

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
Justin's Caf,, LLC :
t/a Justin's Caf, :
1025 1st Street, S.E. : Show
Retailer CR : Cause
License No. 83690 : Hearing
ANC 6D :
Substantial Change in :
Operation (Increase in :
Occupancy), Violation of :
Settlement Agreement :
Case No. 12-CMP-00558(a) :
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July 17, 2013
The Alcoholic Beverage Control
Board met in Alcoholic Beverage Control

Hearing Room, Reeves Building, 2000 14th
Street N.W., Washington, D.C., Chairperson
Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG
FELICIA MARTIN, Investigator, ABRA

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

10:34 a.m.

CHAIRPERSON MILLER: Ms. Gephardt?

MS. GEPHARDT: Yes.

CHAIRPERSON MILLER: Are you here for both cases? Justin's Caf, and Bread & Chocolate?

MS. GEPHARDT: Yes, I am.

CHAIRPERSON MILLER: Okay. Are parties here in both cases or just for Justin's Caf, at this point?

MS. GEPHARDT: I believe the party is not here for either of them.

CHAIRPERSON MILLER: Either of them.

MS. GEPHARDT: No, that's correct and we need the investigator.

CHAIRPERSON MILLER: Okay. I'm going to call Case Number 12-CMP-00558(a) and get on the record with this one because that case is scheduled for 10:00.

MS. GEPHARDT: Okay.

1 CHAIRPERSON MILLER: The other
2 one's not scheduled until 11:00. So.

3 MS. GEPHARDT: Correct.

4 CHAIRPERSON MILLER: Okay. So,
5 this is Justin's Caf, located at 1025 1st
6 Street, S.E., License Number 83690 in ANC 6D
7 and would you introduce yourself for the
8 record?

9 MS. GEPHARDT: Chrissy Gephardt on
10 behalf of the Office of the Attorney General.

11 CHAIRPERSON MILLER: Okay. And
12 anybody here from Justin's Caf,? Okay. It's
13 10:35 and the case is scheduled for 10:00.

14 Ms. Gephardt, do you have any
15 information with respect to the other party?

16 MS. GEPHARDT: I do not. I do
17 not.

18 CHAIRPERSON MILLER: Okay. Are
19 you prepared to go forward ex parte?

20 MS. GEPHARDT: Yes, I am prepared
21 to move forward.

22 CHAIRPERSON MILLER: Okay. I

1 would suggest that that's what we should do
2 not having heard any word from the Licensee.

3 MEMBER ALBERTI: I agree.

4 CHAIRPERSON MILLER: Okay. So,
5 whenever you're ready.

6 MS. GEPHARDT: Okay. I'll go
7 ahead and I'll make an opening statement
8 briefly.

9 CHAIRPERSON MILLER: Okay.

10 MS. GEPHARDT: All right. Good
11 morning, Board Members.

12 Today, the Government will present
13 the testimony of an ABRA Investigator who will
14 testify that on the evenings of September
15 14th, 2012 and September 15th, 2012 that
16 Justin's Caf, was in violation of their
17 voluntary agreement by the fact that more than
18 16 people were on the sidewalk caf, and
19 spilling out onto the surrounding grass and
20 sidewalk.

21 Large trash cans containing kegs
22 sat in the grassy area outside the sidewalk

1 caf,.

2 Additionally, you will hear that
3 Justin's Caf, was using picnic-style tables
4 those two nights also in violation of their
5 voluntary agreement.

6 Thank you.

7 The Government would now like to
8 call their first witness or their only witness
9 Investigator Felicia Martin.

10 CHAIRPERSON MILLER: Good morning.

11 INVESTIGATOR MARTIN: Good
12 morning, all.

13 Whereupon,

14 FELICIA MARTIN

15 was called as a witness by the Government
16 after having been first duly sworn, assumed
17 the witness stand and was examined and
18 testified as follows.

19 DIRECT EXAMINATION

20 MS. GEPHARDT: Good morning. Can
21 you please state your name and spell it for
22 the record?

1 INVESTIGATOR MARTIN: Felicia
2 Martin. Felicia F like Frank E-L-I-C-I-A
3 Martin M Mary A Adam R Robert T time I N Nora.

4 MS. GEPHARDT: All right. Thank
5 you.

6 Ms. Martin, where do you work?

7 INVESTIGATOR MARTIN: I work for
8 the Alcoholic Beverage Regulation
9 Administration.

10 MS. GEPHARDT: And what is your
11 job title?

12 INVESTIGATOR MARTIN: I am an
13 Investigator.

14 MS. GEPHARDT: And what are your
15 job responsibilities as an Investigator.

16 INVESTIGATOR MARTIN: I enforce
17 the alcohol regulations for the City.

18 MS. GEPHARDT: Okay. And how long
19 have you worked for ABRA?

20 INVESTIGATOR MARTIN:
21 Approximately six years.

22 MS. GEPHARDT: All right. And are

1 you familiar with a Licensee by the name of
2 Justin's Caf,?

3 INVESTIGATOR MARTIN: Yes.

4 MS. GEPHARDT: And did you have
5 the occasion to visit Justin's Caf, on Friday
6 September the 14th, 2012?

7 INVESTIGATOR MARTIN: Yes.

8 MS. GEPHARDT: And what was the
9 reason for your visit that night?

10 INVESTIGATOR MARTIN: I received
11 an email from a complainant advising me that
12 the establishment was operating beyond their
13 sidewalk caf, and permitting alcohol
14 consumption beyond their sidewalk caf,.

15 MS. GEPHARDT: And did the
16 complainant send you anything in their
17 complaint -- with their complaint?

18 INVESTIGATOR MARTIN: Yes, the
19 email was -- the first email was accompanied
20 by a photograph.

21 MS. GEPHARDT: Okay. The
22 Government would now like to show the witness

1 what's been marked as Government Exhibit
2 Number 1.

3 MEMBER ALBERTI: Do we have -- can
4 you get something from Ms. Gephardt?

5 MS. GEPHARDT: Ms. Martin, can you
6 tell us what is depicted in this photograph?

7 INVESTIGATOR MARTIN: Depicted on
8 this photograph is the front of Justin's Caf,
9 located at 1025 1st Street, S.E. and what you
10 see here is the sidewalk caf, which
11 encompasses the -- the sidewalk and a grassy
12 area where patrons are consuming what appears
13 to be alcoholic beverages and the sidewalk is
14 way beyond the approved 16 seats that are
15 allowed.

16 (Whereupon, Government Exhibit 1
17 was identified for the record.)

18 MS. GEPHARDT: So, the people in
19 this photograph are they outside of the
20 sidewalk caf,?

21 INVESTIGATOR MARTIN: Yes.

22 MS. GEPHARDT: Okay. And you said

1 how many seats are they allowed on the
2 sidewalk caf,?

3 INVESTIGATOR MARTIN: According to
4 a voluntary agreement that was entered into
5 between the establishment and the ANC, the
6 establishment is permitted to have 16 patrons
7 on the sidewalk caf,.

8 MS. GEPHARDT: Okay. And did you
9 take this photograph?

10 INVESTIGATOR MARTIN: No.

11 MS. GEPHARDT: Who took this
12 photograph?

13 INVESTIGATOR MARTIN: The
14 complainant who resides above the
15 establishment.

16 MS. GEPHARDT: Okay. And how did
17 you receive it again?

18 INVESTIGATOR MARTIN: Via email.

19 MS. GEPHARDT: And how do you know
20 when the photograph was taken? How do you
21 know it was taken that evening?

22 INVESTIGATOR MARTIN: The -- with

1 the email, it was time stamped and the
2 photograph was attached.

3 MS. GEPHARDT: Okay. The
4 Government would now like to show the witness
5 what's been marked Government Exhibit 2 and I
6 have exhibits for the Board.

7 CHAIRPERSON MILLER: You can
8 approached. I don't see anybody else to take
9 this.

10 MS. GEPHARDT: All right.

11 CHAIRPERSON MILLER: Thank you.
12 Okay.

13 MS. GEPHARDT: Ms. Martin, can you
14 tell us what Exhibit Number 2 is?

15 INVESTIGATOR MARTIN: Number 2 is
16 the email I received on September 14th from
17 the complainant.

18 (Whereupon, Government Exhibit 2
19 was identified for the record.)

20 MS. GEPHARDT: Okay. Court's
21 indulgence. At what time did the complainant
22 send you this photograph?

1 INVESTIGATOR MARTIN: It shows
2 here 7:08 p.m.

3 MS. GEPHARDT: Okay. And how can
4 you tell -- going back to Exhibit Number 1,
5 how can you tell that this picture was taken
6 near Justin's Caf,? How do you know that this
7 if Justin's Caf,?

8 INVESTIGATOR MARTIN: Because I've
9 visited the establishment on many occasions
10 prior to this complaint.

11 MS. GEPHARDT: Okay. And did the
12 resident send you other photographs?

13 INVESTIGATOR MARTIN: Yes,
14 approximately -- the actual first photograph
15 came in approximately 6:30 p.m. on September
16 14th and then approximately 40 minutes later,
17 the complainant sent an additional photograph
18 showing kegs outside the establishment.

19 MS. GEPHARDT: Okay. The
20 Government's going to now show the witness
21 what's been previously marked as Government
22 Exhibit 3.

1 MEMBER ALBERTI: Thanks.

2 CHAIRPERSON MILLER: Oh. Thank
3 you.

4 MS. GEPHARDT: And, Ms. Martin,
5 can you tell the Board what's depicted in
6 Government's Exhibit Number 3?

7 INVESTIGATOR MARTIN: The purpose
8 of this email is to continue to show the
9 occupancy beyond the sidewalk caf, and it also
10 depicts two -- two trash -- plastic trash
11 bins. What the complainant described as
12 encased the keg.

13 MS. GEPHARDT: Okay.

14 INVESTIGATOR MARTIN: Beer kegs.
15 (Whereupon, Government Exhibit 3
16 was identified for the record.)

17 MS. GEPHARDT: And are those trash
18 cans outside of the bounds of the sidewalk
19 caf, for Justin's Caf,?

20 INVESTIGATOR MARTIN: Yes, it is.

21 MS. GEPHARDT: All right. Based
22 on this information -- oh, excuse me. Let me

1 just ask a few other questions.

2 Did you take this photograph?

3 INVESTIGATOR MARTIN: No, I did
4 not.

5 MS. GEPHARDT: Okay. And who took
6 this photograph? Do you know?

7 INVESTIGATOR MARTIN: The same
8 complainant.

9 MS. GEPHARDT: Okay. And she sent
10 this to you how?

11 INVESTIGATOR MARTIN: Via email.

12 MS. GEPHARDT: And approximately
13 what time did she send you this photograph?

14 INVESTIGATOR MARTIN: The second
15 photograph came at 7:08 p.m.

16 MS. GEPHARDT: On what date again?

17 INVESTIGATOR MARTIN: On September
18 14th, 2013.

19 MS. GEPHARDT: Okay. Based on the
20 information that you received from the
21 complainant, what did you do next?

22 INVESTIGATOR MARTIN: I -- I

1 believed the -- the photos to be accurate.

2 So, I advised the complainant that I would
3 visit the establishment to confirm or deny the
4 allegations.

5 MS. GEPHARDT: And did you end up
6 going to Justin's Caf, that night?

7 INVESTIGATOR MARTIN: Yes.

8 MS. GEPHARDT: Approximately what
9 time did you arrive at Justin's Caf,?

10 INVESTIGATOR MARTIN: At
11 approximately 8:20 p.m. on the very same day
12 September 14th.

13 MS. GEPHARDT: Okay. And what did
14 you observe when you got there?

15 INVESTIGATOR MARTIN: When I
16 arrived, I did not see the crowd that was
17 depicted in either photograph. However, what
18 I did see were the trash bins which were
19 consistent with the photographs.

20 MS. GEPHARDT: Okay. The
21 Government is now going to show the witness
22 what's already been marked as Government

1 Exhibit 4.

2 MEMBER ALBERTI: Thanks.

3 MS. GEPHARDT: And what is
4 depicted in this photograph, Ms. Martin?

5 INVESTIGATOR MARTIN: Depicted in
6 this photograph are the two plastic trash cans
7 that match the same trash cans that were sent
8 to me by the complainant.

9 (Whereupon, Government Exhibit 4
10 was identified for the record.)

11 MS. GEPHARDT: And where were
12 those trash cans situated in relation to the
13 sidewalk caf,?

14 INVESTIGATOR MARTIN:
15 Approximately 50 feet from the sidewalk caf,.

16 MS. GEPHARDT: So, in other words,
17 they were not inside the sidewalk caf,. They
18 were outside of the sidewalk caf,.

19 INVESTIGATOR MARTIN: Correct.

20 MS. GEPHARDT: And did you look
21 inside of the trash cans?

22 INVESTIGATOR MARTIN: Yes, I -- I

1 did look inside the trash can and the contents
2 consisted of -- each trash can consisting of
3 ice. Which had -- some had melted and there
4 was one keg each in the trash cans.

5 MS. GEPHARDT: And it's --

6 MEMBER SILVERSTEIN: Ms. Gephardt,
7 you're on the microphone.

8 MS. GEPHARDT: Oh, apologize.

9 Thank you.

10 The Government would now like to
11 show the witness what's been marked as
12 Government Exhibit Number 5.

13 Ms. Martin, can you tell the Board
14 what's depicted in Government Exhibit Number
15 5?

16 INVESTIGATOR MARTIN: Here the
17 photographs for Exhibit 5 are showing the
18 content of the trash bins.

19 (Whereupon, Government Exhibit 5
20 was identified for the record.)

21 MS. GEPHARDT: And there are two
22 pages to this exhibit. Are they both -- is

1 one related to one trash can and the other to
2 the other?

3 INVESTIGATOR MARTIN: That is
4 correct.

5 MS. GEPHARDT: And in your
6 assessment, what are these within the trash
7 cans? What did you note them to be?

8 INVESTIGATOR MARTIN: I -- I
9 determined them to be kegs, beer kegs.

10 MS. GEPHARDT: Okay. Is that
11 based on your experience working in this
12 field?

13 INVESTIGATOR MARTIN: Yes.

14 MS. GEPHARDT: Great. Thank you.
15 And did you take this photograph?

16 INVESTIGATOR MARTIN: Yes, I did.

17 MS. GEPHARDT: Okay. And just to
18 go back for a minute, did you take the
19 photograph in Government's Exhibit 3? I mean,
20 excuse me, 4?

21 INVESTIGATOR MARTIN: Yes, I did.

22 MS. GEPHARDT: Okay. Thank you

1 and are these pictures a true and accurate
2 representation of what you saw that night?

3 INVESTIGATOR MARTIN: Yes, they
4 are.

5 MS. GEPHARDT: Okay. So, did you
6 see any of the patrons that were depicted in
7 the complainant's photograph? Did you see
8 them there that night?

9 INVESTIGATOR MARTIN: No, I
10 arrived approximately an hour and a half after
11 the photographs from the complainant were
12 taken, but I also learned that there was a
13 Bruce Springsteen concert at nearby Nationals
14 Park. So, that probably was the reason why I
15 -- I arrived there -- probably the reason why
16 the crowd was no longer there.

17 MS. GEPHARDT: Okay. How many
18 patrons were there on the sidewalk caf, when
19 you arrived approximately?

20 INVESTIGATOR MARTIN: There were
21 approximately -- my memory escapes me. I
22 would have to review my -- my report for the

1 accurate number when I arrived there the first
2 night.

3 MS. GEPHARDT: Okay. The
4 Government would like to show the witness the
5 incident report that was drafted by this
6 witness to refresh her memory.

7 Do you have a copy of the report?

8 INVESTIGATOR MARTIN: On the -- on
9 the chair.

10 MS. GEPHARDT: The Government has
11 not labeled that as an exhibit. I assume that
12 it was -- it's a Board exhibit. Is that
13 correct?

14 CHAIRPERSON MILLER: I'm sorry.
15 You're asking about the --

16 MS. GEPHARDT: The incident
17 report. Is that just automatically a Board
18 exhibit? It's integrated into the record?

19 CHAIRPERSON MILLER: The case
20 report is. Is that attached to the case
21 report? The incident report or are you
22 talking about -- sometimes an incident report

1 is police report.

2 MS. GEPHARDT: I apologize.

3 CHAIRPERSON MILLER: Okay. The
4 case report?

5 MS. GEPHARDT: The report that
6 Ms. Martin wrote about this -- the
7 investigative --

8 CHAIRPERSON MILLER: Right.
9 Exactly. Okay. That is part of our record.
10 Sometimes it's also identified as a Government
11 exhibit just to be --

12 MS. GEPHARDT: Okay.

13 CHAIRPERSON MILLER: -- you know,
14 sure, but --

15 MS. GEPHARDT: We can identify
16 that as Government --

17 CHAIRPERSON MILLER: Six?

18 MS. GEPHARDT: -- well, it's seven
19 because I already have a six.

20 CHAIRPERSON MILLER: Okay.

21 (Whereupon, Government Exhibit 7
22 was identified for the record.)

1 CHAIRPERSON MILLER: Have you
2 given us six?

3 MS. GEPHARDT: It's the
4 investigative report. I don't have copies of
5 it. I just assumed that --

6 CHAIRPERSON MILLER: No, I'm
7 sorry. I thought you said you already gave us
8 Number 6 because --

9 MS. GEPHARDT: Oh, no. No, I
10 haven't gotten there yet. I haven't gotten
11 there yet.

12 CHAIRPERSON MILLER: Okay.

13 MS. GEPHARDT: I just assumed that
14 the Board had copies of the investigative
15 report.

16 CHAIRPERSON MILLER: We do. We
17 do.

18 MS. GEPHARDT: Okay.

19 CHAIRPERSON MILLER: Yes.

20 MS. GEPHARDT: Ms. Martin, if you
21 review your report, does it state anywhere how
22 many patrons approximately were on the patio

1 when you arrived on the evening of September
2 14th, 2012?

3 INVESTIGATOR MARTIN: On September
4 14th, my report does not give the number of
5 patrons who were there on the night that I
6 arrived.

7 I had made contact with the ABC
8 Manager who I recognized from previous visits.
9 Mr. Joe Gonzalez and advised him of the
10 complaint that I had received.

11 MS. GEPHARDT: Okay. And what did
12 Mr. Gonzalez say in reply to your -- the fact
13 that there was a complaint against Justin's
14 Caf,?

15 INVESTIGATOR MARTIN: Mr. Gonzalez
16 agreed that the -- the establishment was over
17 their -- their capacity during the times that
18 he monitored the sidewalk for approximately a
19 half an hour. He said he was -- he was
20 monitoring the sidewalk caf, off and on from
21 6:30 until 7:00 p.m.

22 MS. GEPHARDT: Okay. And did he

1 say what the reason was for the over capacity
2 on the sidewalk caf, that night?

3 INVESTIGATOR MARTIN: Yes, Mr.
4 Gonzalez stated that they're the only game in
5 town pretty much. So, that's why they
6 received many patrons on the nights there are
7 -- on the days that there are events at the
8 local Nationals Park.

9 MS. GEPHARDT: Did he indicate
10 whether they institute any kind of safeguards
11 or procedures to make sure that the sidewalk
12 caf, only contains 16 patrons as allowed per
13 the voluntary agreement?

14 INVESTIGATOR MARTIN: Yes and no.
15 I reminded Mr. Gonzalez that the voluntary
16 agreement stated that the type of seating that
17 the establishment agreed to were four tables
18 consisting of four chairs with the maximum of
19 16 patrons.

20 Mr. Gonzalez went on to say -- I
21 -- I told Mr. Gonzalez that I spoke with
22 Justin, the owner, and he had assured me by

1 the end of summer the establishment would be
2 in compliance with the seating and that was in
3 July 2012 when I had the conversation with Mr.
4 Justin.

5 MS. GEPHARDT: Okay. And you
6 mentioned the seating capacity. Where is that
7 stated how many people are allowed on the
8 sidewalk caf,? Where does that come from?

9 INVESTIGATOR MARTIN: Their
10 voluntary agreement.

11 MS. GEPHARDT: Okay. The
12 Government would now like to show the witness
13 what's been marked as Government's Exhibit
14 Number 5. I mean six. Government's Exhibit
15 6.

16 CHAIRPERSON MILLER: Right.

17 MS. GEPHARDT: I apologize.

18 CHAIRPERSON MILLER: I just want
19 to make sure no one has come into the hearing
20 room who is affiliated with the Justin's Caf,
21 case. Okay. Sorry. Want to make sure. All
22 right.

1 MS. GEPHARDT: Ms. Martin, can you
2 tell the Board what Government's Exhibit
3 Number 6 is?

4 INVESTIGATOR MARTIN: Yes, this is
5 supplemental to the voluntary agreement. What
6 was entered into between the establishment and
7 the ANC 6.

8 (Whereupon, Government Exhibit 6
9 was identified for the record.)

10 MS. GEPHARDT: And when did this
11 supplement to the voluntary agreement become
12 effective?

13 INVESTIGATOR MARTIN: This
14 voluntary agreement became accepted on June
15 14th the year 2010.

16 MS. GEPHARDT: Okay. Thank you.
17 And where in this agreement does it state what
18 the capacity of the sidewalk caf, is suppose
19 to be?

20 INVESTIGATOR MARTIN: Of this
21 three-page document if you would turn to page
22 2, numeral 4, it states in relative --

1 relative parts the sidewalk caf, area will be
2 approximately 300 square feet. The four
3 tables of four seats each. A total of 16
4 seats with additional persons standing which
5 may include smokers who exit from the indoor
6 area for a smoking break.

7 MS. GEPHARDT: Okay. Thank you.
8 With regard to these seats, when you arrived
9 that evening on September the 14th, did you
10 notice if there was any kind of seating on the
11 patio?

12 INVESTIGATOR MARTIN: There was.

13 MS. GEPHARDT: And what exactly --
14 what kind of seating was it?

15 INVESTIGATOR MARTIN: There were
16 two picnic-styles -- picnic-style tables which
17 seats approximately four to six patrons each.

18 MS. GEPHARDT: And how many tables
19 were there?

20 INVESTIGATOR MARTIN: Two picnic-
21 style tables. The seating were benches.

22 MS. GEPHARDT: Okay. Okay.

1 INVESTIGATOR MARTIN: Instead of
2 individual seats.

3 MS. GEPHARDT: Okay. So, they
4 were not individual tables -- four individual
5 tables containing four seats each?

6 INVESTIGATOR MARTIN: Correct.

7 MS. GEPHARDT: Thank you. Court's
8 indulgence. In response to what you observed
9 on September the 14th, did you have occasion
10 to go back to Justin's Caf, on September the
11 15th?

12 INVESTIGATOR MARTIN: Yes.

13 MS. GEPHARDT: And why did you
14 return the following night?

15 INVESTIGATOR MARTIN: I thought it
16 would be best to monitor the establishment
17 once the concert was over at Nationals Park.

18 MS. GEPHARDT: So, the concert on
19 Saturday and Sunday or excuse me, Friday and
20 Saturday?

21 INVESTIGATOR MARTIN: It was
22 actually Saturday night into Sunday.

1 MS. GEPHARDT: Okay. And
2 approximately what time did you arrive at
3 Justin's Caf, on the 15th?

4 INVESTIGATOR MARTIN:
5 Approximately 11:00 p.m.

6 MS. GEPHARDT: Okay. And when you
7 arrived, what did you observed?

8 INVESTIGATOR MARTIN: I observed
9 the picnic-style tables and benches still in
10 use. There were 16 patrons seated and there
11 were five nonsmoking individuals standing on
12 the sidewalk caf,.

13 MS. GEPHARDT: Based on their
14 voluntary agreement, how many patrons were in
15 excess of the 16 patrons allowed on the patio?

16 INVESTIGATOR MARTIN: Five.

17 MS. GEPHARDT: Okay. Did you stay
18 at Justin's Caf,? Did you go inside or did
19 you talk to anybody that night?

20 INVESTIGATOR MARTIN: No.

21 MS. GEPHARDT: Okay.

22 INVESTIGATOR MARTIN: When I

1 returned -- correction. When I left, prior to
2 leaving approximately an hour and a half
3 later, the sidewalk caf,'s occupancy swelled
4 to approximately 21. There were -- there were
5 seven patrons standing with an extra four
6 patrons seated besides the approved number of
7 16.

8 MS. GEPHARDT: And did you notice
9 did all the patrons have alcoholic beverages
10 in their hands?

11 INVESTIGATOR MARTIN: No, they did
12 not.

13 MS. GEPHARDT: Okay. The people
14 seated, did they alcoholic beverages.

15 INVESTIGATOR MARTIN: Yes, they
16 did.

17 MS. GEPHARDT: Okay. And did you
18 notify anyone from Justin's Caf, about the
19 violations that evening?

20 INVESTIGATOR MARTIN: No, I did
21 not.

22 MS. GEPHARDT: All right. Thank

1 you very much. The Government is finished
2 interviewing this witness.

3 CHAIRPERSON MILLER: Okay. Are
4 there Board questions? Yes, Mr. Alberti.

5 MEMBER ALBERTI: I have just a few
6 questions.

7 Investigator, you received the
8 pictures in Government's Exhibits 1 and 3.
9 You received the email on September 14th. Is
10 that correct? Two thousand twelve.

11 INVESTIGATOR MARTIN: That's
12 correct, sir.

13 MEMBER ALBERTI: Were either of
14 these pictures date stamped?

15 INVESTIGATOR MARTIN: No, they
16 accompanied the email that was date stamped.

17 MEMBER ALBERTI: But, there was no
18 date stamp on the pictures?

19 INVESTIGATOR MARTIN: That's
20 correct.

21 MEMBER ALBERTI: Okay. All right.
22 When you arrived -- what did you say you

1 arrived at Justin's on the 14th?

2 INVESTIGATOR MARTIN:

3 Approximately 8:30 -- 8:20.

4 MEMBER ALBERTI: Okay. And you
5 said there was a concert in the neighborhood
6 that evening.

7 INVESTIGATOR MARTIN: Yes.

8 MEMBER ALBERTI: Where would that
9 have taken place?

10 INVESTIGATOR MARTIN: At the
11 Nationals Park.

12 MEMBER ALBERTI: And approximately
13 how far is that from Justin's?

14 INVESTIGATOR MARTIN:
15 Approximately two to three blocks.

16 MEMBER ALBERTI: Okay. When you
17 arrived, were you able to discern whether or
18 not there was an event going on at the
19 stadium?

20 INVESTIGATOR MARTIN: Yes.

21 MEMBER ALBERTI: Okay. Did it
22 look like a large event?

1 INVESTIGATOR MARTIN: Yes, it was
2 Bruce Springsteen.

3 MEMBER ALBERTI: Okay.

4 MEMBER SILVERSTEIN: Yes, that
5 qualified.

6 MEMBER ALBERTI: All right. Okay.
7 Are you familiar with the sidewalk caf, at
8 Justin's? The physical layout of the sidewalk
9 caf, at Justin's Caf,?

10 INVESTIGATOR MARTIN: Yes.

11 MEMBER ALBERTI: And I noticed in
12 these pictures that -- okay. Is he licensed
13 -- is that sidewalk caf, licensed to extend
14 onto -- if you look at Exhibit 3. Okay.

15 INVESTIGATOR MARTIN: Yes.

16 MEMBER ALBERTI: There's a
17 sidewalk there. I mean it's very obvious that
18 there is -- there's a grassy area. I see a
19 picnic table on the lower part. I see a
20 sidewalk. Is he licensed at all -- is his
21 sidewalk caf, licensed at all to extend onto
22 what I'm calling the sidewalk here? That

1 white area here. It's obviously a sidewalk.

2 INVESTIGATOR MARTIN: No, sir.

3 MEMBER ALBERTI: Would the
4 boundaries of his sidewalk caf, end before?
5 Okay. They don't -- okay. Would they end
6 before you get to that sidewalk if you were
7 leaving his establishment?

8 INVESTIGATOR MARTIN: Yes, sir.

9 MEMBER ALBERTI: Okay. So, the
10 picture -- okay. So, it looks -- am I seeing
11 right that in pictures one and three there are
12 people standing on that sidewalk which would
13 be public space not licensed by Justin's Caf,?
14 Am I correct --

15 INVESTIGATOR MARTIN: Yes, sir.

16 MEMBER ALBERTI: -- in your
17 assessment?

18 INVESTIGATOR MARTIN: Yes, sir.

19 MEMBER ALBERTI: Okay. Thank you.
20 All right. The kegs. Is there anyway -- is
21 there anyway of identifying where these kegs
22 came from in terms of where they were

1 purchased?

2 INVESTIGATOR MARTIN: Yes, if --
3 if I were to take them out, there should be an
4 adhesive document affixed to the kegs advising
5 the person where the kegs were purchased.

6 MEMBER ALBERTI: Okay. So, they
7 -- but, that would be not visible in these
8 pictures?

9 INVESTIGATOR MARTIN: Correct.

10 MEMBER ALBERTI: Okay. So, did
11 you take these kegs out to examine that at
12 all?

13 INVESTIGATOR MARTIN: No, sir.

14 MEMBER ALBERTI: Okay. Did you
15 ask about the kegs when you spoke to the
16 manager that evening?

17 INVESTIGATOR MARTIN: Yes. Yes,
18 sir.

19 MEMBER ALBERTI: And can you tell
20 me what you learned in that conversation about
21 the kegs?

22 INVESTIGATOR MARTIN: Yes, Mr.

1 Gonzalez stated that they wanted to make the
2 beer consumption more accessible to -- to
3 their patrons.

4 MEMBER ALBERTI: Meaning what?

5 INVESTIGATOR MARTIN: I understood
6 that so they could serve them from the
7 sidewalk.

8 MEMBER ALBERTI: So, was it your
9 understanding that Mr. Gonzalez was
10 acknowledging that those kegs that you saw on
11 the grassy area were purchased by Justin's
12 Caf,?

13 INVESTIGATOR MARTIN: Yes.

14 MEMBER ALBERTI: I have no further
15 questions.

16 CHAIRPERSON MILLER: Other
17 questions? Okay. I just have a few.

18 One is with respect to the table
19 situation. Are you saying that they violated
20 the settlement agreement because they had,
21 number one, four tables -- they didn't have
22 four tables with four seats each. They had

1 two picnic tables instead of the four tables.

2 INVESTIGATOR MARTIN: Yes.

3 CHAIRPERSON MILLER: Okay. And
4 regardless of how many people sat at the
5 picnic table -- I think in one of your
6 explanations you it sounded like there were 12
7 people at the picnic table.

8 INVESTIGATOR MARTIN: The picnic
9 tables could hold up -- one picnic table could
10 hold up to eight -- eight to ten at one time.

11 CHAIRPERSON MILLER: And so, did
12 you see more than 16 at the two picnic tables
13 together?

14 INVESTIGATOR MARTIN: No, the
15 picnic-style tables were consistent with the
16 16 in number.

17 CHAIRPERSON MILLER: Okay. So,
18 you're saying that they violated the agreement
19 though because the agreement says four tables
20 of four?

21 INVESTIGATOR MARTIN: The style of
22 tables. Yes.

1 CHAIRPERSON MILLER: Okay. And
2 has any signatory to the agreement complained
3 to you about the tables?

4 INVESTIGATOR MARTIN: There wasn't
5 a complaint. Justin Ross advised me that he
6 was very much aware of the agreement of having
7 the four tables and four -- which consists of
8 four chairs and that he had made an order to
9 be in compliance with the voluntary agreement
10 sometime in June.

11 My conversation -- June of 2012
12 and my conversation with Mr. Ross regarding
13 the specific tables that he agreed to was in
14 July 2012 and he stated by the summer's end
15 those type of tables would arrive and be -- he
16 would then be in compliance.

17 CHAIRPERSON MILLER: Right. I
18 hear you on that. I'm just curious whether
19 any of the signatories to the settlement
20 agreement were concerned about the tables

21 INVESTIGATOR MARTIN: Court's
22 indulgence please. The complaints that I

1 received did not come from any of the
2 signatories on the voluntary agreement from
3 the ANC.

4 CHAIRPERSON MILLER: The
5 complaints that you received came -- in this
6 case, didn't come from the signatories of the
7 voluntary agreement?

8 INVESTIGATOR MARTIN: That is
9 correct.

10 CHAIRPERSON MILLER: Okay. And
11 were they -- are they anonymous or are they
12 just blacked out on some of our documents?

13 INVESTIGATOR MARTIN: The -- the
14 complainant was not anonymous to me. She may
15 have her identity known. However, moving
16 forward with the investigation, she asked that
17 she be not identified.

18 CHAIRPERSON MILLER: Okay. I have
19 another question with respect to paragraph 4
20 on the voluntary agreement or settlement
21 agreement. Why are you saying that if there
22 were four people standing they violated that

1 paragraph? Because I'm looking at the words.
2 It says "A total of 16 seats, with additional
3 persons standing" and it doesn't define a
4 number of additional persons.

5 INVESTIGATOR MARTIN: Yes, that I
6 do see. I -- I was going to leave that up to
7 with an interpretation of the Board. I don't
8 -- I don't know the spirit of the law or -- or
9 this language at the time the agreement was
10 entered into.

11 CHAIRPERSON MILLER: Okay. And
12 it's my recollection that the Board in the
13 past has approved like special permits for
14 Justin's to serve outside of its area. You
15 know, like a one-day temporary license or one-
16 day substantial change on a certain event. In
17 which case, what we're seeing in the photos
18 could have been authorized.

19 Do you recall? We once had a
20 fact-finding hearing. You were here and I
21 don't remember the specific date, but it was
22 -- I mean normally if you look at like Exhibit

1 Number 3 and I think Exhibit Number 1, you
2 would say that, and I think you have said,
3 that they don't have authority to be serving
4 alcoholic beverages beyond their sidewalk
5 caf,. But, my question is I thought that --
6 are they on -- if they get a special permit on
7 certain events. Didn't that happen in the
8 past?

9 INVESTIGATOR MARTIN: I was not
10 advised through Mr. Gonzalez that a special
11 permit was asked for this event.

12 That is correct. I was present
13 when they had a special one-day permit
14 hearing, but the activity that was going on in
15 these photographs is not -- is not the same
16 language as Mr. Ross represented to the Board
17 such as the police department being present,
18 porta potties being present, et cetera.

19 So, I -- I believe these pictures
20 to reflect the establishment without the
21 proper permit. Just their regular --

22 CHAIRPERSON MILLER: Okay. Did

1 you check the records to see if they had been
2 given a special permit?

3 INVESTIGATOR MARTIN: No. No,
4 ma'am, I did not.

5 CHAIRPERSON MILLER: Okay. All
6 right. I don't have any other questions.
7 Anybody else?

8 MEMBER ALBERTI: I do.

9 CHAIRPERSON MILLER: Okay. Mr.
10 Alberti.

11 MEMBER ALBERTI: A very quick
12 follow-up to Ms. Miller's question.

13 Investigator, would you take a
14 look at your report please. Page 2 of your
15 report.

16 INVESTIGATOR MARTIN: Yes, sir.

17 MEMBER ALBERTI: On September
18 15th, how many patrons did you see seated that
19 evening?

20 INVESTIGATOR MARTIN: Sixteen.

21 MEMBER ALBERTI: You saw 16
22 seated?

1 INVESTIGATOR MARTIN: Yes.

2 MEMBER ALBERTI: Okay. Let me
3 see. But, your last sentence there you seem
4 to have additional information. The last
5 sentence in the second paragraph from the end
6 you seem to have additional information there
7 in your report. Is that correct or incorrect?

8 INVESTIGATOR MARTIN: That's
9 correct. I was -- the 16 seated that I just
10 spoke was when I arrived at 11:30.

11 MEMBER ALBERTI: And when you left
12 at 1:00 a.m.?

13 INVESTIGATOR MARTIN: When I left
14 at 1:00, there were 21 patrons seated.

15 MEMBER ALBERTI: Okay. Thank you.

16 INVESTIGATOR MARTIN: You're
17 welcome, sir.

18 CHAIRPERSON MILLER: Anything else
19 from Board Members? Okay. Do you have any
20 questions based on Board questions?

21 MS. GEPHARDT: Just one question.

22 REDIRECT EXAMINATION

1 MS. GEPHARDT: Ms. Martin, are you
2 familiar with sort of the procedures or
3 protocol for when a licensee has special
4 events?

5 INVESTIGATOR MARTIN: Yes.

6 MS. GEPHARDT: What are some of
7 the things that you would see if there was a
8 special event going on?

9 INVESTIGATOR MARTIN: Posted with
10 the establishment's issued license, they
11 should also have any special liquor license
12 that was issued through our office and that --
13 that was not presented to me.

14 MS. GEPHARDT: All right. And how
15 about other signs that this would be a special
16 event that was approved by the Board?

17 INVESTIGATOR MARTIN: Our
18 Enforcement Division would receive notice of
19 any events going on for the weekend and to my
20 recollection, we did not receive anything as
21 relates to Justin's Caf,?

22 MS. GEPHARDT: And did you see

1 other types of activities such as porta
2 potties, police, anything like that?

3 INVESTIGATOR MARTIN: No.

4 MS. GEPHARDT: Okay. And it was
5 your assessment as an investigator that there
6 was no special event going on?

7 INVESTIGATOR MARTIN: That's
8 correct.

9 MS. GEPHARDT: Thank you.

10 The Government would also like to
11 just, I forgot, to admit into evidence
12 Government's Exhibits 1 through 7.

13 CHAIRPERSON MILLER: What is --

14 MS. GEPHARDT: I request that
15 Board accept those as Government's Exhibits.

16 CHAIRPERSON MILLER: What was
17 Exhibit Number 6?

18 MS. GEPHARDT: Six is the
19 voluntary -- supplemental voluntary agreement.

20 CHAIRPERSON MILLER: Okay.

21 MS. GEPHARDT: And 7 is the
22 investigative report.

1 CHAIRPERSON MILLER: Right. Okay.
2 All right. The Board will accept Exhibits 1
3 through 7 into the record.

4 (Whereupon, Government Exhibits 1
5 through 7 previously identified
6 were received into evidence.)

7 MS. GEPHARDT: Okay.

8 CHAIRPERSON MILLER: Okay. Okay.

9 MS. GEPHARDT: All right. I think
10 you may be excused.

11 CHAIRPERSON MILLER: Yes, if you
12 don't have any further questions. Thank you,
13 Ms. Martin.

14 INVESTIGATOR MARTIN: Okay.
15 (Whereupon, the witness was
16 excused.)

17 MS. GEPHARDT: May I make a
18 closing statement?

19 CHAIRPERSON MILLER: Certainly.

20 MS. GEPHARDT: Okay. Thank you.
21 Ladies and gentlemen of the Board, you have
22 heard today here through the testimony of

1 Investigator Felicia Martin that on September
2 the 14th, 2012, she responded to Justin's Caf,
3 due to a complaint from a nearby resident.

4 The resident sent her photographs
5 that depicted a swam of patrons mingling
6 outside well outside the area of the sidewalk
7 caf,.

8 When the investigator arrived, she
9 saw two large trash cans filled with ice and
10 each trash can contained a keg. The kegs were
11 located in a grassy area approximately 50 feet
12 away from the sidewalk caf,.

13 When she approached the caf,, she
14 spoke to Mr. Gonzalez, the ABC Manager, who
15 stated that from approximately 6:30 to 7:00
16 p.m. he had monitored the sidewalk off and on
17 and admitted that the establishment was over
18 their approved sidewalk caf, occupancy by
19 about 30 patrons.

20 The investigator also noticed that
21 picnic-style tables were in use on the
22 sidewalk caf, in violation of their voluntary

1 agreement.

2 When Ms. Martin returned the next
3 evening on September 15th at approximately
4 11:30 p.m., the picnic-style tables were still
5 in use. She noticed that there were
6 approximately 16 people I believe or 21 people
7 sitting on the tables that night and
8 additional people standing.

9 The sidewalk caf, had exceeded its
10 capacity. Ms. Martin testified that Justin's
11 Caf, has a supplemental voluntary agreement
12 dated June 14th, 2010 which specifically
13 states "The sidewalk caf, area will be
14 approximately 300 square feet with four tables
15 of four seats each in a total up to 16 seats
16 with additional persons standing which may
17 include smokers who exited from the indoor
18 area for a smoking break."

19 In this situation, it could be
20 argued that if you have 16 seats and then you
21 have other people standing that that would be
22 permissible according to the voluntary

1 agreement because it is allowed for additional
2 persons to be standing. It seems in the
3 context of the voluntary agreement that that
4 provision was intended to include people who
5 are standing for smoking breaks as it actually
6 states in the agreement. Certainly, it does
7 not imply that you can have 30 extra people
8 mingling on the patio and in this case outside
9 of the bounds of the sidewalk caf,.

10 So, the Government would argue
11 that the Licensee is in violation of that
12 provision.

13 Here we also have the admission of
14 the ABC Manager that yes, indeed, they
15 exceeded the bounds, exceeded the capacity on
16 the sidewalk caf,. So, we have an admission.

17 Finally, we know that this is not
18 a special event by the testimony of Ms. Martin
19 who stated she's familiar with special events.
20 You have to have a special permit. If you go
21 to the ABC Manager and you ask do you have
22 that permit, typically, he would be able to

1 provide it. In this case, he was not able to
2 provide anything.

3 And it was also stated through the
4 testimony of Ms. Martin that she's familiar
5 with what is typically seen during a special
6 event and that includes porta potties and a
7 police presence and she did not see that.

8 So, it was in her opinion that
9 this was not a special event and, therefore,
10 the capacity situation on the sidewalk caf,
11 was a violation.

12 The Government here has proven
13 that the Licensee is guilty of increasing the
14 occupancy of their sidewalk caf, without prior
15 Board approval and they violated the terms of
16 their voluntary agreement dated June 14th,
17 2010. Specifically, they used picnic-style
18 tables which allowed for more than four person
19 per table.

20 Thank you.

21 MS. GEPHARDT: Thank you. I just
22 want to ask you one question or make a

1 comment.

2 I mean I have a problem
3 considering Mr. Gonzalez' statements as an
4 admission given that it looks more like
5 hearsay to me and it's in Ms. Martin's report
6 as to what she says he said.

7 MS. GEPHARDT: Well, Ms. Martin
8 heard Mr. Gonzalez say that to her and given
9 that this is an administrative proceeding,
10 hearsay is allowed given that she was the one
11 that heard it. So, anyhow the Government is
12 relying on that information.

13 CHAIRPERSON MILLER: Okay. My
14 point was more towards characterizing it as an
15 admission. But, yes.

16 MS. GEPHARDT: Oh, I see what
17 you're saying. I mean that was my
18 characterization in my closing statement. I
19 assume that -- I mean he basically told Ms.
20 Martin yes, we've exceeded capacity. He
21 outright said it. So, being I guess -- while
22 he didn't say I'm admitting, I mean that to me

1 is an admission.

2 CHAIRPERSON MILLER: Okay. I'm
3 going to close the record now at this point
4 and --

5 MS. GEPHARDT: Oh, I apologize.

6 CHAIRPERSON MILLER: Do you have
7 something else for the record?

8 MS. GEPHARDT: I'd like to argue
9 penalty in this case.

10 CHAIRPERSON MILLER: Okay.

11 MS. GEPHARDT: The Government
12 would argue that the penalty here should be a
13 fine of \$2,750 and that would include a \$2,000
14 fine for charge 1 and for charge 2, a fine of
15 \$750 for a total fine of \$2,750.

16 CHAIRPERSON MILLER: Okay. Do you
17 want to give any rationale with that?

18 MS. GEPHARDT: Just that this
19 falls within the guidelines, the statutory
20 guidelines for this offense for this Licensee
21 and so, therefore, we find it to be
22 appropriate.

1 CHAIRPERSON MILLER: Okay. All
2 right. So, now, I'll close the record.

3 MS. GEPHARDT: Okay. Yes.

4 CHAIRPERSON MILLER: All right.
5 And do you want to file proposed findings of
6 facts and conclusions of law?

7 MS. GEPHARDT: No. I'm sorry. I
8 didn't even -- I just -- well, it just glazed
9 over me. No.

10 CHAIRPERSON MILLER: Okay. All
11 right. Then that completes this hearing and
12 we will just take a vote on deliberating on
13 this in closed session.

14 As Chairperson of the Alcoholic
15 Beverage Control Board for the District of
16 Columbia and in accordance with Section 405 of
17 the Open Meetings Amendment Act of 2010, I
18 move that the Board hold a closed meeting for
19 the purpose of seeking legal advice from our
20 counsel on Case Number 12-CMP-00558(a),
21 Justin's Caf, per Section 405(b)(4) of the
22 Open Meetings Amendment Act of 2010 and

1 deliberating upon this case for the reasons
2 cited in Section 405(b)(13) of the Open
3 Meetings Amendment Act of 2010.

4 Is there a second?

5 MEMBER SILVERSTEIN: Second.

6 CHAIRPERSON MILLER: Mr.

7 Silverstein seconded the motion. I'll now
8 take a roll call vote. Mr. Brooks?

9 MEMBER BROOKS: I agree.

10 CHAIRPERSON MILLER: Mr. Alberti?

11 MEMBER ALBERTI: I agree.

12 CHAIRPERSON MILLER: Ms. Miller
13 agrees. Mr. Silverstein?

14 MEMBER SILVERSTEIN: I agree.

15 CHAIRPERSON MILLER: Then the vote
16 is 4-0-0 and I hereby give notice that the ABC
17 Board will hold a closed meeting in the ABC
18 Board conference room most likely today and
19 will issue an order within 90 days.

20 MS. GEPHARDT: Thank you.

21 (Whereupon, at 11:23 a.m., the
22 hearing was adjourned.)

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