

Capital Reporting Company

In the Matter of: Fever Nightclub, LLC t/a Fever Bar & Lounge 09-19-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :  
 :  
Fever Nightclub, LLC :  
t/a Fever Bar & Lounge :  
816 H Street, NE :  
Retailer CT : Fact Finding  
License No. 89716 : Hearing  
ANC 6A :  
Case No. 12-CMP-00304 :  
Selling Alcoholic Beverages :  
Without a valid ABC License :  
-----x

September 19, 2012

The Alcoholic Beverage Control

Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

ABYIE GHENENE, ABRA

DIANE JACKSON, ABRA

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

2 2:26 p.m.

3 CHAIRPERSON MILLER: Our next fact finding  
4 hearing is scheduled for 2:30. It's 2:26. It looks  
5 like everyone is here. So you all can tell me if  
6 anyone's missing. This is Case No. 12-CMP-00304, Fever  
7 Bar & Lounge, located at 816 H Street, N.E., License  
8 No. 89716.

9 So did you see that there's a piece of paper  
10 on which you can sign in so we get your name spelled  
11 correctly for the record? Okay. When you're ready, if  
12 you would identify yourself for the record, please.

13 MR. LUMUKANDA: Dmaz Lumukanda on behalf of  
14 the Licensee.

15 MR. COHEN: I'm Darryl Cohen, owner-manager  
16 of Fever Bar & Lounge.

17 MR. GHENENE: And Abyie Ghenene, ABRA  
18 investigator on behalf of Investigator Vincent Parker.

19 CHAIRPERSON MILLER: Okay. And did you say  
20 you're Mr. Makagno [sic]?

21 MR. LUMUKANDA: Lumukanda.

22 CHAIRPERSON MILLER: Lumukanda?

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1 MR. LUMUKANDA: Yes, ma'am.

2 CHAIRPERSON MILLER: And you're representing?

3 MR. LUMUKANDA: I'm representing the  
4 Licensee.

5 CHAIRPERSON MILLER: The -- that's what I  
6 mean.

7 MR. LUMUKANDA: Yes, ma'am.

8 CHAIRPERSON MILLER: As an attorney?

9 MR. LUMUKANDA: No.

10 CHAIRPERSON MILLER: Oh, you're helping him?

11 MR. LUMUKANDA: Yes.

12 CHAIRPERSON MILLER: Okay. Fine.

13 MR. LUMUKANDA: Yes.

14 CHAIRPERSON MILLER: All right. Okay. So I  
15 might turn to Mr. Ghenene but my understanding is  
16 there's a question about whether or not Fever is  
17 operating without a license. That's, I believe, the  
18 focus of this fact finding. Okay. Are you ready to --

19 MR. GHENENE: Sure.

20 CHAIRPERSON MILLER: -- address that? Okay.

21 MR. GHENENE: I'm going to read Investigator  
22 Parker's report. He's not in the office this week.

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1 CHAIRPERSON MILLER: Okay.

2 MR. GHENENE: If that's -- if that's okay  
3 with the Board? Case No. is 12-CMP-00304. Date of the  
4 occurrence is July 14th, 2012, trading as Fever Bar &  
5 Lounge. Owner/Licensee Darryl Cohen is the managing  
6 member of Fever Nightclub, LLC. It says, "On Saturday,  
7 July 14th, 2012 at approximately 1:30 a.m., ABRA  
8 investigators Vincent Parker and Brian Owens were  
9 driving in the area near Fever Bar & Lounge, located at  
10 816 H Street, N.E." "Investigator Parker and Owens  
11 observed lights on and people inside the establishment.  
12 There were also two big placards posted at the  
13 establishment." And that's Exhibit 1. "Investigator  
14 Parker and Owens entered Fever Bar & Lounge and  
15 observed the bar in the establishment to be stocked  
16 with spirits." And that's Exhibit 2 and 3.  
17 "Investigator Parker made contact with Darryl Cohen,  
18 who was sitting at the bar, eating food. Mr. Cohen  
19 stated that he was the ABC manager presumably and  
20 presented an ABC manager's license 88595 of the  
21 establishment." "Investigator Parker requested to view  
22 the ABC license for the establishment. Mr. Cohen

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1 presented an ABC license for HR-57, Incorporated,  
2 trading as HR-57," Exhibit 4. "Mr. Cohen stated that  
3 Fever Bar & Lounge was authorized to operate under the  
4 ABC license of HR-57. No patrons were inside of Fever  
5 Bar & Lounge at the time of Investigator Parker's  
6 visit. Investigator Parker asked Mr. Cohen if Fever  
7 Bar & Lounge had sold or served or allowed consumption  
8 of any alcoholic beverages." "Mr. Cohen stated that  
9 Fever Bar & Lounge did sell alcoholic beverages and he  
10 provided a copy of a detailed daily report," exhibit 5,  
11 "from the point of sale," or the POS system. "This  
12 detailed daily report shows that from Friday, July  
13 13th, 2012 at 9:00 p.m.

14 until Saturday, July 14th, 2012, at the time  
15 when Investigator Parker's visit to Fever Bar & Lounge  
16 sold 11 alcoholic beverages for a total price of \$87."  
17 "On Saturday, July 14, 2012, Investigator Parker  
18 visited HR-57, located at 1007 H Street, N.E., and  
19 interviewed Mr. Alquides Puesan, the owner of the  
20 establishment. Mr. Puesan stated that HR-57 was  
21 previously located at 816 H Street, N.E. Mr. Puesan  
22 stated that HR-57 applied for and was issued a new ABC

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1 license at their current 1007 H Street, N.E.,  
2 location." And that's ABRA license 88592.

3 "And he stated that the ABRA license for HR-  
4 57, located at 816 H Street, N.E." -- and that's ABRA  
5 license 085910 -- "was still active. Investigator  
6 Parker advised Mr. Puesan that he would research the  
7 status of HR-57's license" -- or, I'm sorry, just HR-57  
8 -- "located at 816 H Street, N.E., and advise him at a  
9 future date about whether the license was active."

10 Excuse me.

11 "On Tuesday, July 17th, 2012, Investigator  
12 Parker began researching the HR-57's ABC license  
13 status. Investigator Parker confirmed that HR-57,  
14 Incorporated, License No. ABRA-085910, located at 816 H  
15 Street, N.E., owned by Alquides A. Puesan, was  
16 previously a licensed ABC establishment. HR-57,  
17 located at 816 H Street, N.E., moved their  
18 establishment to 1007 H Street, N.E." "As part of this  
19 move, HR-57 applied for a new ABC license at 1007 H  
20 Street, N.E., License No. 088592. The ABC license for  
21 HR-57, located at 1007 H Street, N.E., was issued by  
22 ABRA on June 14th, 2012." And that's Exhibit No. 6.

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1 "Prior to this move, HR-57, Incorporated, subleased  
2 their 816 H Street, N.E., location to Fever Nightclub,  
3 LLC, trading as Fever Bar & Lounge, owned by Darryl  
4 Cohen, on April 28th, 2012." "This sublease," which is  
5 Exhibit 7, "assigned a lease agreement from HR-57,  
6 Incorporated, located at 816 H Street, N.E., to Fever  
7 Nightclub, LLC. This sublease states that they -- as  
8 of April 28th, 2012, HR-57, Incorporated, transferred  
9 all rights, title and interest in the lease premises at  
10 816 H Street, N.E., to Fever Nightclub, LLC.  
11 Additionally, DCMR Code 23-600 states that, 'Trade  
12 names shall not be identical to other licensed  
13 establishments.'" "Therefore, when the ABC license was  
14 issued to HR-57, at 1007 H Street, N.E., on June 14th,  
15 2012, the ABC license for HR-57 at 816 H Street, N.E.,  
16 was no longer valid. On Tuesday, July 17th, 2012,  
17 Investigator Parker also discovered that on May 10th,  
18 2012, Fever Nightclub, LLC, trading as Fever Bar &  
19 Lounge, applied for a new ABC Class -- ABC Class CT  
20 license," which is Exhibit 8, "at 816 H Street, N.E."  
21 "Fever Bar & Lounge posted notice of public hearing for  
22 new ABC placards at 816 H Street, N.E. Petition date

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1 for the public hearing was July 13th, 2012 and the  
2 public license hearing is scheduled for August 6th,  
3 2012. As of Wednesday, July 18th, 2012, Fever Bar &  
4 Lounge has not been issued an ABC license to sell  
5 alcoholic beverages." "On Tuesday, July 17th, 2012,  
6 Investigator Parker interviewed an ABRA Licensing  
7 Division specialist. The licensing specialist stated  
8 that in May 2012, after she reviewed the sublease  
9 agreement between HR-57, Incorporated, and Fever  
10 Nightclub, LLC, as well as the ABRA application for  
11 Fever Bar & Lounge, she spoke to Mr. Puesan and Mr.  
12 Cohen and advised them that HR-57, Incorporated no  
13 longer had rights to occupy 816 H Street, N.E."  
14 "Therefore, the ABC license for HR-57, which was  
15 previously attached to this address, was no longer  
16 valid and should be surrendered to ABRA. The licensing  
17 specialist also made it clear that the ABC license for  
18 Fever Bar & Lounge had not yet been issued. The  
19 licensing specialist stated that she made it clear on  
20 many occasions to Mr. Puesan and Mr. Cohen that there  
21 was no active ABC license at 816 H Street, N.E." "As of  
22 the time of this report, there is still no active ABC

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1 license at 816 H Street, N.E. On Tuesday, July 17th,  
2 2012, Investigator Parker telephoned Mr. Cohen and Mr.  
3 Puesan and advised them both that there was currently  
4 no active ABC license at 816 H Street, N.E.  
5 Investigator Parker also advised that Fever Bar &  
6 Lounge was in violation for selling alcoholic beverages  
7 without an ABC license." "Mr. Cohen and Puesan stated  
8 that they would ensure that Fever Bar & Lounge stop  
9 selling alcoholic beverages immediately." And that  
10 concluded the written report from Investigator Parker.

11 CHAIRPERSON MILLER: Thank you. I want to  
12 say from the outset that there's a difference between  
13 fact finding and some of the other hearings that we  
14 have, like show cause hearings. I just don't know if  
15 you're familiar. So we don't take any testimony or  
16 evidence. We're not going to take any action, like, per  
17 se, you know, today, except we're going to hear  
18 information, hear the facts.

19 Then we may decide to refer (inaudible) for  
20 action. For instance, if we heard a lot of violations,  
21 we might say that we're going to refer this case to the  
22 Office of Attorney General to see whether they should

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1 look into a show cause for something or, you know,  
2 there might be misunderstandings. And we will get that  
3 straightened out at this fact finding hearing or there  
4 might -- just -- so I just want you to have a general  
5 understanding.

6 And if you have any questions --

7 MR. LUMUKANDA: Absolutely.

8 CHAIRPERSON MILLER: -- at the outset, you  
9 know, feel free to ask me.

10 MR. LUMUKANDA: Absolutely. Absolutely.

11 CHAIRPERSON MILLER: Okay. And I know that  
12 our license specialist, Ms. Jackson, is here. Do you -  
13 - do you want to come to the table also? I don't know  
14 if you'll have something to add or be available for  
15 questions.

16 MS. JACKSON: Okay.

17 CHAIRPERSON MILLER: And if you could just  
18 introduce yourself for the record?

19 MS. JACKSON: Hi. I'm Diane Jackson,  
20 licensing specialist with the Alcoholic Beverage  
21 Regulation Administration.

22 CHAIRPERSON MILLER: Okay. And did -- is

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1 there anything you want to say at this point? Mr.  
2 Ghenene just read the investigative report. If there's  
3 anything you want to add now, you can. If you -- if  
4 you don't have anything to add at this point, that's  
5 fine.

6 MS. JACKSON: Well, basically he said  
7 everything. I did instruct him that if you are -- if  
8 you hold a license, then the applicant -- the Licensee  
9 must have a valid lease. What happened was they signed  
10 the lease over to Fever Nightclub. And once you sign  
11 that -- your lease over, your license is no longer  
12 valid. It's not -- it's void. Yeah, so -- and I  
13 explained that to the applicant.

14 CHAIRPERSON MILLER: You did? And when did  
15 you --

16 MS. JACKSON: YEAH.

17 CHAIRPERSON MILLER: -- explain that?

18 MS. JACKSON: Beg your pardon?

19 CHAIRPERSON MILLER: When did you do that, in  
20 July?

21 MS. JACKSON: I explained it at the time I  
22 was processing his -- accepting his application because

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1 there were some things about the application and I  
2 needed to sit down with him and talk to him about, as  
3 we sometimes do with our -- with our applicants. And I  
4 explained to him -- I said, "Do you know that that  
5 lease has been signed over to you; so therefore, HR's  
6 license is now void? You cannot operate there --

7 CHAIRPERSON MILLER: Okay.

8 MS. JACKSON: -- within the ABC license."

9 CHAIRPERSON MILLER: Yes, Mr. Alberti.

10 MR. ALBERTI: Hi, Ms. Jackson.

11 MS. JACKSON: Yes.

12 MR. ALBERTI: Thank you for preparing for us.  
13 You said that you talked to him -- well, the applicant  
14 at the time you were processing his license.

15 MS. JACKSON: Yes.

16 MR. ALBERTI: Do you remember about the time  
17 that would have been? Would that have been -- this  
18 applicant -- application was, I think, made around May  
19 of 2012. If you -- does that ring a bell? Would you  
20 have records to show when you would have had that  
21 conversation with the applicant?

22 MS. JACKSON: Yeah, that would have been --

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1 yeah, sometime in May. Because that was before he was  
2 placarded.

3 MR. ALBERTI: Okay. So sometime in May of  
4 2012?

5 MS. JACKSON: Uh-huh.

6 MR. ALBERTI: Okay. Thank you. And they  
7 spoke to the applicant. Is this the applicant here at  
8 the other table, Mr. Cohen?

9 MS. JACKSON: Yes.

10 MR. ALBERTI: That --

11 MS. JACKSON: The gentleman that is here.

12 MR. ALBERTI: That is the person you spoke  
13 with?

14 MS. JACKSON: Uh-huh.

15 MR. ALBERTI: It also -- Investigator Parker  
16 says that you told him you also spoke to Mr. Puesan; is  
17 that correct?

18 MS. JACKSON: No. He would -- he did not  
19 return my calls.

20 MR. ALBERTI: So you did not have the same  
21 conversation with Mr. Puesan?

22 MS. JACKSON: No. I left a message

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1 explaining but he did not return my calls.

2 MR. ALBERTI: Okay. When --

3 MS. JACKSON: I meant he was --

4 MR. ALBERTI: Okay. When you spoke to Mr.  
5 Cohen, did he appear to understand or did -- what you  
6 were telling him or did he have questions? Well, did  
7 he appear to understand?

8 MS. JACKSON: Yeah, he did appear to  
9 understand. When he was -- he did have questions  
10 because the person who was the license holder was  
11 telling him one thing and then I was telling the other.  
12 And I was saying that, "I'm telling you according to  
13 the law." So he kept telling him things, you know,  
14 "Oh, you can operate. You can operate. You can  
15 operate." And I said, "No, you can't."

16 MR. ALBERTI: Okay.

17 MS. JACKSON: So the nature of the deal was  
18 that he bought the business.

19 MR. ALBERTI: Uh-huh.

20 MS. JACKSON: But HR wanted to hold the  
21 license. So it was a -- it was not a transfer. It was  
22 a new but he bought the business.

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1 CHAIRPERSON MILLER: Uh-huh.

2 MS. JACKSON: It was a new for an ABC  
3 license.

4 MR. ALBERTI: Right. I understand.

5 MS. JACKSON: Uh-huh.

6 MR. ALBERTI: Thank you very much.

7 MS. JACKSON: Yeah.

8 CHAIRPERSON MILLER: Okay. We can -- we can  
9 hear from you all to respond.

10 MR. LUMUKANDA: Sure. I have a letter here  
11 from the original owner of the HR-57 license, which was  
12 at 816 H Street, N.E. And I have a couple of points of  
13 clarification that I wanted to bring up to sort of  
14 bring this whole matter to a conclusion and also to  
15 speak a little bit about Mr. Cohen's interpretation and  
16 what he actually did.

17 The -- if my -- if my understanding is  
18 correct, the reason why the license is -- or would have  
19 been cancelled would be due to 23-600.1, which is noted  
20 in the -- which is noted in the investigative report.  
21 And under that particular law, it states that, "No  
22 person licensed under the act shall use any name of

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1 that business or of an individual business of license,  
2 including a corporate or a trade name, without first  
3 obtaining the approval from the Board for use of the  
4 corporate or trade name."

5           Now, when the investigator noted that  
6 particular statute, he didn't list all of them out. He  
7 just listed them generally. So that's the information  
8 that I use to try to interpret what has actually  
9 happened. The -- Mr. Alquides, the original owner of  
10 the first HR-57 license, was well aware that you cannot  
11 have two ABC licenses at two different places. So they  
12 took certain steps to make sure that they were  
13 compliant with that particular law and also allow Mr.  
14 Cohen to operate.

15           The first thing that occurred in order -- in  
16 the -- in the timeline of Mr. Cohen taking over that  
17 particular business was on April 4th, they entered into  
18 - - Mr. Cohen and Antonio Puesan entered into a  
19 business agreement, where Mr. Cohen would take over the  
20 property, chairs, tables, kitchen or what have you.  
21 They did a business agreement where he would take over  
22 those assets.

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1           The second thing that occurred, which was on  
2 April 28th, 2012, Mr. Cohen, the landlord of AVA  
3 Properties (ph), and Mr. Puesan entered into an  
4 agreement to sublet the space at 816 over to Mr. Cohen.  
5 However, on the document to sublet the lease over to  
6 Mr. Cohen, Ms. Jackson's interpretation of that  
7 document is that Mr. Cohen goes from being a lessee to  
8 not being a lessee by subletting.

9           If that had in fact happened, then it would  
10 be absolutely correct that that license would be  
11 cancelled. But what -- and what actually did happen was  
12 Mr. Puesan was still held on the lease and held jointly  
13 liable with him on there. So although he wanted to  
14 take himself off of the lease completely, by him  
15 subletting, he still has a level of responsibility on  
16 that particular lease.

17           And with that -- with that information in  
18 mind, the second thing that they did -- or the third  
19 thing they did on May 22nd was submit a trade name  
20 change down at -- down here at ABRA. And I have a copy  
21 of that -- the trade name that was stamped for May 22nd  
22 here at ABRA. And if that is absolutely true and that

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1 Mr. Puesan and Mr. Cohen are both on that lease  
2 together, and they are jointly liable, and the Licensee  
3 submits a trade name application, under 23-600.4, if  
4 they're a -- if the Licensee has a different trade name  
5 than a license that he has down the street, then that  
6 license would still be valid.

7           So that is the -- that is the understanding  
8 that Mr. Cohen operated under. He operated under the -  
9 - under the -- he knew that the gentleman at HR-57 was  
10 planning on moving the business down to another  
11 location. And he actually did that on July 14th, 2012.  
12 And on July 14th, 2012, if Mr. Cohen did not have a  
13 lease at the original location and Mr. Cohen -- if Mr.  
14 Puesan did not have a lease or if he did not have a  
15 trade name application in, then Ms. Jackson is  
16 absolutely correct that that license should have been  
17 inactive on that particular day when a new HR-57  
18 license opened up just a few blocks down the street.

19           But what I'm here to say today, which is  
20 missing from the report, is Mr. Cohen made every  
21 reasonable attempt to make sure that he operated within  
22 compliance by, number one, having both of them liable

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1 on the lease and, number two, by entering in an  
2 additional trade name, which is Fever under the  
3 business that he had planned to operate.

4 CHAIRPERSON MILLER: Okay. I see your  
5 additional trade name.

6 MR. LUMUKANDA: Yes.

7 CHAIRPERSON MILLER: But the question about  
8 the lease, what part of the -- of regulations or  
9 statute is being referenced for that?

10 MR. LUMUKANDA: For the -- as far as the  
11 lease, the statute that's -- that is being referenced  
12 for the lease, the investigator actually didn't list  
13 the statute particularly for the lease. And Ms.  
14 Jackson -- Ms. Jackson didn't reference a particular  
15 statute for the lease either. They're using 23-601  
16 through 4, which basically states you can't have two  
17 licensees with the same trade name. And if you do,  
18 then it cancels the other.

19 That's the only statute that they're using.  
20 But I'm using the exact same statute to say that he  
21 historically made every reasonable attempt to be  
22 compliant.

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1 CHAIRPERSON MILLER: I don't know whether to  
2 ask Ms. Jackson or you but because there's an argument  
3 being put forth that it was a valid -- still a valid  
4 license because of the leasing situation. Is that what  
5 you're saying?

6 MR. LUMUKANDA: Yes. That --

7 CHAIRPERSON MILLER: Okay. But I'm saying,  
8 where is that coming from? And maybe Ms. Jackson -- I  
9 don't -- you pointed the trademark one to me from the  
10 regs. I see that. But I don't --

11 MR. LUMUKANDA: Uh-huh.

12 CHAIRPERSON MILLER: I'm just trying to  
13 follow your argument on the lease.

14 MR. LUMUKANDA: It was never mentioned. It  
15 was -- the -- it was -- it was never -- it's only  
16 mentioned that if the trade name was in -- or if I'm  
17 incorrect, please correct me, but my understanding and  
18 interpretation of this law is, if you have two licenses  
19 on one street and you plan on opening another location,  
20 if you change the trade name of your previous location,  
21 then that license should still be active.

22 CHAIRPERSON MILLER: Okay. My understanding

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1 of the report is that there was a license on 816 H  
2 Street or --

3 MR. LUMUKANDA: Yes.

4 CHAIRPERSON MILLER: -- whatever it was and  
5 that that owner moved and took the license with him and  
6 opened another establishment. And therefore --

7 MR. LUMUKANDA: I'm --

8 CHAIRPERSON MILLER: -- there was no license  
9 anymore at that previous establishment. That's the way  
10 I read the report. I don't know.

11 MR. LUMUKANDA: If I may interject?

12 CHAIRPERSON MILLER: Okay. Go ahead.

13 MR. LUMUKANDA: He actually applied for a  
14 brand- new license and was issued a new license. But --

15 CHAIRPERSON MILLER: He was.

16 MR. LUMUKANDA: -- he had the same name. He  
17 was issued a brand-new license --

18 CHAIRPERSON MILLER: Okay.

19 MR. LUMUKANDA: -- on July 14th. So he  
20 didn't actually move the location. He intended to keep  
21 one license at 816 --

22 CHAIRPERSON MILLER: Okay. So --

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1 MR. LUMUKANDA: -- and change the trade name.

2 CHAIRPERSON MILLER: But it was under --  
3 there was a different owner then at 816. And was there  
4 a transfer of ownership for the license?

5 MR. LUMUKANDA: No. They did not transfer  
6 the ownership of the license. They had an agreement  
7 where Mr. Cohen would operate as a licensed ABC manager  
8 until the license that he actually applied for was  
9 completed. He --

10 CHAIRPERSON MILLER: That's the problem,  
11 right? Is that the problem here? That's what it looks  
12 like the problem --

13 MR. GHENENE: I think -- I think that might  
14 be one of the problems but also Ms. Jackson just  
15 produced the lease that was submitted by them. And it  
16 appears that only one person signed as the sublessee,  
17 not two people, as they're indicating.

18 MS. JACKSON: Yeah.

19 CHAIRPERSON MILLER: How does that affect the  
20 validity of the license?

21 MR. ALBERTI: Can we -- can we -- Ms. Miller,  
22 I'd like to see a copy of that lease. Can we --

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1 MR. GHENENE: I have several copies of that  
2 document if --

3 CHAIRPERSON MILLER: Sure.

4 MR. GHENENE: -- if you would like to see it.

5 MR. ALBERTI: And if we could get that, that  
6 would be -- it would be helpful.

7 CHAIRPERSON MILLER: Ms. Walker's going to  
8 get it.

9 MR. ALBERTI: May I ask a quick question?

10 CHAIRPERSON MILLER: Wait, wait. Can I just --

11 MR. ALBERTI: Very good.

12 CHAIRPERSON MILLER: I just asked a question.  
13 And then I'll be happy to go on. What was it? How  
14 does the lease affect the validity of the license?

15 MR. GHENENE: Well, it appears that the  
16 statute that you stated suggests that if there's -- the  
17 same licensee is still -- or the same lessee is still  
18 in effect the licensee, then there would be no -- then  
19 the - - I'm sorry -- the license would not be void. But  
20 it appears that there's a new lessee --

21 CHAIRPERSON MILLER: Oh, okay.

22 MR. GHENENE: -- rather than sharing the

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1 lease.

2 MR. ALBERTI: And that's what we're trying to  
3 get at.

4 MR. GHENENE: Exactly.

5 CHAIRPERSON MILLER: Right. Okay.

6 MR. ALBERTI: Now, may I ask a question --  
7 quick question --

8 CHAIRPERSON MILLER: Yeah, sure. Go ahead.

9 MR. ALBERTI: -- very quickly?

10 CHAIRPERSON MILLER: Yeah.

11 MR. ALBERTI: Mr. Lumukanda, when you said --

12 MR. LUMUKANDA: Yes, go ahead.

13 MR. ALBERTI: -- the trade name application  
14 was submitted -- and who was that application submitted  
15 by?

16 MR. LUMUKANDA: The trade name application  
17 was actually submitted by a Mr. Puesan, who was the  
18 holder of the 816 HR-57 license.

19 MR. ALBERTI: Okay.

20 MR. LUMUKANDA: And I have that document if --

21 MR. ALBERTI: If you have copies of that,  
22 with you --

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1 MR. LUMUKANDA: Yes. Yes, sir.

2 MR. ALBERTI: -- I'd like to see it.

3 MR. LUMUKANDA: Yes, sir.

4 CHAIRPERSON MILLER: Okay.

5 MR. ALBERTI: Ms. Walker will get copies of  
6 that in a moment for you. Okay. So these are  
7 (inaudible). So Mr. Lumukanda, it's your -- it's your  
8 argument that since Mr. Cohen was a sub -- was the  
9 assignee in this lease agreement, meaning he was  
10 subleasing the property --

11 MR. LUMUKANDA: Uh-huh.

12 MR. ALBERTI: -- from Mr. Puesan --

13 MR. LUMUKANDA: Uh-huh.

14 MR. ALBERTI: -- who was leasing it from the  
15 landlord -- is that right --

16 MR. LUMUKANDA: That's correct.

17 MR. ALBERTI: -- it's your argument that Mr.  
18 Puesan held -- was responsible for the lease and,  
19 therefore, his license at this location was still  
20 valid? Is that your argument?

21 MR. LUMUKANDA: That is correct. If he had -  
22 - if those two things occurred -- if he had some

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1 liability -- my argument is, if he has liability on  
2 that lease and he also puts in a trade name  
3 application, then that license should be active  
4 according to 600.4 -- 23-600.4 because he's now  
5 operating under a different trade name, which would be  
6 Fever and --

7 MR. ALBERTI: Well, the trade name wasn't  
8 approved. So he wasn't operating under another trade  
9 name. So that's -- I mean, it shows intent. It  
10 doesn't show -- it doesn't show that it was codified.  
11 It just shows intent.

12 MR. LUMUKANDA: Absolutely.

13 MR. ALBERTI: So I understand why you  
14 (inaudible).

15 MR. LUMUKANDA: Absolutely. Absolutely.

16 MR. ALBERTI: I'm just taking this all in.  
17 I'm just --

18 MR. LUMUKANDA: Yes.

19 MR. ALBERTI: -- trying to understand the  
20 facts that we have before us. And then we'll -- I will  
21 make my decision based on the facts as they've  
22 presented to us today.

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1 MR. LUMUKANDA: Yes, sir.

2 CHAIRPERSON MILLER: So I still don't  
3 understand if you -- you have to help me out.

4 MS. JACKSON: Can I say something?

5 CHAIRPERSON MILLER: Yeah, this connection  
6 here with --

7 MS. JACKSON: This trade name change was not  
8 processed.

9 CHAIRPERSON MILLER: Right.

10 MS. JACKSON: Because I now have a lease that  
11 said that Darryl Cohen was the lease holder. This was  
12 not processed because HR -- when he signed away his  
13 lease, he didn't have a license. So he --

14 MR. ALBERTI: Ms. Jackson, was this -- was it  
15 the decision of the ABC not to process the trade name  
16 or was it at the request of Mr. Puesan not to -- not to  
17 process this?

18 MS. JACKSON: No. It was the decision of --

19 MR. ALBERTI: Not the --

20 MS. JACKSON: -- of the Licensee.

21 MR. ALBERTI: Okay, okay. Thank you.

22 MS. JACKSON: Yeah.

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1 MR. ALBERTI: I mean, it's just -- I just  
2 need to know that --

3 MS. JACKSON: Okay.

4 MR. ALBERTI: -- so we know where -

5 MS. JACKSON: Okay.

6 MR. ALBERTI: -- where the information's  
7 coming in --

8 MS. JACKSON: Okay.

9 MR. ALBERTI: -- and what the intent of the  
10 parties --

11 MS. JACKSON: Okay.

12 MR. ALBERTI: But I appreciate it. Thank  
13 you.

14 MS. JACKSON: Uh-huh.

15 CHAIRPERSON MILLER: So could somebody  
16 address this lease connection again?

17 MR. LUMUKANDA: If I could interject  
18 something here?

19 CHAIRPERSON MILLER: Yes.

20 MR. COHEN: First of all, I want to say  
21 that Ms. Jackson has been very helpful throughout my  
22 whole application process and I thank her for that.

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1 And we did have several discussions about this. And as  
2 she pointed out, I did have several questions, some of  
3 which still haven't been answered, particularly the one  
4 that you're asking now. So it hasn't been clear to me --

5 CHAIRPERSON MILLER: Uh-huh.

6 MR. COHEN: -- throughout this process  
7 exactly what the legal implications are as far as this  
8 lease assignment is concerned. So the main question  
9 that I asked Ms. Jackson was regarding -- I don't know  
10 if you all have had time to read through this entire  
11 thing but the key language on the lease assignment is  
12 in Section 3, Consent of Landlord. And on the fourth  
13 line, on the beginning of the -- the sentence that  
14 starts on that line, "In the event the assignee does  
15 not meet his obligations under this assignment, the  
16 assignor," who is Mr. Puesan, "is obligated for all the  
17 responsibilities under the lease, including payment of  
18 rent, taxes and insurance for a period of one year,"  
19 yada, yada, yada.

20 My interpretation of that was that Mr. Puesan  
21 is still liable under the lease. And my question to  
22 Ms. Jackson was, doesn't this clause mean that

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1 technically he's still on the hook, so his license  
2 should be okay? And to the -- to the best of my  
3 recollection -- and Ms. Jackson's here. So she can  
4 respond to this. But what I remember her suggesting to  
5 me was that that was a question for the legal  
6 department.

7           And so I was expecting that to be referred to  
8 the legal department and to hear from the legal  
9 department as to what the implications of that clause  
10 were.

11           CHAIRPERSON MILLER: So --

12           MR. COHEN: I never heard anything.

13           CHAIRPERSON MILLER: Okay. This is in --  
14 when was this?

15           MR. COHEN: When did this conversation take  
16 place?

17           CHAIRPERSON MILLER: Well, yeah, how long  
18 have you been waiting? You know, when did you -- when  
19 did you have this discussion?

20           MR. COHEN: Well, it was -- it was the same  
21 time frame, when I was applying for my license, which  
22 would have been May/June.

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1 CHAIRPERSON MILLER: Okay. What license did  
2 you exactly apply for?

3 MR. COHEN: I applied for a CT license.

4 CHAIRPERSON MILLER: Just a CT one? Okay.

5 MR. COHEN: Yes.

6 CHAIRPERSON MILLER: Okay. Well, a CT  
7 license. And then you applied for a trade name change  
8 later?

9 MR. COHEN: Right. The understanding was  
10 that I could operate as a manager under the existing  
11 license that was already there until my new license was  
12 approved. That was the understanding that --

13 CHAIRPERSON MILLER: Okay. Let's -- wait.  
14 This is when -- you applied for a CT license in when?

15 MR. COHEN: May.

16 CHAIRPERSON MILLER: May. Okay. And then  
17 you're saying while you -- after you submitted that  
18 application, you had the understanding you could still  
19 -- you could serve liquor based on -- you had an ABC  
20 manager's license? What did you say?

21 MR. COHEN: Yes.

22 CHAIRPERSON MILLER: Yeah.

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1 MR. COHEN: Because that was -- that was  
2 already -- because of the existing license that was  
3 already there.

4 CHAIRPERSON MILLER: And who did you check  
5 with?

6 MR. COHEN: Well, I -- that was the  
7 arrangement that was made between Mr. Pusan and I in  
8 the purchase agreement, which I submitted along with my  
9 application, which was fairly public knowledge. It was  
10 discussed openly in the ANC. The chair of the ABL  
11 Committee actually visited my establishment. So it was  
12 -- this was nothing that we were trying to hide. And  
13 as far as we were concerned, Ms. Jackson's concerns  
14 notwithstanding -- because, you know, I -- we'd  
15 certainly had those discussions -- but again, it was an  
16 open question in my mind.

17 We were simply waiting to hear from the legal  
18 department as to what the disposition of the lease  
19 situation was. As far as we knew, the existing HR-57  
20 license was still good. I have a manager's license so  
21 it was okay for me to operate the establishment under  
22 that license, as long as we did not change the sign,

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1 which we did not.

2 CHAIRPERSON MILLER: So you have a copy of  
3 the case report that Mr. Ghenene wrote up?

4 MR. COHEN: Yes, yes, yes.

5 CHAIRPERSON MILLER: Okay. Now, you said  
6 that it's referenced in a -- in a document that you  
7 could continue to operate because you had an ABC  
8 manager's license. Is it a document that's attached to  
9 the report? You said everybody was aware of that, that  
10 that's what you were told by the person who sold the  
11 license -- the restaurant?

12 MR. COHEN: Right. That arrangement is  
13 mainly documented in the purchase agreement. I don't  
14 know --

15 CHAIRPERSON MILLER: Is the purchase -- right  
16 -- the purchase --

17 MR. COHEN: Right.

18 CHAIRPERSON MILLER: Is that attached here?

19 MR. COHEN: I don't know if we -- do we have  
20 that attached to --

21 MR. LUMUKANDA: Yes, yes.

22 CHAIRPERSON MILLER: It's attached to the

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1 case report or you have a --

2 MR. LUMUKANDA: No. It wasn't attached to  
3 the case report but I brought it if --

4 CHAIRPERSON MILLER: Okay.

5 MR. LUMUKANDA: -- need be.

6 CHAIRPERSON MILLER: Yeah, I think we'd like  
7 to see that because you're telling us that that's what  
8 you relied on. And did that come into our agency with  
9 the application?

10 MR. COHEN: Yes.

11 CHAIRPERSON MILLER: The purchase report.  
12 Okay. Did you put in writing a request to get word back  
13 from the legal department?

14 MR. COHEN: No, I didn't.

15 CHAIRPERSON MILLER: No, okay. Do you -- you  
16 requested Ms. Jackson?

17 MR. COHEN: Yes.

18 MR. LUMUKANDA: Oh, that's the -- five is --  
19 five is okay?

20 CHAIRPERSON MILLER: So did your application  
21 go forward? I --

22 MR. COHEN: It was placarded.

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1                   CHAIRPERSON MILLER: It was placarded. Then,  
2 yeah.

3                   MR. COHEN: The placard period came and went.  
4 There was no protest. The ANC actually approved  
5 support for a stipulated license. But because of this  
6 report, it wasn't acted upon.

7                   CHAIRPERSON MILLER: Okay.

8                   MR. LUMUKANDA: This -- well, this  
9 investigation. But I think we -- I have -- or if I can  
10 respectfully propose a conclusion to this matter? If  
11 there was a bit of confusion between the original HR-57  
12 licensee and Mr. Cohen, Mr. Cohen has attempted to try  
13 to be as compliant, forthcoming and transparent as  
14 possible. But at this point, with this violation on the  
15 books, Mr. Puesan actually wants the original HR-57  
16 license.

17                   He's not aware -- I don't think he really  
18 understands if it's -- he thinks it's active right now,  
19 even based upon what I've read in the ABC report. He  
20 wants the -- he wrote -- he -- I have a letter here  
21 from here where he wants to have the license placed  
22 into safekeeping and that matter be separate. But in

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1 conclusion, with Mr. Cohen, he wants to separate  
2 himself from any of the old HR-57 license at some point  
3 in the future and just focus on -- of course, with the  
4 blessing of the Board and in all of his qualifications,  
5 he wants to focus on the license that he actually  
6 applied for and the other be placed in safekeeping at  
7 the conclusion of this matter that we have at hand.

8 CHAIRPERSON MILLER: So -- okay. My question  
9 is, in the meantime have you or have you not been  
10 serving alcohol?

11 MR. COHEN: We had been, as the report  
12 states, prior to the investigator showing up, at which  
13 point we ceased operation.

14 CHAIRPERSON MILLER: Okay.

15 MR. COHEN: I came down here and had a  
16 conversation with the investigator. And, you know, we  
17 came to an understanding that it -- we shouldn't -- we  
18 shouldn't operate anymore until the matter was  
19 resolved.

20 CHAIRPERSON MILLER: Okay. Yes, Mr. Ghenene?

21 MR. GHENENE: Chairperson Miller, may I ask a  
22 couple questions?

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1 CHAIRPERSON MILLER: Sure.

2 MR. GHENENE: First of all, I'd like to know  
3 that on the -- it's -- the night that Investigator  
4 Parker visited, I guess it would still have been HR-57  
5 that night, according to them. It looks like the  
6 detailed daily report has the heading, "Fever Bar &  
7 Lounge," and where they printed out all the receipts  
8 and all the alcohol sales. So are they operating as  
9 Fever Bar & Lounge that day? I guess my question --  
10 that's my -- one of my questions.

11 MR. ALBERTI: Well, Mr. Ghenene, may I -- may  
12 I just -- I'm going to help you out here. The purchase  
13 agreements that you had for alcohol --

14 MR. GHENENE: That's -- was my next question.

15 MR. ALBERTI: -- under what trade name did  
16 you purchase alcohol?

17 MR. COHEN: I'm sorry, what was that?

18 MR. ALBERTI: Under what name did -- under  
19 what business name did you purchase alcohol for this  
20 establishment?

21 MR. LUMUKANDA: From my understanding, the  
22 alcohol --

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1 MR. ALBERTI: I asked Mr. Cohen.

2 MR. COHEN: I don't recall using any business  
3 name in particular. At that point I think the  
4 inventory was left over from when HR-57 was there. So  
5 he would have purchased the alcohol.

6 MR. ALBERTI: So does your purchase  
7 commitment stipulate the inclusion of alcohol? See, I  
8 have a little problem here, Mr. Lumukanda. I only have  
9 one page. So, I mean, I can't really do much with one  
10 page that's not signed.

11 MR. LUMUKANDA: Wait.

12 MR. ALBERTI: So if you --

13 MR. LUMUKANDA: I have the entire --

14 CHAIRPERSON MILLER: Right.

15 MR. LUMUKANDA: -- agreement.

16 MR. ALBERTI: Right. And I'd like to -- that  
17 would -- that would be important for us to have the  
18 entire agreement.

19 MR. LUMUKANDA: I just didn't have -- I  
20 didn't have five copies. I have one copy of the entire --

21 MR. ALBERTI: Well, okay. We can get you  
22 copies.

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1 MR. LUMUKANDA: I have that. That is here.

2 MR. ALBERTI: Okay. So Mr. Cohen, did that  
3 include the purchase of the alcohol from --

4 MR. COHEN: I don't know that it's reflected  
5 in writing in the agreement but, you know, as you can  
6 probably tell, Mr. Puesan and I were kind of working  
7 together on this. So there were some things that were --

8 MR. ALBERTI: I'm sorry.

9 MR. COHEN: There were some things that were  
10 done, you know, with a handshake, without having it in  
11 writing. So I'd have to look to see if the alcohol  
12 inventory was documented in the transfer or not but I  
13 don't --

14 MR. ALBERTI: So it's your understanding HR-  
15 57 - - there were two HR-57s operating at that time to  
16 your understanding; is that correct?

17 MR. COHEN: Well, no. I mean, it's my  
18 understanding that there were two licenses that were  
19 owned by HR-57. But were attempting to change the  
20 trade name.

21 MR. ALBERTI: No. But at the time you were  
22 operating in July -- in June of 2012, you were -- just

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1 told me you were operating under a HR-57 license.

2 Doesn't that make you an HR-57 -- I mean, isn't that  
3 your trade name at that point?

4 MR. COHEN: Well, again, we had applied to  
5 have the trade name changed. And I hadn't -- we hadn't  
6 been notified of the disposition of the trade name  
7 application. So to your point, I guess because it was  
8 never approved, then legally we didn't have a different  
9 trade name. But --

10 MR. ALBERTI: Okay.

11 MR. COHEN: -- again, it was -- it was an  
12 open question.

13 MR. ALBERTI: And since I -- since I'm --

14 CHAIRPERSON MILLER: Yeah.

15 MR. ALBERTI: -- I've got the floor, I'm  
16 going to ask you. So when you spoke to Ms. Jackson,  
17 she disagreed with your interpretation?

18 MR. COHEN: Yes.

19 MR. ALBERTI: Is that a fair statement?

20 MR. COHEN: I -- yes.

21 MR. ALBERTI: She said that the license was  
22 no longer valid because the lease agreement did not

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1 support that? All right. And you thought otherwise?

2 MR. COHEN: Yes.

3 MR. ALBERTI: Did you follow up with anyone?

4 MR. COHEN: Yeah, well, I asked her right  
5 then. I said, "What about this clause in the lease  
6 assignment?" And she said she would have to check with  
7 legal. So I said, "Okay. Let me know what you find  
8 out."

9 MR. ALBERTI: Okay. So it was clear to you  
10 that the ball was in her court?

11 MR. COHEN: No.

12 MR. ALBERTI: Is that what your testimony is?

13 MR. COHEN: No. I -- at that point, again,  
14 it was an open question in my mind, which I still don't  
15 think I've heard an answer to.

16 MR. ALBERTI: Ms. Jackson, is that the way  
17 you recollect this conversation going?

18 MS. JACKSON: No. I -- each time I sat with  
19 him, I advised him that the lease was signed over to  
20 him and as he signed where it says, "Signee," it's just  
21 his name there. And I explained to him, "You cannot  
22 serve alcoholic beverages there. You do not have a

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1 license." I explained to him --

2 MR. ALBERTI: Did you --

3 MS. JACKSON: -- over and over and over  
4 again.

5 MR. ALBERTI: Did you offer to check with  
6 legal?

7 MS. JACKSON: I didn't see any need to check  
8 with legal.

9 MR. ALBERTI: Thank you. Thank you.

10 CHAIRPERSON MILLER: I know you have a  
11 question still. Can I just -- can you hold it for one  
12 more minute? Okay. Because I'm looking at this  
13 agreement of purchase and sale of business assets. I  
14 haven't had time to study the whole agreement in its  
15 entirety but 1(B)(3) says, "The following assets are  
16 expressly excluded from the purchase and sale. No. 3  
17 is the District of Columbia Alcoholic Beverage Control  
18 license held by the seller."

19 It does say, "Notwithstanding the 90-day  
20 limit used, period described in Section 1(A)(3) above."  
21 So that may have bought you some time. I don't know.

22 MR. COHEN: Right.

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1 CHAIRPERSON MILLER: Is that so --

2 MR. COHEN: Right. The agreement was that I  
3 would temporarily be able to operate under his license  
4 until mine was approved.

5 CHAIRPERSON MILLER: Okay.

6 MR. COHEN: He gave me 90 days to go through  
7 the process of getting my own license.

8 CHAIRPERSON MILLER: Okay. So I guess one of  
9 the issues we'll have to consider is whether -- if this  
10 - - if this is in compliance with ABC regulations or  
11 not, whether you had a valid license. But what you're  
12 saying, once you were told you didn't by Mr. Parker,  
13 you stopped selling?

14 MR. COHEN: Yes.

15 CHAIRPERSON MILLER: All right. Uh-huh.  
16 Okay. Go ahead.

17 MR. GHENENE: My second question was -- and  
18 this is for purposes of follow-up information for  
19 Investigator Parker's report -- so you guys were not --  
20 the location 816 H Street was not operating after July  
21 14th, 2012 and has not operated since then?

22 MR. COHEN: Right.

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1 MR. GHENENE: Okay. And was it this date?  
2 I'm still kind of confused about the -- if you guys  
3 were operating as Fever Bar & Lounge on that date per  
4 your POS system.

5 MR. COHEN: Right. Well, we -- I mean, you  
6 have the printout in writing right there. I mean, the  
7 POS was set up for Fever Bar & Lounge because we were in  
8 the process of getting everything switched over from  
9 one company to the other company. So again, my  
10 understanding was that as far as the trade name issues  
11 were concerned, it was -- had mostly to do with the  
12 signing in the front of the building.

13 As long as we didn't put up a sign that said  
14 anything other than HR-57 -- because that was the owner  
15 of the license -- and we hadn't heard about the  
16 disposition of the trade name application. You know, I  
17 purposefully held off on putting up any signing until  
18 we had that cleared up.

19 CHAIRPERSON MILLER: Okay.

20 MR. GHENENE: So you -- were you guys  
21 operating as Fever Bar & Lounge?

22 MR. COHEN: It -- the understanding that Mr.

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1 Puesan and I had was that technically this is still HR-  
2 57 until we heard otherwise. You are promoting Fever-  
3 sponsored events here.

4 MR. GHENENE: Okay.

5 MR. COHEN: So it was a gray area.

6 CHAIRPERSON MILLER: Uh-huh.

7 MR. COHEN: Again, we were -- we were waiting  
8 to hear about the trade name application, which we had  
9 filed back in May. So

10 CHAIRPERSON MILLER: So -- and so you put in  
11 a submission for a new license or a transfer of  
12 license?

13 MR. COHEN: New.

14 CHAIRPERSON MILLER: New license. And it got  
15 through the placard and it stopped in the agency  
16 because of this report, right?

17 MR. COHEN: Right.

18 CHAIRPERSON MILLER: So that's where it  
19 stands right now. So when you were asking her so, you  
20 know, how you want to -- you thought this should be  
21 resolved, you wanted the other license put in  
22 safekeeping and this license that went through the

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1 placard process to be considered by the Board?

2 MR. LUMUKANDA: Yes, ma'am.

3 CHAIRPERSON MILLER: Is that it? Okay.

4 MR. LUMUKANDA: At the conclusion of, of  
5 course, this fact finding and --

6 CHAIRPERSON MILLER: Right.

7 MR. LUMUKANDA: -- us putting all the facts  
8 on the table.

9 CHAIRPERSON MILLER: But that's what your  
10 proposal is and also to consider the trade name change,  
11 correct or no?

12 MR. LUMUKANDA: No.

13 CHAIRPERSON MILLER: No, it's totally new --  
14 just totally new application?

15 MR. LUMUKANDA: Absolutely. Absolutely.

16 CHAIRPERSON MILLER: Okay.

17 MR. LUMUKANDA: Absolutely. The -- if he --  
18 if it is compliant for that license for the 816 HR-57  
19 license to go into safekeeping, then we're advocating  
20 for that.

21 CHAIRPERSON MILLER: Uh-huh.

22 MR. LUMUKANDA: If it's -- if it's a fact --

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1 if all the -- after all of the -- we hear all the facts  
2 and it is in fact inactive, then that is something that  
3 we will have to accept and it's inactive and Mr. Puesan  
4 would have to deal with that.

5 CHAIRPERSON MILLER: Any other questions or  
6 comments?

7 (No audible response.)

8 CHAIRPERSON MILLER: Okay. I've just got to  
9 admit I don't follow one thing though about that -- the  
10 license is going into safekeeping. Where is that from?  
11 There was a license that was at 816 H. The owner took  
12 it with him to the new location, correct?

13 MR. LUMUKANDA: No, he got a whole new  
14 license.

15 CHAIRPERSON MILLER: He did not? He got a  
16 new one. Okay.

17 MR. COHEN: Yes, yes.

18 CHAIRPERSON MILLER: All right. So you're  
19 saying that one that he didn't take could go into  
20 safekeeping?

21 MR. LUMUKANDA: Yes, yes. If that's  
22 compliant.

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1           CHAIRPERSON MILLER: Because that's what  
2 you're proposing anyway?

3           MR. LUMUKANDA: Yes.

4           CHAIRPERSON MILLER: If that's appropriate?

5           MR. LUMUKANDA: Absolutely.

6           CHAIRPERSON MILLER: Okay. Anything else  
7 anyone wants to add?

8           (No audible response.)

9           CHAIRPERSON MILLER: All right. Well, I  
10 think we've gotten all the facts we need to get. I  
11 think we can perhaps take this under advisement and  
12 sort these things out. And we'll let you know. We'll  
13 get back to you all. We'll discuss with legal counsel  
14 the legal issues that, you know, you've raised. And we  
15 will get back to you or the legal counsel will get back  
16 to you.

17           If you don't hear something, feel free to  
18 call them. Martha Jenkins is our legal counsel.

19           MR. LUMUKANDA: Thank you for your time.

20           CHAIRPERSON MILLER: Okay. Thank you.

21           MR. LUMUKANDA: Thank you.

22           MR. ALBERTI: Ms. Miller, I think you failed

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1 to read the Closed Meeting Act which will have to be  
2 read --

3 CHAIRPERSON MILLER: Say -- I --

4 MR. ALBERTI: -- so that we can discuss this.

5 CHAIRPERSON MILLER: I don't think I failed  
6 yet because I haven't gotten to it yet. I'd be happy  
7 to read it. What he's referring to is that under the  
8 Open Meetings Act we can discuss some matters in closed  
9 meetings and those concern matters that we're getting  
10 legal counsel from. And so that's what I was saying,  
11 we were going to take this under advisement and discuss  
12 the legal issues with legal counsel.

13 And so there are certain instructions that we  
14 read on the record for that, which I will be happy to  
15 read. As Chairperson of the Alcoholic Beverage Control  
16 Board for the District of Columbia, and in accordance  
17 with Section 405 of the Open Meetings Amendment Act of  
18 2010, I move that the ABC Board hold a closed meeting  
19 for the purpose of seeking legal advice from our  
20 counsel on Investigative Report No. 12-CMP-00304 per  
21 Section 405(b)(4) of the Open Meetings Amendment Act of  
22 2010 and deliberating upon this case for the reasons

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1 cited in Section 405(b) (13) of the Open Meetings  
2 Amendment Act of 2010.

3 Is there a second?

4 MR. NOPHLIN: Second.

5 CHAIRPERSON MILLER: Okay. The motion's been  
6 seconded by Mr. Nophlin and Mr. Silverstein. I'll now  
7 take a roll call vote on the motion. Mr. Nophlin?

8 MR. NOPHLIN: I agree.

9 CHAIRPERSON MILLER: Mr. Brooks?

10 MR. BROOKS: I agree.

11 CHAIRPERSON MILLER: Mr. Alberti?

12 MR. ALBERTI: I agree.

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

15 MR. SILVERSTEIN: I agree.

16 CHAIRPERSON MILLER: It seems that the motion  
17 has passed by a vote of 5-0-0 and therefore, we will  
18 later hold a closed meeting in the ABC Board conference  
19 room today pursuant to the Open Meetings Amendment Act  
20 of 2010. Okay. Thank you very much.

21 MR. LUMUKANDA: Thank you.

22 MR. COHEN: Thank you.

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1 CHAIRPERSON MILLER: That concludes this fact  
2 finding.

3 (WHEREUPON, at 3:14 p.m., the hearing was  
4 concluded.)

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1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, BRADLEY ANGLIN, the officer before whom the  
4 foregoing hearing was taken, do hereby certify that the  
5 testimony appearing in the foregoing transcript was  
6 recorded by me and thereafter reduced to typewriting  
7 under my direction; that said transcription is a true  
8 record of the testimony given by said parties; that I  
9 am neither counsel for, related to, nor employed by any  
10 of the parties to the action in which this was taken;  
11 and, further, that I am not a relative or employee of  
12 any counsel or attorney employed by the parties hereto,  
13 nor financially or otherwise interested in the outcome  
14 of this action.

15

16

17

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19

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BRADLEY ANGLIN

20

Notary Public in and for the

21

District of Columbia

22

1 CERTIFICATE OF TRANSCRIPTION

2

3 I, MIRANDA PENNACHI, hereby certify that I am not  
4 the Court Reporter who reported the following  
5 proceeding and that I have typed the transcript of this  
6 proceeding using the Court Reporter's notes and  
7 recordings. The foregoing/attached transcript is a  
8 true, correct and complete transcription of said  
9 proceeding.

10

11

12

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15 \_\_\_\_\_  
Date

\_\_\_\_\_

16

MIRANDA PENNACHI  
Transcriptionist

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<hr/> <p style="text-align: center;">\$</p> <hr/> <p><b>\$87</b> 5:16</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p><b>085910</b> 6:5  <b>088592</b> 6:20</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p><b>1</b> 4:13  <b>1(A)(3)</b> 42:20  <b>1(B)(3)</b> 42:15  <b>1:30</b> 4:7  <b>1007</b> 5:18        6:1,18,19,21        7:14  <b>10th</b> 7:17  <b>11</b> 5:16  <b>12-CMP-00304</b>        1:8 2:6 4:3 49:20  <b>13th</b> 5:13 8:1  <b>14</b> 5:17  <b>14th</b> 1:13 4:4,7        5:14 6:22 7:14        18:11,12 21:19        43:21  <b>17th</b> 6:11 7:16 8:5        9:1  <b>18th</b> 8:3  <b>19</b> 1:11</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p><b>2</b> 4:16  <b>2:26</b> 2:2,4  <b>2:30</b> 2:4  <b>2000</b> 1:13  <b>2010</b> 49:18,22        50:2,20</p>	<p><b>2012</b> 1:11 4:4,7        5:13,14,17        6:11,22        7:4,8,15,16,18        8:1,3,5,8 9:2        12:19 13:4 17:2        18:11,12 39:22        43:21</p> <p><b>22nd</b> 17:19,21  <b>23-600</b> 7:11  <b>23-600.1</b> 15:19  <b>23-600.4</b> 18:3 26:4  <b>23-601</b> 19:15  <b>28th</b> 7:4,8 17:2</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p><b>3</b> 4:16 29:12 42:16  <b>3:14</b> 51:3</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p><b>4</b> 5:2 19:16  <b>405</b> 49:17  <b>405(b)(13)</b> 50:1  <b>405(b)(4)</b> 49:21  <b>4th</b> 16:17</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p><b>5</b> 5:10  <b>5-0-0</b> 50:17  <b>57</b> 6:4 39:15 45:2</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p><b>6</b> 6:22  <b>600.4</b> 26:4  <b>6A</b> 1:8  <b>6th</b> 8:2</p> <hr/> <p style="text-align: center;">7</p> <hr/>	<p><b>7</b> 7:5</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p><b>8</b> 7:20  <b>816</b> 1:6 2:7 4:10        5:21 6:4,8,14,17        7:2,6,10,15,20,2        2 8:13,21 9:1,4        15:12 17:4        21:1,21 22:3        24:18 43:20        46:18 47:11</p> <p><b>88592</b> 6:2  <b>88595</b> 4:20  <b>89716</b> 1:7 2:8</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p><b>9:00</b> 5:13  <b>90</b> 43:6  <b>90-day</b> 42:19</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p><b>a.m</b> 4:7  <b>ABC</b> 1:9        4:19,20,22        5:1,4,22        6:12,16,19,20        7:13,15,19,22        8:4,14,17,21,22        9:4,7 12:8 15:2        16:11 22:7 27:15        31:19 33:7 35:19        43:10 49:18        50:18</p> <p><b>ABL</b> 32:10  <b>able</b> 43:3  <b>ABRA</b> 1:20 2:17        4:7 6:2,3,4,22        8:6,10,16        17:20,22</p>	<p><b>ABRA-085910</b>        6:14  <b>absolutely</b> 10:7,10        17:10,22 18:16        26:12,15        46:15,17 48:5  <b>Abyie</b> 1:20 2:17  <b>accept</b> 47:3  <b>accepting</b> 11:22  <b>accordance</b> 49:16  <b>according</b> 14:12        26:4 37:5  <b>act</b> 15:22        49:1,8,17,21        50:2,19  <b>acted</b> 35:6  <b>action</b> 9:16,20        52:10,14  <b>active</b> 6:5,9        8:21,22 9:4        20:21 26:3 35:18  <b>actually</b> 15:16        16:8 17:11 18:11        19:12 21:13,20        22:8 24:17 32:11        35:4,15 36:5  <b>add</b> 10:14 11:3,4        48:7  <b>additional</b> 19:2,5  <b>Additionally</b> 7:11  <b>address</b> 3:20 8:15        28:16  <b>Administration</b>        10:21  <b>admit</b> 47:9  <b>advice</b> 49:19  <b>advise</b> 6:8  <b>advised</b> 6:6 8:12</p>
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