

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

5 - - - - -X

6 IN THE MATTER OF: :

7 M & M Beer & Wine, Inc.,  
 8 t/a M & M Market Case Number 15-CMP-00751  
 9 3544 East Capitol Street NE  
 10 License Number 78461  
 11 Retailer B

12 ANC 7F

13 SHOW CAUSE HEARING

14 - - - - -X

15 Wednesday, May 18, 2016

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

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CHAIRPERSON:

DONOVAN W. ANDERSON, Presiding

OTHER PERSONS PRESENT:

RUTHANNE MILLER, BOARD MEMBER

JAMES SHORT, BOARD MEMBER

MIKE SILVERSTEIN, BOARD MEMBER

NICK ALBERTI, BOARD MEMBER

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

2 CHAIRPERSON ANDERSON: All right. The next  
3 case on our calendar is we have a show cause hearing for  
4 Case Number 15-CMP- --

5 MR. SILVERSTEIN: I'm going to ask the  
6 interpreter to move closer to the gentleman and to speak  
7 more softly so that we can hear what's going on here.

8 CHAIRPERSON ANDERSON: Hold on. All right.  
9 The next case on our calendar is Case Number  
10 15-CMP-00751, M & M Market, License Number 78461. Will  
11 the parties please identify themselves for the record.  
12 There is also a sign-in sheet. Can you sign your name  
13 in and also spell it for the record please.

14 MR. RIVERO: Good morning, Board Members  
15 Fernando Rivero for the District of Columbia.

16 CHAIRPERSON ANDERSON: Good afternoon,  
17 Mr. Rivero.

18 MR. RIVERO: Oh, yes, good afternoon.

19 CHAIRPERSON ANDERSON: I know you have had a  
20 long day, but it's still afternoon. So can you -- I  
21 need you two both identify yourself.

22 THE INTERPRETER: My name is Salam Legese

1 (ph). I am a Amharic interpreter.

2 CHAIRPERSON ANDERSON: Can you -- can you  
3 stand please and raise your --

4 THE INTERPRETER: Salam Legese, Amharic  
5 interpreter.

6 CHAIRPERSON ANDERSON: I need you to raise  
7 your right hand please. And Ms. Legese, that's it,  
8 yeah, do you swear or affirm to interpret the -- the --  
9 to the best of your ability from English to Amharic?

10 THE INTERPRETER: Tigrinya.

11 CHAIRPERSON ANDERSON: To I'm sorry.

12 THE INTERPRETER: Tigrinya. Tigrinya. It's  
13 Tigrinya.

14 CHAIRPERSON ANDERSON: No. No. No. That's  
15 his name?

16 THE INTERPRETER: No. That's the language.

17 MR. SHORT: That's the language.

18 CHAIRPERSON ANDERSON: I thought you said  
19 you're Amharic.

20 THE INTERPRETER: Amharic and Tigrinya  
21 interpreter. I do apologize. I do interpret for --

22 CHAIRPERSON ANDERSON: Okay. So you

1 interpret -- what language are you interpreting?

2 THE INTERPRETER: Right now I'm interpreting  
3 from Amharic to Tigrinya. To -- to English to Tigrinya  
4 and Tigrinya to English.

5 CHAIRPERSON ANDERSON: All right. I'm  
6 sorry. Do you swear or affirm to -- to the best of your  
7 knowledge interpret from English to --

8 THE INTERPRETER: Tigrinya.

9 CHAIRPERSON ANDERSON: -- to Tigrinya and  
10 from Tigrinya to English to the best of your ability.

11 THE INTERPRETER: I do.

12 CHAIRPERSON ANDERSON: Okay. You may be  
13 seated. Can you ask him to identify himself on the  
14 record please.

15 [The witness, Mr. Mebrahtu, speaking through  
16 an interpreter.]

17 MR. MEBRAHTU: Amanuel Mebrahtu.

18 CHAIRPERSON ANDERSON: Okay. Fine. Thank  
19 you. So both of you can -- can -- ask him to spell his  
20 name for -- for the record. You have already got it?  
21 Okay. You can -- all right. Thanks. All right. This  
22 is a show cause hearing that we have. Mr. Fernando, are

1 there any preliminary matters in this case?

2 MR. RIVERO: Mr. Rivero. Yes. We actually  
3 are ready to move forward. We have no Offer in  
4 Compromise to present to The Board at this time.

5 CHAIRPERSON ANDERSON: Okay. All right.  
6 Does the Government wish to make an opening statement?

7 MR. RIVERO: Yes. Board Members, we are  
8 here today in the show cause matter of M & M Beer &  
9 Wine, Incorporated trading as M & M Market located at  
10 3544 East Capitol Street NE. The show cause notice  
11 issued in this matter concerns the charge that the  
12 licensee permitted the provision of a go-cup to a patron  
13 in the establishment in violation of D.C. Official Code  
14 25741. It is our believe that a preponderance of the  
15 evidence based on the testimony of our witness ABRA  
16 Investigator Anthony Howse will show that the licensee  
17 sold an alcoholic beverage to the investigator while he  
18 was undercover and provided him with a go-cup of ice on  
19 September 18, 2015. Thank you.

20 CHAIRPERSON ANDERSON: Mr. Mebrahtu, do you  
21 wish to make an opening statement at this time?

22 MR. MEBRAHTU: Yes, I do.

1 CHAIRPERSON ANDERSON: Well, basically let  
2 me ask does he know why he's here?

3 MR. MEBRAHTU: Yes, I do.

4 CHAIRPERSON ANDERSON: All right. And so  
5 basically the Government is going to present their case,  
6 and then you're going to present your defense. And so  
7 at this juncture you can either -- you can make an  
8 opening statement to tell -- to tell me about your case  
9 or you can wait until the Government presents its case  
10 and then you can make an opening statement and present  
11 your case.

12 MR. MEBRAHTU: Okay. I will speak later.

13 CHAIRPERSON ANDERSON: Okay. Fine. Does  
14 the Government wish to call its first witness?

15 MR. RIVERO: Yes. The Government will call  
16 Investigator Anthony Howze to the stand.

17 CHAIRPERSON ANDERSON: Thank you.  
18 Mr. Howze, can you raise your right hand please. Do you  
19 swear or affirm to tell the truth and nothing but the  
20 truth.

21 INVESTIGATOR HOWZE: Yes.

22 CHAIRPERSON ANDERSON: You may have a seat,

1 sir.

2 MR. RIVERO: Good afternoon. What is your  
3 name?

4 INVESTIGATOR HOWZE: Anthony Howze.

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

7 INVESTIGATOR HOWZE: H-O-W-Z-E.

8 MR. RIVERO: What is your occupation,  
9 Mr. Howze.

10 INVESTIGATOR HOWZE: Investigator for ABRA,  
11 Alcoholic Beverage Regulation Administration.

12 MR. RIVERO: How long have you been an  
13 investigator here?

14 INVESTIGATOR HOWZE: Eight months.

15 MR. RIVERO: What are your duties as an ABRA  
16 investigator.

17 INVESTIGATOR HOWZE: To conduct inspections  
18 and investigations for ABC licensed establishments in  
19 the District of Columbia.

20 MR. RIVERO: Are you familiar with M & M  
21 Market?

22 INVESTIGATOR HOWZE: Yes, I am.

1 MR. RIVERO: How are you familiar with the  
2 establishment?

3 INVESTIGATOR HOWZE: I purchased a go-cup  
4 from M & M Market.

5 MR. RIVERO: When did you do that?

6 INVESTIGATOR HOWZE: September 18th, 2015.

7 MR. RIVERO: Let me take you to the  
8 beginning of your visit. What time was it, during the  
9 day or night?

10 INVESTIGATOR HOWZE: 2:20 p.m.

11 MR. RIVERO: What happened when you walked  
12 inside?

13 INVESTIGATOR HOWZE: I entered the  
14 establishment. I walked to the back of the  
15 establishment where the display of beer and wine was  
16 located. I opened the -- the display and picked out a  
17 MD 20/20 bottle of citrus wine.

18 MR. RIVERO: What did you do after you  
19 picked up the bottle of wine?

20 INVESTIGATOR HOWZE: Walked to the cash  
21 register and placed it on the -- the ledge where the --  
22 where the counter was.

1 MR. RIVERO: Okay. And what did you do  
2 after you placed the bottle on the ledge of the counter?

3 INVESTIGATOR HOWZE: There is a freezer  
4 directly below the cashier counter. I opened the  
5 freezer and received a -- retrieved a Styrofoam cup that  
6 had ice in it and put it on the counter next to the  
7 alcoholic beverage.

8 MR. RIVERO: When you say there was a  
9 freezer under the counter about how large was this  
10 freezer?

11 INVESTIGATOR HOWZE: Probably the size of  
12 the table, the table that you're sitting at, sir.

13 MR. RIVERO: Okay. Would you give me an  
14 estimate? Would you say it would be about four or five  
15 feet wide?

16 INVESTIGATOR HOWZE: Correct.

17 MR. RIVERO: Where is the door to this  
18 freezer located, on what side of this freezer?

19 INVESTIGATOR HOWZE: The door?

20 MR. RIVERO: Uh-huh.

21 INVESTIGATOR HOWZE: The freezer handle is  
22 on the -- actually on the top of the -- of the freezer.

1 MR. RIVERO: On the top.

2 INVESTIGATOR HOWZE: And it's a -- it's a  
3 slide freezer where you can slide it back or slide is  
4 forward.

5 MR. RIVERO: Okay. So to open the freezer  
6 you slid the door?

7 INVESTIGATOR HOWZE: Correct.

8 MR. RIVERO: Okay. What happened after you  
9 pulled out the cup of ice.

10 INVESTIGATOR HOWZE: I sat it next to the  
11 alcoholic beverage that I received from the display case  
12 in the back of the establishment.

13 MR. RIVERO: And what happened next?

14 THE INTERPRETER: May I ask for repetition?

15 CHAIRPERSON ANDERSON: I'm sorry. Yes.

16 THE INTERPRETER: May I ask for repetition?

17 I didn't get what he said.

18 CHAIRPERSON ANDERSON: Okay. Yes.

19 MR. RIVERO: Go ahead and repeat what you  
20 said.

21 INVESTIGATOR HOWZE: What -- what was the  
22 last? I sat the Styrofoam cup next to the alcoholic

1 beverage on the -- on the counter.

2 MR. RIVERO: And what happened after --  
3 after that happened?

4 INVESTIGATOR HOWZE: The cashier asked for  
5 the -- the amount of the actual bottle. I paid the  
6 cashier. He bagged the item. He -- I paid for the --  
7 the items. He bagged it for me, and I exited the  
8 establishment with the alcoholic beverage and the  
9 Styrofoam cup.

10 MR. RIVERO: Okay. I'd like you to describe  
11 the sales counter.

12 INVESTIGATOR HOWZE: The sales counter was  
13 probably the size of the table as well and -- and less  
14 and there's a glass -- glass window between myself and  
15 the clerk. There is a ledge, not too big, not too  
16 small, where you can actually put your items on there  
17 for purchase. And there's a -- a spin around tray where  
18 you actually put the items on the tray and spin it  
19 around and put your money on the tray as well for --  
20 for -- for purchase.

21 MR. RIVERO: After you received your items  
22 were they bagged?

1 INVESTIGATOR HOWZE: They were bagged.

2 Correct.

3 MR. RIVERO: What did you do after you  
4 received your items?

5 INVESTIGATOR HOWZE: I retrieved my items  
6 from the counter and exited the establishment.

7 MR. RIVERO: Did you get any change from the  
8 transaction?

9 INVESTIGATOR HOWZE: I believe I did get --  
10 receive \$6. I believe the purchase was \$4 for the  
11 bottle, and I gave him a \$10 bill and I received \$6  
12 back.

13 MR. RIVERO: And then you exited the  
14 establishment?

15 INVESTIGATOR HOWZE: Correct.

16 MR. RIVERO: Okay. I'm going to show you a  
17 document that is marked Government's Exhibit 1 for  
18 identification. A copy of that document is provided to  
19 the licensee. I'd like you to take a moment and look at  
20 the document and tell me what it is.

21 INVESTIGATOR HOWZE: This is a copy of my  
22 investigative report.

1 MR. RIVERO: In this case, right?

2 INVESTIGATOR HOWZE: Correct.

3 MR. RIVERO: Look through -- take a moment  
4 and look through all the pages and see that it's  
5 complete.

6 CHAIRPERSON ANDERSON: Excuse me a minute,  
7 Mr. Rivero. Have you seen this document before, sir?

8 MR. MEBRAHTU: No, I did not.

9 CHAIRPERSON ANDERSON: So can you take a --  
10 can you -- while -- can you just look at the document to  
11 see -- why don't you look through the document so you'll  
12 know what it is that's being referenced.

13 MR. MEBRAHTU: Right now?

14 CHAIRPERSON ANDERSON: That would be  
15 helpful. I mean if you don't want to, you don't --

16 MR. MEBRAHTU: I wanted to understand it.

17 That's why I requested an interpreter. It would be very  
18 difficult for me.

19 CHAIRPERSON ANDERSON: There are some  
20 pictures in it. So he can look in there and look at the  
21 pictures at least.

22 MR. RIVERO: This is the copy of the

1 investigator's investigative report that formed the  
2 start of this case. Under established procedures once  
3 The Board decides that a case will happen the agency  
4 provides a copy of this report to the licensee by law.  
5 In fact, the agency has 90 days to do so. After the  
6 hearing I can inquire if there was some issue about that  
7 delivery.

8 CHAIRPERSON ANDERSON: Well, I -- I'm not --  
9 I will just -- I think based on the representation that  
10 was made today so even if the agents provided it to him,  
11 he said he couldn't read it anyway. So -- but go ahead.

12 MR. RIVERO: Thank you. The Government  
13 would move into evidence now a copy of the  
14 investigator's report with its exhibits.

15 CHAIRPERSON ANDERSON: Do you have an  
16 objection, sir, with making this -- the document in  
17 front of you part of the record?

18 MR. MEBRAHTU: No, I don't.

19 CHAIRPERSON ANDERSON: So moved.

20 MR. RIVERO: Thank you. Investigator Howze,  
21 I'm going to turn your attention parts of your report.  
22 What you call Exhibit 1 is a photograph. Can you tell

1 me what's in the photograph?

2 INVESTIGATOR HOWZE: This is a picture of  
3 the MD 20/20 bottle that I purchased the day -- the day  
4 of September 18th, 2015.

5 MR. RIVERO: And the bottle has a label on  
6 it, right?

7 INVESTIGATOR HOWZE: Correct.

8 MR. RIVERO: Who put that label on the  
9 bottle?

10 INVESTIGATOR HOWZE: I did.

11 MR. RIVERO: And why did you do that?

12 INVESTIGATOR HOWZE: For -- for evidence.

13 MR. RIVERO: I'm going to turn your  
14 attention to what you call Exhibit 2 in your report.  
15 This is another picture, right?

16 INVESTIGATOR HOWZE: Correct.

17 MR. RIVERO: What's in the photograph?

18 INVESTIGATOR HOWZE: It's a picture of me  
19 holding a Styrofoam cup with ice in it.

20 MR. RIVERO: So the hand in the photo is  
21 your hand?

22 INVESTIGATOR HOWZE: Correct.

1 MR. RIVERO: And this the Styrofoam cup that  
2 you took from the freezer as you testified?

3 INVESTIGATOR HOWZE: Yes, it is.

4 MR. RIVERO: I'm direct your attention now  
5 to Exhibit 3 in your report. It's also a picture.  
6 What's that picture?

7 INVESTIGATOR HOWZE: This is also a picture  
8 of the Styrofoam cup, but this one actually has the --  
9 the cap on -- on this one, the top to the -- to the cup.

10 MR. RIVERO: Who took that photo?

11 INVESTIGATOR HOWZE: I did, sir.

12 MR. RIVERO: So you say this cup has the top  
13 on it?

14 INVESTIGATOR HOWZE: Correct.

15 MR. RIVERO: And it doesn't have the top on  
16 it in Exhibit 2?

17 INVESTIGATOR HOWZE: Correct.

18 MR. RIVERO: What's the difference? Why the  
19 difference?

20 INVESTIGATOR HOWZE: I took that picture to  
21 show that the ice was already in the cup.

22 MR. RIVERO: Okay. And there is a label on

1 the cup, right?

2 INVESTIGATOR HOWZE: Correct.

3 MR. RIVERO: Who wrote that label?

4 INVESTIGATOR HOWZE: I wrote it.

5 MR. RIVERO: Why?

6 INVESTIGATOR HOWZE: For evidence  
7 transmittal.

8 MR. RIVERO: You said evidence transmittal.  
9 So I'm going to point your attention to your Exhibit 6  
10 in your report. What is that?

11 INVESTIGATOR HOWZE: This is a copy of a  
12 evidence transmittal sheet that I filled out and  
13 submitted to Chief Jackson.

14 MR. RIVERO: So what's the purpose of this  
15 form?

16 INVESTIGATOR HOWZE: After we receive the  
17 evidence from the -- from the establishment we bring it  
18 to ABRA and turn it into the chief for submittal.

19 MR. RIVERO: That means that the evidence is  
20 here?

21 INVESTIGATOR HOWZE: Correct.

22 MR. RIVERO: Okay. No further questions.

1 CHAIRPERSON ANDERSON: Mr. Mebrahtu -- and  
2 I -- and I'm very sorry, sir, if I butcher your name. I  
3 do apologize for that. Do you -- at this time do you  
4 want to ask any questions to the investigator based on  
5 the questions that the Government just asked him?

6 MR. MEBRAHTU: Yes. The question that I  
7 would like to ask him is that --

8 CHAIRPERSON ANDERSON: You can -- yeah. Ask  
9 the question. Yeah.

10 MR. MEBRAHTU: So what I don't understand is  
11 the cup that you're saying that you got with ice, did  
12 you pay for it or did you get it for free?

13 INVESTIGATOR HOWZE: It was actually for  
14 free. He only charged me for the bottle.

15 MR. MEBRAHTU: That's what I only want to  
16 ask.

17 CHAIRPERSON ANDERSON: You don't have any --  
18 you don't have any other questions to ask him, sir?

19 MR. MEBRAHTU: No. The other thing I would  
20 like to say is I did not do it. I was not there. I  
21 know it's illegal.

22 CHAIRPERSON ANDERSON: Well, like I said,

1 you can tell me that later on. But I'm just saying this  
2 is your opportunity to -- since he's the one who bought  
3 the -- the -- the -- he's the investigator -- I'm sorry.  
4 He's the person who bought the stuff from your store.  
5 So this is your opportunity to ask him questions about  
6 it.

7 MR. MEBRAHTU: That's it. That's the only  
8 question.

9 CHAIRPERSON ANDERSON: All right. Fine.  
10 Thank you. Do we have any questions by any board  
11 members? Yes, Ms. Miller.

12 MS. MILLER: Good afternoon. I -- I just  
13 wanted to ask you you bought the alcohol at 2:20 in the  
14 afternoon; is that right?

15 INVESTIGATOR HOWZE: Yes, ma'am.

16 MS. MILLER: And what -- what time did you  
17 do your evidence transmittal?

18 INVESTIGATOR HOWZE: It's not in front of my  
19 face. I don't recall.

20 MS. MILLER: You don't recall?

21 INVESTIGATOR HOWZE: I need to -- actually  
22 to see the piece of paper if possible.

1 MS. MILLER: Do you do that at -- at the  
2 office?

3 INVESTIGATOR HOWZE: Yes, ma'am.

4 MS. MILLER: And did you have another  
5 investigation after this one?

6 INVESTIGATOR HOWZE: Involving this --  
7 involving this case? No, ma'am.

8 MS. MILLER: No. Can you come right back to  
9 the office, or did you go to another establishment?

10 INVESTIGATOR HOWZE: We had other  
11 establishments we went to after. Correct.

12 MS. MILLER: Okay. And were you with  
13 another investigator?

14 INVESTIGATOR HOWZE: Yes.

15 MS. MILLER: And who was that?

16 INVESTIGATOR HOWZE: Investigator Dorshea  
17 Demby (ph).

18 MR. RIVERO: I'm going to have to lodge an  
19 objection at this point on the -- on the grounds of  
20 relevancy. I don't see --

21 MR. SILVERSTEIN: Excuse me. Please speak  
22 up. I can't hear you over her.

1 MS. MILLER: Relevancy?

2 MR. RIVERO: Yes.

3 MS. MILLER: Okay. I -- I -- I see a cup of  
4 ice, and I'm just wondering when the picture of the ice  
5 was taken as part of the evidence. And that goes to the  
6 evidence transmittal questions. But that's the  
7 relevance.

8 CHAIRPERSON ANDERSON: For what's it's  
9 worth, Mr. Rivero, I'm going to overrule the objection.  
10 But I -- I get your point, sir.

11 INVESTIGATOR HOWZE: The picture was taken  
12 after I exited the establishment and got into the car.

13 MS. MILLER: It was taken there?

14 INVESTIGATOR HOWZE: It was taken  
15 immediately after I left the establishment if that's  
16 what you're asking.

17 MS. MILLER: Yeah. That's really -- okay.  
18 So I should have been more direct. So that's -- that --  
19 thank you. That's very helpful. So the -- the picture  
20 of the cup and the ice were taken at the  
21 establishment --

22 INVESTIGATOR HOWZE: Yes.

1 MS. MILLER: -- or outside the --

2 INVESTIGATOR HOWZE: Outside of the  
3 establishment in -- in the ABRA vehicle. Correct.

4 MS. MILLER: And same with the alcohol  
5 bottle, the MD 20/20?

6 INVESTIGATOR HOWZE: That picture was taken  
7 when I got back to the -- to the office. The -- the  
8 reason for me taking the picture with the ice so it  
9 wouldn't melt.

10 MS. MILLER: Right.

11 INVESTIGATOR HOWZE: That's -- that's the  
12 reason I took the picture with the ice in it, ma'am.

13 MS. MILLER: Okay. Good. Okay. Okay.  
14 Thank you.

15 CHAIRPERSON ANDERSON: Mr. Alberti.

16 MR. ALBERTI: Investigator Howze, thank you  
17 for your report. Just real quickly so you testified  
18 that you took the Styrofoam cup with ice in it and --  
19 from the cooler that was in front of the counter?

20 INVESTIGATOR HOWZE: Correct.

21 MR. ALBERTI: Were -- were there more than  
22 one cups of ice in the cooler?

1 INVESTIGATOR HOWZE: Yes, there were.

2 MR. ALBERTI: Do you remember approximately  
3 how many?

4 INVESTIGATOR HOWZE: No, I do not.

5 MR. ALBERTI: Okay. But you're sure there  
6 was more than one?

7 INVESTIGATOR HOWZE: Yes, sir.

8 MR. ALBERTI: And did they have -- all  
9 have -- I mean the one -- the other ones that you saw,  
10 they had ice in them or did they not have ice in them?

11 INVESTIGATOR HOWZE: I can't attest to that  
12 because I only picked up one -- one cup.

13 MR. ALBERTI: Oh, they were -- did they have  
14 lids on them?

15 INVESTIGATOR HOWZE: They were -- they were  
16 sealed. Correct.

17 MR. ALBERTI: Okay. Similar to the one that  
18 you picked up?

19 INVESTIGATOR HOWZE: Correct.

20 MR. ALBERTI: Thank you. No further  
21 questions.

22 CHAIRPERSON ANDERSON: Mr. Short.

1 MR. SHORT: Yes. Good afternoon, Inspector  
2 Howze.

3 INVESTIGATOR HOWZE: Good afternoon.

4 MR. SHORT: When you arrived there at 2:00  
5 in the evening were there any other patrons -- any more  
6 customers in the store besides yourself?

7 INVESTIGATOR HOWZE: I'm not sure. I can't  
8 recall.

9 MR. SHORT: Were there any patrons outside  
10 of the store? Anybody in the --

11 INVESTIGATOR HOWZE: Yes. There was patrons  
12 outside of the establishment. Correct.

13 MR. SHORT: Were they loitering or were  
14 they -- were they shopping or --

15 INVESTIGATOR HOWZE: It was -- it was -- it  
16 was loitering.

17 MR. RIVERO: I'm going to lodge the same  
18 relevancy based objection at this time unfortunately.

19 CHAIRPERSON ANDERSON: I'm sorry.

20 MR. RIVERO: Pardon?

21 CHAIRPERSON ANDERSON: I didn't hear what  
22 you said, Mr. Rivero.

1 MR. RIVERO: I am objecting on the basis of  
2 relevancy.

3 CHAIRPERSON ANDERSON: Oh, I think that you  
4 should have -- the cat is already out of the bag. He  
5 got the answer. So even if I -- even if I say that I --  
6 I sustain the objection and -- and I think -- one thing  
7 I'll say to Mr. --

8 MR. RIVERO: It goes more to the continued  
9 line of questioning is what I was getting at.

10 CHAIRPERSON ANDERSON: I -- I -- I -- I know  
11 what you're doing. I'm -- I'm not saying I disagree  
12 with you. But I -- I guess the bottom line is that this  
13 is how the board member -- my assumption is again. And  
14 so at least he asked a question, you object to it. But  
15 I guess I'll say in your closing that maybe you can try  
16 to respond to that. Because even if I -- even if I  
17 overrule -- I'm sorry -- sustain the objection, he's  
18 still -- the board member will still think that way. So  
19 I'm -- maybe it's a cue for you to -- in your closing to  
20 try to address some of those issues if you -- if you  
21 believe that you should. But I -- I -- I am not  
22 disagreeing with you. Okay. Do you have any other

1 questions? I think he -- he already answered the  
2 question. So --

3 MR. SHORT: Yeah. Okay. Well, while at the  
4 store you cited the owner with 25-741, go cups and  
5 back-up drink prohibited; is that correct?

6 INVESTIGATOR HOWZE: In my report, correct.

7 MR. SHORT: Can you describe what -- exactly  
8 what 25-741, go cups -- as an investigator why -- why is  
9 that important in this case?

10 INVESTIGATOR HOWZE: The D.C. Official Code  
11 basically states that an alcoholic beverage and a go-cup  
12 cannot be sold together.

13 MR. SHORT: Okay. All right. Thank you.  
14 That's all I have, Mr. Chair.

15 CHAIRPERSON ANDERSON: Mr. Silverstein.

16 MR. SILVERSTEIN: Investigator Howze, you  
17 say you did not pay for the cup?

18 INVESTIGATOR HOWZE: Correct.

19 MR. SILVERSTEIN: Explain to me the -- the  
20 providence of the cup and your transaction with the  
21 owner of the -- of the establishment, how you -- how you  
22 got the cup, what the -- was there a quid quo pro (ph)

1 on your getting the cup? Did you --

2 MR. RIVERO: Again, just for the record I'm  
3 going to --

4 CHAIRPERSON ANDERSON: Mr. -- Mr. -- I'm --  
5 going to -- I'm going to -- I'm going to sustain the --  
6 I'm going to sustain the objection.

7 MR. RIVERO: It was asked and answered.

8 CHAIRPERSON ANDERSON: Yeah. So what  
9 I'll -- so what I'll ask you to do then,  
10 Mr. Silverstein --

11 MR. SILVERSTEIN: It's not a -- it's not a  
12 crime to get a cup for -- for medicine. On the other  
13 hand, it's -- it's a crime -- you know, it's a violation  
14 for -- for alcohol. I want to know how he --

15 MR. RIVERO: The -- the witness testified  
16 that he put an alcoholic beverage on the ledge. He went  
17 into a freezer, pulled out a cup of ice, put it on the  
18 ledge, purchased the bottle, \$10 was handed, \$6 was  
19 returned, and bagged, and walked out with the alcoholic  
20 beverage and the cup.

21 CHAIRPERSON ANDERSON: All right.

22 MR. RIVERO: That was the witness'

1 testimony.

2 CHAIRPERSON ANDERSON: All right. So,  
3 Mr. -- Mr. Silverstein, I think that counsel is  
4 objecting to -- so maybe you can rephrase your -- your  
5 question or ask it a different way or just ask a  
6 different question, sir.

7 MR. SILVERSTEIN: Sure. Was there any  
8 connection between your purchase of the beverage and  
9 the -- your -- your gaining custody of this cup that  
10 became a go-cup? Was this implied? Was this -- was  
11 this part of your -- of the transaction implied or -- or  
12 stated?

13 INVESTIGATOR HOWZE: This was a part of  
14 our -- our routine for the day, to be in undercover  
15 capacity. M & M Market was one of the spots that was on  
16 the list for -- to see if they would sell go-cups and  
17 minis. And that was the reason why myself going into  
18 the establishment purchased the alcoholic beverage with  
19 a go-cup.

20 MR. SILVERSTEIN: Fine. No further  
21 questions.

22 CHAIRPERSON ANDERSON: All right, sir.

1 MR. ALBERTI: Could I ask one further  
2 question?

3 CHAIRPERSON ANDERSON: Go ahead, Mr.  
4 Alberti.

5 MR. ALBERTI: Mr. Howze, did you in any way  
6 conceal the Styrofoam cup from -- from the -- from the  
7 cashier?

8 INVESTIGATOR HOWZE: Conceal?

9 MR. ALBERTI: Yes. Was it -- was -- was  
10 the -- was the cup -- do you believe that the cup was  
11 clearly visible to the -- to the cashier?

12 INVESTIGATOR HOWZE: As far as him seeing it  
13 when I put it on the ledge?

14 MR. ALBERTI: Yes.

15 INVESTIGATOR HOWZE: Yes.

16 MR. ALBERTI: Okay. Thank you. I have no  
17 further questions.

18 MR. SHORT: I just had one follow up.

19 CHAIRPERSON ANDERSON: Yes, Mr. Short.

20 MR. SHORT: Mr. Howze, was there any problem  
21 in your communications when you purchased this bottle  
22 and got this cup at the store?

1 INVESTIGATOR HOWZE: Between me and the  
2 cashier?

3 MR. SHORT: Yes.

4 INVESTIGATOR HOWZE: No, sir.

5 MR. SHORT: Is the defendant the same person  
6 that -- or the licensee the same person that sold you  
7 that?

8 INVESTIGATOR HOWZE: I'm not -- I'm not  
9 sure.

10 MR. SHORT: Okay. That's all. No further  
11 questions.

12 CHAIRPERSON ANDERSON: Sir, do you have any  
13 questions to ask the investigator based on the questions  
14 that were just asked by the board members?

15 MR. MEBRAHTU: No, I don't.

16 CHAIRPERSON ANDERSON: Mr. Rivero, do you  
17 have any final questions you want to ask the  
18 investigator?

19 MR. RIVERO: Yes. I have one.

20 CHAIRPERSON ANDERSON: Go ahead, sir.

21 MR. RIVERO: You responded to a question  
22 about whether the clerk could see the cup. Didn't you

1 testify that the clerk bagged the bottle and the cup and  
2 gave it to you?

3 INVESTIGATOR HOWZE: Both items. Correct.

4 MR. RIVERO: You didn't bag them, the clerk  
5 did?

6 INVESTIGATOR HOWZE: Correct.

7 MR. RIVERO: No further questions.

8 CHAIRPERSON ANDERSON: Thank you,  
9 Mr. Rivero. You can step down, sir. Thank you for your  
10 testimony. Does the Government have any further  
11 witnesses?

12 MR. RIVERO: The Government has no further  
13 witnesses and concludes its case.

14 CHAIRPERSON ANDERSON: Thank you. Now is  
15 your opportunity, sir, to present your case to The  
16 Board. Do you have any witnesses you're going to call,  
17 or are you just going to be the one testifying?

18 MR. MEBRAHTU: I didn't bring a witness.  
19 I'm the only one who's going to testify.

20 CHAIRPERSON ANDERSON: Can you stand please.  
21 Can you raise your right hand please. Do you swear or  
22 affirm to tell the truth and nothing but the truth?

1 MR. MEBRAHTU: Yes, I do.

2 CHAIRPERSON ANDERSON: Have a seat. You can  
3 present your case now, sir.

4 MR. MEBRAHTU: Okay. I have heard the case  
5 really well. And in general what I would like to say is  
6 that -- that I know it's illegal to -- to sell the cup  
7 with -- with a drink, and I did not do that. And we do  
8 not sell that in our shop at all.

9 CHAIRPERSON ANDERSON: Do you have anything  
10 else to say?

11 MR. MEBRAHTU: And just in general what I  
12 would like to say is I do not sell a cup with ice. I do  
13 sell a bag of ice, but not a cup and the ice. And I did  
14 not do that at all.

15 CHAIRPERSON ANDERSON: Anything else?

16 MR. MEBRAHTU: No. I don't have anything  
17 else.

18 CHAIRPERSON ANDERSON: All right. You had  
19 the investigator there, sir, right? Mr. Howze was --  
20 Mr. -- oh, I'm sorry. Sorry.

21 MR. ALBERTI: It's a long day.

22 CHAIRPERSON ANDERSON: Go ahead, Mr. Rivero

1 any questions you planned?

2 MR. RIVERO: Yes.

3 CHAIRPERSON ANDERSON: Go ahead.

4 MR. RIVERO: You understand that it's not  
5 legal to sell a cup with an alcoholic beverage, right?

6 MR. MEBRAHTU: Yes, I do.

7 MR. RIVERO: And it's also not legal to give  
8 the cup for free with an alcoholic beverage, right? Did  
9 you understand that?

10 MR. MEBRAHTU: Yes. I do understand the  
11 question. If I know that it is illegal to sell it, I  
12 know -- I also know it's not legal to give it for free.

13 CHAIRPERSON ANDERSON: Any more questions?

14 MR. RIVERO: No.

15 CHAIRPERSON ANDERSON: Sir, the document in  
16 front of you, I would like you to pick it up. And I  
17 want you to turn to what has been identified as Exhibit  
18 Number 1, which is the [inaudible 1:43:23]. So do you  
19 sell this product in your store, sir?

20 MR. MEBRAHTU: Yes, I do.

21 CHAIRPERSON ANDERSON: And I want to -- want  
22 you to turn to what has been identified as Exhibit 3.

1 Can you turn to that? Do you have cups like these in  
2 your store, sir?

3 MR. MEBRAHTU: No. I do not have this in my  
4 store. Even in D.C. it's illegal to sell this kind of  
5 cups. It's a foam -- it's called foam cup, and we know  
6 we are not supposed to sell those.

7 CHAIRPERSON ANDERSON: So, sir, the --  
8 Mr. Howze testified that he came to your store and  
9 bought that drink and got this cup. So are you saying  
10 that you don't -- he didn't buy that drink and got that  
11 cup from your establishment?

12 MR. MEBRAHTU: What I'm saying is he might  
13 have come and bought the drink, but I know we don't hold  
14 this kind of cups and he didn't get it from our store.

15 CHAIRPERSON ANDERSON: Now, do you have a  
16 refrigerator anywhere close to the counter in your  
17 store, sir?

18 MR. MEBRAHTU: Yes, I do, where we sell ice  
19 cream.

20 CHAIRPERSON ANDERSON: And how -- where is  
21 this -- where is this located?

22 MR. MEBRAHTU: Lower than --

1 CHAIRPERSON ANDERSON: Lower than where?

2 Where?

3 MR. MEBRAHTU: So like the cash register --  
4 the cash register is closed. And outside that lower  
5 near the ground there is the refrigerator.

6 CHAIRPERSON ANDERSON: Now, do you remember  
7 an investigator coming into your store some time in  
8 September and talking to you about having these type of  
9 cups in your establishment, sir?

10 MR. MEBRAHTU: Do you mean the day that  
11 he's -- he claimed that he found those?

12 CHAIRPERSON ANDERSON: No. The day when  
13 the -- when the person -- when another investigator came  
14 and gave you a citation.

15 MR. MEBRAHTU: Yes. I -- there was a person  
16 that came with not a warning, but he gave me a paper  
17 saying if you don't agree with this, then you can come  
18 to ABRA and talk to them.

19 CHAIRPERSON ANDERSON: All right. This is  
20 what I --

21 MR. MEBRAHTU: Yes, I do remember that.

22 CHAIRPERSON ANDERSON: I want you to -- I

1 want you to turn to Page 2 of this report. And what I  
2 would like you to -- I'm talking to the translator.

3 THE INTERPRETER: Oh, okay.

4 CHAIRPERSON ANDERSON: So I would like you  
5 to read where it says on Monday, September 29th. So I  
6 need you to read and translate that portion of the  
7 report to him, and then I'm going to ask him some  
8 questions about it. Okay? You see -- do you see --

9 THE INTERPRETER: Which number?

10 CHAIRPERSON ANDERSON: It says -- on Page 2  
11 where the top of the page it says on Monday, September  
12 29th.

13 THE INTERPRETER: Okay. Okay.

14 CHAIRPERSON ANDERSON: So I need you to  
15 read -- read it -- translate it to him, and then I want  
16 to -- want to ask some questions.

17 THE INTERPRETER: Okay, your Honor.

18 CHAIRPERSON ANDERSON: Do you understand  
19 this paragraph, sir?

20 MR. MEBRAHTU: Yes.

21 CHAIRPERSON ANDERSON: So did that happen?

22 MR. MEBRAHTU: Yes. I was there when the

1 investigator came, and he explained to me that it was  
2 illegal to have the cup. And he gave me the 250  
3 citation. But he did not find a cup then at that time.

4 CHAIRPERSON ANDERSON: So you're saying this  
5 portion of the report where he told you to remove the  
6 cups and you removed the cups, that didn't happen?

7 MR. MEBRAHTU: No. There was no cup that he  
8 found and he told me to remove and I removed. That was  
9 not true.

10 CHAIRPERSON ANDERSON: All right. I don't  
11 have any further questions. Go ahead, Ms. Miller.

12 MS. MILLER: Good afternoon. I wanted to  
13 ask you how many employees do you have at your  
14 establishment?

15 MR. MEBRAHTU: Only two. Mostly -- mostly I  
16 am the one who do the work. But I have people that help  
17 me.

18 MS. MILLER: Two?

19 MR. MEBRAHTU: Just the one. Me and another  
20 person.

21 MS. MILLER: One other -- is it a male  
22 person?

1 MR. MEBRAHTU: Yes.

2 MS. MILLER: Okay. And are you there every  
3 day?

4 MR. MEBRAHTU: Yeah. Most of the time I'm  
5 there. I'm the one who open it and close it.

6 MS. MILLER: Okay. But you don't remember  
7 the investigator buying this M & M with the go-cup? I'm  
8 sorry.

9 MR. MEBRAHTU: I was there.

10 MS. MILLER: I want to correct my question.  
11 I guess the -- there's a photo of alcohol marked MD.  
12 That's what I'm referring to, 20/20. Okay.

13 MR. MEBRAHTU: So that day I was the one who  
14 was working there. He might have come there, but I  
15 don't specifically remember him because I had a lot of  
16 customers.

17 MS. MILLER: Okay. You do remember that you  
18 were working on the day in question which I guess is  
19 Friday, September 18th, 2015?

20 MR. MEBRAHTU: I am sure I was working there  
21 the whole day.

22 MS. MILLER: Okay. And but you have another

1 employee that also sells alcohol?

2 MR. MEBRAHTU: Mr. Shay (ph). Yes. The two  
3 of us sell the alcohol.

4 MS. MILLER: Okay. Did you talk to him  
5 about this investigative report? Or I'm sorry. He said  
6 he didn't see this. Did you talk to him about the  
7 investigator coming and -- and saying that he was sold a  
8 go-cup?

9 MR. MEBRAHTU: Yes. I did talk to him about  
10 it, and he told me he wouldn't sell anything without my  
11 permission. And I know it's illegal to sell the cup,  
12 and I did not do that. I did not give the cup. That's  
13 one thing I really want you to understand.

14 MS. MILLER: Okay. And you -- you don't  
15 have at your store any -- any cups at all or -- or do  
16 you have some other types of cups?

17 MR. MEBRAHTU: Where -- where I sell grocery  
18 items I do sell cups, but it is covered with a plastic  
19 bag as like all together.

20 MS. MILLER: And do any of those cups have  
21 caps?

22 MR. MEBRAHTU: No. No. It's only a cup.

1 It doesn't have a cover.

2 MS. MILLER: No cover. And do you sell ice?

3 MR. MEBRAHTU: Yes. I sell bagged ice.

4 MS. MILLER: Okay. Thank you.

5 CHAIRPERSON ANDERSON: Any --

6 MR. MEBRAHTU: No -- no problem.

7 CHAIRPERSON ANDERSON: Mr. Short.

8 MR. SHORT: Good afternoon again, sir. How  
9 many years have you been in business at this location?

10 MR. MEBRAHTU: As a -- as a owner I have  
11 worked there for a year and a half. But before that I  
12 have worked as a manager before.

13 MR. SHORT: So how many years total has  
14 he -- has he been -- either worked or owned that place?  
15 How many years?

16 MR. MEBRAHTU: I started since 2008, but  
17 there were a time that I left and I came back.

18 MR. SHORT: Okay. And that was what date  
19 again?

20 MR. MEBRAHTU: Since 2008.

21 MR. SHORT: 2008. Okay. Our -- our ABRA  
22 records reflect that on October 30th, 2009 this

1 establishment was cited for selling go-go cups -- or  
2 go-cups. Forgive me.

3 MR. MEBRAHTU: Yeah. I do not remember  
4 because at that time I was not the owner. Like I -- I  
5 don't think I should be asked.

6 MR. SHORT: Does he have any history of any  
7 ABRA violations at this establishment? Does he have any  
8 history at all of violations at the establishment?

9 MR. MEBRAHTU: At that time because I was  
10 not the owner I would not know.

11 MR. SHORT: Okay. Thank you very much.  
12 That's all I have, Mr. Chair.

13 CHAIRPERSON ANDERSON: I don't think he  
14 understands you. All right. Any other questions by any  
15 other board members?

16 MR. ALBERTI: So, sir, when -- when did you  
17 first become the owner?

18 MR. MEBRAHTU: Estimated a year and a half  
19 ago. I cannot say for sure because I don't have the  
20 papers I would need. I can't say the exact date, but  
21 about a year and a half ago.

22 MR. ALBERTI: Okay. Thank you. No. That's

1 fine. I know I'm just confused. We'll talk about it  
2 later.

3 CHAIRPERSON ANDERSON: Any other questions  
4 by any of the board members? Mr. Fernando, do you have  
5 any questions to ask based on the board members -- board  
6 questions?

7 MR. RIVERO: Yes. Mr. Rivero, has a few  
8 questions.

9 CHAIRPERSON ANDERSON: Go ahead, sir.

10 MR. RIVERO: You said you have another  
11 employee that works, right?

12 MR. MEBRAHTU: Yes. I have a person that  
13 helps me.

14 MR. RIVERO: Okay. Does that person -- that  
15 person also works the cash register, right, sometimes?

16 MR. MEBRAHTU: Most of the time he help me  
17 fill -- refill the items. But he also have another  
18 part-time job. So he's not there most of the time.  
19 Because it's a very small store most of the time I'm the  
20 one who's doing most of it.

21 MR. RIVERO: But my question has to do with  
22 what your employee does when he's there. So when he's

1 there sometimes he works at the cash register, right?

2 MR. MEBRAHTU: Most of the time he helps me  
3 refill the refrigerator. But if he have to do the  
4 registration -- I mean the register, I have to be there  
5 make --

6 MR. RIVERO: Why does he have to be there?

7 MR. MEBRAHTU: First of all, it's a very  
8 small store and I like to do everything legally and I  
9 would like to be the one who's doing most of the work.  
10 And secondly, I do not have the ability to hire another  
11 person fully, so I do most of the work.

12 MR. RIVERO: But that still doesn't answer  
13 my question. So I'm going to ask one more time.

14 MR. MEBRAHTU: Okay.

15 MR. RIVERO: If you're telling me that your  
16 employee never, never, never works the cash register,  
17 then say that. If you're telling me that he only works  
18 the cash register when you're looking over his shoulder,  
19 then say that. Or if you're telling me that maybe one  
20 or two times -- rarity -- he might be at the cash  
21 register by himself for a little bit of time, you can  
22 say that too.

1 MR. MEBRAHTU: If he -- he never do the cash  
2 register by himself only. If I'm there and if there is  
3 a lot of people -- a lot of clients, then I will ask him  
4 to help me and he would run the cash register. But if  
5 I'm not there, he will never run the cash register.

6 MR. RIVERO: You sell these -- these caps by  
7 themselves separately, right?

8 MR. MEBRAHTU: No, I do not.

9 MR. RIVERO: So you don't have these caps at  
10 all in your store?

11 MR. MEBRAHTU: No, I do not have it. I  
12 don't sell it. And it's illegal for people to hold that  
13 in their store by itself and -- with -- with the ice  
14 too. So it's illegal. It -- you would be punished  
15 twice if you had that. So we don't have that.

16 MR. RIVERO: Do you sell soft drinks like  
17 Coca-Cola?

18 CHAIRPERSON ANDERSON: Does he sell soft  
19 drinks like Coca-Cola?

20 MR. MEBRAHTU: Yes, I do.

21 MR. RIVERO: Okay. And don't you give your  
22 customers a cup with their Coca-Cola?

1 MR. MEBRAHTU: No, I do not.

2 MR. RIVERO: Do your customers ask you for a  
3 cup for the Coca-Cola?

4 MR. MEBRAHTU: They do ask of course.  
5 Sometimes they ask when they buy a wine, sometimes when  
6 they ask beer. But since I know it's illegal I do not  
7 give it to them.

8 MR. RIVERO: Okay. If -- if your employee  
9 put a cup of ice or two in the freezer and you didn't  
10 look in it, you wouldn't find out if there was a cup in  
11 there or not, right?

12 MR. MEBRAHTU: First of all, if he put -- he  
13 wouldn't put something like that without my permission.  
14 Even if he does that for his personal use, I'm always  
15 checking around like when customers are not there. So I  
16 would see it.

17 MR. RIVERO: Okay. No further questions.

18 CHAIRPERSON ANDERSON: Do you have anything  
19 else you want to -- you need to say, sir?

20 MR. MEBRAHTU: No, I do not. I have said  
21 what I have to say.

22 CHAIRPERSON ANDERSON: Okay.

1 MS. MILLER: May I ask one more question.

2 CHAIRPERSON ANDERSON: I'm sorry?

3 MS. MILLER: May I ask one more question?

4 CHAIRPERSON ANDERSON: Sure.

5 MS. MILLER: Okay. I just want to get a  
6 little more clarification for the record on the  
7 Government's Exhibit Number 1, which is the case report.  
8 Could you -- would you take a careful look at that and  
9 let us know if you -- if you have seen in before.

10 MR. MEBRAHTU: Nobody give me this paper  
11 before. I have never seen this before.

12 MS. MILLER: Okay. And -- and is the  
13 address of M & M Market 3544 East Capitol Street NE?

14 MR. MEBRAHTU: Yes.

15 MS. MILLER: And can you -- can you read  
16 English? Can you understand English in writing?

17 MR. MEBRAHTU: Some I could understand.  
18 There are some words that I do not understand and is  
19 very difficult for me.

20 MS. MILLER: Okay. And -- and lastly, it's  
21 did you read any of it today at the hearing? Have you  
22 read any of this report? The narrative is really only a

1 page and a half.

2 MR. MEBRAHTU: I only looked at the pictures  
3 and I read some of it that the interpreter translated  
4 for me. But besides that like I don't -- no, I did not  
5 read it.

6 MS. MILLER: Okay. It's not that long, and  
7 I just want to ask before this record is closed whether  
8 you do want to take any more time to read it. It's only  
9 a narrative of one and a half pages or less.

10 CHAIRPERSON ANDERSON: What -- what are you  
11 asking him to read?

12 MS. MILLER: The details described -- the  
13 summary and details of -- of the investigation, the case  
14 [inaudible 2:10:44] here to correspond to.

15 CHAIRPERSON ANDERSON: Well, I think -- I  
16 think that when I -- when I had asked the -- when I had  
17 asked him to read the last paragraph about the September  
18 29th, I mean it was right, and I think he understood.  
19 And I think -- I think it's clear to him why he's here.  
20 I mean as he stated -- oh, I apologize. I -- I forgot  
21 that you have to translate. Go ahead, Ms. --  
22 Ms. Miller.

1 MS. MILLER: No, I'm finished. I gather --  
2 you have already asked him to read the last paragraph  
3 which describes the violation.

4 CHAIRPERSON ANDERSON: All right.

5 MS. MILLER: All I'm asking -- okay. I  
6 don't know if you need to read any more, but that --  
7 that was the most important part.

8 THE INTERPRETER: Your Honor, like if you  
9 would like me to read and translate it, I could do that.  
10 But usually the site transition would only allow to do a  
11 page. Besides that --

12 MS. MILLER: That's all there is.

13 THE INTERPRETER: -- like we have to take it  
14 home and translate it for the accuracy.

15 CHAIRPERSON ANDERSON: I know. Yeah.  
16 We're -- we're fine.

17 MS. MILLER: Okay.

18 CHAIRPERSON ANDERSON: I mean we're fine. I  
19 think --

20 MS. MILLER: Most of it's pictures.

21 CHAIRPERSON ANDERSON: He -- he understands  
22 why he's here and the charges that he was -- his

1 establishment was -- was charged with selling a go-cup.  
2 And I believe that he has -- he understands sufficiently  
3 to state his position that he didn't sell the go-cup  
4 because he knows that it's against the law. So I'm  
5 comfortable that -- that he understands the nature of  
6 the charge and why he's here and his defense.

7 MS. MILLER: But just because I raised the  
8 issue I also want to say for the record that I believe  
9 that the investigator described what is written in the  
10 report on -- on the stand.

11 CHAIRPERSON ANDERSON: Do you -- all right.  
12 Do you have any other questions that you don't  
13 understand, sir, that you need some clarification?

14 MR. MEBRAHTU: No. I do not have any  
15 comment or any question.

16 CHAIRPERSON ANDERSON: All right. Thank  
17 you. All right. All right. Now, I have to say this,  
18 but does -- do the parties wish to file proposed  
19 findings of fact and conclusions of law or waive their  
20 right to do so?

21 MR. RIVERO: Well, I would consider that  
22 question after closing argument.

1                   CHAIRPERSON ANDERSON: I thought that -- you  
2 know, I apologize, Mr. Rivero. I think I'm having a  
3 long day. I thought we had --

4                   MR. RIVERO: Yes. Common sentiment.

5                   CHAIRPERSON ANDERSON: All right. Tell him  
6 he doesn't need to answer that question at the moment.  
7 All right. Does the Government wish to make a closing  
8 argument?

9                   MR. RIVERO: Yes.

10                  CHAIRPERSON ANDERSON: Go ahead please.

11                  MR. RIVERO: Board Members, this is a very  
12 simple case. Unfortunately there are two very different  
13 stories here about what happened on September 18th. The  
14 investigator's testimony was clear -- crystal clear. He  
15 entered the establishment, obtained an alcoholic  
16 beverage, obtained a cup with ice, brought it to the  
17 clerk, paid for the alcoholic beverage, and left the  
18 store with the bottle and the cup of ice. Whether he  
19 paid any money or not for the cup is irrelevant because  
20 the law does not require that a cup be given for sale at  
21 all. Being given for free is also forbidden. Moreover,  
22 the law defines what a go-cup is. It's a cup that's

1 given with an alcoholic beverage. Whether there's ice  
2 in it or not is also irrelevant. You heard testimony  
3 from the investigator that he took a picture of the cup  
4 fairly soon after he left the store. You have heard  
5 testimony about what the investigator did step by step  
6 to preserve the evidence. And you have heard testimony  
7 from the licensee that he does not sell these cups and  
8 he doesn't even have them. Only one of these two  
9 witnesses can be telling an accurate story. No evidence  
10 has been introduced to impune any bad motive to the  
11 investigator. The investigator was merely doing his  
12 job. The licensee stands to benefit from his testimony.  
13 This is not to say that the licensee is not telling the  
14 truth as he sees it. But only one of these two sides  
15 has taken a great deal of effort to preserve its actions  
16 over time. Only one of these two sides fairly quickly  
17 documented its actions because perhaps a year or more  
18 later it may be difficult to recall the exact  
19 transaction. Therefore I would submit to you that in  
20 the absence of any evidence to impune the credibility of  
21 the witness that you find in favor of the Government  
22 because we have presented evidence that is more likely

1 than not that the investigator wasn't making up this  
2 whole story. As to the penalty that may issue for this  
3 case that is the purview of this Board and not the  
4 Government. The Board may have any options that the law  
5 provides including issuing a warning which is allowed  
6 under Chapter 800 of Title 23 of the DCMR or a fine. I  
7 leave that particular decision to The Board, and my job  
8 is to prove that what the investigator here was telling  
9 you all was a true story. Thank you.

10 CHAIRPERSON ANDERSON: Do you have any  
11 closing statements that you need to make, sir?

12 THE INTERPRETER: Your Honor, I'm asking for  
13 clarification.

14 CHAIRPERSON ANDERSON: That's fine. When  
15 you're ready you can -- yeah.

16 MR. MEBRAHTU: Your Honor, I have a  
17 question.

18 CHAIRPERSON ANDERSON: Yes.

19 MR. MEBRAHTU: Your Honor, I did -- what I  
20 say it is not true that the investigator came and found  
21 a cup the first time when he said he came and he bought  
22 the -- the beverage. And the second time where he say

1 when they gave me the citation I also know for a fact  
2 they did not find any cup. But what I wanted to know  
3 was are those people one person or two different  
4 investigators?

5 CHAIRPERSON ANDERSON: It's two different  
6 people.

7 MR. MEBRAHTU: Your Honor, what kind of  
8 evidence does he have, the second time when he came and  
9 said he found a cup and he told me to remove it and that  
10 I removed it? What kind of evidence does he have?

11 CHAIRPERSON ANDERSON: Well, I -- I know --  
12 I know this is closing so you're not asking questions.  
13 But you're not being charged, sir, about the -- the  
14 second time. You're only being -- the -- the case --  
15 oh, I'm sorry.

16 THE INTERPRETER: No. I can interpret, your  
17 Honor.

18 CHAIRPERSON ANDERSON: Yeah. You're only  
19 being charged about the first time when they came and --  
20 and the person bought the -- the cup.

21 MR. MEBRAHTU: There's nothing else that I  
22 need to say. I just wanted to make sure about that.

1 CHAIRPERSON ANDERSON: Okay. All right.  
2 Thanks. All right. Now I'll ask my question, Mr. --  
3 all right. So the record is now closed since -- since  
4 you don't have any documents that you want me to rely  
5 on; is that correct?

6 MR. MEBRAHTU: No, I don't.

7 CHAIRPERSON ANDERSON: All right. So the  
8 record is now closed. Now, the question then is that,  
9 Mr. Rivero, do you -- do the parties wish to file  
10 proposed findings of fact and conclusion of law or waive  
11 their right to do so?

12 MR. RIVERO: The Government waives its right  
13 to file findings of facts and conclusions of law.

14 CHAIRPERSON ANDERSON: And since you always  
15 do such a wonderful job in explaining to the applicant,  
16 could you explain to them what this process means, sir.

17 MR. RIVERO: I already did.

18 CHAIRPERSON ANDERSON: Well --

19 MR. MEBRAHTU: No. I do not want to do  
20 that.

21 CHAIRPERSON ANDERSON: All right. Thank  
22 you. So both parties waive. All right. The Board then

1 will issue a decision in -- in 90 days. All right.  
2 As -- as chairperson of the Alcoholic Beverage Control  
3 Board of the District of Columbia and in accordance with  
4 Section 405 of the Open Meetings Amendment Act of 2010 I  
5 move that the ABC Board hold a closed meeting for the  
6 purpose of seeking legal advice from our counsel on Case  
7 Number 15-CMP-00751, M & M Market per Section 405B4 of  
8 the Open Meetings Amendment Act of 2010 and deliberating  
9 upon Case Number 15-CMP-00751, M & M Market for the  
10 reasons cited in Section 405B13 of the -- of the Open  
11 Meetings Amendment Act of 2010. Is there a second?

12 MR. SHORT: Second.

13 CHAIRPERSON ANDERSON: Mr. Short has  
14 seconded the motion. I will now take a roll call vote  
15 on the motion before us now that it has been seconded.  
16 Mr. Silverstein.

17 MR. SILVERSTEIN: I agree.

18 CHAIRPERSON ANDERSON: Mr. Short.

19 MR. SHORT: I agree.

20 CHAIRPERSON ANDERSON: Mr. Alberti.

21 MR. ALBERTI: I agree.

22 CHAIRPERSON ANDERSON: Ms. Miller.

1 MS. MILLER: I agree.

2 CHAIRPERSON ANDERSON: Mr. Anderson. I  
3 agree. As it appears that the motion has passed, I  
4 hereby give notice that the ABC Board will hold a closed  
5 meeting in the ABC Board conference room pursuant to the  
6 Open Meetings Amendment Act of 2010 and issue an order  
7 within 90 days. Thank you very much.

8 MR. MEBRAHTU: No problem.

9 CHAIRPERSON ANDERSON: All right. That's --  
10 that's done. All right. Thank you.

11 (Whereupon the above-entitled matter was  
12 concluded.)

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