

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA  
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
3 ALCOHOLIC BEVERAGE CONTROL BOARD  
4

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6 IN THE MATTER OF: :

7 Nispero, L.L.C. :

8 t/a El Nuevo Migueleno: Case #15-CMP-00715

9 1721 Columbia Road Northwest :

10 License #75403 :

11 Retailer Class CR :

12 ANC 1C :

13 No ABC Manager :

14 - - - - -X

15 Wednesday, May 25, 2016

16  
17 Whereupon, the above-referenced matter  
18 came on for hearing at the Alcoholic Beverage  
19 Control Board, Reeves Center, 2000 14th Street,  
20 N.W., Suite 400S, Washington, D.C. 20009.

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2 BOARD MEMBERS PRESENT

3 NICK ALBERTI, BOARD MEMBER

4 RUTHANNE MILLER, BOARD MEMBER

5 JAMES SHORT, BOARD MEMBER

6 MIKE SILVERSTEIN, BOARD MEMBER

7

8 ALSO PRESENT:

9

10

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

2 [09:37]

3 SHOW CAUSE HEARING STATUS

4 CHAIRPERSON ANDERSON: The next case on  
5 the Show Cause Hearing Status calendar is Case  
6 #15-CMP-00715, El Nuevo Migueleno, License  
7 #75403. Will the parties please approach and  
8 identify yourselves for the record please?

9 MR. RIVERO: Fernando Rivero for the  
10 District of Columbia.

11 CHAIRPERSON ANDERSON: Good afternoon,  
12 Mr. Rivero. I see that the licensee is not here.  
13 Do you have any representation that you can make  
14 on behalf of the licensee?

15 MR. RIVERO: I do not. I know that I had  
16 attempted to settle this matter previously and  
17 lost contact with the licensee. I would like the  
18 Board to take administrative note in its records,  
19 the licenses was served with notice about this  
20 hearing today and I believe there is on record a  
21 file to that effect.

22 CHAIRPERSON ANDERSON: All right. So,

1 this is a Show Cause Hearing. Is the government  
2 prepared to move forward?

3 MR. RIVERO: Yes.

4 CHAIRPERSON ANDERSON: Does the  
5 government wish to make an opening statement?

6 MR. RIVERO: Yes.

7 CHAIRPERSON ANDERSON: Proceed.

8 MR. RIVERO: Good afternoon Board members  
9 we're here today in the Show Cause matter of  
10 Nispero, L.L.C., trading as El Nuevo Migueleno,  
11 located at 1721 Columbia Road Northwest. The  
12 show cause notice issued in this matter concerns  
13 the charges that the licensee: 1) Permitted the  
14 establishment to operate without the presence of  
15 a Board-approved manager in violation of D.C.  
16 Official Code 25-701 and 2) personally  
17 superintended the establishment while under the  
18 influence of alcohol in violation of 25-703.  
19 It's our belief that a preponderance of the  
20 evidence, based on the testimony of our witness,  
21 ABRA investigator Vernon Leftwich, who visited  
22 the establishment on October 24, 2015, at

1 approximately 2:24 a.m., that an employee advised  
2 him that there was no ABC manager or owner  
3 present, and the investigator did return about 15  
4 minutes later to find the owner present but  
5 apparently intoxicated. The government will now  
6 call investigator, Vernon Leftwich, as its  
7 witness.

8 CHAIRPERSON ANDERSON: Well, I think that  
9 before you call -- well, I think the way it goes  
10 here, Mr. Rivero, I did ask you if you have an  
11 opening statement, and so you did your opening  
12 statement, and so I guess -- I guess you are  
13 ready to call your first witness, and go ahead,  
14 sir, who is your first witness?

15 MR. RIVERO: Vernon Leftwich.

16 CHAIRPERSON ANDERSON: Mr. Leftwich. Can  
17 you raise your right hand, please? Do you swear  
18 or affirm to tell the truth and nothing but the  
19 truth?

20 MR. RIVERO: Yes.

21 CHAIRPERSON ANDERSON: Thank you, have a  
22 seat. Your witness.

1 MR. RIVERO: Thank you. What is your  
2 name?

3 MR. LEFTWICH: Vernon Leftwich.

4 MR. RIVERO: Can you spell your last name  
5 for the record, please?

6 MR. LEFTWICH: Leftwich, L-E-F-T-W-I-C-H.

7 MR. RIVERO: What is your occupation, Mr.  
8 Leftwich?

9 MR. LEFTWICH: I'm an ABRA investigator.

10 MR. RIVERO: Okay, and what is ABRA?

11 MR. LEFTWICH: The Alcoholic Beverage  
12 Regulation Administration.

13 MR. RIVERO: What are your duties as an  
14 ABRA investigator?

15 MR. LEFTWICH: As an ABRA investigator,  
16 we conduct inspections and investigations at ABC  
17 licensed establishments through Washington D.C.

18 MR. RIVERO: How long have you been  
19 employed at ABRA?

20 MR. LEFTWICH: I've been employed since  
21 July of 2015.

22 MR. RIVERO: Are you familiar with the

1 establishment known as El Nuevo Migueleno?

2 MR. LEFTWICH: Yes.

3 MR. RIVERO: How are you familiar with  
4 that establishment?

5 MR. LEFTWICH: I'm familiar with the  
6 establishment by going there for a noise  
7 complaint.

8 MR. RIVERO: When did you visit the  
9 establishment?

10 MR. LEFTWICH: On October 24, 2015.

11 MR. RIVERO: What was the reason for your  
12 visit again?

13 MR. LEFTWICH: The reason I visited the  
14 establishment was due to a noise complaint by a  
15 resident in the area.

16 MR. RIVERO: Around what time did you  
17 arrive?

18 MR. LEFTWICH: I initially arrived at the  
19 establishment at about 2:25 a.m.

20 MR. RIVERO: With whom did you speak when  
21 you arrived at the establishment?

22 MR. LEFTWICH: A male employee --

1 security employee.

2 MR. RIVERO: What did you say to that  
3 person?

4 MR. LEFTWICH: I notified him who I was  
5 and that I was an ABRA investigator and the  
6 reason for my visit being there was a noise  
7 complaint and requested that the bass be turned  
8 down by the DJ.

9 MR. RIVERO: Okay, what happened after  
10 you made that request?

11 MR. LEFTWICH: The employee went over to  
12 the DJ's booth and they lowered the volume and he  
13 came back to me and asked was it low enough? And  
14 I stated that it was fine.

15 MR. RIVERO: Okay, and did you do  
16 anything else after that?

17 MR. LEFTWICH: After that I asked to  
18 speak with the ABC manager or owner on duty so  
19 that I could inform them that there was a noise  
20 complaint and that they should be notified that  
21 there was a noise complaint so that they can  
22 control the volume to ensure that there were no

1 further complaints.

2 MR. RIVERO: And what the security  
3 employee's response to your question?

4 MR. LEFTWICH: He informed that the owner  
5 had just recently left.

6 MR. RIVERO: Okay, and what did you do  
7 then?

8 MR. LEFTWICH: I asked was there an ABC  
9 manager on duty since their owner had just left.

10 MR. RIVERO: And his response?

11 MR. LEFTWICH: That there was no ABC  
12 manager on duty, that he could call the owner.

13 MR. RIVERO: And what happened after  
14 that?

15 MR. LEFTWICH: He telephonically  
16 contacted the owner and requested that he come  
17 back. He told him that I was there.

18 MR. RIVERO: And who at did you do?

19 MR. LEFTWICH: I informed him that I  
20 would be going to another establishment for  
21 another complaint and that I would be returning  
22 shortly in the hopes that the owner would be

1 there by the time that I returned.

2 MR. RIVERO: Okay. All right, and what -  
3 - how much later did you return to the premises?

4 MR. LEFTWICH: The establishment that I  
5 traveled to was approximately 7 minutes away so  
6 with parking and commuting back and forth, I  
7 returned about 15 to 20 minutes later at  
8 approximately 2:40 a.m.

9 MR. RIVERO: Okay, and what did you do  
10 when you arrived again at the establishment at  
11 approximately 2:40 a.m.?

12 MR. LEFTWICH: I spoke with the same male  
13 employee and asked him had the owner arrived back  
14 at the establishment, and he pointed in the  
15 direction of a gentleman standing in the back of  
16 the establishment next to the DJ booth in a blue  
17 polo shirt and jeans.

18 MR. RIVERO: Okay and what did you do  
19 after the employee pointed out this gentleman?

20 MR. LEFTWICH: I said thank you and I  
21 walked over to where the presumptive owner was  
22 and I informed him of who I was but I'm assuming

1 due to the music he couldn't hear me, so he  
2 motioned that I follow him and he directed us  
3 back towards the foyer before you exit and enter  
4 the establishment.

5 MR. RIVERO: And did you go there?

6 MR. LEFTWICH: Yes.

7 MR. RIVERO: What happened when you got  
8 to that area?

9 MR. LEFTWICH: I informed him who I was,  
10 why I was there and requested that he provide me  
11 with some form of identification to confirm his -  
12 - his -- who he was, and he refused to give me  
13 his ID, he informed me that their license allows  
14 them to operate to 3:00 a.m. and it wasn't 3:00  
15 a.m. at that time and that he did not have to  
16 close his establishment and I informed him that  
17 'you are actually very much so correct and I'm  
18 not there to ask you to close your establishment  
19 or to stop service, I'm here because for a noise  
20 complaint and furthermore there was no ABC  
21 manager or owner present at my initial visit, so  
22 I'm here to confirm that now.

1           He informed me that he was not giving me  
2 any identification, that I needed more training,  
3 that I was new, and I didn't know what I was  
4 talking about in regards to my reason for the  
5 visit and he also stated that I wasn't being  
6 truthful about the noise complaint.

7           MR. RIVERO: And after he said that what  
8 did you say or do?

9           MR. LEFTWICH: During this entire time  
10 the security officer, the male employee, was  
11 standing in the foyer with us and I asked him to  
12 ask his owner, the owner, to give me his ID. I  
13 was simply here for a noise complaint, this could  
14 be very easily resolved and it's just a  
15 notification.

16           He informed me to give him a break  
17 because he had a few drinks, and during this time  
18 the owner is still being a bit aggressive,  
19 yelling that I didn't know what I was doing, that  
20 I needed more training, and the security officer  
21 said that this is the only owner and that other  
22 ABRA investigators know who he is and this is the

1 owner, people know that he is the owner. I  
2 informed him that this is my first time at this  
3 establishment, I have no idea who he is, I've  
4 never seen him and I'm not aware that he's the  
5 owner by looking at him so would need some form  
6 of identification to confirm that.

7           Around this time, the owner, or said  
8 owner, stated that he would be calling the police  
9 and I immediately exited the establishment not to  
10 exacerbate and I called my supervisor and during  
11 this time he's still insulting me based on my  
12 knowledge of what I'm doing in regards to my  
13 duties by being there.

14           MR. RIVERO: Okay. When you were  
15 attempting to have this conversation about  
16 notification with this person who was pointed out  
17 to be the owner, could you assess his demeanor,  
18 what could you see, sense, smell about this  
19 individual?

20           MR. LEFTWICH: In the foyer area during  
21 our conversation, I could definitely smell  
22 alcohol on his breath as if he had recently

1 consumed some amount of alcohol. His eyes were a  
2 bit glossy, he wasn't very much focusing on me  
3 exactly, he wasn't really listening to what I was  
4 saying, he was agitated and very aggressive. The  
5 walk to the foyer area and even while we were in  
6 the foyer area he was wobbling per se, he wasn't  
7 even able to stand up on his own, he was leaning  
8 on the wall the majority of the time, very loud  
9 and a bit confrontational.

10 MR. RIVERO: And you would testify that  
11 the security employee said to you that he had had  
12 a couple of drinks?

13 MR. LEFTWICH: Yes, his exact words that  
14 "man give him a break, he's had a few drinks."

15 MR. RIVERO: A few, not a couple, a few?

16 MR. LEFTWICH: Mm hmm.

17 MR. RIVERO: Okay, all right. You said  
18 that you exited after the purported owner  
19 threatened you and attempted to call the police?

20 MR. LEFTWICH: Yes.

21 MR. RIVERO: And you said that you  
22 contacted your supervisor?

1 MR. LEFTWICH: My supervisor, yes.

2 MR. RIVERO: What did you say to your  
3 supervisor?

4 MR. LEFTWICH: I informed my supervisor  
5 that I had notified them of a noise complaint and  
6 the result of the noise complaint being that they  
7 did turn down the volume, and that I left and  
8 returned to make sure that there was an abc  
9 manager on duty, but the said owner refused to  
10 give me his identification and stated that I had  
11 needed more training, that I didn't know what I  
12 was doing, and that he was going to call the  
13 police because he wanted me to leave his  
14 establishment, so I has did, he confirmed that I  
15 should leave the establishment and return to the  
16 office and e-mail a summary and finalize an  
17 official report.

18 MR. RIVERO: Okay. Well, I'm going to  
19 show you what I have marked government Exhibit  
20 #127 that would have been given to the licensee  
21 had the licensee been here. Let me give that to  
22 you. Can you tell me what that looks like to

1 you?

2 MR. LEFTWICH: this is the official  
3 report that I typed.

4 MR. RIVERO: Okay, I want you to take a  
5 look and make sure that it's complete and  
6 accurate.

7 MR. LEFTWICH: Yes.

8 MR. RIVERO: Okay. [inaudible 12:00]  
9 evidence of exhibit one, the investigator's  
10 report.

11 CHAIRPERSON ANDERSON: It's so moved.

12 MR. RIVERO: thank you, no further  
13 questions at this time.

14 CHAIRPERSON ANDERSON: Do any Board  
15 members have any questions for the investigator?  
16 Any questions for the investigator by the Board?  
17 Hearing none, you are free to -- thank you, sir.  
18 Does the government have any other witnesses?

19 MR. RIVERO: The government does not.

20 CHAIRPERSON ANDERSON: Does the  
21 government rest?

22 MR. RIVERO: Yes.

1 CHAIRPERSON ANDERSON: Does the  
2 government wish to make a closing?

3 MR. RIVERO: Yes.

4 CHAIRPERSON ANDERSON: Go ahead, sir.

5 MR. RIVERO: First, I'd like the record  
6 to reflect that there is an interpreter present  
7 and available during the length of this hearing.  
8 We do believe that the government has introduced  
9 witnessed testimony from the ABRA investigator  
10 that reports a preponderance of the evidence that  
11 the licensee wasn't present on the premises on  
12 the investigator's visit that morning of October  
13 24. There is plenty of evidence that the  
14 employee admitted that there was no owner there  
15 and that there was no manager there, and that was  
16 all that we need to prove because there has been  
17 no evidence in corroboration of any contrary  
18 assertion.

19 Secondly, the investigator returned about  
20 15 or so minutes later and was unable to  
21 personally ascertain that the individual who was  
22 on the premises was, in fact, the owner. So,

1 we're only alleging a violation of no ABC manager  
2 on duty. As to the first visit. As to the  
3 second visit, even if we concede by the behavior  
4 of the individual, in fact an owner, it's clear  
5 that we have an owner who was uncooperative and  
6 that's a not a violation of the D.C. Code. It is  
7 a violation of the D.C. Code, however, if you're  
8 superintending an establishment and you're  
9 intoxicated and the evidence that goes to that  
10 violation is the testimony of the investigator  
11 about what he observed, the demeanor of the  
12 purported owner, his inability to walk properly,  
13 his lack of understanding and despite the  
14 investigator repeatedly correcting him that his  
15 purpose at the establishment was not to shut the  
16 place down but to talk about a noise complaint,  
17 the physical, glossy-eyed, the smell of alcohol,  
18 and also the corroborating statement of the  
19 employee who said he'd had a few drinks.

20 So, had there been actual testimony from  
21 the other side there might be some evidence to  
22 cast the investigator's observations in some

1 other light, but we don't have that and we have  
2 the fact that an investigator that has been on  
3 the job for a year now and testified to signs of  
4 intoxication that are not beyond the normal ken  
5 of folks in society today so we don't actually  
6 need an expert to testify when someone thinks  
7 another person is drunk, which is what happened  
8 here.

9           And with that, we believe that the  
10 government has proven both of the charges by a  
11 preponderance of the evidence and we would  
12 recommend a penalty consistent with Title 25 of  
13 the D.C. Code. Thank you. The government waives  
14 the findings of fact and conclusions.

15           CHAIRPERSON ANDERSON: All right. As  
16 chairperson of the Alcoholic Beverage chairperson  
17 of the Alcoholic Beverage Control Board for the  
18 District of Columbia and in accordance with D.C.  
19 section 405 of the Open Meetings Amendment Act of  
20 2010, I move that the ABC Board hold a closed  
21 meeting for the purpose of seeking legal advice  
22 from our counsel on Case #15-CMP-00715, El Nuevo

1 Migueleno per section 405 B4 of the Open Meetings  
2 Amendment Act of 2010 and deliberating upon case  
3 #15-CMP- 00715, El Nuevo Migueleno, for the  
4 reasons cited in section 405 B13 of the Open  
5 Meetings Amendment Act of 2010. Is there a  
6 second?

7 MR. SHORT: Second.

8 CHAIRPERSON ANDERSON: Mr. Short has  
9 seconded the motion. I will now take a roll call  
10 vote on the motion before us now that it has been  
11 seconded, Mr. Silverstein?

12 MR. SILVERSTEIN: I agree.

13 CHAIRPERSON ANDERSON: Mr. Short?

14 MR. SHORT: I agree.

15 CHAIRPERSON ANDERSON: Mr. Alberti?

16 MR. ALBERTI: I agree.

17 CHAIRPERSON ANDERSON: Ms. Miller?

18 MS. MILLER: I agree.

19 CHAIRPERSON ANDERSON: Mr. Anderson? I  
20 agree. As it appears that the motion has passed  
21 I hereby give notice that the ABC Board will hold  
22 a closed meeting in the ABC Board Conference Room

1 pursuant to the Open Meetings Amendment Act of  
2 2010 and issue an order within 90 days. Thank  
3 you.

4 MR. RIVERO: Thank you.

5 CHAIRPERSON ANDERSON: All right, the  
6 Board will be in recess until our 3:30 hearing.  
7

8 (Whereupon, the above-entitled matter was  
9 concluded.)

10