

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

X

IN THE MATTER OF: :
Hop and Wine Beverages, LLC: Case multiple
t/a Hop and Wine Beverages :
1344 4th Street NE :
License #86140 :
Retailer A Wholesaler's :
ANC 5D :
Violated Terms of Whls LiC :
- - - - -X

Wednesday, September 28, 2016

Whereupon, the abovereferenced matter
came on for hearing at the Alcoholic Beverage
Control Board, Reeves Center, 2000 14th Street,
N.W., Suite 400S, Washington, D.C. 20009.

OLENDER REPORTING, INC.
1100 Connecticut Avenue N.W., #810, Washington, D.C. 20036
Washington: 2028981108 • Baltimore: 4107523376
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BOARD MEMBERS PRESENT

NICK ALBERTI, BOARD MEMBER

JAMES SHORT, BOARD MEMBER

MIKE SILVERSTEIN, BOARD MEMBER

RUTHANNE MILLER, BOARD MEMBER

ALSO PRESENT:

MICHAEL FONSECO

ANNELIESE ROWARN

MARTIN WETTEN

JASON PERU

P R O C E E D I N G S

FACT FINDING HEARING

CHAIRPERSON ANDERSON: We now have a fact finding hearing. This is regarding multiple cases, Hop and Wine Beverages, license #86140.

Will the parties please approach and identify themselves for the record, please?

MR. FONSECO: Good afternoon, members of the board. Michael Fonseca, on behalf of the licensee.

CHAIRPERSON ANDERSON: Good afternoon, Mr. Fonseca.

MR. WETTEN: Martin Wetten.

CHAIRPERSON ANDERSON: And who are you, sir?

MR. WETTEN: Hop and Wine Beverages owner.

CHAIRPERSON ANDERSON: Good afternoon.

MS. ROWARN: Anneliese Rowarn, Hop and Wine Beverages, director of strategic planning.

CHAIRPERSON ANDERSON: Director of what, ma'am?

MS. ROWARN: Strategic planning.

CHAIRPERSON ANDERSON: Good afternoon.

MR. PERU: I'm investigator Jason Peru.

CHAIRPERSON ANDERSON: Good afternoon. All right, let me just get back to the record. This -- we have a fact finding hearing and I'm going to list -- there's several cases and so I will list the case numbers: Case #16-CMP-00439, case #16-CMP-00438, case #16-CMP-00436, case #16-CMP-00435, case #16-CMP-00433, case #16-CMP-00432, case #16-CMP-00430, case #16-CMP-00428, case #16-CMP-00428 , case #16-CMP-00427, case #16-CMP-00426 , case #16-CMP-00424, case #16-CMP-00422, case #16-CMP-00421, case #16-CMP-00419, and case #16-CMP-00417.

All these cases are -- the overriding theme with these cases is sale of alcoholic beverages without a license prohibited, wholesaler's license importation permit requirements and qualifications, prohibited statements, unlawful importation of beverages, transport of beverages within the District of Columbia. Is everyone clear why is it that the board requested this fact finding hearing? Yes, Mr. Fonseca?

MR. FONSECO: Yes, Chairman. Let me say there's an incentive waiver hearing payment fine which was executed --

CHAIRPERSON ANDERSON: I can't hear --

MR. FONSECO: I'm sorry. Is this on? There's a --

CHAIRPERSON ANDERSON: I think it's on but you were covering --

MR. FONSECO: Oh, I was covering my mouth.

CHAIRPERSON ANDERSON: Yes, sir.

MR. FONSECO: Okay. There is a consent to waiver hearing and payment of fine of which all these cases that were read into the record were inclusive, the fine was paid in \$31,000 yesterday and the charges as summarized I think are limited to wholesale operations, storing, and then two charges of misleading or making [inaudible 04:25].

CHAIRPERSON ANDERSON: Yeah, as I said before, it's not a matter of -- we are aware that the licensee was fined, and we're aware that the licensee has paid the fine. The purpose of this

hearing, it's not a matter of the licensee paying a fine and writing it off as 'this is a fine that we have to pay to continue to operate our business', that board wants to be sure that this licensee is legally operating his business within the law within the confines of the District of Columbia, and so what I want from the licensee is for them to explain to the board that 'there is a process that we have started and that we will operate a legitimate business within the law, within D.C.'. Because I'm not -- the board will not be satisfied that we're going to move on and these violations continue, the licensee pays the fine and just chalk it off as the cost of doing business, okay?

MR. FONSECO: Understood.

CHAIRPERSON ANDERSON: So, how should we start? I think that everyone is aware of the issues so then the licensee or yourself, Mr. Fonseca, can try to express the issues that you are aware of that are the concerns that the board has for the operations.

MR. FONSECO: I can summarize --

CHAIRPERSON ANDERSON: Yes, sir.

MR. FONSECO: -- if that's helpful. There's acknowledgement that their operations didn't meet the requirements of the statute during the time in question. These begin after the licensee report which I believe was March 24th, but for certain for the month of April of 2016 forward once they saw that and gave me -- and I provided advice on the correct operation in the District of Columbia, the activities are in compliance. The warehouse is in use.

Deliveries -- of course, you have to understand that they have a major operation and a license in Virginia, so approximately that of the witnesses here also but in summary approximately 15 to 20%, now 25% of sales come into the District of Columbia, so it's a much bigger operation in Virginia, but everything ultimately originates from deliveries to the Virginia warehouse and then divvying up what's going out day by day for D.C. operations. So they are

arriving, being stored, deliveries are being made from that warehouse. So, in a nutshell that's how operations are being done now. There's no bringing a truck onto the property every five minutes and driving off. Storage is going on.

CHAIRPERSON ANDERSON: You said the warehouse is in use, so how do you -- what do you -- how do you qualify 'is in use.' What does that mean?

MR. FONSECO: Beverages that are going to be sold in certain -- delivered in the District of Columbia -- come in from inside the warehouse, so they're there whether they're there one or two days, whether they're arriving in the morning because it's a back order that then has to go out that day, it just depends. But it ends up in the warehouse, stay in the warehouse, before they get picked up by a truck that's going to do deliveries to the relevant retailers.

CHAIRPERSON ANDERSON: So, a truck is going to come from -- all right, someone is going to drop off a load of liquor in the warehouse five minutes a day, five minutes, ten minutes, 24

hours, that what's I mean, I'm confused.

That's what you said, the warehouse is in use. What I think of a warehouse is that I go to a warehouse, all the products are there and the delivery truck comes and picks up the product and moves on, and moves on. So, therefore, at any point I go to a warehouse, there are going to be supplies there.

MR. FONSECO: That's correct.

CHAIRPERSON ANDERSON: So, if I got -- say if I should go to the warehouse and this is what I consider a warehouse, I guess, the products are there, but I'm not sure if that's what you're saying, and that's what I'm confused about.

MR. FONSECO: Well, by far there are going to be products always there. There's going to be some diminishment of some and others will be back filled to fill it back up. There'll be some back orders that arrive in Virginia that will be brought in that might go out the door a little sooner and, again, it's not going to be five minutes, but it may not be overnight. This goes

on in the industry. The big guys, this happens all the time. Stuff comes in on the tractor trailers and they're put into shipments for that day. Most of the other products would stay there for a day or two and there's constant turnover.

CHAIRPERSON ANDERSON: Well, Mr. Fonseca, you're learned counsel. What is it that from your perspective -- what is it that the regulations require.

MR. FONSECO: The regulations don't -- are not clear. To be honest with you I think the industry is fearful of what some states have done because it would wreak havoc on the distribution supply.

CHAIRPERSON ANDERSON: But what is that?

MR. FONSECO: For example, Delaware requires 72 hours -- arrival, stays in the warehouse for 72 hours. Some products are so popular that it just -- it's just untenable.

CHAIRPERSON ANDERSON: What does the state of Virginia require? Since I was told that the operation, the major operation is out of

Virginia, so what does the state of Virginia require? I mean, you operate in Virginia, you should know what the law requires, I mean that's elementary.

MR. FONSECO: That's what I thought. It's a come to rest, but like a lot of come to rest --

CHAIRPERSON ANDERSON: What does that mean?

MR. FONSECO: That is the problem. That's the nougat that we're all fighting to -- how -- okay if it has to land into the warehouse, if it gets defined by some states then some extremes are -- like Delaware with the 72 hours.

CHAIRPERSON ANDERSON: All right, your client, as you stated, their major business is in Virginia, that's what you stated. So, what is the interpretation of the -- because if it's an issue and if the law in Virginia is similar to D.C. then it can be in D.C. and then they can move it from D.C., take it to Virginia. That's what you're doing, you're moving it from Virginia to D.C. So, since you're -- what I'm asking is, what is it that the state of Virginia requires,

because you have determined that you're keeping probably 75% -- 85, 80 to 85 -- minimum of 75% of the goods is going to be in Virginia because I think what you said is that 15 to 20%, sometimes 25% -- that's what -- I think that's the recommendation that you made.

MR. FONSECO: I said of sales, not of --

CHAIRPERSON ANDERSON: Of sales.

MR. FONSECO: In other words, 100% starts in Virginia.

CHAIRPERSON ANDERSON: Right.

MR. FONSECO: When it comes to sales then at least 25%, or probably a max of 25% is being moved into D.C. for D.C. Sales.

MR. ALBERTI: It's 25% of your wholesale sales are to the district, is that what you're telling us?

MR. FONSECO: Maximum.

MR. ALBERTI: 20 to 25%. Okay, okay.

CHAIRPERSON ANDERSON: I know there are some questions --

MR. FONSECO: Is this the ?

CHAIRPERSON ANDERSON: --yeah go ahead and then I'm going to stop asking questions and I'm going to let my other board members, or maybe I'll have the investigator ask questions, but I usually don't ask questions but because if I'm not clear that's why I'm starting the presentation, I'm not clear. Go ahead, sir.

MR. WETTEN: My understanding of the Virginia law, started in Virginia in 1994, is that the product has to come to the warehouse and once it hits the warehouse you can sell it. We have talked -- we have products in the craft beer industry that are so hot, like Bell's Hopslam you literally have people waiting for their truck to come, so once it comes in, even retailers in Virginia are allowed to come to the warehouse to get their product, but we've never had an issue in Virginia. I know more about Virginia's issues versus D.C. but, you know 'come to rest' is basically it has to go the floor and go from there.

CHAIRPERSON ANDERSON: I think the problem

that you're having in D.C. is a problem, and I'll again put on the record that the investigative reports in this case -- they're ingenious and it showed that this warehouse was not operational in D.C. The trucks never passed through, nothing happened in D.C.

And that's what these investigators' reports showed. Nothing happened in D.C. This -- and this is my word -- that it was a sham. I'm saying that's my word. I'm not saying that that's what the investigator said, but in reading it that's my personal conclusion. So, what assurances that you are going to give this board the next time. So, because I said before we, the board does not want this to be a cost of doing business in D.C. because you're paying a \$30,000 fine, I don't really believe that's a whole lot of money. But to some people it's a whole lot, but for the volume of business that you're doing, my assumption is that you could easily write this off as a cost of business and you can continue writing this off as a cost of business and then

you're not operating in the spirit of the law -- what the law intends. Go ahead, Mr. Alberti.

MR. ALBERTI: So, I have a number of questions. First I want to go to your description of what happens in Virginia. So, I understand you have hot products, they come in and they immediately go out, they probably barely hit the warehouse floor and I'm guessing some maybe get loaded to your delivery trucks or to someone that's coming to pick them up right off the tractor trailer possibly. Am I correct? Is that about what?

MR. WETTEN: Right off the tractor trailer? No, that's not correct.

MR. ALBERTI: Okay, so Virginia will sit there, will hit the warehouse floor and then immediately they're being pushed out they're so popular.

MR. WETTEN: Not just with Hop and Wine, with every wholesaler you have the same problems.

MR. ALBERTI: I got you, I got you, I get it, I get it. Those deliveries to Virginia, those

products where are they originating from?

MR. WETTEN: Well, the brewery or, a lot of times in Virginia, you know, we're in northern Virginia where we have all these, you know we have the demographics to support the sales of these brands, they come from other wholesalers, wholesaler transfer, sometimes if we run out of an Oktoberfest beer, we'll call an importer and they'll get it from another distributor in New York who might be overstocked.

MR. ALBERTI: Okay, okay.

MR. WETTEN: So it can come from the, you know --

MR. ALBERTI: Okay. But there is a distinction there because now you've got an extra separation because they're going to your warehouse in Virginia and basically they're originating from the manufacturer or some out-of-state distributor like we'd expect, right? Or it's transferred, wholesale. But here, you're just sort of transferring the product from one of your locations to another, to another one of your

places, so that's -- it's a subtle difference, but it is a difference in how I view this. How large is this warehouse in -- it's up by Union Market, right?

MR. WETTEN: Yes.

MR. ALBERTI: It's in that complex. How large is it?

MR. WETTEN: Do we have the square footage? Give us a second, we'll look at the lease.

MR. ALBERTI: Sure.

MR. WETTEN: She's got it on her phone. Can you ask the follow-up question, or the next question and we'll come back to it when we find it?

MR. ALBERTI: Yeah, so how many days a week do you make deliveries within D.C.

MR. WETTEN: Are you talking about the transfer to the warehouse?

MR. ALBERTI: No, deliveries in D.C. to --

MR. WETTEN: Can you tell us?

MS. ROWARN: We deliver Monday through Saturday.

MR. ALBERTI: Monday through Saturday. Does it differ quite a bit from day to day?

MS. ROWARN: Yes.

MR. ALBERTI: Okay, so give me the range. It's okay -- let me step back. How many trucks is that that you're sending out -- or how many truckloads are you sending out typically? What's the range each day in the District?

MS. ROWARN: Towards the end of the week, so Wednesday, Thursday and Friday those will be heavier delivery days because of just the retailers --

MR. ALBERTI: Sure.

MS. ROWARN: -- basically they're running with the cash flow of their business, most people don't want to buy more than they need so I would say that Monday and Tuesday it would be a small volume and Wednesday, Thursday and Friday would be where the largest amount of volume is coming in from and then Saturday would be slower than Monday or Tuesday.

MR. ALBERTI: Okay.

MS. ROWARN: So, it could be between two or five trucks.

MR. ALBERTI: Truckloads or trucks?

MS. ROWARN: What?

MR. ALBERTI: I'm counting if the truck has to make it's deliveries, come back and reload, that's a truckload and then go out again, that's two truckloads, so I want to really count truckloads.

MS. ROWARN: I don't -- to my knowledge, the truck is going to the D.C. warehouse once and then running its route --

MR. ALBERTI: And then that's it? Fine, so how many truckloads? How many trucks?

MS. ROWARN: It would be two to five depending on -

MR. ALBERTI: On the day? Okay. Where are these delivery trucks stored overnight?

MS. ROWARN: We have one truck that stays at the D.C. warehouse and the rest of them come back to Virginia.

MR. ALBERTI: So, the product that's brought

in to D.C. from Virginia, how is it transported? You've got maybe five trucks on Friday that might be making deliveries to the District. Are these the same five trucks that would be bringing the product from Virginia into the District?

MS. ROWARN: Yes.

MR. ALBERTI: So, how is the product brought from Virginia to the district?

MS. ROWARN: That's on a transfer truck, so a larger truck brings all the products to the D.C. warehouse?

MR. ALBERTI: What time of day does that happen usually?

MS. ROWARN: Between 2:00 to 3:00 a.m.

MR. ALBERTI: Okay, so it comes in early in the morning. So, occasionally we would expect someone, investigators out there to notice -- how long does it take to unload a truck like that?

MS. ROWARN: Several -- probably a couple of hours, several hours.

MR. ALBERTI: A couple of hours? So, we should expect to see those some nights out there.

Is that correct?

MS. ROWARN: Since, I mean since moving forward, yes.

MR. ALBERTI: What? Since you're moving forward.

MR. WETTEN: When they move forward.

MR. ALBERTI: What did you -- I'm all these questions? When did you start moving forward? I don't mean to be comical about this, but I need to know.

MR. WETTEN: I know. As I stated, essentially after the date of the last report, and they come into compliance --

MR. ALBERTI: Okay, so --

MR. WETTEN: -- in my opinion.

MR. ALBERTI: So it's currently I should be, they should be occasionally seeing these big trucks parked outside your warehouse unloading in the early morning hours? Okay.

MR. WETTEN: If you want, I can give you more detail, I didn't know those questions were going to be brought up but Keith Rankin who deals with

all this can, you know get that, so I can follow up.

MR. ALBERTI: These are the kind of details, at least the way I see it, the way I analyze problems. These are the kind of details that I know you should know so I know that you do have a plan.

MR. WETTEN: We do.

MR. ALBERTI: You can tell me you have a plan but I need the details to know what the plan is, it's not like some of our presidential candidates who have a plan and don't tell me what it is. So, you get the analogy but --

MR. WETTEN: I just want to add, I don't mean to be vague here, it's not an excuse because my company, I don't know 100% but I'm gone 80% of the time but I've got a real estate company and also Wetten Importers, it's a national import.

MR. ALBERTI: Sure.

MR. WETTEN: So, anything that I can't answer, I will see if I can get to you in detail.

MR. ALBERTI: I appreciate that, I appreciate

that. The size of the warehouse, maybe you can get that to me also?

MR. WETTEN: Yep. I'll do that right now.

MR. ALBERTI: Okay, so when do your deliveries happen typically?

MS. ROWARN: I would say that they're coming late, most retailers and wholesalers are accepting deliveries later in the day, so our [inaudible 23:24] so it depends on when our customers are open.

MR. ALBERTI: Okay. So, are your delivery trucks coming in empty?

MS. ROWARN: Yes.

MR. ALBERTI: Okay. And then getting loaded here. Okay. After I see the information if I have any follow-up questions I'll make sure they go to you but right now that's all I have. Thank you.

CHAIRPERSON ANDERSON: Yes, Mr. Short.

MR. SHORT: Good afternoon. Your name again? The owner?

MR. WETTEN: Martin Wetten.

MR. SHORT: Mr. Wetten, how long have you had your businesses in the District of Columbia?

MR. WETTEN: Wetten Importers in 1992, Hop and Wine was doing distribution since 1994, we were running on the Wetten license so in '97 it became Hop and Wine officially.

MR. SHORT: '97?

MR. WETTEN: Yes.

MR. SHORT: Your certificate of occupancy for Washington.

MR. WETTEN: I'm sorry?

MR. SHORT: Your certificate of occupancy, your C of O would be dated 1997?

MR. WETTEN: Not for D.C. I'm talking Virginia, we started in Virginia.

MR. SHORT: Okay, okay. Virginia -- give me the date again. 1997?

MR. WETTEN: 1997.

MR. SHORT: Virginia.

MR. WETTEN: We were operating as Wetten since 1994.

MR. SHORT: So in D.C. 1994.

MR. WETTEN: No, D.C. I believe we started on the permit system in 1998, '99.

MR. SHORT: Okay.

MR. WETTEN: When we got the warehouse four or five years, I think we bought the place down there five years ago.

MR. SHORT: Okay, before this, before you had your warehouse how were you doing business here in Washington D.C.? Before you had your warehouse.

MR. WETTEN: We were on the permit system.

MR. SHORT: Permit system?

MR. WETTEN: Initially.

MR. FONSECO: If I may, Mr. Short, let me clarify because prior to this, based on the regulatory inspection report of the investigator which was exhibit 1 on the first report, which, just so the record has this, which would have been case #16-CMP-00417, the C of O is dated April 24, 2012.

MR. SHORT: Okay, D.C. since about 2012.

MR. FONSECO: Correct.

MR. SHORT: Okay, I guess what I'm trying to find out is when you -- you were doing all your business permit wise prior to 2012.

MR. WETTEN: Yeah.

MR. SHORT: So you weren't storing anything in Washington?

MR. WETTEN: No, not then. We didn't have a warehouse.

MR. SHORT: Okay. What's different between what you were doing then and why you're here now? I guess what I'm trying -- let me clarify that. Your model in 2011, before you got your building in 2012 --

MR. WETTEN: Right --

MR. SHORT: How were you conducting business in Washington D.C.?

MR. WETTEN: We were on the permit system.

MR. SHORT: The permit system. So, is that a lot more expensive or less expensive?

MR. WETTEN: I think it got to a point, and correct me if I'm wrong, Annaliese, actually it got to be more expensive because we were growing

so much. We were a different company, craft brewers in a different world in 2011.

MR. SHORT: Okay.

MR. WETTEN: Yeah, it just ballooned out of control.

MR. SHORT: Have you ever had any problems in Virginia at all? Any?

MR. WETTEN: No, to the best of my knowledge, nothing. Not these kind of problems.

MR. SHORT: I didn't say these kind but any kind if as an alcohol operator.

MR. WETTEN: No, because I actually didn't, I was not even involved with Hop and Wine, even though I owned it, I was not running Hop and Wine, I kind of came on board January last year to clean things out. There was just, the company ballooned on us, craft beer just exploded, we were up to 153 employees, trying to service the whole state of Virginia and we sold off the south so it was a different world. We brought in a lot of great players from R_____ Premium that have, for lack of a better explanation, they've taken

us out of the develop world and made us a serious company.

MR. SHORT: Okay.

MR. WETTEN: We have managers managing managers.

MR. SHORT: Okay, your business model improved vastly.

MR. WETTEN: Since I came aboard, no credit to me, I mean I'm no genius but I knew the good people out there.

MR. SHORT: Okay. Please take this -- I'm glad to see any business come to Washington D.C. as a lifelong, lifetime person, we need as much taxes as we can get because at one time we were really not doing that well. We are now and so I'm pro-business, I want to see your business run wisely but according to the rules and according to the statutes and following all of the ABC rules so that we don't have to see you here again.

MR. WETTEN: Exactly.

MR. SHORT: But you'll be a good business.

Now, let me ask you this. Since you're the president, CEO, can you just give me a bottom line taxes what you paid in Virginia, bottom line what you paid in the District for last year?

MR. WETTEN: I'd say -- let me see here, correct me if I --

MR. SHORT: Ballpark, ballpark.

MR. WETTEN: It's 59 cents a case in Virginia for beer, is that correct? So, 59 cents --

MR. SHORT: It's 59 in Virginia?

MR. WETTEN: Yeah. It's much higher than in D.C. I believe D.C. is 18 cents a case, 2.25 gallons.

MR. SHORT: Okay. So, the longer you're living in Virginia the more money you pay.

MR. WETTEN: I'm sorry?

MR. SHORT: The longer -- well, I'll leave that alone. That's your distribution. I guess what I'm trying to say is, can you give me a bottom line? How much taxes, bottom line, if you don't know just say you don't know, but --

MR. WETTEN: Okay.

MR. SHORT: -- how much taxes did you pay in the District of Columbia last year?

MR. WETTEN: Honestly, I don't know because I don't pay those bills.

MR. SHORT: But you're doing a roaring business. A robust business.

MR. WETTEN: Ah, no disrespect against D.C. and this will speak for every wholesaler, we're a Virginia first wholesaler [inaudible 29:02] for two reasons. In Virginia, we have franchise laws that protect us. D.C. you have no protection, you can lose a brand. Like, we've lost two brands in the past year, our two largest -- Stone Lagers --

MR. SHORT: For the record let's break that down for a layperson.

MR. WETTEN: I'm sorry?

MR. SHORT: You say you lost two brands?

MR. WETTEN: Yes.

MR. SHORT: Break that down for the layperson for the record.

MR. WETTEN: I'm sorry?

MR. SHORT: Explain that, without --

MR. WETTEN: We no longer represent Stone Lagers which is huge for us is what I'm saying. Mr. Fonseca.

MR. FONSECO: If I may, I'll deal with two issues, this one first. Certain jurisdictions have what are called franchise laws so that the wholesaler has a relationship with the manufacturer that's contractual and they can't break the contract. The District of Columbia, there is no franchise law. And we're small. Frankly if you think about it until the 2000s came, there were only a handful of wholesalers. They just kept consolidating so there were two or three, and now we've got this explosion which lets me segue then into the permit system and how it really works. It's what gives the district the phenomenal selection of wines and beers and many going back to when I was the director in the late 80s, Corona came in originally on permits and once it took off, it was the same thing. You've got to become a wholesaler. Everybody

that comes in becomes a small DCR seller working off the permits until it just became uncontrollable, just too many. We were running 100 permits in a lot every day. It's not feasible any longer. So that's essentially why you start to get more and more small wholesalers coming in or they could be big somewhere else but they need a branch in D.C.

MR. SHORT: Thank you for that explanation and Mr. Fonseco I wouldn't expect anything different than, with your professional background, than to have the information and I'm glad that you were able to explain it for us, but the bottom line, the reason why we're here is because something went awry and our investigation unit found that our laws weren't being adhered to. So, again, I guess you already got this question earlier, and one of you can answer it. Your business model now won't allow that to happen to you again, is that correct?

MR. WETTEN: That's correct.

MR. SHORT: Okay, so with these many

violations you know if you come to the board again with the same issues something very serious may happen, correct?

MR. WETTEN: That's correct.

MR. SHORT: And I'm pro-business, we are pro-business, and we want to see you do it right here, so I'm hopeful we don't see you again under these kinds of circumstances. That's all I have, Mr. Chair, thank you.

CHAIRPERSON ANDERSON: Thank you, Mr. Short. Yes, Ms. Miller.

MS. MILLER: Good afternoon. I just want to follow up on a question I think Mr. Short asked but I don't know that we got an answer to it in here. I'm just most interested in what you changed in your operation into compliance. I think you have made, Mr. Fonseca, that there's a penalty paid because operations weren't in compliance, and so I'm wondering how that's changed now.

MR. FONSECO: Essentially, we are storing in D.C. before making deliveries to D.C. retailers.

MS. MILLER: Okay, thank you.

MR. FONSECO: No direct delivery from Virginia into D.C. --

MS. MILLER: Okay.

MR. FONSECO: -- the only direct delivery is to the warehouse. There are other smaller trucks that then load up and deliver to the appointed clients.

MS. MILLER: Do all D.C. deliveries come from products that are stored in warehouses? There's no set time that they are stored there?

MR. FONSECO: That is the conundrum, yes. They are stored in the times required.

MS. MILLER: Okay. But before some of them weren't even stored at all, right?

MR. FONSECO: During the time in question, I think essentially the consent waiver concedes to the charges, so yes.

MS. MILLER: Yes, okay, thank you.

CHAIRPERSON ANDERSON: Hold on one minute. Go ahead Mr. Silverstein.

MR. SILVERSTEIN: I just -- I want to thank

you for moving to correct this and I think that if you haven't as of now, sir, you might want to speak to your learned counsel about the history of this law, which goes, I believe, to the 1970s, why it was implemented and some things that have happened as a back story since then as to why this is so important: a) for jobs, b) that taxation, keeping the proper regulations, and it's not being done simply to be intrusive or to put an undue burden upon your business, but the reasons, and especially the history [inaudible 33:51]. Thank you.

CHAIRPERSON ANDERSON: Mr. Peru. I know you did an excellent report with the other investigators and you're here today. Are there any questions? As an investigator what are your charges to go out there and make sure that they're complying with the law, so are there any questions you have for them?

MR. PERU: Yeah, I have a couple of questions just based on the information that was provided to you guys today, just for some clarity because

maybe things have changed. I interviewed Mr. Wetten five months ago now, almost to date, April 28th was the interview date, and at the time there was, you know, he had maybe not some clarity on his operations of what was going on. Five months later we're asking him questions and I'm still not getting 100% answers. From an investigator standpoint, it's nothing against you, I'm looking at the fact that you're the person on the license, so that's how I'm seeing it, so one question that was brought up today, she made a statement regarding operations of delivery to D.C. You said Monday through Saturday, okay? When I did my investigation for all those months it was Tuesday through Saturday, all the reports state, all the invoice receipts, transfers, truck receipts were all Tuesday through Saturday . Was that a mistake, that it's not Monday? It's not on Monday? Or it is Monday now?

MS. ROWARN: We recently started --

CHAIRPERSON ANDERSON: You need to speak up,

ma'am, because you're talking to us, yeah.

MS. ROWARN: So, we recently started doing Monday deliveries again. It was in between that time that we first met and --

CHAIRPERSON ANDERSON: You have to still -- pull the microphone closer.

MS. ROWARN: We recently started Monday deliveries again. Okay, so it's -- you are doing Mondays now? Okay. And it's still a certain amount of trucks are about the same as before?

MS. ROWARN: Yes.

MR. PERU: On a daily basis? And you mentioned, you said, and I -- just so we're clear -- I've been to the warehouse, I've driven by, I've never had a chance to physically go in since investigator Townsend and I had been there, you know, more to do surprise checks and surveillances, so there has been times that I have seen pallets stacked up that weren't stacked before since the investigation. The gate was unlocked a couple of times, so I guess that leads to my other question is one particular day we

came the gate was open and unlocked. We walked up, knocked on the door, there was no one in the office. Is there anybody? So, is that office still not -- it's not a manned office space still? Just the warehouse is used as come and go's or what's happening with that space now.

MS. ROWARN: It would depend on the particular day but we do have someone that is in the warehouse between four to six hours a day.

MR. PERU: They don't [inaudible 36:42].

MS. ROWARN: Say that again.

MR. PERU: Okay, I'll ask that question maybe

--

MR. ALBERTI: Can I just interject? So, during what times typically during the day? That's part of Mr. Peru's question.

MS. ROWARN: It would be in the morning while the transfer is happening.

MR. PERU: So, 3:00 a.m. to 4:00 a.m. is what I think you told the board, somewhere around that time? Okay, so then they'll be on after that.

MR. ALBERTI: What about people in the

office? Are the people in the office when you're loading? I'm sorry to interject here but it's just hard to understand the question.

MS. ROWARN: I'm not sure that I understand the question.

MR. ALBERTI: You've got two critical times: One when you get deliveries which is like 2:00 to 4:00 in the morning I'm guessing or somewhere around that, right? And then, you've got to load the trucks to go out, right?

MS. ROWARN: Yes.

MR. ALBERTI: So, you've got to have staff. Maybe they're not in the office, but there's activity there, there's got to be a responsible person there to speak to. What are those times?

MS. ROWARN: So, the person that is taking the transfer to the D.C. warehouse stays there until all of the other trucks have been loaded.

MR. ALBERTI: So, he stays there throughout. He might be there from 3:00 a.m. until 4:00 -- until 2:00 in the afternoon whenever all of the other trucks go out?

MS. ROWARN: Mm hmm. Well, not specifically 2:00 but, you know, after all the trucks have been loaded, the person will stay there to do, you know, whatever tasks need to be done in the warehouse.

MR. ALBERTI: Right, right, right. Okay, so we can expect someone there from around 3:00 a.m. to I would imagine 12:00 in the afternoon, 1:00 in the afternoon the next day, right? Okay.

CHAIRPERSON ANDERSON: See, you're being asked the questions. The investigator is asking a specific question because they don't want to go there at 1:00 and you said "you know the person just left because of all the deliveries," so from an investigator's perspective, if we're going to go there to do an investigation then they need to at least there should be some times when they'll say 'well, you know, we operate 9:00 to 5:00, so if we go between 9:00 and 5:00 we'll see some operation, but if they go there at 7:00 and there's no operation, then you can be in violation because those are not my business

hours. So, I assume that's what he's asking. When I'm coming what should I expect?

MS. ROWARN: Thank you for clarifying. I would say 4:00 to 11:00 a.m. -- 4:00 a.m. to 11:00 a.m.

MR. ALBERTI: Okay.

CHAIRPERSON ANDERSON: Your floor, Mr. Peru.

MR. PERU: I was just thinking. So, you also said -- and once again I'm not trying to dispute everything you're saying, I just know what I've been seeing at the location. So, you said there's a truck that you guys are keeping at the D.C. warehouse. I've never seen a box truck from April 28th through now. I've driving by several times at different times of day. I've never seen a box truck -- a Hop and Wine truck outside. So, is that recent? Is that new? I mean, where are the trucks being stored, parked or kept that it would be visible to us or to anybody driving by?

MR. WETTEN: Let me interject here, there's definitely a truck there when I'm there. My favorite restaurant in town is Masseria, which is

our favorite pit stop. I've seen trucks there on Saturday nights.

MR. PERU: Saturday nights parked overnight?

MR. WETTEN: That's correct. Absolutely. It's never the same truck, either.

MR. PERU: So, Saturday night going to be the night where it stays over, because that's --

MR. WETTEN: I have no -- I'm just saying when I went to dinner there I've seen one or two trucks parking there.

MR. PERU: Okay. That's fair enough. I'm asking, because my time maybe we're going to work on a Saturday night, I'm just trying to --

MR. WETTEN: Or it may be Thursday, I can't tell you but I'll look at my credit card receipts and look.

MS. ROWARN: The truck that is parked in the D.C. warehouse is also utilized during the day for deliveries.

MR. PERU: Oh, absolutely, I understand that, I understand that. I just wondered, once again, if we drive by, and mind you this is not singling

you out, this is a D.C.-wide thing to make sure everyone is in compliance here, and once again, being that this case was so intensive and lasted so long, and seeing -- making sure -- so, of course, today, I know that we're going to have fact finding at some point and I'm going to come to the board today and tell them what I did or didn't see and that's -- that's -- I'm revealing what I have seen in that time period, and I asked about the vehicle [inaudible 41:14] because I want the board to know just so you know where I'm at and you what I know, because there's a Mini Cooper with Virginia tags that was parked out front. And it was first parked -- we first saw it on May 3rd at 12:15 parked in the corner like there was the office. It looked like it was parked there and left overnight. We went back --

MR. FONSECO: Is that a.m. or p.m.?

MR. PERU: I'm sorry, sir. A.m. And then again I went by on 12:15 a.m. on May 3rd and then 12:16 on September 1st at 11:37 a.m. the same Mini Cooper parked in the same place at the same

warehouse. I mean in the same location, so.

MR. WETTEN: Do you mind if I see that?

MS. ROWARN: That's one of the D.C. drivers.

MR. PERU: That's why I was asking. That's why I was asking about the truck they're driving because I've seen the Mini Cooper there.

MR. ALBERTI: But that would be during the hours that you don't have ongoing activity, right?

MS. ROWARN: That's what --

MR. ALBERTI: 12:00 midnight? Is that what we're talking about?

MS. ROWARN: Is it 12:00 p.m.?

MR. ALBERTI: Or p.m.?

MR. PERU: I think that it should be p.m. -- yeah, the picture was taken in the daytime.

MR. ALBERTI: Okay, so it's in the morn --

MR. FONSECO: 12:00 noon.

MR. ALBERTI: Okay, all right. It was taken with light?

MR. PERU: Yes, with light.

MR. FONSECO: Yeah, it's with light but the

12:15 one does say that it's a.m. but it's got to be p.m. There is daylight. It's definitely that, that's the first day that we went there it was on a day that it was actually open so we went to knock and talk to somebody and no one was there and that's when I took those.

MR. PERU: Can I have that back, please?
Thanks.

CHAIRPERSON ANDERSON: You know I should never have been a lawyer. Stop me from looking at it because it's going to start questions and you're going to find problems with it.

MR. FONSECO: Another case I had pictures so I was -- in a positive light there's pallets stacked next to the Mini Cooper as well.

MR. PERU: I was just curious to be, my questions about the trying to get into the warehouse, you know, to see what was going on, so.

MR. FONSECO: Is that your last question?
Your last observation?

MR. PERU: Yes, yes it was, it was.

MR. FONSECO: One of the things in my mind, of course the board focused more on this issue but to micromanage what trucks are there and what trucks aren't there -- it's the activities of being a wholesaler, of storing, so the products are coming in and being put into the warehouse, the trucks are coming in later to take some of it out or most of it out, depending on what the orders are, and then they're off making their deliveries and this is going on day after day after day, I submit that that's operating within the confines of the law as a District of Columbia wholesaler.

CHAIRPERSON ANDERSON: But, Mr. Fonseca, there's, what, 15 or 16 cases, and I think that - - and we're not discussing about the other cases, but I'm just saying from a factual perspective the reports that you have in front of you, the investigators stated proved that there was no activity there. So, we're not trying to micro -- the board is not trying to micromanage, the board is trying to get some sense of whether or not

there is activity there because from what I've seen and one of the investigators had a spring on that gate and came back and it was still there, so it says that there was no activity. So, we're not trying to micromanage it, we're trying to find out to get a sense -- to be fair to you. As I said before, if you -- if this wholesaler says that 'my hours of business are from 9:00 to 5:00,' then if the investigator goes there between 9:00 to 5:00 at any point between 9:00 to 5:00 he or she should see some activities there. If the investigator goes there at 7:00 p.m. and says there's no activity, then you can come back to the board and say that we have informed the board that our hours are 9:00 to 5:00. By going there at 7:00 p.m. if there's no activity that does not prove anything because that's not our operating hours. So, you need to help your client. You need to tell the investigator, give the investigator a timeline where if the investigator comes within this timeline, then they will see the activity. If you don't give a

timeline the investigator will go there at 7:00 p.m. see no activity and then I'm not going to take it and if there's a case and you come here and say to us, 'why would he go there at 7:00 p.m.?' Well, we went there at 7:00 p.m. because the impression that you left us is that you're 24 hours active, that there's activity there 24 hours, so at any point within that 24 hour period, there should be proof that there's activity going on in this law. So, that's all this is. We're -- I would hope that it's not taken that we're micromanaging. We just need to get some guidelines of what's your hours of business so the investigator would know to be fair to you.

MR. FONSECO: I understand, and my comment -- I apologize if you think it was intended to disregard the 15 cases, you know, you signed the consent to waive them and we paid the fine. We concede the charges. It's a matter of being in compliance now and staying in compliance which is critical and we understand that. So, it was more

about whether or not a truck was there overnight or not overnight is a matter of indifference if the warehouse is closed. That was really the point I was trying to stress.

MR. ALBERTI: Mr. Fonseca, I mean all of this was to get some basic information because there's some obvious ways for us to monitor this. I mean, let's put it out there, it doesn't take Einstein to figure out 'oh, if we have someone monitoring this place from 9:00 to 11:00 based on what the owners -- what the staff and the owners told us' right? On a Friday we should see several of those trucks coming and going.

MR. FONSECO: Yes.

MR. ALBERTI: All right, and being loaded and if that doesn't happen, you'll be here again. I guarantee it. So, that's what we're trying -- it's not micromanaging, it's trust and verify, all right? You want us to believe you? I'm willing to do that and I will absolutely believe you once my investigators come out and tell me, 'you know, we were out there at certain times and

we saw the kind of activity that they described and would be associated with a wholesaler.' You know, I'm not going to be looking to see if every pallet hits the floor. But, we are going to be looking to see for obvious signs that you are operating.

MR. FONSECO: Understood.

CHAIRPERSON ANDERSON: Are there any other questions by any other board members? Mr. Peru?

MR. PERU: No, sir.

CHAIRPERSON ANDERSON: I just want to say to you that the board needs and wants assurances from you, as the owner, that you're complying with the law and I will assure you that if there are continued violations the board is not going to take it to state, 'okay, fine, we're going to fine you as a cost of business,' because you can write it off on your taxes, you will continue not complying with the law and this is just one of the costs of doing business and we do not want this to be the cost of doing business. Yes, we want your money but not because you are operating

outside of the confines of the law. All right? So, that's just, that's one of the reasons why -- we didn't have to have the fact finding, we fined you, you paid it when you paid, but the board wants to make sure that you know that we want to make sure that you're complying with the law and that this should not be taken as the cost of doing business in Washington, D.C. Okay? Thank you very much for coming to the hearing today and I say this often, I hope to never see you again and that's a good thing. Thank you very much.

MR. FONSECO: Thank you.

MR. WETTEN: Thank you.

MR. ALBERTI: Thank you.

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