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

(11:18 a.m.)

CHAIRPERSON MILLER: Okay. The Board is back on the record calling Case No. 13-CMP-00104. It is Vita Restaurant and Lounge/Penthouse Nine located at 1318 9th Street, N.W., License No. 86037, in ANC-2F.

Would the parties identify themselves for the record, please?

MR. RIVERO: Good morning, Fernando Rivero for the District of Columbia.

CHAIRPERSON MILLER: Good morning. And with you?

MR. RIVERO: With me also is Brian Amy, pro-bono attorney in our section.

CHAIRPERSON MILLER: Okay. Good morning. I noticed that no one is here for the respondent and it's 11:19 and the case was called for 11:00.

And I also want to say that the Board got notice by email yesterday that the respondent was requesting a continuance due to

1 illness and that the Office of the Attorney  
2 General consented to that motion.

3 So the Board indicated  
4 individually by email each Member's position  
5 on the continuance and request and in that  
6 email correspondence there wasn't a majority  
7 that approved the continuance.

8 Now that we are convened as a  
9 Board before this hearing starts, I want to at  
10 least ask Mr. Rivero if you want to say  
11 anything to the motion and then have the Board  
12 take another vote as a body on the record.

13 So, Mr. Rivero, do you have  
14 anything you want to say with respect to the  
15 continuance?

16 MR. RIVERO: I do.

17 CHAIRPERSON MILLER: Yes, please.

18 MR. RIVERO: This is actually the  
19 first motion to which I consent, as the  
20 Government, that has not been approved.

21 CHAIRPERSON MILLER: Speak up,  
22 please.

1                   MR. RIVERO: This is actually the  
2 first motion to which I consent, as the  
3 Government, that has not been approved. And  
4 for that reason, I want to make sure that the  
5 Government's rationale for consenting is on  
6 the record in the event of an appeal of this  
7 resulting decision.

8                   The Show Cause Hearing that the  
9 Board affords licensee is a right of the  
10 licensee. It's not the right of the  
11 Government. And therefore, the Government is  
12 not prejudiced by a continuance.

13                   I understood this as part of the  
14 reason why I consented --

15                   CHAIRPERSON MILLER: Can you  
16 hearing?

17                   MEMBER SILVERSTEIN: Please use  
18 the microphone, Mr. Rivero.

19                   CHAIRPERSON MILLER: Can you speak  
20 up a little more?

21                   MR. RIVERO: It used to be on.

22                   CHAIRPERSON MILLER: No, it's on.

1 Some of the Board Members --

2 MEMBER SILVERSTEIN: I want to be  
3 able to hear you.

4 MR. RIVERO: Sure. As I  
5 indicated, the Show Cause Hearing is a right  
6 that is afford to the licensee, not the  
7 Government, so a continuance does not  
8 prejudice the Government and I understood that  
9 when I consented.

10 Secondly, the licensee is  
11 unrepresented by counsel and while the Court  
12 of Appeals has taken the position that you  
13 don't absolve parties who are unrepresented of  
14 their roles and their duties in the litigation  
15 process, that they are, in fact, to be looked  
16 at differently, because they are not  
17 represented.

18 And to the extent that an  
19 accommodation is made, that doesn't affect the  
20 substance, if you will, or the rights of the  
21 parties, then I believe that the Court of  
22 Appeals would expect unrepresented parties to

1 be treated in that fashion. That's the second  
2 reason.

3 And then the final reason is that  
4 I actually had no evidence and to this point,  
5 I have -- to this day and to this moment, I  
6 don't have any evidence to put forward to the  
7 Board to say actually she is not sick, that  
8 this is a pretext or anything like that,  
9 because I lack that evidence. That also  
10 factored into my decision to consent to the  
11 motion.

12 So those are the three reasons why  
13 the Government consented to the motion and I  
14 just wanted to put those on the record. Thank  
15 you.

16 CHAIRPERSON MILLER: Thank you.  
17 Are there questions by Board Members of Mr.  
18 Rivero? Yes, Mr. Alberti?

19 MEMBER ALBERTI: Mr. Rivero, have  
20 you been the attorney representing the  
21 Government on this case from the beginning?

22 MR. RIVERO: Yes.

1                   MEMBER ALBERTI: Okay. Are you  
2 knowledgeable? Do you remember this is, first  
3 of all, the third continuance? I mean, this  
4 is the third -- this date today represents the  
5 third time this case has been continued. Is  
6 that correct?

7                   MR. RIVERO: I think so.

8                   MEMBER ALBERTI: Do you remember  
9 in those three instances what the excuses were  
10 for -- the reasons, the rationale for a  
11 continuance on the licensee's part?

12                  MR. RIVERO: I have a note here  
13 that one of the continuances was actually a  
14 request by the Board. On October 15, 2013, I  
15 was advised of the need to move the hearing.  
16 I have a note here.

17                  MEMBER ALBERTI: Okay.

18                  MR. RIVERO: So I know that as to  
19 one of them, that the request didn't come from  
20 the licensee. I can't tell you about the  
21 others right now. I have to look into my  
22 notes, but that's the one that comes to mine

1 that was most recently.

2 MEMBER ALBERTI: So all right. So  
3 we know at least one of the previous ones came  
4 from the licensee.

5 MR. RIVERO: Right.

6 MEMBER ALBERTI: But you don't  
7 know the rationale?

8 MR. RIVERO: No, I know it's -- we  
9 got an email from ABRA saying there was a need  
10 to move the hearing.

11 MEMBER ALBERTI: No, I meant --  
12 Okay. Your notes say that one of the  
13 continuances was at the request of the  
14 licensee?

15 MR. RIVERO: Correct.

16 MEMBER ALBERTI: But you don't  
17 know the rationale?

18 MR. RIVERO: No. The note that I  
19 just talked about right now is a note that  
20 says that there was a need to move the license  
21 -- the hearing and it wasn't the licensee's  
22 request. It was ABRA's request.

1 MEMBER ALBERTI: Okay. But there  
2 were three continuances granted before this.

3 MR. RIVERO: Right.

4 MEMBER ALBERTI: One of them was  
5 at the Board's --

6 MR. RIVERO: Right.

7 MEMBER ALBERTI: -- based on the  
8 Board's need.

9 MR. RIVERO: Right.

10 MEMBER ALBERTI: The other two, do  
11 you have any information about the other two?

12 MR. RIVERO: I can't remember off  
13 hand, but I can look and get back to you, but  
14 I don't -- can't --

15 MEMBER ALBERTI: You don't have it  
16 right now?

17 MR. RIVERO: I don't remember  
18 right now.

19 MEMBER ALBERTI: Okay. Thank you.

20 CHAIRPERSON MILLER: Any other  
21 questions? Mr. Silverstein?

22 MEMBER SILVERSTEIN: Do we have

1 any idea as to whether the licensee has some  
2 serious illness? Do we know what her  
3 condition might be?

4 MR. RIVERO: Unfortunately, I do  
5 not have that information.

6 MEMBER SILVERSTEIN: Did she state  
7 with any specificity other than I am ill or  
8 illness?

9 MR. RIVERO: There was an email  
10 that she wrote to the Board. That email was  
11 forwarded to me. I read that email and I  
12 don't have it in front of me, but she stated  
13 she wanted a request due to illness or being  
14 ill. I don't recall that that --

15 MEMBER SILVERSTEIN: Is it her  
16 illness or someone else's --

17 MR. RIVERO: -- message got --

18 MEMBER SILVERSTEIN: -- illness?

19 MR. RIVERO: Her's. I don't  
20 recall that --

21 MEMBER SILVERSTEIN: I didn't even  
22 read that. If that's the email --

1 MR. RIVERO: Yes, well, that's  
2 what I read.

3 MEMBER SILVERSTEIN: It just  
4 simply says "due to illness."

5 MR. RIVERO: Yes. So I read it as  
6 being her illness, but I didn't see any  
7 details on the kind of illness.

8 CHAIRPERSON MILLER: Yes, do you  
9 want to comment now or under a motion? Do you  
10 have a question?

11 MEMBER SILVERSTEIN: Does anybody  
12 else have questions before --

13 CHAIRPERSON MILLER: Are there any  
14 other questions?

15 MEMBER BROOKS: Yes.

16 CHAIRPERSON MILLER: Mr. Brooks?

17 MEMBER BROOKS: Yes, I just want  
18 to be clear. When were we requested for a  
19 continuance because of illness? How long ago  
20 was that?

21 MR. RIVERO: Pardon me?

22 MEMBER BROOKS: When were we

1 notified that she is requesting a continuance  
2 because of illness?

3 MR. RIVERO: I have a copy of the  
4 email her now actually. It looks like July  
5 28.

6 MEMBER SILVERSTEIN: I'm sorry?

7 MR. RIVERO: It looks like July  
8 28.

9 MEMBER ALBERTI: Do you know what  
10 time?

11 MR. RIVERO: 5:32 p.m.

12 MEMBER ALBERTI: Okay.

13 MEMBER BROOKS: All right. Thank  
14 you.

15 CHAIRPERSON MILLER: Other  
16 questions? Okay. So what I would propose is  
17 that I'm going to make a motion and then we  
18 can discuss further the motion.

19 I'm going to move that we approve  
20 the continuance, that illness is almost always  
21 recognized as good cause for a continuance by  
22 the Courts and the adjudicatory bodies and Mr.

1 Rivero has said he doesn't have any evidence  
2 that she is lying or that this is a pretext,  
3 that she is unrepresented by counsel, that  
4 there is absolutely no prejudice to the  
5 Government to postponing and the Government  
6 consents to such postponement.

7 Therefore, I think that there is  
8 no good reason to deprive the respondent of  
9 her right to this hearing. Do I have a  
10 second?

11 MEMBER SHORT: Second.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you, Mr. Short. Is there further discussion?  
14 Mr. Silverstein?

15 MEMBER SILVERSTEIN: Thank you,  
16 Madam Chair. Normally, when the licensee  
17 requests a continuance and the Attorney  
18 General's office has no objection, we grant  
19 it. Only in extraordinary circumstances would  
20 I vote to deny such a request and I believe  
21 this is such case. And I believe all parties,  
22 including the public, deserve an explanation.

1           Less than a month ago, we all sat  
2 up here and promised the residents of Adams  
3 Morgan and the rest of the city that we would  
4 do a better job of enforcing laws already on  
5 the books and we promised that we would no  
6 longer allow unnecessary delays in  
7 adjudication, and we were speaking of peace,  
8 order and quiet issues. We promised that.

9           The residents in this issue, of  
10 the city, have a role in the licensing  
11 process. They can protest the granting and  
12 renewal of licenses and they have the right to  
13 try to negotiate settlement agreements with  
14 licensees to protect peace, order and quiet,  
15 their right to a good night's sleep,  
16 residential parking, pedestrian safety and  
17 sanitation.

18           When the residents signed that  
19 agreement, they are giving up the right to  
20 protest in exchange for our approving that  
21 agreement and then our enforcing that  
22 agreement. We are responsible to the

1 neighbors and neighborhood associations who  
2 negotiate and sign settlement agreements.

3 And this particular case involves  
4 a charge of violating a settlement agreement.  
5 It happened, the charge itself occurred,  
6 February a year ago. More -- it's almost a  
7 year and a half ago.

8 There was a Show Cause Hearing  
9 scheduled for October 13th. We had to have it  
10 delayed. Then there was a Show Cause Hearing,  
11 it was rescheduled for the 29th of January and  
12 that was rescheduled. Then it was rescheduled  
13 for the 5th of March and that was rescheduled.  
14 And then it was rescheduled for the 7th of May  
15 and again, it was rescheduled. And now this  
16 last minute request.

17 Had we voted to continue this  
18 hearing, it would have been rescheduled after  
19 our August recess, probably in October or  
20 November, that would have been more than a  
21 year from the first scheduled Show Cause  
22 Hearing and more than a year and a half from

1 the alleged offense.

2 Madam Chair, our responsibility  
3 includes a responsibility to uphold and  
4 enforce the law and to repeatedly delay  
5 adjudication for more than a year, for more  
6 than a year and a half would have been is to  
7 be derelict in our duty and to break faith  
8 with those residents of the District of  
9 Columbia who put their trust in us when they  
10 sign those voluntary agreements or settlement  
11 agreements and give away their rights as part  
12 of -- their right to protest as part of that.

13 This is a peace, order and quiet  
14 issue and sooner or later it has to be  
15 resolved. Because of the repeated, repeated,  
16 repeated delays, we have to move on this  
17 sooner or later. It is time to get to work,  
18 even if it is without the defendant here, we  
19 have to get to work.

20 CHAIRPERSON MILLER: Mr.  
21 Silverstein, I just want to let others speak,  
22 but I just want to ask you if you have

1       indication that the reschedulings were due to  
2       the respondent, because OAG does not know that  
3       and we don't seem to have that in the record,  
4       at this time.

5                   Are there other comments to the  
6       motion?

7                   MEMBER SILVERSTEIN: We do know  
8       that the one on the 5th of October --

9                   CHAIRPERSON MILLER: I'm sorry.

10                  MEMBER SILVERSTEIN: -- was  
11       rescheduled at the request of the Board and  
12       that is the only one.

13                  CHAIRPERSON MILLER: Right. But  
14       we don't --

15                  MEMBER SILVERSTEIN: We also do  
16       know for what it is worth, and we will take it  
17       for what it is worth, that the licensee has  
18       requested numerous delays on other issues  
19       pending before the Board.

20                  CHAIRPERSON MILLER: I think you  
21       would need to cite that on the record if  
22       that's the reason, because I don't think that

1 is going to hold very well if she appeals, if  
2 you are saying we know this, but there is no  
3 evidence in the record. I don't know that.

4 MEMBER RODRIGUEZ: Madam Chair?  
5 I'm of course new on the Board and I don't  
6 know all the history, however, my question is  
7 have other delays been requested as a result  
8 of medical condition? Is this the first delay  
9 or have other delays been requested as a  
10 result of medical condition?

11 CHAIRPERSON MILLER: I can only  
12 answer based on my memory and I wouldn't --  
13 you know, I would say I don't remember any  
14 others, but I think if a Board is going to  
15 deny based on their reasons for -- or blaming  
16 the delays on this respondent, then the Board  
17 should know that for a fact. That's my  
18 position. Others? Mr. Alberti?

19 MEMBER ALBERTI: It is unlike this  
20 Board to continue a case repeatedly. I mean,  
21 we have done it once in this case. It is this  
22 Board's policy to get these cases heard and

1 I'm confident that our staff would have found  
2 an opening in our schedule to hear this case  
3 before today.

4 So I am operating under the  
5 assumption that the other two continuances  
6 were at the request of the licensee.

7 In addition to that, the licensee  
8 has provided us no information. I mean, there  
9 is no information on their illness, how severe  
10 it is, was it sudden? Did they know a week  
11 ago? I think it's disingenuous of the  
12 licensee to expect us to continue this based  
13 on the paucity of information that they have  
14 given us.

15 And my assumption is that they  
16 have asked for two other continuance. So that  
17 is the -- that is what I will be basing my  
18 decision on.

19 CHAIRPERSON MILLER: Others?  
20 Okay. I just have to speak to this more,  
21 because I find this very disturbing and being  
22 a lawyer myself and having litigated myself,

1 I appreciate that when a party or an attorney  
2 is ill, that it is very difficult to -- unless  
3 you are saying you don't believe the  
4 respondent, which is what it sounds like, if  
5 you are truly ill, it is very hard to put  
6 together all this proof for a continuance.

7 And I think it has been the  
8 practice of most bodies to accept that the  
9 person who is saying that is speaking the  
10 truth. So that's what I think is at issue  
11 here. There is no harm that is going to be  
12 done to the public in the meantime by  
13 postponing a case, which is going to be about  
14 a penalty.

15 In fact, this same establishment  
16 has already had a hearing before us on the  
17 renewal. And in that hearing, we had an  
18 opportunity to hear from the public and we can  
19 address whatever substantive concerns the  
20 neighbors or community have had with respect  
21 to this establishment.

22 So this particular hearing is not

1 key to that protection. And I think that what  
2 we are doing is being -- I'm not -- what the  
3 Board would be doing by denying it would be  
4 just expressing an impatience and acting  
5 expediently at the expense of fairness to an  
6 individual who is not represented by counsel.

7 And I think the Court says -- Mr.  
8 Rivero said look very carefully to the  
9 protection of litigants who are not  
10 represented by counsel. Okay. Anything else?

11 So we are taking a new vote at  
12 this point having heard from --

13 MEMBER ALBERTI: I just have one  
14 question.

15 CHAIRPERSON MILLER: -- Mr.  
16 Rivero.

17 MEMBER ALBERTI: Mr. Rivero, have  
18 you discussed the future date with the  
19 licensee?

20 MR. RIVERO: I have not done that,  
21 no.

22 MEMBER ALBERTI: Have you

1       communicated with the licensee since you got  
2       the email request?

3                   MR. RIVERO:  No.

4                   MEMBER ALBERTI:  Have you  
5       attempted to, I should ask?

6                   MR. RIVERO:  Yes, I called once  
7       and there was no answer on the phone.  This  
8       was after July 28th and prior to today, but I  
9       don't remember the exact date or time.

10                  MEMBER ALBERTI:  Okay.  Thank you.

11                  MR. RIVERO:  I have two phone  
12       numbers that I use.  One was the  
13       establishment's phone number and it was a  
14       voicemail for the establishment.  The other  
15       one didn't pick up.

16                  MEMBER ALBERTI:  Thank you.  Did  
17       you leave a message?

18                  MR. RIVERO:  I did not.

19                  MEMBER ALBERTI:  Okay.  Can we  
20       just pause just for one moment?

21                  CHAIRPERSON MILLER:  Sure.  Okay.  
22       Mr. Alberti, do you want some more time?

1 MEMBER ALBERTI: No.

2 CHAIRPERSON MILLER: Okay. And  
3 any other comments? Okay. So I made a motion  
4 to approve the continuance that has been  
5 seconded by Mr. Short.

6 All those in favor say aye.

7 MEMBER SHORT: Aye.

8 CHAIRPERSON MILLER: Aye.

9 MEMBER RODRIGUEZ: Aye.

10 All those opposed?

11 MEMBER ALBERTI: Oppose.

12 MEMBER SILVERSTEIN: Oppose.

13 MEMBER BROOKS: Oppose.

14 CHAIRPERSON MILLER: It appears  
15 that it's a 3-3 vote. Why don't I take a roll  
16 call.

17 Mr. Brooks?

18 MEMBER BROOKS: Oppose.

19 CHAIRPERSON MILLER: Mr. Alberti?

20 MEMBER ALBERTI: Oppose.

21 CHAIRPERSON MILLER: Mr.

22 Rodriguez?

1 MEMBER RODRIGUEZ: Approved.

2 CHAIRPERSON MILLER: Miller

3 approves.

4 Mr. Silverstein?

5 MEMBER SILVERSTEIN: Oppose.

6 CHAIRPERSON MILLER: And Mr.

7 Short?

8 MEMBER SHORT: Approve.

9 CHAIRPERSON MILLER: Okay. The  
10 vote is 3-3-0. So the motion fails.

11 Now, Mr. Rivero, are you ready to  
12 proceed ex parte?

13 MR. RIVERO: Yes.

14 CHAIRPERSON MILLER: Okay.

15 MR. RIVERO: Yes, the Government  
16 is ready.

17 CHAIRPERSON MILLER: Thank you.

18 MR. RIVERO: Good morning, Board  
19 Members. We are here in the matter of Vita  
20 Restaurant and Lounge. Last year, the Board  
21 issued a Notice of Status of Show Cause  
22 Hearing to the establishment wherein it was

1       alleged that the establishment violated its  
2       voluntary agreement by not taking the  
3       necessary actions to ensure that music, noise  
4       and vibrations from the establishment were not  
5       audible within any adjacent residential  
6       properties at all times during business hours  
7       when the music is being played.

8                       In order for the Government to  
9       provide evidence today, the Government will  
10      call on Brian Molloy to testify.

11                      CHAIRPERSON MILLER:   Okay.   Good  
12      morning.   Still.

13                      MR. MOLLOY:    Good morning.

14      Whereupon,

15                      BRIAN MOLLOY  
16      was called as a witness by Counsel for the  
17      Government, and having been first duly sworn,  
18      assumed the witness stand and was examined and  
19      testified as follows:

20                      MR. MOLLOY:    I do.

21                      CHAIRPERSON MILLER:   Okay.   Thank  
22      you.

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DIRECT EXAMINATION

MR. RIVERO: Good morning.

MR. MOLLOY: Good morning.

MR. RIVERO: Would you, please, state your name for the record?

MR. MOLLOY: Brian Molloy spelled B-R-I-A-N Molloy is M-O-L-L-O-Y.

MR. RIVERO: Thank you. Mr. Molloy, what is your occupation?

MR. MOLLOY: I'm an attorney in private practice.

MR. RIVERO: And prior to being an attorney, what was that occupation?

MR. MOLLOY: I was an ABRA Investigator.

MR. RIVERO: Okay. And ABRA is?

MR. MOLLOY: The Alcoholic Beverage Regulation Administration.

MR. RIVERO: Okay. And for how long were you an ABRA Investigator?

MR. MOLLOY: From July 2012 through June 2013.

1 MR. RIVERO: Okay. And what were  
2 your duties as an Investigator?

3 MR. MOLLOY: ABRA Investigators  
4 inspect and investigate licensed  
5 establishments in the District of Columbia.

6 MR. RIVERO: Thank you. Are you  
7 familiar with the establishment known as Vita  
8 Restaurant and Lounge?

9 MR. MOLLOY: Yes, I am.

10 MR. RIVERO: Okay. And how is it  
11 that you are familiar with the restaurant?

12 MR. MOLLOY: On February 24, 2013,  
13 I was called in to do a noise complaint  
14 investigation on the establishment.

15 MR. RIVERO: Okay. And how did  
16 you or what did you do in response to that  
17 noise complaint?

18 MR. MOLLOY: Well, I received the  
19 noise complaint at, approximately, 1:10 a.m.  
20 from my Supervisory Investigator Craig  
21 Stewart. At that point, I was somewhere else  
22 in the city, so I had to drive over to the

1 location. I arrived at, approximately, 1:30,  
2 right at about the same time I arrived,  
3 another ABRA Investigator, Brian Owens,  
4 arrived at 1:30 as well.

5 As soon as we arrived, we called  
6 the complainant, his name was Mr. Martin  
7 Smith, because it's our procedure to verify  
8 the noise complaint by going into the --

9 CHAIRPERSON MILLER: Excuse me.  
10 We are having trouble hearing.

11 MEMBER ALBERTI: I'm sorry.

12 MR. MOLLOY: Oh, okay. Our  
13 procedure is to go into the complainant's home  
14 to see if we can verify the complaint, hear  
15 the music usually. But when we arrived, and  
16 I called the complainant, he didn't answer his  
17 phone, so we didn't have any access to go and  
18 verify the complaint.

19 We decided to take this  
20 opportunity to then go inside Vita Lounge to  
21 speak with the ownership and warn them that a  
22 noise complaint had been filed and that they

1 should turn down the music.

2 So Investigator Owens and I went  
3 inside the establishment, identified ourselves  
4 as ABRA Investigators and asked to speak to  
5 the owner. It was at that point that the  
6 owner, Mrs. Beyene, introduced herself to us  
7 and confirmed she was the owner.

8 We told her that a noise complaint  
9 had been called in against her establishment  
10 and so she should turn down the noise. And I  
11 should note, at this point, when we walked in,  
12 the music volume was very loud. And so that's  
13 why we told her to turn it down.

14 She said she would. She was  
15 cooperative. She said she would take care of  
16 everything. And then she took us on a tour of  
17 the establishment. On our way from the front  
18 of the establishment to the back -- and the  
19 back is on Naylor Court, the front is on 9th  
20 Street, I believe, yes, 9th Street.

21 On her way to the back, she  
22 stopped by the DJ and said something to him,

1 but it was so loud with the music volume that  
2 I couldn't overhear what she said to the DJ.  
3 But she took us all the way to the back and  
4 she then told us that her problem with the  
5 noise, because she had had other noise  
6 complaints filed against the establishment  
7 before, is that she has a back door which she  
8 is required to have as an emergency exit and  
9 that noise escapes through the back door. And  
10 she knows she needs to insulate it more.

11           Investigator Owens and I said  
12 that's good that you know where the noise is  
13 escaping from, but since you haven't insulated  
14 it yet, you need to turn the music down. She  
15 again said don't worry, I talked to the DJ.  
16 We have turned the music down. And it didn't  
17 sound like she had at all.

18           So then when we walked from the  
19 back of the club back to the front, she  
20 stopped again and said something to the DJ.  
21 Again, it was so loud, I couldn't hear. We  
22 got all the way up to the front of the

1 establishment and again, we reminded her, it  
2 sounds just as loud as when we walked in. You  
3 need to turn the music down or else they are  
4 going to call in another noise complaint and  
5 we will have to come back here. And we might  
6 be able to verify it the next time and, at  
7 that point, you know, you will be -- you will  
8 have a noise violation or, in this case, a  
9 settlement agreement violation.

10 She said don't worry, you know,  
11 I'll talk to the DJ. It's okay. And we said  
12 all right. You know, it sounds the same, but  
13 fine. At that point, that whole encounter  
14 took about 10 minutes. At that point, we  
15 walked outside.

16 Right as I'm about to get in my  
17 car, I get a call on my ABRA cell phone and it  
18 is the complainant. He has finally returned  
19 my call. He then invites Investigator Owens  
20 and I into his establishment, which is on  
21 Naylor Court, approximately, I would say 30 or  
22 40 yards from the establishment.

1                   So we walked to his front door.  
2                   He invited us in. We stood in his living room  
3                   for about 10 minutes and had a conversation  
4                   with Mr. Smith about the noise. And as soon  
5                   as we walked inside and he closed the door, we  
6                   looked at the windows made sure they were  
7                   closed and we could hear the music.

8                   It was clear that it was the music  
9                   coming from Vita Lounge. There was no other  
10                  establishments nearby that were making noise.  
11                  They were like a car with a loud stereo. It  
12                  was definitely Vita Lounge.

13                  And we listened to Mr. Smith's  
14                  complaints for a few minutes. I would say  
15                  after about 8 minutes or so, the noise from  
16                  Vita definitely died down. But we had already  
17                  heard it in there for the first 8 minutes we  
18                  were in there and Mr. Smith wanted to proceed  
19                  with the noise violation.

20                  So we left his establishment. We  
21                  walked out onto Naylor Court and that's when  
22                  we saw the owner, Ms. Beyene, standing outside

1 the back door looking at her establishment.  
2 And Investigator Owens and I walked up to her  
3 and said right after we left, we got the call  
4 from the complainant. We did go inside his  
5 unit. We could hear your music, so we did  
6 verify the noise complaint and that's a  
7 violation of your settlement agreement as  
8 well.

9 She said she was in the alley, at  
10 that point, trying to confirm with the DJ what  
11 level of noise they could have their music at.  
12 And I said, unfortunately, you know, you  
13 waited too long to do this. I was just in  
14 your place for 10 minutes. We told you to  
15 turn down the music several times. You didn't  
16 do it. After we left, the complainant called  
17 and we were able to verify the noise  
18 complaint.

19 It's nice that you are turning the  
20 music down now. We can't hear it in his place  
21 now. Tell your DJ this is his max and mark it  
22 off on your stereo, but it's just too late at

1 this point.

2 At that point, we walked back  
3 inside with the owner. Investigator Owens  
4 conducted a regulatory inspection. No other  
5 violations were found. And then we left the  
6 establishment.

7 MR. RIVERO: Thank you. There are  
8 no further questions for the witness, at this  
9 time.

10 CHAIRPERSON MILLER: Okay. Any  
11 Board questions? Mr. Silverstein?

12 MEMBER SILVERSTEIN: Mr. Molloy,  
13 what does the -- do you have a copy of the  
14 voluntary agreement?

15 MR. MOLLOY: I don't have a copy  
16 of the full voluntary agreement, but contained  
17 in the report that I wrote, I have a copy of  
18 Section 5, which addresses noise and privacy.

19 MEMBER SILVERSTEIN: Would you put  
20 that on the record? What does that section  
21 say?

22 MR. MOLLOY: Sure. Section --

1 MR. RIVERO: I would have to  
2 object for a moment because we want to have  
3 something in evidence that is being entered  
4 into. It needs to be introduced as an  
5 exhibit. So I'm happy to help out in that  
6 regard, but if he is going to testify to this  
7 report, I think it needs to be in evidence.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER SILVERSTEIN: What -- okay.

10 CHAIRPERSON MILLER: So are you  
11 saying though that after you put it in  
12 evidence, he can testify? You don't want him  
13 to testify in general after you put it in?

14 MR. RIVERO: Yes.

15 CHAIRPERSON MILLER: Okay. Fine.  
16 Would you like to --

17 MR. RIVERO: Not a problem.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER SILVERSTEIN: What I'm  
20 trying to determine, okay --

21 CHAIRPERSON MILLER: Are we going  
22 to wait?

1                   MEMBER SILVERSTEIN:  -- would you  
2     like to put it in evidence now?

3                   MEMBER ALBERTI:  Why don't we give  
4     Mr. Rivero a moment to --

5                   MR. RIVERO:  Okay.

6                   MEMBER ALBERTI:  -- take care of  
7     this administrative matter.

8                   MEMBER SILVERSTEIN:  Sure.

9                   MR. RIVERO:  I'll show you a  
10    document, it's a number of pages.  If you will  
11    notice, it's marked Exhibit 1 in the top right  
12    corner.  I want you to go ahead and just take  
13    a look at this for just a minute and tell us  
14    what this document is.  Take a minute to look  
15    at that and tell us what that document is.

16                  MR. MOLLOY:  It is the Board Order  
17    and voluntary agreement for a CT ABC License  
18    at 1318 9th Street, which is the same location  
19    as Vita Lounge and Penthouse Nine.

20                                 (Whereupon, the above-referred to  
21    document was marked as Government  
22    Exhibit No. 1 for identification.)

1 MR. RIVERO: Was that document an  
2 exhibit to your investigative report?

3 MR. MOLLOY: It was. It was  
4 Exhibit No. 1.

5 MR. RIVERO: Okay. All right. I  
6 would like to introduce into evidence  
7 Government's Exhibit No. 1, which is Exhibit  
8 No. 1 to the investigative report. And it is  
9 the settlement agreement for the licensee.

10 CHAIRPERSON MILLER: And it is the  
11 what?

12 MR. RIVERO: The settlement  
13 agreement.

14 CHAIRPERSON MILLER: Yes. Okay.  
15 Fine.

16 MR. RIVERO: I want to now move  
17 this into evidence, at this time.

18 CHAIRPERSON MILLER: Okay. So it  
19 is admitted, but I would also say that the  
20 investigative report to which it is attached  
21 is in evidence in any event in the record, but  
22 we can identify it separately as well, if you

1 like.

2 MR. RIVERO: Okay.

3 (Whereupon, the above-referred to  
4 document was received into  
5 evidence as Government Exhibit No.  
6 1.)

7 MR. RIVERO: No further questions.

8 CHAIRPERSON MILLER: Okay. Thank  
9 you.

10 MEMBER SILVERSTEIN: Mr. Molloy,  
11 what does this voluntary agreement/settlement  
12 agreement say regarding noise?

13 MR. MOLLOY: It says on the second  
14 page, Section 6, that section is entitled  
15 "Noise and Privacy," and it says "The  
16 applicant will comply with Title 25, Section  
17 725 of D.C. Code, make architectural  
18 improvements to the property and take all  
19 necessary action to ensure that music, noise  
20 and vibrations from the establishment are not  
21 audible within any adjacent residential  
22 properties.

1                   Applicant will also take all  
2                   necessary steps to ensure that the music,  
3                   noise and vibrations are not disruptive to the  
4                   adjacent residential property occupants of  
5                   reasonable use of the outdoor areas of their  
6                   property.

7                   Should any sound, noise or music  
8                   be heard in any residential premises,  
9                   applicant will take immediate remedial action.  
10                  If necessary, applicant will take reasonable  
11                  steps to reduce noise emanating from the  
12                  establishment from the opening of the entry  
13                  and exit doors.

14                  MEMBER SILVERSTEIN: Did you enter  
15                  the complainant's property?

16                  MR. MOLLOY: Yes.

17                  MEMBER SILVERSTEIN: Could you  
18                  tell us what you saw, what you heard and what  
19                  you did?

20                  MR. RIVERO: If I may, the witness  
21                  has actually testified to that.

22                  MEMBER SILVERSTEIN: And to what

1 he heard. I did not hear specifically to what  
2 level was the music audible where you were  
3 standing all of --

4 CHAIRPERSON MILLER: Okay. Would  
5 you not object if he asks specific questions?  
6 Like what did you --

7 MR. RIVERO: Correct. The witness  
8 has testified that he heard. He was in the  
9 establishment, in the living room of the  
10 complainant, spoke with the complainant about  
11 8 minutes and that the noise from the Vita  
12 Lounge died down. That the noise was above  
13 the outdoor noise. That there was no vehicle  
14 out there with loud music, for example.

15 So if there is any question that  
16 is to elicit information other than that,  
17 that's not appropriate.

18 MEMBER SILVERSTEIN: I don't  
19 believe I'm badgering the witness, but I do  
20 want to be certain as to what he heard. What  
21 the level was, which in itself would be  
22 perhaps the degree of violation. Was it that

1 of a conversation? Could it be heard?

2 MR. MOLLOY: Yes.

3 MEMBER SILVERSTEIN: Absolute  
4 silence or could it be actually heard while  
5 people were maybe watching television or  
6 speaking?

7 MR. MOLLOY: Well, I was in the  
8 living room of the complainant's townhouse and  
9 we had made sure that the door was closed and  
10 the windows were closed and the volume of the  
11 music was such that while I was talking with  
12 Investigator Brian Owens and the complainant,  
13 we could easily hear the music over our level  
14 of standard conversation.

15 We could also hear it over any  
16 other street noise. It was clear that the  
17 music from Vita Lounge was the one like  
18 outside noise that we could hear inside his  
19 establishment. And it was to the point where  
20 if your goal was -- I mean, this was about  
21 1:45 a.m., your goal was, you know, I just  
22 want to sleep soundly.

1 I have no other noise. I don't  
2 have a TV on or radio on. You would hear the  
3 music from Vita Lounge very clearly and it  
4 would probably disrupt your sleep.

5 MEMBER SILVERSTEIN: That was what  
6 I was trying to determine. And this was at  
7 1:40 in the morning?

8 MR. MOLLOY: Approximately at  
9 1:40, 1:45.

10 MEMBER SILVERSTEIN: No further  
11 questions.

12 CHAIRPERSON MILLER: Okay.  
13 Others? This may be a little peripheral, I  
14 don't know if you'll object, but I'm wondering  
15 if you had occasion to go back for another  
16 noise complaint after this one?

17 MR. MOLLOY: I personally  
18 haven't --

19 CHAIRPERSON MILLER: Okay.

20 MR. MOLLOY: -- been back.

21 CHAIRPERSON MILLER: All right.

22 All right. Anything else? Okay. Thank you.

1 Is there any redirect on Board questions?

2 Okay.

3 MR. RIVERO: There is.

4 REDIRECT EXAMINATION

5 MR. RIVERO: Mr. Molloy, you have  
6 testified that the noise would probably  
7 disturb a person's sleep. But that's just  
8 your opinion? Isn't that correct?

9 MR. MOLLOY: That's correct.

10 MR. RIVERO: Okay. That's all.

11 No further questions.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you.

14 MR. RIVERO: Thank you.

15 CHAIRPERSON MILLER: Okay. Any  
16 other witnesses?

17 MR. RIVERO: The Government has no  
18 other witnesses.

19 CHAIRPERSON MILLER: Exhibits?  
20 Any other exhibits?

21 MR. RIVERO: We will shortly put  
22 in -- well, the only exhibit that is in the

1 record right now, as we have introduced it, is  
2 Exhibit 1.

3 CHAIRPERSON MILLER: Right.

4 MR. RIVERO: A copy which, of  
5 course, is in the Agency's file as well as  
6 part of the report.

7 CHAIRPERSON MILLER: Correct.

8 MR. RIVERO: Today the Government  
9 has provided information sufficient to show  
10 that Vita Lounge violated its voluntary  
11 agreement with the Board. They did operate on  
12 the night in question and a noise violation  
13 was found by the Investigator, at the time,  
14 who is the witness who testified today. Thank  
15 you.

16 CHAIRPERSON MILLER: Okay. Thank  
17 you. So the record is closed. Do you wish to  
18 file proposed findings of facts and  
19 conclusions of law?

20 MR. RIVERO: The Government will  
21 waive.

22 CHAIRPERSON MILLER: Okay. Then

1 the Board will issue a decision within 90  
2 days. I'm going to take a vote on  
3 deliberating this case in closed session.

4 As Chairperson of the Alcoholic  
5 Beverage Control Board for the District of  
6 Columbia and in accordance with Section 405 of  
7 the Open Meetings Amendment Act of 2010, I  
8 move that the ABC Board hold a closed meeting  
9 for the purpose of seeking legal advice from  
10 our counsel on Case No. 13-CMP-00104, Vita  
11 Restaurant and Lounge/Penthouse Nine, per  
12 Section 405(b)(4) of the Open Meetings  
13 Amendment Act of 2010, and deliberating upon  
14 this case for the reasons cited in Section  
15 405(b)(13) of the Open Meetings Amendment Act  
16 of 2010.

17 Is there a second?

18 MEMBER SILVERSTEIN: Second.

19 CHAIRPERSON MILLER: Mr.

20 Silverstein seconded the motion. I'll now  
21 take a roll call vote on the motion now that  
22 it has been seconded.

1 Mr. Brooks?

2 MEMBER BROOKS: I agree.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

5 CHAIRPERSON MILLER: Mr.

6 Rodriguez?

7 MEMBER RODRIGUEZ: I am sorry,

8 Madam Chair, I was --

9 CHAIRPERSON MILLER: We are taking  
10 a vote on considering this case in closed  
11 session.

12 MEMBER RODRIGUEZ: I agree.

13 CHAIRPERSON MILLER: Okay. I  
14 agree.

15 Mr. Silverstein?

16 MEMBER SILVERSTEIN: I agree.

17 CHAIRPERSON MILLER: Mr. Short?

18 MEMBER SHORT: I agree.

19 CHAIRPERSON MILLER: It appears  
20 that the motion has passed by a vote of 6-0-0.  
21 So this Board will consider this case in  
22 closed session and pursuant to the Open

1 Meetings Amendment Act of 2010, issue an order  
2 within 90 days.

3 Okay. Thank you very much. That  
4 concludes this case.

5 (Whereupon, the Show Cause Hearing  
6 in the above-entitled matter was concluded at  
7 12:01 p.m.)

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