20 MEMBER SILVERSTEIN: So this was a
21 weekday?

22 INVESTIGATOR HREBENAK: I don't

1 know. July 8?

2 MS. SCHMIDT: I'm sorry, it was
3 June --

4 MEMBER ALBERTI: Friday?

5 INVESTIGATOR HREBENAK: If you
6 want, I can look it up.

7 MS. SCHMIDT: June 9th.

8 MEMBER SILVERSTEIN: June 9th?
9 That was a Friday? That was a -- and their
10 license allows only until 2:00?

11 MS. RODRIGUEZ: The sales until
12 2:00. The operation until 3:00 a.m.

13 MEMBER ALBERTI: All right. I
14 consider that important.

15 MS. RODRIGUEZ: Yes.

16 MEMBER SILVERSTEIN: Okay. Very
17 well.

18 CHAIRPERSON MILLER: You will get
19 a chance, too. Okay. What do you mean the
20 odor of alcohol? Like did it smell like beer?
21 Did it smell like -- what do you mean?

22 INVESTIGATOR HREBENAK: It smelled

1 -- I mean, if I had to guess, it would smell
2 like a liquor and not necessarily a beer,
3 because it wasn't bubbly, but other than that,
4 I can't be more specific about what was inside
5 the cup. But it did have the smell of alcohol
6 or liquor.

7 CHAIRPERSON MILLER: As opposed to
8 ginger ale or something like that?

9 INVESTIGATOR HREBENAK: Yes,
10 ma'am, yes.

11 CHAIRPERSON MILLER: Okay. Other
12 questions? Are there other questions based on
13 Board questions for the officer?

14 MS. RODRIGUEZ: Yes.

15 CHAIRPERSON MILLER: Yes, okay.

16 RECROSS-EXAMINATION

17 MS. RODRIGUEZ: You stated that
18 when -- that you actually told her that you
19 were going to call ABRA, but nowhere in your
20 report does it say that you actually spoke to
21 her and you told her that.

22 CHAIRPERSON MILLER: Okay. So try

1 to make it a question.

2 MS. RODRIGUEZ: Yes. So did you
3 state on your report that you actually spoke
4 to Mrs. Garay and told her that she was in
5 violation and you were calling the ABRA
6 Investigator?

7 INVESTIGATOR HREBENAK: I didn't
8 specifically state that. I stated that I
9 spoke to her to confirm the hours and I called
10 an ABC Investigator.

11 MS. RODRIGUEZ: Did you put that
12 on your report that you actually --

13 INVESTIGATOR HREBENAK: That I --

14 MS. RODRIGUEZ: -- told --

15 INVESTIGATOR HREBENAK: I don't
16 understand your question.

17 MS. RODRIGUEZ: I'm sorry?

18 INVESTIGATOR HREBENAK: I don't
19 understand your question.

20 MS. RODRIGUEZ: Did you specify
21 that on your report that you actually spoke to
22 her and you told her that she was in violation

1 and that you were going to call an ABRA
2 Investigator?

3 INVESTIGATOR HREBENAK: I think I
4 answered that question and no, I didn't do --
5 tell her all those three things together, no.

6 MS. RODRIGUEZ: But did you write
7 that on your report? Did you actually say I
8 spoke to Mrs. Garay and told her that she was
9 in violation and I informed her that I was
10 going to call the ABRA Investigator. Did you
11 write that on your report?

12 INVESTIGATOR HREBENAK: I did not
13 write that exact -- those exact words on the
14 report, no.

15 MS. RODRIGUEZ: And then you say
16 on your report that you observed the owner
17 hand a plastic cup with yellow liquid to a
18 patron. That's all you wrote on your report,
19 correct?

20 INVESTIGATOR HREBENAK: Yes.

21 MS. RODRIGUEZ: Did you write on
22 your report that the -- what was in the

1 plastic cup, the liquid actually smelled like
2 alcohol? Did you write that specifically?

3 INVESTIGATOR HREBENAK: I don't
4 know. I would have to look at the report.

5 MS. RODRIGUEZ: In specific detail
6 on your report?

7 INVESTIGATOR HREBENAK: I don't
8 know. I would have to look at the report and
9 see if I actually referenced that.

10 MS. RODRIGUEZ: Do you think
11 that's a very important point to write on your
12 report?

13 INVESTIGATOR HREBENAK: I mean, I
14 can't answer that question. One, I haven't
15 seen the -- I can't look at the report right
16 now.

17 MS. RODRIGUEZ: Yes.

18 INVESTIGATOR HREBENAK: And it's
19 important to say that there was a cup passed
20 back and forth. I don't know that it was
21 necessarily --

22 MS. RODRIGUEZ: No. Do you think

1 it's very important to actually state that you
2 smelled what was in -- the contents of the
3 cup? Don't you think that's very important to
4 actually write on your report, I picked up the
5 cup and I smelled alcohol?

6 INVESTIGATOR HREBENAK: I suppose,
7 yes, that could be considered important, yes.

8 MS. RODRIGUEZ: Did you write that
9 on your report?

10 INVESTIGATOR HREBENAK: I said no.

11 MS. RODRIGUEZ: Okay.

12 CHAIRPERSON MILLER: Okay. Yes?

13 REDIRECT EXAMINATION

14 MS. SCHMIDT: But did you smell
15 it? Did you actually smell the alcohol?

16 INVESTIGATOR HREBENAK: Yes.

17 MS. SCHMIDT: And you -- did you
18 see money passed? Did you see credit cards or
19 money being -- any transactions being
20 performed at that time?

21 INVESTIGATOR HREBENAK: Yes.

22 MS. SCHMIDT: Okay.

1 MS. RODRIGUEZ: And do you recall
2 an actual --

3 CHAIRPERSON MILLER: Okay.

4 MEMBER ALBERTI: Wait.

5 CHAIRPERSON MILLER: This is her
6 witness, so, yeah, I don't think you get
7 another round on this. This is your witness.
8 You have done cross. You have done redirect.
9 Okay. Is that where you were going?

10 MEMBER ALBERTI: Yes, I mean --

11 CHAIRPERSON MILLER: Okay. Okay.
12 I think that concludes your testimony. Thank
13 you very much.

14 INVESTIGATOR HREBENAK: Thank you.

15 CHAIRPERSON MILLER: Okay.

16 (Whereupon, witness was
17 temporarily excused.)

18 CHAIRPERSON MILLER: All right.
19 Do you have any other witnesses?

20 MS. SCHMIDT: The Government
21 rests, at this time.

22 CHAIRPERSON MILLER: Okay. All

1 right. So this is your time to present your
2 direct case. Do you have testimony that you
3 want to give?

4 MS. RODRIGUEZ: Well, she doesn't
5 have any witnesses with her.

6 CHAIRPERSON MILLER: Right.

7 MS. RODRIGUEZ: She would like to
8 inform the Board of some of the timing between
9 when the officer called the ABRA --

10 CHAIRPERSON MILLER: Okay.

11 MS. RODRIGUEZ: -- Investigator
12 and when the ABRA Investigator arrived, which
13 doesn't make any sense.

14 CHAIRPERSON MILLER: All right.
15 Let me put her under oath if she is going to
16 be putting testimony into evidence.

17 So if you would raise your right
18 hand?

19 Whereupon,

20 SYLVIA GARAY
21 was called as a witness by the licensee, and
22 having been first duly sworn, assumed the

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

3 CHAIRPERSON MILLER: Okay. Do you
4 want to take the stand or are you more
5 comfortable right there?

6 MS. GARAY: I have a written
7 answer.

8 CHAIRPERSON MILLER: Okay.

9 MS. GARAY: Which is like I put
10 everything together.

11 CHAIRPERSON MILLER: That's fine.
12 You can stay there.

13 MS. GARAY: Yes, I don't know if
14 she is able to read it for me?

15 CHAIRPERSON MILLER: Are you going
16 to read it for her as like a translator?

17 MS. GARAY: Yes, that's right.

18 CHAIRPERSON MILLER: Because you
19 are nervous?

20 MS. RODRIGUEZ: Oh, it's actually
21 in English.

22 CHAIRPERSON MILLER: Oh, okay.

1 You are just too nervous to read it yourself?

2 MS. GARAY: (No audible answer).

3 CHAIRPERSON MILLER: Okay. But
4 this is your testimony?

5 MS. GARAY: It's my testimony.

6 CHAIRPERSON MILLER: It's not her
7 testimony?

8 MS. GARAY: Yes. I put it
9 together myself.

10 CHAIRPERSON MILLER: Okay.

11 MS. RODRIGUEZ: Would you like me
12 to read it in complete or just summarize it?

13 CHAIRPERSON MILLER: It's your
14 case, so you all decide.

15 MS. RODRIGUEZ: Okay. She wants
16 me to read it.

17 MEMBER ALBERTI: Madam Chair?
18 Just one moment, please.

19 CHAIRPERSON MILLER: Do you have
20 an objection?

21 MEMBER ALBERTI: Just one moment,
22 please.

1 CHAIRPERSON MILLER: Okay. You're
2 going to read it word-for-word, right, as her
3 words?

4 MS. RODRIGUEZ: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MS. RODRIGUEZ: It's dated April
7 10, 2013.

8 "Dear Officer, Dear Members of the
9 Board, by means of this letter I am contesting
10 the charge dated June 9, 2012. I am
11 contesting the time of the alleged violation
12 that Officer Paul Hrebenak, Badge 3450
13 reported.

14 In June 9, 2012, no alcohol
15 beverages were served after 1:50 a.m.
16 According to Officer Hrebenak, on June 9,
17 2012, he observed patrons consuming alcohol
18 beverages in my business establishment at 2:37
19 a.m.

20 Then he stated that he called an
21 ABRA Investigator so that the investigator
22 would arrive at the premises for a report.

1 According to the ABRA Investigator" -- I'm
2 sorry.

3 "According to ABRA Investigator
4 Butler's report, he arrived at my business at
5 2:40 a.m. The time of the alleged violation
6 and the arrival of the Investigator Butler do
7 not make any sense, because according to the
8 investigator's report, only three minutes went
9 by from the alleged observation to the arrival
10 of the investigator.

11 In addition, Officer Hrebenak
12 states in his report that he entered the
13 premises, walked up to the bar and observed
14 the owner hand a plastic cup to a customer and
15 he observed several customers paying their
16 bill. All of this before the ABRA
17 Investigator met with Officer Hrebenak at 2:40
18 a.m., the time stated by Investigator Butler
19 on the ABRA report.

20 Yet on Officer Hrebenak's report,
21 he states that at 3:02 a.m., he was still
22 waiting for the ABRA Investigator. On the

1 officer's report, he does not state the time
2 of arrival of the ABRA Investigator.

3 Could the officer have observed
4 alcohol being served and consumed before 1:50?
5 Possibly, but it would have been during the
6 allowed time period. Did he wait until 2:37
7 a.m. to call the Investigator Butler?
8 Possibly.

9 I do recall Officer Hrebenak
10 entering my business establishment on June 9,
11 2012, but no alcohol was being consumed or
12 served at the time. I do also recall
13 Investigator Butler arriving on that date, but
14 no alcohol was being consumed or served, at
15 that time.

16 In addition, I would like to
17 inform that."

18 That's it.

19 CHAIRPERSON MILLER: Okay. Ms.
20 Schmidt, do you have any cross-exam based on
21 that testimony?

22 MS. SCHMIDT: No. No, not really.

1 CHAIRPERSON MILLER: Not really.
2 I was thinking about this before and now that
3 I heard this testimony and I think other Board
4 Members would like the opportunity to recall
5 Mr. Hrebenak just --

6 MEMBER ALBERTI: Officer Hrebenak.

7 CHAIRPERSON MILLER: Officer.
8 Just to ask him a little bit more about the
9 time frame.

10 MEMBER ALBERTI: Yes.

11 CHAIRPERSON MILLER: Yes. Thank
12 you. You are already sworn in, so you can --
13 okay.

14 Whereupon,

15 INVESTIGATOR PAUL HREBENAK
16 was recalled as a witness by the ABRA Board,
17 and having been previously duly sworn, resumed
18 the witness stand, was examined and testified
19 as follows:

20 CHAIRPERSON MILLER: Mr.
21 Silverstein?

22 MEMBER SILVERSTEIN: Officer

1 Hrebenak, first of all, thank you for your
2 service. Thanks for being here.

3 The tick-tock as we call it, you
4 were there at 2:37 and you said, at that time,
5 you contacted ABRA and Investigator Butler was
6 there at 2:40?

7 INVESTIGATOR HREBENAK: I didn't
8 put in my report that he was there at 2:40.

9 MEMBER SILVERSTEIN: Did you -- go
10 ahead.

11 INVESTIGATOR HREBENAK: I know
12 that I waited quite a while, because the
13 normal procedure for us to contact ABRA is
14 through our cell phone, so I would have called
15 him and I would have had to get a call
16 service. He would have had to call me back,
17 ask me what I had. I would have had to
18 explain for him. He would have to drive from
19 down here to up there.

20 And as I noted, I was still
21 waiting for him at 3:02, I believe. So those
22 are the times that I had and I can only

1 testify to that.

2 MEMBER SILVERSTEIN: So it wasn't
3 that he was just by chance next door or
4 somewhere close by. You did not see him until
5 3:02?

6 INVESTIGATOR HREBENAK: I don't
7 know if I saw -- I saw him after 3:02, that's
8 what I -- because I earlier stated that I was
9 still waiting for him at 3:02. So I don't
10 know -- I never noticed his exact arrival
11 time.

12 MEMBER SILVERSTEIN: Could we just
13 hold it for a second? No further questions.

14 CHAIRPERSON MILLER: Now, I just
15 have one question. I was going to ask you
16 this before. Like how do you know like that
17 it was 2:37, for instance? How do you --

18 INVESTIGATOR HREBENAK: What I do
19 is I'll go over the air and ask the dispatcher
20 to note the time.

21 CHAIRPERSON MILLER: What?

22 INVESTIGATOR HREBENAK: I'll go

1 over the radio air, the radio and ask the
2 dispatcher to note the time.

3 CHAIRPERSON MILLER: Oh, okay.

4 INVESTIGATOR HREBENAK: I do that
5 for disorderly noise at night violations. I
6 do that for ABRA violations as well and her
7 time is the OUC or Office of Unified
8 Communications' time. And that's usually how
9 I keep track of time.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. I want to ask the licensee. First of
12 all, I want to give you an opportunity to ask
13 a question since we brought him back again.
14 And if you have any objections to our having
15 brought him back on this point, feel free to
16 raise them. But I want to give you the
17 opportunity as well.

18 We don't usually do that, but we
19 think the time question that you raised was
20 important, so if you have questions you want
21 to ask based on this little exchange you may.

22 MEMBER ALBERTI: May the Board

1 finish?

2 CHAIRPERSON MILLER: Oh, I'm
3 sorry. I thought you were finished.

4 MEMBER ALBERTI: Oh, I'm sorry. I
5 have a statement in regards to this witness.

6 Ms. Garay, the reason she is
7 asking you if you object is because there was
8 no -- you were not given the opportunity
9 before the hearing, the testimony was given,
10 to state whether or not you wanted to have a
11 rule on witnesses, which means that would have
12 meant that the officer would to have been --
13 had to have been out of the room while you
14 testified, but he was in the room while you
15 testified and now he is being brought back in.

16 So the question to you is do you
17 object to him after hearing your testimony now
18 being able to testify? And I ask that because
19 I find it troubling that we have proceeded
20 this way. You are not represented by an
21 attorney. And the Chair thought you should be
22 and maybe she was right, because the Board, I

1 think, has -- I think we have violated
2 procedures here.

3 I'll be quite honest with you by
4 not asking you before he gave testimony
5 whether you object. And if you do object,
6 then we will have to disregard, I believe my
7 opinion as a Board Member, any testimony that
8 he just gave.

9 MS. GARAY: Okay. Yes, I do
10 object.

11 CHAIRPERSON MILLER: Okay. The
12 best you can do is you can move to strike that
13 testimony, his testimony if you would like.

14 MS. RODRIGUEZ: Yes, we move to
15 strike his testimony.

16 CHAIRPERSON MILLER: Okay. I
17 didn't hear anything personally prejudicial,
18 but other may have interpreted it that way.
19 So, Ms. Schmidt, do you have any objections
20 for the record?

21 MS. SCHMIDT: Nothing. For the
22 record, nothing that was said was even

1 relevant as far as --

2 CHAIRPERSON MILLER: Right, right.

3 So but if you want --

4 MS. SCHMIDT: -- this witness.

5 CHAIRPERSON MILLER: -- us to
6 strike that to be more comfortable, we can
7 strike it.

8 MS. RODRIGUEZ: Yeah, she would
9 like it to be striked.

10 CHAIRPERSON MILLER: Okay.
11 Investigator Hrebenak, you are excused. Thank
12 you very much.

13 INVESTIGATOR HREBENAK: Okay.
14 Thank you.

15 (Whereupon, witness was excused.)

16 CHAIRPERSON MILLER: So the
17 testimony of the officer has been struck with
18 respect to recalling him back.

19 MS. SCHMIDT: Just to be clear,
20 yes. Just to call him back, but for the
21 previous --

22 CHAIRPERSON MILLER: Exactly.

1 MS. SCHMIDT: The testimony in the
2 case in chief is still part of the record?

3 CHAIRPERSON MILLER: Yes.

4 MS. SCHMIDT: Thank you.

5 CHAIRPERSON MILLER: Okay. So all
6 right. So you just gave testimony. We are
7 going back to where we left off. You read her
8 testimony. Ms. Schmidt, I can't recall
9 whether you had any questions.

10 MS. SCHMIDT: No, I did not.

11 CHAIRPERSON MILLER: Okay. Board
12 Members have any questions? Okay. I would
13 like to ask you a few questions.

14 How do you recall what time --
15 your times? Like how do you know that it was,
16 you know, 1:58?

17 MS. GARAY: It was 1:50 because
18 when 1:00 comes around, he always park his car
19 like in the alley. There is an alley in front
20 of my establishment and he always pointed this
21 big light showing me that it's time to close.

22 CHAIRPERSON MILLER: Who?

1 MS. GARAY: Mr. -- what's his
2 name? Officer Hrebenak.

3 CHAIRPERSON MILLER: He does that
4 at 1:50?

5 MS. GARAY: He will -- not when
6 this incident happened. Even before then, he
7 always come around show me the time, 1:30, so
8 I'm always checking. This officer when he was
9 working the area, he will always park his car
10 in front of the establishment.

11 CHAIRPERSON MILLER: Okay. He did
12 it that night?

13 MS. GARAY: So when he enter my
14 establishment, the first thing I look was my
15 clock. You know, it was 1:50. Even after
16 this incident, at 1:00, 1:30, he is always
17 like riding around, looking through the
18 window. I don't even have curtains. I don't
19 -- it's like my establishment is an open
20 space. You know, you can see through.

21 CHAIRPERSON MILLER: Okay. So do
22 you serve any drinks after 2:00?

1 MS. GARAY: No, ma'am. I stop
2 serving at 1:45. I have been with this
3 license for close to seven years. I'm allowed
4 all these regulations. I grew up in this
5 business. My family had this license for like
6 30-something years. And it was passed to me.

7 CHAIRPERSON MILLER: Can you --
8 are you familiar with serving a plastic cup
9 with yellow liquid?

10 MS. GARAY: It was a Red Bull that
11 I, you know, gave it to a patron. And it was
12 no -- at that time, it was not even past the
13 2:00 hour and it was no sales going on at that
14 time.

15 CHAIRPERSON MILLER: Do you
16 continue to take people's credit cards and,
17 you know, tally the bill or whatever after
18 2:00?

19 MS. GARAY: After 2:00, people are
20 paying their bills. You know, it's just only
21 myself as the cashier. So, you know, as he
22 said, you know, I was -- patrons were paying

1 their tabs. You know, I was running credit
2 cards, you know.

3 CHAIRPERSON MILLER: What is the
4 last time -- what's the latest that you serve
5 people alcohol?

6 MS. GARAY: The last time I serve
7 on that night, I remember, it was 1:50. 1:45,
8 1:50, which I also told the investigator that
9 when he arrived.

10 CHAIRPERSON MILLER: So the
11 investigator -- did you say he always shines
12 the light on you at 1:45 or 1:50?

13 MS. GARAY: 1:30, you know, it's
14 like a harassment to me.

15 CHAIRPERSON MILLER: He did it
16 that night?

17 MS. GARAY: He did it that night.

18 CHAIRPERSON MILLER: And what time
19 did he enter your establishment?

20 MS. GARAY: Well, he was normally
21 parked midnight, 1:00, right across my
22 restaurant.

1 CHAIRPERSON MILLER: What time did
2 he come in?

3 MS. GARAY: When he came in it was
4 around 1:50, close to that time. It was --
5 I'm sure it was not even the 2:00 hour.

6 CHAIRPERSON MILLER: Okay. Any
7 other questions? Ms. Schmidt, do you have any
8 questions based on Board questions?

9 MS. SCHMIDT: No.

10 CHAIRPERSON MILLER: Okay.
11 Anything else in your case?

12 MS. GARAY: I have.

13 CHAIRPERSON MILLER: You have a
14 question? Okay.

15 REDIRECT EXAMINATION

16 MS. SCHMIDT: Ms. Garay, how did
17 you know -- how do you know it was 1:50 when
18 he came in?

19 MS. GARAY: He looked at the time.
20 He always, you know, pointing his clock at me.
21 He was always doing that. It's like a
22 harassment with these guys. It's the only

1 officer that I had problems with. You know,
2 I don't -- I never felt that I was protected
3 by him. I felt like it was harassment. I
4 don't have a clue why.

5 MS. SCHMIDT: And you said --

6 MS. GARAY: It seems to me like
7 it's something personal.

8 MS. SCHMIDT: No further
9 questions.

10 CHAIRPERSON MILLER: Okay. All
11 right. Anything else? Okay. So now we will
12 do closing. Do you have any?

13 MS. SCHMIDT: Just very briefly.

14 The Government has shown that the
15 licensee was serving alcohol after the --
16 after hours. This is shown through the
17 testimony of Officer Hrebenak, who stated that
18 he was -- he went there at 2:37 a.m. and that
19 he -- there -- it was definitely after hours
20 and he said that he had been there and that he
21 was in the neighborhood because there is a
22 history of incidents at that location, so he

1 was monitoring that location.

2 And he said he went -- and he said
3 he went in there and it was 2:37 and he did
4 see a cup with -- a cup of alcohol that he was
5 able to tell that it was alcohol being served
6 and he did see people paying and drinks being
7 served.

8 And again, this is a matter of --
9 and I understand this is a matter of
10 credibility. You have the officer versus the
11 owner and the owner, of course, has self-
12 interest in interpreting the facts in such a
13 way as to protect her license.

14 However, the officer is a
15 dispatched employee of the District and he is
16 doing his job to ensure that there is no
17 operation after hours, especially in this
18 case.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Do you want to make a closing?

21 MS. RODRIGUEZ: Yes. Ms. Garay
22 would like to let you know that I think the

1 biggest emphasis here should be the time,
2 because like we -- like she stated on her
3 letter, the officer said he arrived there at
4 2:37 and he called the ABRA Investigator at
5 2:37. Yet, the ABRA Investigator arrived
6 there at 2:40.

7 I mean, it's on the -- ABRA's
8 Investigator's report that he arrived at 2:40.
9 So it just doesn't -- the timing just does not
10 make any sense at all. So I think that the
11 time is very crucial. So she -- Ms. Garay is
12 stating that she did not serve any alcohol
13 after the legal hours.

14 CHAIRPERSON MILLER: Okay.

15 MS. SCHMIDT: Do I get the last
16 word?

17 CHAIRPERSON MILLER: Yes, right,
18 yes.

19 MS. SCHMIDT: And it should be
20 noted that Officer Hrebenak never said that
21 the investigator came at 2:40. His testimony
22 clearly stated that at 3:02 he was still

1 trying to call the Investigator. So whatever
2 -- so even if the investigator reports at
3 2:40, it's not -- it was not in the testimony
4 today that we should take the testimony of
5 Officer Hrebenak who admitted that it was --
6 that he was there at 2:37 and that the
7 investigator -- he was still calling the
8 investigator at 3:02.

9 CHAIRPERSON MILLER: All right.
10 I'm going to now close the record.

11 MEMBER ALBERTI: Ms. Miller,
12 before we close the record, would Ms. Schmidt
13 like to make a recommendation?

14 MS. SCHMIDT: Yes, I would. We
15 would ask for a \$1,500 fine and one day
16 suspension to be suspended for a period of one
17 year.

18 MEMBER ALBERTI: Thank you.

19 CHAIRPERSON MILLER: And I want to
20 make sure that there aren't any documents that
21 anyone wants submitted into evidence.

22 MS. RODRIGUEZ: Yes.

1 CHAIRPERSON MILLER: Do you want
2 that document in evidence? What is it?

3 MS. RODRIGUEZ: Yes, she wants
4 this.

5 CHAIRPERSON MILLER: The letter?

6 MS. RODRIGUEZ: Yes, the letter.

7 CHAIRPERSON MILLER: Okay. Do you
8 have an objection?

9 MS. SCHMIDT: No objection.

10 CHAIRPERSON MILLER: Okay. Then
11 I'll admit that as Licensee's Exhibit No. 1.

12 (Whereupon, the document was
13 marked for identification as
14 Licensee Exhibit 1 and was
15 received in evidence.)

16 CHAIRPERSON MILLER: All right.
17 Well, that concludes your case. All right.
18 So the record is now closed.

19 The next thing I just want to ask
20 is if anybody wants to submit proposed
21 findings of fact and conclusions of law or
22 waive your right to do so? Are you going to?

1 MS. SCHMIDT: No.

2 CHAIRPERSON MILLER: All right.
3 I'll explain it a little further.

4 Okay. Most parties in these cases
5 don't do this, but you have the right to if
6 you choose to. That means that you will wait
7 for the transcript to come out from today's
8 hearing and then you would look at the record,
9 the transcript, your letter, anything else in
10 the record and you would submit in writing
11 findings of facts that you would suggest to
12 the Board, based on that that we find in
13 either of the facts would be in your favor if
14 you were writing it most likely, and then
15 conclusions of law.

16 You know, why we would find you
17 not guilty based on the law, based on these
18 facts. Anyway, very few parties do take
19 advantage of that. It's work, but you have an
20 opportunity if you want to.

21 MS. RODRIGUEZ: Yes, she would
22 like to do that. How much time will she have

1 in order to get with her?

2 CHAIRPERSON MILLER: She has, I
3 think, 30 days from when the transcript comes
4 out, which it usually comes out in two weeks,
5 I believe. Two or three weeks. Two, two.

6 Okay. So we will get the
7 transcript to you when it is ready.

8 MS. GARAY: Okay.

9 CHAIRPERSON MILLER: It should be
10 in two weeks. Then you will have 30 days to
11 send it in, submit your proposed findings of
12 fact and conclusions of law.

13 MS. RODRIGUEZ: Okay.

14 CHAIRPERSON MILLER: Okay. And
15 the Government? Maybe? What?

16 MS. SCHMIDT: Well, we will also
17 submit then if they are submitting.

18 CHAIRPERSON MILLER: Okay. All
19 right. Okay.

20 MEMBER ALBERTI: May I? Ms.
21 Garay, that document must be submitted. A
22 copy of the document must be submitted to Ms.

1 Schmidt as well as to the Board.

2 MS. GARAY: Okay.

3 MEMBER ALBERTI: So you have to
4 submit to both parties, both to Ms. Schmidt
5 and to the Board copies of that document that
6 you are preparing.

7 CHAIRPERSON MILLER: Ms. Schmidt
8 will do likewise. But they should be
9 simultaneous.

10 And if you have any questions
11 after today, you can contact our general
12 counsel, Martha Jenkins.

13 MS. RODRIGUEZ: Okay.

14 CHAIRPERSON MILLER: All right.
15 Any other questions? Okay. Then after we get
16 your proposed findings and conclusions of law,
17 you will get an order back within 90 days.
18 All right. Thank you very much.

19 MS. RODRIGUEZ: Thank you.

20 MEMBER ALBERTI: Officer, thank
21 you for coming.

22 MEMBER SILVERSTEIN: Thank you for

1 your time.

2 MEMBER ALBERTI: We appreciate your
3 service to the city. Thank you for coming.

4 CHAIRPERSON MILLER: Okay. As
5 Chairperson of the Alcoholic Beverage Control
6 Board for the District of Columbia and in
7 accordance with Section 405 of the Open
8 Meetings Amendment Act of 2010, I move that
9 the ABC Board hold a closed meeting for the
10 purpose of seeking legal advice from our
11 counsel on Case No. 12-251-00206, Corina's
12 Restaurant, per Section 405(b)(4) of the Open
13 Meetings Amendment Act of 2010, and
14 deliberating upon this case for the reasons
15 cited in Section 405(b)(13) of the Open
16 Meetings Amendment Act of 2010.

17 Is there a second?

18 MEMBER BROOKS: Second.

19 CHAIRPERSON MILLER: Mr. Brooks
20 has seconded the motion. I'll now take a roll
21 call vote on the motion before us now that it
22 has been seconded.

1 Mr. Brooks?

2 MEMBER BROOKS: I agree.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

5 CHAIRPERSON MILLER: Ms. Miller

6 agrees.

7 Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Mr. Jones?

10 MEMBER JONES: I agree.

11 CHAIRPERSON MILLER: It appears
12 that the motion has passed by a vote of 5-0-0.

13 I hereby give notice that the ABC
14 Board will hold a closed meeting in the ABC
15 Board conference room in, approximately, 90
16 days pursuant to the Open Meetings Amendment
17 Act of 2010.

18 Okay. Thank you. That concludes
19 our hearing for April 10, 2013.

20 (Whereupon, the Show Cause Hearing
21 in the above-entitled matter was concluded at
22 5:32 p.m.)

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