

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-18-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Island Cafe, Inc. :
t/a Island Cafe :
829 Upshur Street, NW :
Retailer CT : Show Cause
License No. 60578 : Hearing
ANC 4C :
Case No. 12-251-00104 :
Allowed the Establishment to be :
Used for an Unlawful or :
Disorderly Purpose, Failed to :
Comply With Security Plan :
-----x

July 18, 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

AMY SCHMIDT, OAG

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

2 1:50 p.m.

3 CHAIRPERSON MILLER: The next case on our
4 calendar is Case No. 12-251-00104 of Island Cafe,
5 located 829 Upshur Street, N.W., License No. 60578, in
6 ANC 4C.

7 MS. SCHMIDT: Wait a minute. This is
8 supposed to start at 2:30 but I can't -- Mr. Fonseca --

9 CHAIRPERSON MILLER: Oh, sorry.

10 MS. SCHMIDT: No. But if we can wait -- no.
11 We can have preliminary matter and we might be able to
12 resolve this. And then --

13 CHAIRPERSON MILLER: Okay.

14 MS. SCHMIDT: And then if not -- we could
15 just do that part because my investigator's not back
16 yet but he will be back at the time of 2:30.

17 CHAIRPERSON MILLER: Okay. How much time do
18 you need?

19 MS. SCHMIDT: No. (Inaudible) preliminary
20 hearing without the investigator.

21 CHAIRPERSON MILLER: Okay.

22 MS. SCHMIDT: So that'll take time.

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1 CHAIRPERSON MILLER: Okay.

2 MS. SCHMIDT: Should we -- do we introduce
3 ourselves directly on the --

4 CHAIRPERSON MILLER: Yeah, oh, are you ready?

5 MS. SCHMIDT: For the preliminary matter,
6 yes.

7 CHAIRPERSON MILLER: Sure, yeah. I called
8 the case. And so, whenever you're ready to introduce
9 yourselves would be great.

10 MS. SCHMIDT: Amy Schmidt, assistant attorney
11 general on behalf of District of Columbia.

12 MR. FONSECA: Michael Fonseca on behalf of
13 the Licensee. With me is its principal, Nevaldo
14 Bailey.

15 CHAIRPERSON MILLER: Okay. Good afternoon.

16 MR. BAILEY: Good afternoon, all of you.

17 CHAIRPERSON MILLER: So this is a show cause
18 hearing. Are there any preliminary matters?

19 MS. SCHMIDT: Yes, there is a preliminary.
20 We have an offer in compromise, which we'd like to
21 present to the Board at this time. And the terms of
22 that office -- offer in compromise are that we would --

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1 for purposes of this -- for purposes of offer terms,
2 we've dropped Charge No. 2. And therefore, there'll be
3 two charges remaining. We ask for the \$8000 fine,
4 \$4000 for each of the charges.

5 And the ten days -- we ask for ten days.
6 However, these ten days have already been served as
7 part of the summary suspension. And that it should be
8 also known that Mr. Bailey will be serving a suspension
9 on a previous case starting July 21st, is it?

10 MR. FONSECA: Starting tomorrow, July 19th,
11 which was the records case (inaudible) and with that,
12 it is really -- he is really serving this four days
13 from a 2010 sale to minor. So there were four back-up
14 days on the cases just decided by the Board. So part
15 of this thing would require those back-up days -- four.
16 So there are ten served at his summary suspension, four
17 back-up days from case -- do you have it written down -
18 - from case number -- okay. Looks like it made a
19 smaller file after this.

20 But it would be in that case. So in essence,
21 the --

22 MS. SCHMIDT: I think the case number is

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1 (inaudible).

2 MR. FONSECA: We can get that before we
3 (inaudible). Bottom line is, he would be serving a
4 current suspension starting tomorrow, terminating on
5 Thursday. If we were proposing to continue four
6 additional days, it would now be part of this back --
7 the back-up time from the last case is now part of this
8 OIC. So we have -- he'd basically be serving a straight
9 eight days. The added time is an additional four days.

10 There were ten days that were served.

11 MS. SCHMIDT: I apologize (inaudible). Okay.

12 CHAIRPERSON MILLER: It's all right.

13 MR. FONSECA: It's Case No. 11-CMP-00179.

14 MS. SCHMIDT: All right. Yeah, okay. I got
15 it. He's got it.

16 MR. FONSECA: And the government's trying to
17 give us a bigger break than what we're entitled to.

18 MS. SCHMIDT: So it'd be another four days.
19 So it'd be another four days back up. Okay. Say that
20 again.

21 MR. FONSECA: The Board's Order that just was
22 entered into on June 20th, for which -- I will read

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1 that order, which we must now take into consideration
2 as part of this OIC. The Board Order (inaudible) was
3 to pay a fine of \$4000 fully in 30 days of this Order.
4 Additionally, respondent shall receive a suspension of
5 four days, all four days stayed for one year, provided
6 respondent has not committed any additional ABC
7 violations. Oh, it's the second.

8 Third, respondent shall receive the
9 suspension of this four days -- all four days served.
10 The suspension days are after-dated from the four
11 stayed days imposed by the Board on May 23rd, 2010, in
12 Case No. 10- CC-0022. The served suspension day shall
13 run from Thursday, July 19th -- that's tomorrow --
14 through Sunday, July 22nd.

15 So taking that into consideration, part of
16 this will -- recognizing the ten days are the
17 suspension for this incident in March 10, 2012, of
18 which were served, the \$8000 fine, and then the four
19 days of back-up time triggered by this past order day,
20 June 20th, would have to now be served.

21 So in essence, it's 14 days, four of them
22 he's now served. But those four are really triggered

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1 by this last Board Order.

2 CHAIRPERSON MILLER: What about the four days
3 from the other order?

4 MR. FONSECA: Those --

5 CHAIRPERSON MILLER: The four days stayed,
6 you know, in Case No. --

7 MR. FONSECA: That's what now has been
8 triggered --

9 CHAIRPERSON MILLER: -- 00022?

10 MR. FONSECA: -- by this OIC because --

11 MS. SCHMIDT: So it would be days --

12 MR. FONSECA: -- there's now a new violation.

13 CHAIRPERSON MILLER: Eight days.

14 MS. SCHMIDT: It would be eight days. So at
15 this point it would be eight days served.

16 MR. FONSECA: No, there's just four days
17 remaining.

18 MS. SCHMIDT: No, no. The total. He's got
19 to serve -- oh, at least he did --

20 MR. FONSECA: Yeah, the days were what he
21 served at once.

22 BOARD MEMBER: So now I'm confused.

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1 BOARD MEMBER: Maybe they ought to come back
2 to us.

3 BOARD MEMBER: Yeah, they're not ready.

4 MS. SCHMIDT: Okay.

5 CHAIRPERSON MILLER: Do you want to take a
6 break and talk about this in the back?

7 MR. FONSECA: Could you give us just five
8 minutes?

9 MS. SCHMIDT: Five minutes.

10 CHAIRPERSON MILLER: Sure.

11 MR. SILVERSTEIN: Why don't we come back at
12 2:30?

13 MR. JONES: Yeah, time to get ready.

14 CHAIRPERSON MILLER: How much time do you
15 need?

16 MS. SCHMIDT: 2:15. I was -- the officer's
17 here. That's why.

18 CHAIRPERSON MILLER: Okay. I don't want to
19 delay unnecessarily. 2:15 is fine.

20 So we're in recess until 2:15.

21 (WHEREUPON, at 1:57 p.m., the hearing went
22 off record until 2:15 p.m.)

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1 CHAIRPERSON MILLER: Okay. We're back on the
2 record. Okay. I'll start again.

3 MS. SCHMIDT: We apologize for the confusion.

4 CHAIRPERSON MILLER: Okay.

5 MS. SCHMIDT: All right. This -- the term of
6 this offer -- our Charge 2 will -- Charge 2 will be --
7 will be dismissed. And the other two charges will be
8 the fine of \$4000 per charge, which will be \$8000 to be
9 payable in 90 days. And then, as far as time, there'll
10 be 14 days in this case. Ten days have already been
11 served as part of the summary suspension. And the
12 other four days, which are to be served, are triggered
13 by Case No. 00179, which was books and records.

14 Those four days will be served -- we're
15 asking those four days to be served after four days
16 have been -- that Mr. Bailey -- that the Licensee
17 already has to serve in that case. So it'll be eight
18 day -- so it'll be starting on July 19th and end July
19 26th. However, the eight days are -- there are two
20 different cases that are -- we just want to make them
21 consecutive. That's all.

22 The 14 days in this -- to be clear, 14 days

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1 in this case, 10 days served as part of summary
2 suspension back in March, and 4 days, which was the
3 back-up time from the books and records case.

4 CHAIRPERSON MILLER: You said that he's going
5 to serve July 19th through 26th?

6 MS. SCHMIDT: Yes. Because July 19th -- he's
7 already serving four days in another case from July --

8 CHAIRPERSON MILLER: Okay. So those four
9 days --

10 MS. SCHMIDT: Yeah.

11 CHAIRPERSON MILLER: -- and another case
12 would be served July 19th?

13 MR. FONSECA: Four days for this would then
14 run from the 23rd through the 26th.

15 MS. SCHMIDT: 23rd, 24th --

16 CHAIRPERSON MILLER: So the four days --

17 MR. FONSECA: Four, then four.

18 CHAIRPERSON MILLER: I got the four and four.
19 So they're all from previous cases?

20 MS. SCHMIDT: Yes. But the back-up -- or the
21 back-up four days from the 23rd through the 26th are
22 triggered by the fact that he is -- he is offer-in-

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1 compromising this case.

2 CHAIRPERSON MILLER: Correct, okay.

3 MS. SCHMIDT: It's not new time. It's old
4 time from another case.

5 CHAIRPERSON MILLER: Triggered.

6 MS. SCHMIDT: But only by four in this case.

7 CHAIRPERSON MILLER: Okay. Could you repeat
8 the case number that was triggered -- that these --
9 those suspended days are being served from?

10 MS. SCHMIDT: Oh, yes. That was from Case
11 No. - - that was from Case No. 00022 -- 10-CC-0022.

12 CHAIRPERSON MILLER: Okay.

13 MS. SCHMIDT: That was triggered by the books
14 and record case. And now, this one -- this triggers
15 the books and rec. It's sort of a little of a domino
16 effect.

17 CHAIRPERSON MILLER: Okay. I got that.

18 Okay. And the ten days, could you just --

19 MS. SCHMIDT: That's from this case. In
20 other words, when he was on there, this -- he's on the
21 summary suspension, he was closed for ten days. So
22 we're -- so any -- so that -- here can say that time's

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1 served.

2 CHAIRPERSON MILLER: Right. Okay. That was
3 the total amount of time he was closed, correct?

4 MS. SCHMIDT: Yes.

5 CHAIRPERSON MILLER: Okay. Board members
6 have questions?

7 (No audible response.)

8 CHAIRPERSON MILLER: Do either of you want to
9 address any further --

10 MR. JONES: Madam Chair?

11 CHAIRPERSON MILLER: Oh, yeah.

12 MR. JONES: I had a question.

13 CHAIRPERSON MILLER: Oh, I was in the middle
14 of a question. I'm sorry, but --

15 MR. JONES: Oh, okay. You asked if -- I'm
16 sorry, I apologize.

17 CHAIRPERSON MILLER: Okay. So why -- go
18 ahead. You can go.

19 MS. SCHMIDT: No, that's fine.

20 CHAIRPERSON MILLER: Okay. I started to say
21 -- oh, is there anything further you -- either of you
22 want to say as to this offer in compromise?

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1 MR. FONSECA: (Inaudible) just respond the
2 Board's questions.

3 CHAIRPERSON MILLER: Okay. Oh, I'm sorry.
4 Okay. Now, Mr. Jones, go ahead.

5 MR. JONES: Thank you, Madam Chair. So I
6 think I followed the magery of the age and service and
7 what have you. But if I'm going to be -- if I'm
8 honest, part of this OIC -- there are no new days, no
9 new stayed days, no new served days, no suspension days
10 at all as part of this OIC? He's already served the
11 ten as part of the initial closing, correct? And the
12 other four and four that we're speaking of are triggers
13 from previous cases that you want to serve
14 consecutively, correct?

15 MS. SCHMIDT: Yes.

16 MR. FONSECA: Yes.

17 MR. JONES: Okay.

18 MR. FONSECA: And as part of that, you'll
19 recall with the lifting of the summary suspension, a
20 number of things were done. And just last week we had
21 that status hearing that (inaudible) what was done so
22 all of those things were taken care of that are

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1 required. So in essence, what -- and what occurs often
2 times is the summary suspension or the show cause on
3 the summary suspension because most (inaudible) most
4 time there's a fine and there are days. And typically
5 it's the days that were served (inaudible).

6 MR. JONES: Okay, okay.

7 MR. FONSECA: So it is consistent with that.

8 MR. JONES: Understood. So the part that I'm
9 struggling with a little but -- and I'm -- probably
10 could be swayed either way, but right now, in my --
11 from my perspective, I'm looking at a -- feeling a
12 little lenient in terms how we're looking at the days
13 served. But I'm also seeing a lot of leniency in terms
14 of the fine, to be honest. Because we're at the
15 minimum range of what the fine would be for both
16 charges, if we was to be found guilty of those charges.

17 So we're charging in this OIC the minimum on
18 the fine range and no new days -- not even new stayed
19 days as part of this OIC for this operator. And I'm
20 having a little bit of trouble trying to understand the
21 rationale and the logic as to why you feel like that's
22 appropriate from the OAG standpoint.

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1 MS. SCHMIDT: Oh, okay. Part of this is --
2 I'll be -- I'll be -- because of that fact finding
3 hearing last week -- well, the problem with that fact
4 finding hearing last week -- I'm being quite candid --
5 the fact that it was -- this -- that occurred before
6 these incidents. And so that -- so basically if there
7 were to be stayed days, they would -- they could be
8 subject for an incident that happened before this
9 incident.

10 In other words, if you bought -- because we
11 use -- typically stayed days are where you -- is any
12 event that happens -- in other words, we gave stayed
13 todays. They said, "I need to know what happens
14 afterwards." And if you go by the date of
15 adjudication, even though the event started beforehand
16 -- it was before -- it was in -- what month was that
17 in?

18 MR. FONSECA: It was December of '10.

19 MS. SCHMIDT: December and this happened in
20 March. And therefore, the government is concerned and
21 to be equitable that he should not be subject for
22 something that happened, you know, because of the way -

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1 - the way things -- because the date of adjudication
2 would be after the actual date -- after the date --
3 after -- it would be after the date that it occurred.
4 In other words, the sequence of events is out of whack.

5 So we're trying to not penalize him for the
6 getting the cases out of -- out of sequence.

7 MR. FONSECA: If I -- if I could also explain
8 it from our perspective and, frankly, the prosecution,
9 we believe, is correct and the context of it is that
10 this is all progressive discipline. So there is -- the
11 Board decides to send a case that involved an incident
12 December 10 of 2010. This incident we're adjudicating
13 now is March of 2012 -- excuse me, is December of 2011.
14 And this is now March of 2012.

15 And to leave some stayed days now for an
16 incident after the fact and then to have punishment
17 imposed, it would register that it would be for conduct
18 that happened prior to that, before one would assume if
19 you had learned your behavior, you're entitled to
20 continued progressive discipline. Well, he's going to
21 get discipline because it's going to come after and the
22 Board's going to vote and so forth on this one, whether

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1 it's through an OIC or a finding or it'll be -- we'll
2 prevail if we defend.

3 So because these cases came so out of turn,
4 it was felt that the ten days frankly were enough and
5 the grounds for lifting the stay eliminated the
6 imminent danger. And we've really somewhat took care
7 of the punishment component because ten days is
8 significant. But I ask the Board consider that because
9 additional days in isolation -- not to the fact that
10 we're now here before you when you had something that
11 happened after -- because again, you still have the
12 proximity of the books and records.

13 So I understand the Board can't turn on and
14 off these things. But one would hope you -- to filter
15 it somewhat if you give it a context of what -- of what
16 --

17 MR. JONES: Okay. So let me -- let me try
18 and be brief in my follow up. So I get that. I
19 totally comprehend the logic and interaction behind the
20 days. My question was more if you were geared towards
21 best -- to me, best providing some sense of relief for
22 your client in a sense of, we'll present this as an OIC

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1 for those reasons that you stated, in terms of the
2 punitive nature of the days served, given the fact
3 finding, given what may occur, etc.

4 Those are possibilities -- hypotheticals that
5 could likely happen but aren't written in stone as it
6 stands today. Given those scenarios, the OAG decided
7 to buy into your side of the argument -- to buy into
8 your client's position on that. My concern then is if
9 there's a compromise that is met, the buy-in on the
10 days is one thing, but then why not -- why are we at
11 the lowest end of the range in terms of the fine --
12 dollar amount of the fines associated with that?

13 If there's a -- because clearly, based on
14 what you described to me, there is an opportunity
15 there. And I just want to -- and you're -- I
16 understand -- I'm not inserting myself into
17 negotiations or as part of OIC. I just want to
18 understand the rationale because that would be the part
19 that I'd be struggling with.

20 MR. FONSECA: Yes. Well, it's not that
21 difficult to understand. He's going to pay \$4000 in
22 less than two days and another \$8000. And, I mean, you

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1 know, other than putting this place out of business,
2 which might happen -- I don't know -- it's just -- you
3 know, the fines themselves are a significant sanction
4 on top of suspension.

5 MR. JONES: Okay. So that's your rationale.
6 I want to -- I want to hear from -- like, what's your --
7 -- because you're representing the other side of the
8 table, right?

9 MS. SCHMIDT: Well, I represent -- however,
10 the OAG -- the OAG is not here to put -- it's not to
11 put businesses out of business either, as long -- if
12 they're trying to correct their behavior. In this
13 case, it's showing me after summary suspension, there
14 was -- there was some of the -- he did comply with the
15 conditions of summary suspension. That's why -- if he
16 hadn't complied, then we would have been -- would have
17 been more punitive.

18 But since he did comply, he should get some
19 credit for complying. And given the financial -- given
20 the fact he's paying \$4000 in three days, we are
21 cognizant of the fact that it's, you know, there have
22 been cash --

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1 MR. JONES: Okay. So you don't -- you don't
2 feel like the days not -- no new days being applied to
3 this OIC is part of the reward for compliance?

4 MS. SCHMIDT: It's not an matter of -- it's
5 not a matter of rewarding or not rewarding but
6 someone's --

7 MR. JONES: Or taken into consideration? I
8 apologize. Whatever words you use.

9 MS. SCHMIDT: At this point, no, because he
10 did comply.

11 MR. JONES: Okay.

12 MS. SCHMIDT: Yeah.

13 MR. JONES: Thank you. Thank you, Madam
14 Chair.

15 CHAIRPERSON MILLER: Other questions? Yes,
16 Mr. Alberti?

17 MR. ALBERTI: Madam Chair, please don't hate
18 for me this but I'm going to go back to the days that
19 you're serving, which is eight days; am I correct --
20 and how we come about those eight days because I'm not
21 sure --

22 MS. SCHMIDT: Oh, sure.

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1 MR. ALBERTI: -- I'm not sure I heard it
2 correctly.

3 MS. SCHMIDT: Oh, not a problem.

4 MR. ALBERTI: All right. So let me go over
5 what I understand. All right? Case No. 11-CMP-00179,
6 which was adjudicated on June 21st, 2012 -- all right -
7 - no, I'm sorry -- yeah, right -- June 21st, 2012 --
8 all right -- that case triggered four days from a
9 previous case. That case was Case No. 10-CC-00022. So
10 that's four days. All right?

11 MS. SCHMIDT: Yes.

12 MR. ALBERTI: That would trigger from the
13 00022 case. Then there's an additional four days that
14 were applied from -- there are -- there are additional
15 four stayed days from the 00179 day that are triggered
16 by the current OIC?

17 MS. SCHMIDT: That's correct.

18 MR. FONSECA: That is correct.

19 MR. ALBERTI: Okay. Thank you.

20 MR. FONSECA: That's it exactly.

21 CHAIRPERSON MILLER: Another question?

22 (No audible response.)

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1 CHAIRPERSON MILLER: I think what the Board's
2 going to do is just recess for a few minutes and think
3 about what the parties have said with respect to
4 considering the offer in compromise and then return.

5 So I will read the instructions and make a motion with
6 respect to the Open Meeting Act for the closed meeting.

7 As Chairperson of the Alcoholic Beverage
8 Control Board for the District of Columbia, and in
9 accordance with Section 405 of the Open Meetings
10 Amendment Act of 2010, I move that the ABC Board hold a
11 closed meeting for the purpose of seeking legal advice
12 from our counsel on Case No. 12-251-00104, Island Cafe,
13 per Section 405(b)(4) of the Open Meetings Amendment
14 Act of 2010, and deliberating upon this case for the
15 reasons cited in Section 405(b)(13) of the Open
16 Meetings Act of 2010.

17 Is there a second?

18 MR. BROOKS: Second.

19 CHAIRPERSON MILLER: Now that the motion has
20 been seconded, I'll take a roll call on the motion.
21 Mr. Nophlin?

22 MR. NOPHLIN: I agree.

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1 CHAIRPERSON MILLER: Mr. Brooks?

2 MR. BROOKS: I agree.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MR. ALBERTI: I agree.

5 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
6 Silverstein?

7 MR. SILVERSTEIN: I agree.

8 CHAIRPERSON MILLER: Mr. Jones?

9 MR. JONES: I agree.

10 CHAIRPERSON MILLER: The vote is 6-0-0 on the
11 motion and it passes. I hereby give notice that the
12 ABC Board will hold a closed meeting in the ABC Board
13 conference room to consider this.

14 Okay. So we'll recess and be back very
15 shortly. Thank you.

16 (WHEREUPON, at 2:30 p.m., the hearing went
17 off record until 3:06 p.m.)

18 CHAIRPERSON MILLER: Okay. We're back on the
19 record. We'll go -- we proceed. Is there any other
20 matter the parties want to bring to our attention?

21 MS. SCHMIDT: (Inaudible) --

22 CHAIRPERSON MILLER: But --

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1 MS. SCHMIDT: I think we need (inaudible)
2 accepting our offer or not. Then -- and then --

3 CHAIRPERSON MILLER: Okay.

4 MS. SCHMIDT: -- we can proceed from there.

5 CHAIRPERSON MILLER: Okay.

6 MR. ALBERTI: There's been --

7 MR. FONSECA: Let's be --

8 MR. JONES: Is there an OIC?

9 MR. ALBERTI: There is. There is.

10 MR. FONSECA: -- (inaudible) offer.

11 MR. ALBERTI: Just one moment. Because I
12 just want to remind the parties that no motion has been
13 made on your previous discussion of an OIC. So

14 CHAIRPERSON MILLER: The --

15 MR. ALBERTI: Does that OIC stand?

16 CHAIRPERSON MILLER: An offer in compromise
17 was presented to the Board and went to recess. And,
18 you know, we're prepared to go forward unless
19 anything's changed in the meantime and the parties want
20 to bring anything else to our attention before we
21 proceed.

22 MS. SCHMIDT: One second. Thank you so much.

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1 We our -- out OIC stands as until otherwise. At this
2 point, we're not changing our OIC until --

3 MR. ALBERTI: Okay.

4 MS. SCHMIDT: -- until we get --

5 CHAIRPERSON MILLER: Okay. Then an OIC was
6 presented for the following: to drop Charge 2, to have
7 the Licensee pay a penalty of \$8000, which would be
8 \$4000 for each of the violations, to serve -- the
9 license would be suspended from July 19th through 26th,
10 ten days the license would be suspended but considered
11 served from the suspension case. Does that -- did I
12 characterize that correctly?

13 MR. ALBERTI: Madam Chair --

14 CHAIRPERSON MILLER: Yeah.

15 MR. ALBERTI: -- I'm having a little trouble
16 understanding the OIC. So can I state my understanding
17 of it?

18 CHAIRPERSON MILLER: Absolutely.

19 MR. ALBERTI: The OIC, as I understood it,
20 was correctly, according to the records that I have,
21 would be a total fine of \$4000, \$4000 for each case.
22 And then there were no days to be served?

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1 MS. SCHMIDT: A total fine of \$8000.

2 MR. ALBERTI: So a total fine of -- I'm
3 sorry, excuse me --

4 MS. SCHMIDT: Yes, 8000.

5 MR. ALBERTI: -- 4000 -- \$8000, \$4000 for
6 each charge --

7 CHAIRPERSON MILLER: Uh-huh.

8 MR. ALBERTI: -- and then no days to be
9 served and a payment made at -- when?

10 MS. SCHMIDT: In 90 days.

11 MR. ALBERTI: In 90 days.

12 MR. FONSECA: With the recognition that ten
13 days -- ten days have previously been served; no
14 additional days will be served.

15 MR. ALBERTI: Okay. Yes. With recognition
16 that ten days were served as part of the --

17 MR. FONSECA: And then --

18 MR. ALBERTI: -- summary suspension.

19 MR. FONSECA: But four days would be required
20 to be served --

21 MR. ALBERTI: No.

22 MR. FONSECA: -- to resolve that case --

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1 CHAIRPERSON MILLER: This is what the problem
2 was before.

3 MR. ALBERTI: No. Mr. Fonseca, the violation
4 that occurred, Case No. 11-CMP-00179 -- all right --
5 that violation was adjudicated on June 21st, 2012,
6 correct?

7 MR. FONSECA: Correct.

8 MR. ALBERTI: This violation occurred prior
9 to that. So this violation, since it occurred prior to
10 the adjudication of Case No. 00179, those four days are
11 not triggered by this violation. You can only trigger
12 days after a case is -- after a case -- a violation
13 could only trigger stayed days from the date of
14 adjudication. That's why we say they stayed for one day
15 from the day of this OIC or the date of the order.

16 Is that clear?

17 MR. FONSECA: That is clear.

18 MR. ALBERTI: Thank you.

19 MS. SCHMIDT: Okay. So Mr. -- I'm sorry
20 (inaudible) Okay. Then -- okay. Then that's not the -
21 - I couldn't -- we'll make another OIC because that's
22 not the way I understood it.

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1 CHAIRPERSON MILLER: Okay. Fine. Because
2 there was confusion with respect to what that OIC was.

3 MS. SCHMIDT: Okay. So we'll stop drop
4 Charge No. 2. And then for Charges 1 and 3, \$4000 for
5 each charge, a total of \$8000. And then a total of ten
6 days to be served, six days -- six days for this
7 violation -- I'm sorry, six day -- no -- just six days
8 for this violation. I'm sorry. Let's not -- let's not
9 get ten days -- six days for this violation.

10 MR. ALBERTI: Is this the old OIC?

11 CHAIRPERSON MILLER: No.

12 MS. SCHMIDT: This is the new OIC.

13 MR. ALBERTI: Or is this -- no. This is the
14 new OIC?

15 MS. SCHMIDT: Yes, it is.

16 MR. JONES: I'm totally confused.

17 CHAIRPERSON MILLER: Okay. I got it. Okay.

18 MR. ALBERTI: I just wanted to make sure.

19 For the record, I wanted to make sure, Ms. --

20 MS. SCHMIDT: But this --

21 MR. ALBERTI: Wait, wait, wait, wait.

22 MS. SCHMIDT: Based on --

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1 MR. ALBERTI: Wait, wait, wait. Let me --
2 let me finish. Let me finish, Ms. Schmidt. For the
3 record, I want to make sure that we are not considering
4 the OIC that was stated before we went into recess.
5 And now, that has been withdrawn and we're considering
6 a new OIC?

7 MS. SCHMIDT: Yes.

8 MR. ALBERTI: Thank you very much.

9 MS. SCHMIDT: Okay. I'm sorry for -- again,
10 I apologize for the confusion. So this -- so this --
11 in this case, there'll be ten -- it'll be a \$8000 fine
12 for two -- the two charges that remain. And then
13 there'll be a total of six days to be served on this --
14 on this charge.

15 CHAIRPERSON MILLER: Okay. What -- when will
16 the \$8000 be paid?

17 MS. SCHMIDT: Within 90 days.

18 CHAIRPERSON MILLER: Ninety days. And when
19 will the six days be served?

20 MS. SCHMIDT: After the four days that have
21 been ordered by the Board in another case.

22 CHAIRPERSON MILLER: Do you have a date?

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1 MR. FONSECA: Yes. We mentioned July 23rd,
2 six consecutive days thereafter. I believe it would be
3 July -- the 28th of July. So the license would be
4 returned on the 29th of July.

5 CHAIRPERSON MILLER: Okay. So the OIC, as I
6 understand it, is to drop Charge 2, to assess fines of
7 -- in the amount of \$4000 each for Charges 1 and 3,
8 which would come to \$8000 total to be paid within 90
9 days, and for six days served from July 23 to July 28,
10 2012.

11 Mr. Fonseca, is that your understanding of
12 the OIC?

13 MR. FONSECA: That is my understanding.

14 CHAIRPERSON MILLER: And does your client
15 accept that?

16 MR. BAILEY: Yes.

17 CHAIRPERSON MILLER: And does he understand
18 that he waives his right to a hearing? He accepts it?

19 MR. BAILEY: Yes, Madam Chair.

20 CHAIRPERSON MILLER: Okay. Thank you. And I
21 had phrased it correctly, Ms. Schmidt?

22 MS. SCHMIDT: Yes.

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1 CHAIRPERSON MILLER: Okay. Now, are there
2 any Board questions?

3 (No audible response.)

4 CHAIRPERSON MILLER: Okay. We have an offer
5 in compromise before us to drop Charge 2, to assess
6 \$4000 penalty for violations 1 and 3 each, totaling
7 \$8000 to be paid within 90 days and to have six days of
8 the license suspended on days July 23 through July 28.
9 Those days would be served. Okay.

10 Do I have a second?

11 BOARD MEMBER: Second.

12 CHAIRPERSON MILLER: Final comments?

13 (No audible response.)

14 CHAIRPERSON MILLER: Okay. Then all those in
15 favor of the motion that's been seconded, say aye?

16 (Chorus of ayes.)

17 CHAIRPERSON MILLER: All those opposed?

18 (Chorus of nays.)

19 CHAIRPERSON MILLER: All those abstaining?

20 (No audible response.)

21 CHAIRPERSON MILLER: I'm going to take a roll
22 call. Mr. Nophlin?

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1 MR. NOPHLIN: I agree.

2 CHAIRPERSON MILLER: Mr. Brooks?

3 MR. BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MR. ALBERTI: I disagree. I don't think the
6 monetary fine is high enough for this infraction.

7 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
8 Silverstein?

9 MR. SILVERSTEIN: I agree.

10 CHAIRPERSON MILLER: Mr. Jones?

11 MR. JONES: I disagree.

12 CHAIRPERSON MILLER: The motion passes by a
13 vote of 4-2-0. So the offer in compromise is accepted.
14 Thank you.

15 MR. BAILEY: Thank you.

16 CHAIRPERSON MILLER: Okay. The next one's at
17 3:30.

18 PARTICIPANT: So your next hearing's at 3:30?

19 CHAIRPERSON MILLER: Yeah, that's right.

20 PARTICIPANT: Listen, you want to take a
21 potty break?

22 CHAIRPERSON MILLER: Yeah, yeah. Okay. Our

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1 next case is scheduled for 3:30 and it's now 3:15. So
2 we're going to recess until 3:40.

3 (WHEREUPON, at 3:15 p.m., the hearing was
4 concluded.)

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CERTIFICATE OF NOTARY PUBLIC

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

BRADLEY ANGLIN
Notary Public in and for
DISTRICT OF COLUMBIA

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CERTIFICATE OF TRANSCRIPTION

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

Date

MIRANDA PENNACHI

Transcriptionist

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