

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, : Show Cause

1025 1st Street, SE : Hearing

Retailer CR : (Status)

License No. 83690 :

ANC 6D :

Case No. 13-CMP-00119 :

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November 6, 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

MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

CHRISSEY GEPHARDT, OAG

EARL JONES, ABRA INVESTIGATOR

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

(10:34 a.m.)

CHAIRPERSON MILLER: Okay. Are the parties here for Justin's Caf,?

(Off the record comments)

CHAIRPERSON MILLER: Okay. So I'm going to call that case then. That is Case Number 13-CMP-00119, Justin's Caf,, located at 1025 1st Street, SE, License Number 83690.

Good morning. So if you've signed in, could you now identify yourself for the record?

MR. ROSS: Yes. My name is Justin Ross, from Justin's Caf,, 1025 1st Street, Washington, D.C.

CHAIRPERSON MILLER: Okay. And you're the owner?

MR. ROSS: Yes, I am.

CHAIRPERSON MILLER: All right.

MS. GEPHARDT: Chrissy Gephardt on behalf on the District of Columbia. Good morning.

1 CHAIRPERSON MILLER: Okay. And
2 are there any preliminary matters in this
3 case?

4 MS. GEPHARDT: No, there are not.
5 The parties will proceed to a hearing.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Ross, are you familiar with the order of
8 procedure here, about how the hearing's going
9 to go?

10 MR. ROSS: I'm not quite sure
11 actually.

12 CHAIRPERSON MILLER: Okay. Well,
13 basically the Government has the burden of
14 proof. And the Government goes first. She
15 can make an opening statement.

16 And then you can, if you want, you
17 don't have to. It's not evidence. It's just
18 saying what you intend to prove, basically.
19 And you can either do that right after her or
20 when you start your case.

21 So she'll call her witnesses, and
22 then you'll have a chance to cross examine,

1 we'll have a chance to cross examine.

2 And then when she's finished with
3 her case, being witnesses and any documents
4 to put into evidence, then you can put on any
5 witnesses. Or you can testify yourself about
6 your case.

7 And the Government has a chance to
8 rebut. And then it's closing. She does a
9 closing argument. You do a closing argument
10 if you want. Okay. All right, then we are
11 ready to proceed?

12 MS. GEPHARDT: Yes, we're ready to
13 proceed.

14 CHAIRPERSON MILLER: And do you
15 have an opening?

16 MS. GEPHARDT: Sure. Board
17 members, today the charges which you're
18 alleging, I guess, to the Licensee are that
19 he provided entertainment in his
20 establishment without having an entertainment
21 endorsement at the time, which was on
22 Thursday, February 21st, 2013, at

1 approximately 7:30 p.m.

2 And then also that he violated the
3 terms of his voluntary agreement which
4 prohibits live music inside the
5 establishment.

6 You will hear, through the
7 testimony of an investigator, an ABRA
8 investigator, that a live band was witnessed
9 to be playing inside the establishment on
10 this particular evening.

11 And at the end, I will ask that
12 you will find that this Licensee has been in
13 violation of these two charges. And I will
14 ask that you levy a fine which I will discuss
15 in my closing.

16 CHAIRPERSON MILLER: Okay, thank
17 you. Did you want to make an opening
18 statement?

19 MR. ROSS: Yes. The only thing I
20 would like to say is that we did, I'm not
21 sure of the exact date, because I wasn't
22 quite sure. My phone died and I couldn't

1 look it up. But we do have entertainment
2 endorsement now.

3 We've had it for about eight
4 months. And part of it was just my not
5 knowing fully well of the rules. And I
6 didn't know that I necessarily needed that
7 for a guitar and a singer. Because we
8 weren't charging admission.

9 It was stupid on my part to not
10 know. But since we've gotten the
11 entertainment endorsement we've got on the
12 voluntary agreement from the this time
13 (phonetic) 10:38:26.

14 CHAIRPERSON MILLER: Okay. So I
15 just want to clarify something with you,
16 okay. So that's fine. That's your opening.
17 It's not evidence, even though what you said
18 sounded like you might want to have it as
19 evidence.

20 So when it gets to your case and I
21 swear you in again, don't think you've
22 already said it. Because you haven't said it

1 as evidence.

2 MR. ROSS: Okay.

3 CHAIRPERSON MILLER: All right.

4 Ms. Gephardt, are you ready to call your
5 first witness?

6 MS. GEPHARDT: Yes, the Government
7 would like to call Investigator Earl Jones to
8 the stand please.

9 CHAIRPERSON MILLER: Good morning.

10 MR. JONES: Good morning?

11 CHAIRPERSON MILLER: Do you swear
12 to tell the truth, the whole truth, nothing
13 but the truth?

14 MR. JONES: I do.

15 CHAIRPERSON MILLER: Okay, thank
16 you.

17 MS. GEPHARDT: Good morning,
18 Investigator Jones.

19 MR. JONES: Good morning.

20 MS. GEPHARDT: Can you please
21 state where you work?

22 MR. JONES: I work for the

1 Alcoholic Beverage Regulation Administration.

2 MS. GEPHARDT: And what is your
3 position?

4 MR. JONES: As an investigator,
5 compliance investigator.

6 MS. GEPHARDT: And how long have
7 you worked for ABRA?

8 MR. JONES: Since September of
9 2009.

10 MS. GEPHARDT: And as a compliance
11 investigator, in general, what are your
12 duties?

13 MR. JONES: Our duties, we inspect
14 and conduct investigations of licensed ABC
15 establishments within the District of
16 Columbia.

17 MS. GEPHARDT: Okay. And do you
18 recall the name of a Licensee by the name
19 Justin's Caf,?

20 MR. JONES: Yes, ma'am.

21 MS. GEPHARDT: And did you have
22 occasion to visit Justin's Caf, on Thursday,

1 February 21st, 2013, at approximately 7:30
2 p.m.?

3 MR. JONES: Yes, ma'am.

4 MS. GEPHARDT: And what was the
5 purpose of your visit?

6 MR. JONES: I went to conduct a
7 regulatory inspection.

8 MS. GEPHARDT: Okay. And when you
9 say a regulatory inspection, what is that?

10 MR. JONES: A regulatory
11 inspection for our agency is basically a
12 common inspection that each ABC establishment
13 within the District, they get a minimum of
14 three a year.

15 And then basically we inspect all
16 the licenses to make sure that they're all
17 current and up to date.

18 MS. GEPHARDT: Okay. Can you tell
19 me when you arrived at Justin's Caf, what you
20 saw or what you noticed?

21 MR. JONES: Upon arrival, the
22 place seemed pretty crowded. Once I heard a

1 band or I heard music coming from inside the
2 establishment prior to entering.

3 Once I entered I could see that
4 there was live entertainment being provided.
5 There was basically a two-piece band. There
6 was a male and female, two-piece member band
7 that was playing.

8 I walked past the both of them,
9 and I went to go and try to speak to an ABC
10 manager or an owner at that point in time.

11 MS. GEPHARDT: Now when you say a
12 two-piece band, can you tell me what the band
13 was doing?

14 MR. JONES: There was a female who
15 was singing on the microphone. And then
16 there was a male that was, he was playing an
17 instrument. And it was being amplified
18 through speakers.

19 MS. GEPHARDT: Okay. And were the
20 people in the establishment dancing or --

21 MR. JONES: I didn't observe any
22 dancing. The patrons were enjoying the

1 music, but I didn't observe any dancing.

2 MS. GEPHARDT: Okay. And you
3 mentioned that you went inside the
4 establishment to find an ABC manager or an
5 owner. Did you locate anybody?

6 MR. JONES: Yes, ma'am. I located
7 the owner of the establishment, who is here
8 today.

9 MS. GEPHARDT: Okay. And what did
10 you talk to him about?

11 MR. JONES: I spoke with him
12 about, well, first I identified myself. And
13 I advised as to the reason that I was there.

14 And once he handed me the
15 licenses, I began to conduct my regulatory
16 inspection. Upon conducting the regulatory
17 inspection, I observed that the license, the
18 ABC license, did not have an entertainment
19 endorsement on it.

20 MS. GEPHARDT: Okay.

21 MR. JONES: At that point, I
22 asked, you know, I spoke with him. And I

1 told him that what was being provided as far
2 as entertainment was considered an ABRA
3 violation due to not having an entertainment
4 endorsement.

5 MS. GEPHARDT: Okay. And you said
6 when I talked to him, who are you referring
7 to again?

8 MR. JONES: The owner, Mr. Ross.

9 MS. GEPHARDT: Okay. And how
10 again were you able to tell whether he had an
11 entertainment endorsement or not?

12 MR. JONES: It was not listed. At
13 that time, it was not listed on the ABC
14 license as an endorsement.

15 MS. GEPHARDT: And at any point
16 after your visit, did you confirm whether the
17 entertainment endorsement was in place or
18 not?

19 MR. JONES: Yes. Once I got back
20 to the office I reviewed the ABRA records for
21 the establishment.

22 And that's common practice,

1 because you want to make sure that you're
2 doing the correct thing. You don't want to
3 violate someone when they're not supposed to
4 be.

5 So I went through the ABRA record
6 to make sure that either he had filed and had
7 been approved, and it just wasn't on the
8 license, or whether he actually didn't have
9 it.

10
11 And what I saw, what I observed
12 earlier, was true. And it was. He had not
13 applied for it. And so that's when I went on
14 ahead. And I confirmed that there was a
15 violation with the entertainment endorsement.

16 MS. GEPHARDT: Okay.

17 MR. JONES: I also noticed that
18 the establishment at that time, what was
19 called a voluntary agreement which is now
20 called a settlement agreement, had a
21 stipulation in that indicating that the
22 establishment is not to provide live

1 entertainment inside or outside on the
2 sidewalk caf, unless being approved by the
3 ABRA Board.

4 MS. GEPHARDT: Okay. And are you
5 taking that out of the supplement to the
6 voluntary agreement?

7 MR. JONES: Yes, ma'am.

8 MS. GEPHARDT: Okay. I'd like to
9 show the Board, and the witness and the
10 Licensee what has been marked as Exhibit
11 Number 1 which is the supplement to the
12 voluntary agreement. And these are the
13 copies for the Board.

14 CHAIRPERSON MILLER: I think it's
15 also attached though to Mr. Jone's report.
16 Or is this different?

17 MS. GEPHARDT: I guess they're
18 attached to his exhibits. But --

19 CHAIRPERSON MILLER: As an
20 exhibit.

21 MS. GEPHARDT: -- the Government
22 wanted to bring this to the attention of the

1 Board. But I guess you're right. I suppose
2 you have these already.

3 CHAIRPERSON MILLER: Okay. I just
4 wanted to, I was just curious if it was the
5 same thing which I thought it would be.

6 MS. GEPHARDT: I assume the Board
7 gets all the exhibits attached to the
8 reports. Is that correct?

9 CHAIRPERSON MILLER: Yes.

10 MS. GEPHARDT: Okay. Investigator
11 Jones, you were mentioning the voluntary
12 agreement. Is this what you were referring
13 to, what you're seeing in front of you,
14 Government's Exhibit Number 1?

15 MR. JONES: Yes, ma'am, item
16 Number 2 under that nature of business, of
17 the business.

18 MS. GEPHARDT: And what does it
19 say?

20 MR. JONES: Number 2 says nature
21 of the business, "The applicant will manage
22 and operate an establishment with an emphasis

1 on food with separate restaurant and bar
2 areas and a sidewalk caf,.

3 "There will be no live music
4 either indoors or in the sidewalk caf,. Any
5 change from this model should be considered a
6 change in operation and requires prior
7 approval by the ABC Board."

8 MS. GEPHARDT: Okay. And do you
9 know when this agreement was executed, what
10 date it was?

11 MR. JONES: It was June 2010.

12 MS. GEPHARDT: Okay. On the last
13 page I believe it contains the dates.

14 MR. JONES: Yes, June 14th, 2010.

15 MS. GEPHARDT: Okay. So this
16 would have been effective at the time of the
17 violation on February 21st?

18 MR. JONES: Yes, ma'am.

19 MS. GEPHARDT: Okay. Brief
20 indulgence. So based on the voluntary
21 agreement that you checked, was it your
22 opinion that the Licensee was in violation of

1 the voluntary agreement?

2 MR. JONES: Yes, ma'am.

3 MS. GEPHARDT: Okay. That's all I
4 have for this witness.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Ross, do you have some questions for Mr.
7 Jones?

8 MR. ROSS: No.

9 CHAIRPERSON MILLER: Okay. Board
10 questions?

11 MALE PARTICIPANT: No.

12 CHAIRPERSON MILLER: I have one
13 question. And I'm not sure whether you might
14 have addressed this or not.

15 But in February on the date of
16 this incident, when you went back to the
17 office to check the record, there was no
18 entertainment endorsement. But did you check
19 to see whether there was an application
20 pending for an entertainment endorsement?

21 MR. JONES: I checked the file
22 thoroughly. There was no application.

1 CHAIRPERSON MILLER: There's no
2 application either?

3 MR. JONES: No, ma'am.

4 CHAIRPERSON MILLER: Okay. All
5 right, thank you. That's all I have. Okay,
6 thank you very much.

7 MR. JONES: Thank you.

8 CHAIRPERSON MILLER: Okay. Do you
9 have any other witnesses?

10 MS. GEPHARDT: I don't have any
11 other witnesses.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Ross, how would you like to proceed then.
14 It's your case now.

15 MR. ROSS: Okay. What do I --

16 CHAIRPERSON MILLER: You can
17 testify, take the stand and give your side of
18 the story, anything you want to say, which
19 would be under oath, and evidence. So if you
20 don't have another witness, that's what you
21 could do.

22 MR. ROSS: Yeah, okay. I'll do

1 that.

2 CHAIRPERSON MILLER: Okay. I'll
3 put you under oath.

4 Okay. Do you swear to tell the
5 truth, the whole truth, nothing but the
6 truth?

7 MR. ROSS: Yes.

8 CHAIRPERSON MILLER: Okay, thank
9 you. So, you know, even like what you said
10 before, that wasn't in evidence, like I said.
11 So anything you want to say now to, you know,
12 buttress your case.

13 MR. ROSS: Sure. I would like to
14 say there was just an oversight on my part.
15 I just didn't, it's stupid.

16 It was live music. And the fact
17 that it was not paying a cover or not
18 promoting it, I just thought that I didn't
19 need an entertainment endorsement.

20
21 And it was, you know, once I found
22 that out and once the investigator came we

1 applied. And we were given our entertainment
2 endorsement.

3 And we stopped, you know, after
4 the investigator came until we got our
5 entertainment endorsement. And that's, you
6 know, all I can say.

7 CHAIRPERSON MILLER: Okay. Ms.
8 Gephardt?

9 MS. GEPHARDT: My only question,
10 well, I mean no. I don't have any questions
11 based on that.

12 CHAIRPERSON MILLER: Okay. Board
13 members?

14 (No response)

15 CHAIRPERSON MILLER: I was just
16 curious. When did you apply?

17 MR. ROSS: I believe it was May,
18 is when we got the endorsement.

19 CHAIRPERSON MILLER: May is when
20 you got it?

21 MR. ROSS: Yes.

22 CHAIRPERSON MILLER: Oh, so you

1 applied earlier than that, okay. All right,
2 other questions? Yeah, Mr. Alberti?

3 MEMBER ALBERTI: Good morning, Mr.
4 Ross. With regards to your voluntary
5 agreement, settlement agreement as we call
6 them now, were you aware of the settlement
7 agreement at the time of this --

8 MR. ROSS: Yes, sir.

9 MEMBER ALBERTI: -- violation?

10 MR. ROSS: Yes, sir.

11 MEMBER ALBERTI: And you had
12 thoroughly read it prior to that?

13 MR. ROSS: Yes. I can't say that
14 I'd read it any time recently, you know,
15 since I've signed it. I mean I've gone over
16 it. It's an oversight on my part. I have no
17 excuse.

18 MEMBER ALBERTI: All right. I
19 mean, you have told us that you didn't
20 understand that because there was no cover
21 charge, your testimony was that because there
22 was no cover charge you understood that you

1 didn't need an entertainment endorsement.

2 But looking at this voluntary
3 agreement, it says under nature of business,
4 second sentence, it just says, "There will be
5 no live music either indoors or in the
6 sidewalk caf,." Was that clear to you?

7 MR. ROSS: I didn't read it close
8 enough. I mean, looking now it is very clear
9 to me. And I wouldn't have done it if I'd --

10 MEMBER ALBERTI: Thank you. No
11 further questions.

12 CHAIRPERSON MILLER: Okay. Any
13 questions on Board questions?

14 MS. GEPHARDT: No, no questions.

15 CHAIRPERSON MILLER: All right.
16 Thank you, Mr. Ross. Okay. And is there
17 anything else you want to add or put in the
18 case?

19 MR. ROSS: No.

20 CHAIRPERSON MILLER: Okay. Then
21 that brings us to closings, unless there's
22 rebuttal. Is there a rebuttal?

1 MS. GEPHARDT: No, no rebuttal.

2 CHAIRPERSON MILLER: Okay. Okay,
3 closings?

4 MS. GEPHARDT: Yes. Board
5 members, I think basically through the
6 testimony of Investigator Jones, you heard
7 that there was a live band on the evening of
8 February 21st, 2013, with somebody who was
9 singing and another individual who was
10 playing a guitar.

11 Thus, this would qualify as
12 entertainment. He told you that there was
13 not an entertainment endorsement at the time
14 which would allow that to take place.

15 And furthermore, he also checked
16 to see what the settlement agreement or the
17 voluntary agreement said.

18 And specifically in item Number 2,
19 the nature of the business, it specifically
20 states there will be no live music either
21 indoors or on the sidewalk caf,.

22 More importantly, I think, as you

1 have heard, the Licensee himself has
2 essentially admitted that he did not have an
3 entertainment endorsement at the time.

4 And also he admitted that the
5 voluntary agreement, that it says that he
6 cannot have live music either indoor or
7 outdoors.

8 However, as he stated, it was an
9 oversight. But I think for purposes of this
10 case and the charges here, I mean, he
11 essentially admitted that he is violation of
12 both of these. So the Government will ask
13 the Board that there be a \$4000 fine imposed
14 for --

15 CHAIRPERSON MILLER: How much?

16 MS. GEPHARDT: A \$4000 fine, which
17 would be \$2000 for each charge. And that's to
18 be payable within 60 days.

19 CHAIRPERSON MILLER: Okay. I just
20 have a question on that before I go to Mr.
21 Ross. Do you think this is double charging or
22 it isn't?

1 MS. GEPHARDT: Well, I believe
2 that the Government believes that this is two
3 separate violations.

4 While it may arise out of the same
5 set of facts, there was a lack of an
6 entertainment endorsement. And then there
7 was a violation of a settlement agreement.

8 And the Government believes that
9 disregarding or not paying attention to one's
10 settlement agreement is a serious violation.

11 And so it's not just a matter of
12 not having your entertainment endorsement.
13 But you're not agreeing to what you've already
14 said you would agree to with the community.
15 And so that's why we brought two separate
16 charges here.

17 CHAIRPERSON MILLER: Okay. Thank
18 you.

19 MEMBER ALBERTI: May I ask a
20 question?

21 CHAIRPERSON MILLER: Yeah.

22 MEMBER ALBERTI: Ms. Gephardt, just

1 to clarify what you just said, so I'm trying
2 to understand.

3 So as an example, if this had been
4 a DJ playing, is it your contention that he
5 would have had a violation because there was
6 no entertainment endorsement? But he would
7 not have had a violation of the settlement
8 agreement, because that's not live music?

9 MS. GEPHARDT: I hear exactly what
10 you're saying. Perhaps, yes, that would
11 probably be the case. Because that's not what
12 the agreement says, the voluntary agreement.

13 MEMBER ALBERTI: To make it clear,
14 if he had a comedian up there, which is
15 entertainment --

16 MS. GEPHARDT: Right.

17 MEMBER ALBERTI: That's not live
18 music.

19 MS. GEPHARDT: Well, right.

20 MEMBER ALBERTI: So that's my
21 example. So would it be true that he
22 wouldn't, is it your contention that he would

1 not have violated the settlement agreement?

2 MS. GEPHARDT: Well, it appears
3 that that is the case. It says live music.

4 MEMBER ALBERTI: Okay.

5 MS. GEPHARDT: I mean, obviously,
6 yeah. I mean, obviously there could be other
7 potential violations of the agreement. For
8 example, Number 6, noise and privacy,
9 "Applicant shall take all reasonable steps" --

10 MEMBER ALBERTI: But what we're
11 talking about, right, we're talking about --

12 MS. GEPHARDT: Right, no, I know.
13 But yeah, for that provision, yeah,
14 absolutely. It would just be live music.

15 MEMBER ALBERTI: Live
16 entertainment. All right. Thank you very
17 much.

18 MS. GEPHARDT: Yes.

19 CHAIRPERSON MILLER: Okay, Mr.
20 Ross, do you want to make any closing
21 argument, statement?

22 MR. ROSS: No.

1 CHAIRPERSON MILLER: Okay. Then
2 we're going to close the record. So all the
3 evidence is in which we heard, you know,
4 today. And then the investigator's report is
5 part of the record.

6 And so I need to ask you, which I
7 doubt you want to do, but do you want to file
8 proposed findings of facts and conclusions of
9 law?

10 MS. GEPHARDT: No, thank you.

11 CHAIRPERSON MILLER: Okay. That's
12 a whole legal brief on the evidence that we
13 heard today, basically. Okay. So you don't,
14 do you?

15 MR. ROSS: No.

16 CHAIRPERSON MILLER: Okay. So what
17 the Board is going to do is consider the
18 evidence that we heard today and what's in the
19 record. And we will issue an order within 90
20 days.

21 And the Board is just going to take
22 a vote on having a closed meeting to

1 deliberate this behind closed doors and
2 according to the Open Meetings Act.

3 So I'm going to read that now.
4 Wait a second.

5 Okay, as Chairperson of the
6 Alcoholic Beverage Control Board for the
7 District of Columbia, in accordance with
8 Section 405 of the Open Meetings Amendment Act
9 of 2010, I move that the ABC Board hold a
10 closed meeting for the purpose of seeking
11 legal advice from our Counsel on Case Number
12 13-CMP-00119, Justin's Caf,, for Section 405
13 (b) of the Open Meetings Amendment Act of 2012
14 and deliberating upon this case for the
15 reasons cited in Section 405(b)13 of the Open
16 Meetings Amendment Act of 2010.

17 Is there a second?

18 MR. SILVERSTEIN: Second.

19 CHAIRPERSON MILLER: Mr.
20 Silverstein seconded the motion. I'll now
21 take a Roll Call vote. Mr Alberti? Mr.
22 Alberti, do you --

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON MILLER: Okay. Ms.
3 Miller agrees. Mr. Silverstein?

4 MR. SILVERSTEIN: I agree.

5 CHAIRPERSON MILLER: Okay. It
6 appears the motion has passed by a three,
7 zero, zero vote.

8 I hereby give notice that the ABC
9 Board will hold a closed meeting in the ABC
10 Board conference room either today or next
11 Wednesday, depending on our schedule, pursuant
12 to the Open Meetings Amendment Act of 2010.
13 And we'll issue an order, a written order,
14 within 90 days which will be sent to you.

15 MR. ROSS: Okay.

16 MS. GEPHARDT: Thank you.

17 CHAIRPERSON MILLER: All right.
18 Thank you very much.

19 MR. ROSS: Appreciate it.

20 CHAIRPERSON MILLER: Okay.

21 (Whereupon, the hearing in the
22 above-entitled matter was concluded at 10:58

1

a.m.)

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A				D
\$2000 24:17	anybody 11:5	22:13 23:4 24:13	check 17:17,18	D.C 1:14 2:15
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Act 29:2,8,13,16	approximately 5:1		closings 22:21 23:3	different 14:16
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