

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
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Jasper Ventures, LLC :
t/a Capitale (Formerly K :
Street) : Show
1301 K Street, N.W. : Cause
Retailer CN : Hearing
License No. 72225 :
ANC 2F :
Trade Name Change Without :
Board Approval :
Case No. 12-251-00369 :
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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:

MICHAEL STERN, OAG

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

2:55 p.m.

CHAIRPERSON MILLER: Are the parties here for Capitale? That's scheduled for -- they're in the hallway? Okay. Maybe someone can get them.

MEMBER ALBERTI: I'm going to take a short break.

CHAIRPERSON MILLER: Okay. Is everybody here on Capitale?

MR. SUNG: Yes.

CHAIRPERSON MILLER: All right. Then I'm going to call the case. It's Case Number 12-251-00369. It's for Capitale located at 1301 K Street, N.W., License Number 72225 in ANC 2F.

Let the parties identify themselves for the record please.

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

MR. O'BRIEN: Stephen O'Brien for

1 the Licensee. I'm accompanied by Ki Jun Sung
2 who is a managing member of the License.
3 That's K-I. A second word J-I-N -- J-U-N.
4 I'm sorry. J-U-N. The third is S-U-N-G.
5 Third word. Ki Jun Sung.

6 CHAIRPERSON MILLER: Okay. This
7 is a show cause hearing. Are there any
8 preliminary matters?

9 MR. STERN: There are.

10 CHAIRPERSON MILLER: Okay.

11 MR. STERN: The parties have
12 reached a stipulation of the facts which will
13 alleviate the need for a trial.

14 The parties agree that on October
15 8th, 2012 ABRA Investigator Kofi Apraku,
16 excuse me, visited the establishment. At that
17 time, the establishment was using the trade
18 name Capitale. That a search of the records
19 revealed that at that time that name had not
20 been approved for use by the Board. So
21 stipulated.

22 CHAIRPERSON MILLER: Okay.

1 MR. STERN: What remains of the
2 case is the potential penalty that the Board
3 may impose and there the parties have a
4 disagreement.

5 CHAIRPERSON MILLER: Okay.

6 MR. STERN: The Government
7 believes that a fine of \$500 is appropriate
8 for this case. I don't know the Respondent's
9 position on that.

10 What really complicates this --

11 MR. O'BRIEN: We agree as to this
12 particular charge a \$500 penalty would be
13 appropriate. We're in agreement on that also.

14 CHAIRPERSON MILLER: Okay.

15 MR. STERN: The complicating
16 factor here is that the Respondent has a prior
17 record with days that were suspended that have
18 not yet been imposed and the Government would
19 be asking that those days be imposed. That
20 would be for Case Number 10-CMP-714 which was
21 decided on 6/13/2012. There were five days
22 suspended that the Government would ask to be

1 imposed and in Case Number 10-CMP-540 which
2 was a final order on April 25th, 2012, the
3 Government would ask that four days which had
4 been stayed would be imposed at this time.
5 Totaling nine days.

6 CHAIRPERSON MILLER: Are you
7 finished or are you --

8 MR. STERN: That's it. Yes.

9 CHAIRPERSON MILLER: That's it.
10 Okay. Mr. O'Brien.

11 MR. O'BRIEN: Thank you. The date
12 of this offense as we've stipulated was
13 October 8th, 2012.

14 The two cases referred to by
15 counsel originated in 2010. However, were not
16 finally adjudicated -- and going to Number
17 714, was not finally adjudicated until June
18 13, 2012 which is about four months before the
19 date of the incident offense.

20 The other case 540 is far more
21 convoluted. This went to the Court of Appeals
22 and came back for reconsideration here on a

1 couple of occasions. But, the best that even
2 the Respondent can say in this case is that a
3 four-day suspension was imposed on October 12,
4 2011. Three hundred and sixty-one days before
5 the October 8th, 2012 date of the incident
6 offense.

7 So, if the Board is going to
8 rigidly and mechanically say that there's a
9 new infraction, that any what I call back-up
10 time from previous offenses must be served,
11 then the Government's position is correct.
12 But, I suggest to the Board that it is not
13 mandatory that stayed time be served in the
14 event of any infraction.

15 So, what we're looking at here now
16 is a secondary offense, failure to use a Board
17 approved trade name or I should say failure to
18 get Board approval to use a trade name. A
19 secondary offense for which the parties agree
20 a \$500 fine would be appropriate resolution.
21 Of course, it's always for the Board to decide
22 what's appropriate.

1 The parties agree that this is not
2 a particular serious offense in the range of
3 offenses we have and an analogy occurs to me.

4 Let us say one imprisoned for a
5 serious criminal offense and then is paroled
6 and placed on probation based on good behavior
7 and let us say that individual during the
8 period of parole or probation commits a
9 relatively minor offense. For instance,
10 failure to come to a full stop at a stop sign.

11 Now there, the probation or parole
12 department can say to the court he's on
13 probation or parole contingent upon not
14 breaking the law. He broke the law. He
15 belongs back in jail.

16 But, the court can also say and
17 the court has the discretion and I'm now
18 suggesting the Board has the discretion to say
19 that re-imprisonment for that is
20 disproportionate to the relatively minor
21 offense at hand and the court can exercise
22 it's discretion in not revoking parole or

1 probation.

2 Now, I will throw in that what
3 does happen in those cases not infrequently is
4 the court says well, I'm not going to revoke
5 parole or probation, but because I'm concerned
6 here, I am going to extend further the period
7 of parole or probation and by analogy, I'm
8 suggesting that the Board could say well,
9 we're not going to invoke the stayed days now.
10 But, we are going to extend the period of the
11 stay for a reasonable additional period of
12 time.

13 And I suggest, I guess in
14 summation, that nine days is pretty stiff for
15 a relatively minor secondary offense and I
16 think the Board again has the discretion to do
17 that. I certainly don't see the statute where
18 the Board can't do it and I'd ask the Board to
19 exercise its discretion in that regard in
20 favor of the Respondent here.

21 CHAIRPERSON MILLER: Mr. Stern, do
22 you have any other --

1 MR. STERN: Well, I would just
2 note on behalf of the Government I don't
3 disagree with the legal analysis. I believe
4 that the Board does have the discretion
5 whether to impose the entire amount of the
6 back-up time.

7 However, I believe that the Board
8 should impose it in this instance not
9 necessarily just because of the nature of the
10 offense, but because of the long, long history
11 the Respondent has with many offenses and
12 because it goes to the integrity of the
13 Board's process that when the Board says if
14 you commit another violation you will be
15 suspended, that the Board follows through with
16 that and imposes the suspension if another
17 violation is committed.

18 So, for that reason, I don't
19 disagree with the entire legal analysis that
20 the Respondent gave. I think it is within the
21 discretion of the Board to decide whether to
22 impose the time or not.

1 On the other hand, it's still the
2 Government's position that those nine days
3 should be imposed.

4 CHAIRPERSON MILLER: Okay.

5 MR. O'BRIEN: May I make one
6 observation?

7 For what little it may be worth in
8 context, the Licensee subsequently procured
9 Board approval for the official trade name.

10 CHAIRPERSON MILLER: Okay. I have
11 a question about that and, you know, I don't
12 want to get to into the case, but you're
13 asking us to consider not imposing those days
14 at least for now based on the nature of the
15 offense or how minor it is.

16 Can you give me any more
17 information about how minor this offense is?
18 The nature of this -- why there wasn't a trade
19 name change done in time or what --

20 MR. O'BRIEN: It's explained to me
21 that an employee was suppose to take care of
22 it, a former employee and that didn't happen.

1 I won't claim that the Licensee
2 was not aware of the need to accomplish it.

3 CHAIRPERSON MILLER: Um-hum.

4 MR. O'BRIEN: Approval.

5 CHAIRPERSON MILLER: Okay.

6 MR. O'BRIEN: We do know that. It
7 just didn't get done. The blame has been
8 placed with a former employee, but I don't
9 have any further details on that.

10 The reason I say it's minor is,
11 first of all, it's a secondary offense.

12 CHAIRPERSON MILLER: Um-hum.
13 Okay.

14 MR. O'BRIEN: A second-tier
15 offense and second, I think the agreement of
16 the Government and the Respondent as to what
17 would be an appropriate penalty for the
18 offense standing alone evidences a belief
19 somewhere out here that this is not the most
20 serious case to come before the Board. This
21 meaning the instant offense.

22 Of course, the perspective

1 consequences, the penalty urged by the
2 Government is very, very serious.

3 CHAIRPERSON MILLER: I have one
4 other question on that point because I would
5 consider it in evaluating a penalty. In
6 general, how long was he operating with a
7 changed trade name without, you know, having
8 gotten it approved?

9 MR. O'BRIEN: I have to ask him.
10 I don't know the answer.

11 CHAIRPERSON MILLER: Okay.

12 MR. SUNG: Yes, we started using
13 it in September. Cleared it up in I believe
14 within weeks of getting this notice.

15 MR. O'BRIEN: The client tells me
16 that they started using the name sometime in
17 September. Which would be a month perhaps a
18 little more than a month before October 8th
19 and that it was -- the matter was cleared up
20 shortly thereafter.

21 CHAIRPERSON MILLER: Okay. So,
22 about a month.

1 I have one other question. I ask
2 it once in awhile, but when we're talking
3 about stayed days, do have a monetary figure
4 you would put on what a stayed day costs the
5 Licensee?

6 MR. O'BRIEN: For clarity, for my
7 understanding, can I rephrase the question?

8 CHAIRPERSON MILLER: Yes. Um-hum.

9 MR. O'BRIEN: A stayed day doesn't
10 cost the --

11 CHAIRPERSON MILLER: I'm sorry. A
12 suspended day.

13 MR. O'BRIEN: If anything, you
14 mean a served day.

15 CHAIRPERSON MILLER: A served day.
16 A suspended day. Sorry. Thank you.

17 MR. O'BRIEN: I'm told depending
18 on the day of the week, it can range from
19 2,000 to 3,000 on a slow night to as much as
20 \$10,000 on a busy night and that doesn't take
21 into account the lost sales tax revenues to
22 the District during that period. It doesn't

1 take into the lost wages of the employees who
2 can't work and the payroll taxes to the
3 District on those wages.

4 CHAIRPERSON MILLER: Right. Okay.
5 I mean because we often talk about these days
6 and I think it's important once in awhile to
7 -- if there are numbers to consider.

8 MR. O'BRIEN: Thank you. It's a
9 very fair question.

10 CHAIRPERSON MILLER: Okay. Any
11 other questions by Board Members? Okay.

12 So, I think you both have fully
13 addressed this issue and so, I think I can
14 close the record on this case unless there's
15 anything else to --

16 MR. O'BRIEN: No, and I'd like to
17 thank the Government's counsel for his fair
18 analysis and concession that the Board does
19 have the discretion. Notwithstanding his
20 belief it should not be exercised in this
21 case. It would have been easy for him to say
22 you can't do it. But, he didn't say that. He

1 was very objective, very --

2 CHAIRPERSON MILLER: Okay. So,
3 don't suppose you're going to file proposed
4 findings of facts conclusions of law because
5 you've stipulated to your facts and you've
6 argued the law already. So, correct?
7 Nobody's going to file anything else. Right?

8 MR. O'BRIEN: I am not.

9 MR. STERN: Yes.

10 CHAIRPERSON MILLER: Okay. All
11 right. All right. Then this case is
12 completed and I'm just going to have the Board
13 vote on considering the penalty question in
14 closed session.

15 As Chairperson of the Alcoholic
16 Beverage Control Board for the District of
17 Columbia and in accordance with Section 405 of
18 the Open Meetings Amendment Act of 2010, I
19 move that the ABC Board hold a closed meeting
20 for the purpose of seeking legal advice from
21 our counsel on Case Number 12-251-00369,
22 Capitale per Section 405(b)(4) of the Open

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

5 Is there a second?

6 MEMBER BROOKS: Second.

7 CHAIRPERSON MILLER: Mr. Brooks
8 seconded the motion. I'm going to take a roll
9 call. Mr. Brooks?

10 MEMBER BROOKS: I agree.

11 CHAIRPERSON MILLER: Mr. Alberti?

12 MEMBER ALBERTI: I agree.

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

15 MEMBER SILVERSTEIN: I agree.

16 CHAIRPERSON MILLER: Mr. Jones?

17 MEMBER JONES: I agree.

18 CHAIRPERSON MILLER: It appears
19 the motion has passed by a 5-0-0 vote. I
20 hereby give notice that the ABC Board will
21 hold a closed meeting in the ABC Board
22 conference room most likely today pursuant to

1 the Open Meetings Amendment Act of 2010 and
2 issue an order within 90 days. Okay.

3 Thank you very much.

4 MR. O'BRIEN: Thank you.

5 CHAIRPERSON MILLER: Okay. I
6 think that concludes our hearings for this
7 afternoon and the Board will recess and return
8 in a little while to do the agenda.

9 (Whereupon, at 3:12 p.m., the
10 hearing was adjourned.)

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A	argued 15:6 asking 4:19 10:13 aware 11:2 awhile 13:2 14:6	certainly 8:17 Chairperson 1:16 1:19 2:3,9,12 3:6 3:10,22 4:5,14 5:6 5:9 8:21 10:4,10 11:3,5,12 12:3,11 12:21 13:8,11,15 14:4,10 15:2,10 15:15 16:7,11,13 16:16,18 17:5	costs 13:4 counsel 5:15 14:17 15:21 couple 6:1 course 6:21 11:22 court 5:21 7:12,16 7:17,21 8:4 criminal 7:5	exercise 7:21 8:19 exercised 14:20 explained 10:20 extend 8:6,10
ABC 15:19 16:20 16:21 ABRA 3:15 accompanied 3:1 accomplish 11:2 account 13:21 Act 15:18 16:1,4 17:1 additional 8:11 addressed 14:13 adjourned 17:10 adjudicated 5:16 5:17 advice 15:20 afternoon 2:19 17:7 agenda 17:8 agree 3:14 4:11 6:19 7:1 16:10,12 16:15,17 agreement 4:13 11:15 agrees 16:14 Alberti 1:19 2:7 16:11,12 Alcoholic 1:2,14,15 15:15 alleviate 3:13 Amendment 15:18 16:1,4 17:1 amount 9:5 analogy 7:3 8:7 analysis 9:3,19 14:18 ANC 1:10 2:16 answer 12:10 Appeals 5:21 appears 16:18 appropriate 4:7,13 6:20,22 11:17 approval 1:11 6:18 10:9 11:4 approved 3:20 6:17 12:8 Apraku 3:15 April 5:2	B	change 1:10 10:19 changed 12:7 charge 4:12 cited 16:3 claim 11:1 clarity 13:6 cleared 12:13,19 client 12:15 close 14:14 closed 15:14,19 16:21 CN 1:9 Columbia 1:1 2:21 15:17 come 7:10 11:20 commit 9:14 commits 7:8 committed 9:17 completed 15:12 complicates 4:10 complicating 4:15 concerned 8:5 concession 14:18 concludes 17:6 conclusions 15:4 conference 16:22 consequences 12:1 consider 10:13 12:5 14:7 considering 15:13 context 10:8 contingent 7:13 Control 1:2,14,15 15:16 convoluted 5:21 correct 6:11 15:6 cost 13:10	D	F
	back 5:22 7:15 back-up 6:9 9:6 based 7:6 10:14 behalf 9:2 behavior 7:6 belief 11:18 14:20 believe 9:3,7 12:13 believes 4:7 belongs 7:15 best 6:1 Beverage 1:2,14,15 15:16 blame 11:7 Board 1:2,11,15 3:20 4:2 6:7,12,16 6:18,21 7:18 8:8 8:16,18,18 9:4,7 9:13,15,21 10:9 11:20 14:11,18 15:12,16,19 16:20 16:21 17:7 Board's 9:13 break 2:8 breaking 7:14 broke 7:14 Brooks 1:20 16:6,7 16:9,10 Building 1:15 busy 13:20		date 5:11,19 6:5 day 13:4,9,12,14,15 13:16,18 days 4:17,19,21 5:3 5:5 6:4 8:9,14 10:2,13 13:3 14:5 17:2 decide 6:21 9:21 decided 4:21 deliberating 16:2 department 7:12 depending 13:17 details 11:9 disagree 9:3,19 disagreement 4:4 discretion 7:17,18 7:22 8:16,19 9:4 9:21 14:19 disproportionate 7:20 District 1:1 2:20 13:22 14:3 15:16 DONALD 1:20 D.C 1:16	factor 4:16 facts 3:12 15:4,5 failure 6:16,17 7:10 fair 14:9,17 far 5:20 favor 8:20 figure 13:3 file 15:3,7 final 5:2 finally 5:16,17 findings 15:4 fine 4:7 6:20 finished 5:7 first 11:11 five 4:21 follows 9:15 former 10:22 11:8 Formerly 1:7 four 5:3,18 four-day 6:3 full 7:10 fully 14:12 further 8:6 11:9
	C	E	G	
	call 2:13 6:9 16:9 Capitale 1:7 2:4,10 2:14 3:18 15:22 care 10:21 case 1:12 2:13,13 4:2,8,20 5:1,20 6:2 10:12 11:20 14:14,21 15:11,21 16:2 cases 5:14 8:3 cause 1:8 3:7	easy 14:21 employee 10:21,22 11:8 employees 14:1 entire 9:5,19 establishment 3:16 3:17 evaluating 12:5 event 6:14 everybody 2:10 evidences 11:18 excuse 3:16	general 12:6 getting 12:14 give 10:16 16:20 goes 9:12 going 2:7,13 5:16 6:7 8:4,6,9,10 15:3,7,12 16:8 good 2:19 7:6 gotten 12:8 Government 4:6 4:18,22 5:3 9:2 11:16 12:2 Government's 6:11 10:2 14:17 guess 8:13	
			H	

<p>hallway 2:5 hand 7:21 10:1 happen 8:3 10:22 hearing 1:9,15 3:7 17:10 hearings 17:6 HERMAN 1:21 history 9:10 hold 15:19 16:21 hundred 6:4</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>identify 2:17 important 14:6 impose 4:3 9:5,8,22 imposed 4:18,19 5:1,4 6:3 10:3 imposes 9:16 imposing 10:13 imprisoned 7:4 incident 5:19 6:5 individual 7:7 information 10:17 infraction 6:9,14 infrequently 8:3 instance 7:9 9:8 instant 11:21 integrity 9:12 Investigator 3:15 invoke 8:9 issue 14:13 17:2</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jail 7:15 Jasper 1:6 Jones 1:21 16:16 16:17 July 1:13 Jun 3:1,5 June 5:17 J-I-N 3:3 J-U-N 3:3,4</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>K 1:7,8 2:15 Ki 3:1,5 know 4:8 10:11 11:6 12:7,10</p>	<p>Kofi 3:15 K-I 3:3</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>law 7:14,14 15:4,6 legal 9:3,19 15:20 License 1:9 2:15 3:2 Licensee 3:1 10:8 11:1 13:5 little 10:7 12:18 17:8 LLC 1:6 located 2:15 long 9:10,10 12:6 looking 6:15 lost 13:21 14:1</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>managing 3:2 mandatory 6:13 matter 1:5 12:19 matters 3:8 mean 13:14 14:5 meaning 11:21 mechanically 6:8 meeting 1:3 15:19 16:21 Meetings 15:18 16:1,4 17:1 member 1:19,20,21 1:21 2:7 3:2 16:6 16:10,12,15,17 Members 14:11 met 1:15 Michael 1:21,23 2:20 Miller 1:17,19 2:3 2:9,12 3:6,10,22 4:5,14 5:6,9 8:21 10:4,10 11:3,5,12 12:3,11,21 13:8 13:11,15 14:4,10 15:2,10 16:7,11 16:13,13,16,18 17:5 minor 7:9,20 8:15 10:15,17 11:10</p>	<p>monetary 13:3 month 12:17,18,22 months 5:18 motion 16:8,19 move 15:19</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 1:10 3:18,19 6:17,18 10:9,19 12:7,16 nature 9:9 10:14,18 necessarily 9:9 need 3:13 11:2 new 6:9 NICK 1:19 night 13:19,20 nine 5:5 8:14 10:2 Nobody's 15:7 note 9:2 notice 12:14 16:20 Notwithstanding 14:19 Number 2:14,15 4:20 5:1,16 15:21 numbers 14:7 N.W 1:8,16 2:15</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>OAG 1:23 objective 15:1 observation 10:6 occasions 6:1 occurs 7:3 October 3:14 5:13 6:3,5 12:18 offense 5:12,19 6:6 6:16,19 7:2,5,9,21 8:15 9:10 10:15 10:17 11:11,15,18 11:21 offenses 6:10 7:3 9:11 official 10:9 Okay 2:5,9 3:6,10 3:22 4:5,14 5:10 10:4,10 11:5,13 12:11,21 14:4,10 14:11 15:2,10</p>	<p>17:2,5 once 13:2 14:6 Open 15:18,22 16:3 17:1 operating 12:6 order 5:2 17:2 originated 5:15 O'Brien 2:22,22 4:11 5:10,11 10:5 10:20 11:4,6,14 12:9,15 13:6,9,13 13:17 14:8,16 15:8 17:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>parole 7:8,11,13,22 8:5,7 paroled 7:5 particular 4:12 7:2 parties 2:4,17 3:11 3:14 4:3 6:19 7:1 passed 16:19 payroll 14:2 penalty 4:2,12 11:17 12:1,5 15:13 period 7:8 8:6,10 8:11 13:22 perspective 11:22 placed 7:6 11:8 please 2:18 point 12:4 position 4:9 6:11 10:2 potential 4:2 preliminary 3:8 PRESENT 1:18,22 presiding 1:17 pretty 8:14 previous 6:10 prior 4:16 probation 7:6,8,11 7:13 8:1,5,7 process 9:13 procured 10:8 proposed 15:3 purpose 15:20</p>	<p>pursuant 16:22 put 13:4 P-R-O-C-E-E-D-... 2:1 p.m 2:2 17:9</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 10:11 12:4 13:1,7 14:9 15:13 questions 14:11</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>range 7:2 13:18 reached 3:12 really 4:10 reason 9:18 11:10 reasonable 8:11 reasons 16:2 recess 17:7 reconsideration 5:22 record 2:18 4:17 14:14 records 3:18 Reeves 1:15 referred 5:14 regard 8:19 relatively 7:9,20 8:15 remains 4:1 rephrase 13:7 representing 2:20 resolution 6:20 Respondent 4:16 6:2 8:20 9:11,20 11:16 Respondent's 4:8 Retailer 1:9 return 17:7 revealed 3:19 revenues 13:21 revoke 8:4 revoking 7:22 re-imprisonment 7:19 right 2:12 14:4 15:7,11,11</p>
---	--	---	---	--

rigidly 6:8	stipulated 3:21 5:12 15:5	Um-hum 11:3,12 13:8	2,000 13:19
roll 16:8	stipulation 3:12	understanding 13:7	2:55 2:2
room 1:15 16:22	stop 7:10,10	urged 12:1	2000 1:15
Ruthanne 1:17,19	Street 1:8,8,16 2:15	use 3:20 6:16,18	2010 5:15 15:18 16:1,4 17:1
S	subsequently 10:8	V	2011 6:4
sales 13:21	suggest 6:12 8:13	Ventures 1:6	2012 3:15 5:2,13,18 6:5
says 8:4 9:13	suggesting 7:18 8:8	violation 9:14,17	2013 1:13
scheduled 2:4	summation 8:14	visited 3:16	25th 5:2
search 3:18	Sung 2:11 3:1,5 12:12	vote 15:13 16:19	3
second 3:3 11:15 16:5,6	suppose 10:21 15:3	W	3,000 13:19
secondary 6:16,19 8:15 11:11	suspended 4:17,22 9:15 13:12,16	wages 14:1,3	3:12 17:9
seconded 16:8	suspension 6:3 9:16	want 10:12	4
second-tier 11:14	S-U-N-G 3:4	Washington 1:16	405 15:17
Section 15:17,22 16:3	T	wasn't 10:18	405(b)(13) 16:3
see 8:17	take 2:7 10:21 13:20 14:1 16:8	week 13:18	405(b)(4) 15:22
seeking 15:20	talk 14:5	weeks 12:14	5
September 12:13 12:17	talking 13:2	went 5:21	5-0-0 16:19
serious 7:2,5 11:20 12:2	tax 13:21	we're 4:13 6:15 8:9 13:2	540 5:20
served 6:10,13 13:14,15	taxes 14:2	we've 5:12	6
session 15:14	tells 12:15	word 3:3,5	6/13/2012 4:21
short 2:8	thank 5:11 13:16 14:8,17 17:3,4	work 14:2	7
shortly 12:20	think 8:16 9:20 11:15 14:6,12,13 17:6	worth 10:7	714 5:17
show 1:8 3:7	third 3:4,5	P	72225 1:9 2:16
sign 7:10	Three 6:4	p 1:5,12	8
Silverstein 1:21 16:14,15	throw 8:2	\$	8th 3:15 5:13 6:5 12:18
sixty-one 6:4	time 3:17,19 5:4 6:10,13 8:12 9:6 9:22 10:19	\$10,000 13:20	9
slow 13:19	today 16:22	\$500 4:7,12 6:20	90 17:2
sorry 3:4 13:11,16	told 13:17	1	
standing 11:18	totaling 5:5	10-CMP-540 5:1	
started 12:12,16	trade 1:10 3:17 6:17,18 10:9,18 12:7	10-CMP-714 4:20	
statute 8:17	trial 3:13	12 6:3	
stay 8:11	two 5:14	12-251-00369 1:12 2:14 15:21	
stayed 5:4 6:13 8:9 13:3,4,9	t/a 1:7	13 5:18	
Stephen 2:22	U	1301 1:8 2:15	
Stern 1:23 2:19,20 3:9,11 4:1,6,15 5:8 8:21 9:1 15:9		14th 1:15	
stiff 8:14		17 1:13	
		2	
		2F 1:10 2:16	