

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

5 - - - - -X

6 IN THE MATTER OF: :

7 Terfneh Kahsay : Case # 16-251-00087

8 t/a Salina Restaurant :

9 1936 9th Street NW :

10 License #82969 Retailer CT :

11 ANC 1B :

12 Unlawful/disorderly use, Failure:

13 to Preserve a Crime Scene, etc.:

14 - - - - -X

15 Wednesday, August 3, 2016

16

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

21

22

1

2 BOARD MEMBERS PRESENT

3 NICK ALBERTI, BOARD MEMBER

4 JAMES SHORT, BOARD MEMBER

5 MIKE SILVERSTEIN, BOARD MEMBER

6 RUTHANNE MILLER, BOARD MEMBER

7

8 ALSO PRESENT:

9 WALTER ADAMS

10 AMY SCHMIDT

11 ANN DANIELS

12 TERFNEH KAHSAY

13

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

2 FACT FINDING HEARING

3 CHAIRPERSON ANDERSON: So, we're back on
4 the record and we call for the afternoon's
5 agenda. Our next case is, we have a show cause
6 hearing case #16-251-00087, Salina Restaurant,
7 license #82969. Will the parties please approach
8 and identify themselves for the record, please?

9 MR. ADAMS: Members of the board and Mr.
10 Chairman, Walter Adams representing the District
11 of Columbia and I have other counsel at the
12 table.

13 MS. DANIELS: Ann Daniels, also representing
14 the District of Columbia.

15 MS. SCHMIDT: Amy Schmidt, Assistant Attorney
16 General representing the District of Columbia.

17 CHAIRPERSON ANDERSON: Mr. Adams, three
18 backups today? The poor man's over here, and
19 there's three lawyers against, what's this all
20 about?

21 MS. SCHMIDT: You get a pleasant surprise
22 today.

1 CHAIRPERSON ANDERSON: Okay.

2 MR. KAHSAY: Terfneh Kahsay, owner of Salina
3 Restaurant.

4 CHAIRPERSON ANDERSON: Good afternoon, sir,
5 how are you doint?

6 MR. KAHSAY: I'm fine.

7 CHAIRPERSON ANDERSON: All right, this is a
8 show cause hearing. Are there any preliminary
9 matters today?

10 MR. ADAMS: There is, Mr. Chairman. I'll let
11 the respondent inform you of the [inaudible
12 2:08].

13 CHAIRPERSON ANDERSON: Yes, sir, what are you
14 requesting?

15 MR. KAHSAY: All I have requested is \$14,000
16 fine and --

17 MS. SCHMIDT: No, sir, sir --

18 MR. ADAMS: Sorry, I apologize.

19 MR. KAHSAY: We just wanna reduce the fine in
20 order to --

21 MR. ADAMS: If you don't mind. We're here --
22 I believe that you want a continuance of today's

1 hearing?

2 MR. KAHSAY: Yeah, I want a continuance.

3 CHAIRPERSON ANDERSON: All right. Now,
4 you're aware that the establishment is closed and
5 that even through a continuance the establishment
6 is going to remain closed, and next week is going
7 to be the last week for the summer that -- this
8 is the last hearing that we're going to have on
9 the 10th, and if that schedule is already filled,
10 our September schedule is busting at the seams,
11 so you are aware that by requesting a continuance
12 you might be talking about -- if the board grants
13 it -- you're talking about October and the
14 establishment remains closed during this period
15 of time?

16 MR. ADAMS: If I may, Mr. Chairman, part of
17 the reason that the establishment is asking for a
18 continuance, and this originally was scheduled
19 for a show cause hearing for September 7th and
20 apparently the establishment, they don't have an
21 attorney counsel, they had a non-attorney
22 representative to serve as an advisor and I've

1 been informed by the respondent that he's not
2 available due to a death in his family, so I
3 think, I'm articulating it for the respondent,
4 but I believe we've been in discussions about
5 what our potential settlement options and we gave
6 him some options whether to go proceed today or
7 to proceed at a later time, and it's our
8 understanding that he may want to continue it.
9 So, if the board is potentially able to, if we do
10 a continuance, if the board is able to get to it
11 at the earliest time possible, you know -- I
12 think that is what the respondent may have been
13 looking for. But, he is aware -- I believe -- he
14 is definitely the establishment is closed and
15 cannot at least serve -- utilize his liquor
16 license.

17 CHAIRPERSON ANDERSON: No, I just wanted him
18 to -- I mean -- I just wanted him to know that
19 even if the board is going to consider it, to let
20 him know what the options are in a sense, so --

21 MR. ADAMS: Understood, your honor.

22 CHAIRPERSON ANDERSON: -- that, as I said

1 before, we have one more session for this month
2 which is next week and then we're on recess for
3 the rest of August and our calendar for September
4 is filled, so therefore it's going to be
5 difficult to -- if we grant to have a date in
6 September. I just want you to know, that's all,
7 I was just -- that's all I was doing.

8 MR. KAHSAY: Can I discuss it with him?

9 CHAIRPERSON ANDERSON: Sure, sure. I mean,
10 we'll try to work with the schedule, the schedule
11 is -- I just want to let you know that -- what
12 we're running against, that's all. I mean we
13 can, if you guys want to continue talking some
14 more we can --

15 MR. ADAMS: Okay.

16 CHAIRPERSON ANDERSON: -- we can stay off the
17 record and continue to talk.

18 MR. ADAMS: Can we have a --

19 UNKNOWN SPEAKER: Five minute break?

20 MR. ADAMS: -- five minute break?

21 CHAIRPERSON ANDERSON: We can -- we have a
22 fact finding hearing at 2:00 so, why don't you

1 come back at 2:00?

2 MR. ADAMS: Okay.

3 CHAIRPERSON ANDERSON: That would give you
4 some time to --

5 MR. ADAMS: That would be perfect.

6 CHAIRPERSON ANDERSON: Okay, so we'll come
7 back at 2:00 okay?

8 MR. ADAMS: All right.

9 CHAIRPERSON ANDERSON: All right, we're back
10 on the record. Case #16-251-00087, Salina
11 Restaurant, license #82969. Mr. Adams, are -- I
12 know we had a break so the parties could discuss.
13 Are there any preliminary matters?

14 MR. ADAMS: Mr. Chairman, if the board does
15 not mind we would ask that this matter be passed
16 for your next proceeding. We -- there's -- the
17 parties are in discussion on a couple of issues
18 and we're close to finalizing a preliminary
19 matter but we don't want to provide anything to
20 this board without it being finalized.

21 CHAIRPERSON ANDERSON: All right, that's
22 fine. That's fine, so I'll recall the case, so

1 we'll move on then with our calendar. We have
2 two fact finding hearings so we can -- we'll do
3 it after the fact finding hearing and that will
4 give us as much time as you require to finalize
5 the details. Thank you very much. I prefer
6 parties to have the time to work out the details.

7 CHAIRPERSON ANDERSON: All right I will now
8 recall -- I think that we should have more than
9 enough time. I'll recall show cause hearing case
10 #16-251-00087, Salina Restaurant, license #82969.
11 Will the parties please approach and identify
12 themselves for the record?

13 It is my understanding that there's an offer
14 in compromise so can you tell us what the offer
15 in compromise is?

16 MS. SCHMIDT: I will be happy --

17 MR. ADAMS: I'll defer to my colleague.

18 CHAIRPERSON ANDERSON: You know --

19 MS. SCHMIDT: Just to keep things
20 interesting.

21 CHAIRPERSON ANDERSON: Mr. Adams and, I'm
22 sorry, what's your name, ma'am?

1 MS. DANIELS: Ann Daniels.

2 CHAIRPERSON ANDERSON: Ms. Daniels, if I say
3 that have ownership here and there's three
4 lawyers, now I'm being sincere, but anyway, go
5 ahead, Ms. Schmidt.

6 MS. SCHMIDT: Okay. Just as a preliminary
7 statement before we get to the offer in
8 compromise, the government is not minimizing the
9 dangerous situation that the licensee created
10 that was created by not coming to ABRA first to
11 get the proper transfer of the license and, you
12 know, because the government understands that you
13 cannot just let anyone an alcoholic
14 establishment, an alcohol serving establishment.
15 And this OIC will also ensure that the licensee
16 is responsible until and if there would be a
17 proper transfer of the business to another owner
18 and, also, one other thing we want to make sure
19 to address is the issue of the security cameras
20 which was a big -- which was an issue in the
21 hearing, which I was not there but I read the
22 transcript that Mr. Adams admirably handled. And

1 also, does the board wish me to read the entire
2 offer in compromise into the record or can they
3 just take notice and -- I just want to know how,
4 what the.

5 CHAIRPERSON ANDERSON: Well, why don't you
6 touch the salient portions of it that you think
7 that are the important portions that you think
8 that will address the reason why we're here.

9 MS. SCHMIDT: Okay. Well, then, I'll read
10 number one which is:

11 1. "Terfneh Kahsay, trading as Salina
12 Restaurant, who is the licensee, will pay a fine
13 of \$12,000 within 120 days of today's date or the
14 license will be suspended until payment of the
15 fine is received. The OIC breakdown is as
16 follows:

17 1. Charge #1 is dismissed.

18 2. A \$2000 fine for charge #2 which was
19 [inaudible 3:14].

20 3. A mandatory written warning for charge
21 #3.

22 4. A mandatory written warning for charge

1 #4.

2 5. A \$5000 fine for charge #5.

3 6. A mandatory written warning for charge
4 #6.

5 7. A \$5000 fine for charge #7.

6 3. The licensee shall show that its video
7 surveillance cameras are operational and record
8 for 30 days. The cameras should cover all blind
9 spots as well as the exterior front and back of
10 the establishment. An ABRA investigator will
11 conduct a walk-through of the establishment to
12 evaluate the location of [inaudible 3:15] prior
13 to September 7, 2016.

14 4. Number four deals with making sure that
15 the video footage is available within 12 hours
16 when an inspector asks and that it's accessible
17 to both MPD and ABRA personnel. Number five, the
18 licensee shall file a new security plan with the
19 board by Monday, August 29th. The new security
20 plan will incorporate the conditions of this
21 offer in compromise. The new security plan shall
22 include procedures on how to properly remove

1 unruly patrons from the establishment and the
2 methods by which MPD will be contacted. The new
3 security plan shall include the establishment of
4 procedures of training all staff personnel in
5 preserving a crime scene. The new security plan
6 will indicate which security personnel will be
7 present, the training security personnel will
8 receive, and how security personnel will be
9 identifiable to the public.

10 6. Number six is about an incident log.

11 7. Number 7 again addresses the 911
12 situation which I know in the hearing was a major
13 issue. So, this time it says the licensee must
14 call 911 at the time of any violent incident or
15 altercation inside the establishment that leads
16 to the eviction of the patrons by establishment
17 staff or security. Additionally, the licensee
18 must call 911 anytime the patron, anyone who is
19 in obvious need of emergency medical assistance
20 or anyone who claims injury and requests
21 emergency medical assistance.

22 8. Number 8, again dealing with -- going to

1 the fact that the licensee is going to be
2 responsible for the establishment which the
3 licensee shall provide to the board by Monday,
4 August 29th, evidence of all new licenses
5 necessary to operate in the district are current
6 and are in the current owner's name. These
7 licensees include, but are not limited to, the
8 basic business license, D.C. tax registration,
9 certificate of occupancy. This will involve them
10 going back to ensure that they're back in his
11 name again. Currently they are in the name of
12 Karma, Inc.

13 9. With that goes number 9, that he should
14 operate under the trade name Salina Restaurant
15 and the board will not approve any transfers to
16 the new owner until all seven fines are paid.

17 11. Number 11 again addresses the concern of
18 the board. Terfneh Kahsay shall be responsible
19 for managing the business in person. Mr. Kahsay
20 will provide the board by Monday, August 29th,
21 all the days and hours of the week that he will
22 be working at the establishment. In addition to

1 that, will also provide to the board by Monday,
2 August 29th, the names of the establishment's ABC
3 managers or individuals who will be responsible
4 for operating the business in his absence. He
5 agrees that the ABC managers and individuals
6 responsible for operating the business in his
7 absence will be different from the individuals
8 that ran and operated the business Karma without
9 board approval. We don't want to be in a
10 situation again where the same -- where the same
11 bad actors are involved if something happens.

12 A status hearing will be set for Wednesday,
13 September 7th, to determine if the licensee is
14 compliant with the terms of this agreement.

15 CHAIRPERSON ANDERSON: And, Ms. Schmidt,
16 based on the seriousness of this case, why do you
17 believe that the board should accept this offer
18 in compromise?

19 MS. SCHMIDT: Both Mr. Adams and I have had
20 many discussions with the licensee and he
21 understands what has happened. And he claims
22 that he was not given good advice by his

1 attorney. He really -- I think he sincerely
2 believes that when he sold the business that he
3 was not given the advice that he was still
4 totally responsible and he understands it now and
5 is willing to accept responsibility for his error
6 before.

7 CHAIRPERSON ANDERSON: Mr. Adams.

8 MR. ADAMS: The whole reason that we want --
9 this is a serious case and there's no doubt about
10 it, and we can't diminish how, so we've had --
11 I've dealt before this court, this body, with
12 several things. I think the reason that we felt
13 it was okay to at least pursue the ability to
14 solve the matter is that all -- the biggest issue
15 I see is the transfer and the fact that the sale
16 went on without -- obviously, the facts of the
17 case are bad they're not -- have not been --
18 doesn't raise the same issues regarding safety as
19 some of the cases that we've dealt with and so
20 based upon that we -- there was a general -- you
21 know, in talking with the establishment -- and,
22 frankly, at least where the intent is I think it

1 will -- is there somewhere in between going
2 through the full revocation or is there a way to
3 settle? And we at least wanted to leave the
4 option open and we felt that these terms that we
5 present to the board today addresses each of the
6 issues and each of the charges that were
7 presented by essentially allowing the
8 establishment to reset, and to an extent they can
9 -- and go back to a point where they were in
10 November of last year and they're still going to
11 go through this transfer application, at least
12 they'll go through a transfer application, but
13 still pay for penalties for what happened in May.
14 So, obviously, again it's a bad situation but it
15 really isn't -- the violent situation was bad but
16 that isn't necessarily what would necessarily
17 bring you here, it's that whole transfer issue
18 that is a prickly one and that, where the board
19 can make its own decision on what to do in terms
20 of how that transfer application runs, but we
21 want to at least allow the respondent to have had
22 a chance to address it. These are pretty serious

1 charges considering the amount of time that
2 they've been shut down and so we felt that this
3 was a reasonable compromise and would still take
4 care of [inaudible 3:21] interests and take care
5 of the board's interests, so that's my comments,
6 sir.

7 CHAIRPERSON ANDERSON: Thank you, Mr. Adams.
8 Thank you, Ms. Schmidt. Mr. Kahsay, why -- do
9 you have a copy of the offer in compromise in
10 front of you, sir?

11 MR. KAHSAY: Yes, I do.

12 CHAIRPERSON ANDERSON: And the offer in
13 compromise that you have in front of you, does
14 this -- why do you believe that the board should
15 accept this offer in compromise based on the
16 incident that occurred? You've been here for all
17 these hearings, so why do you believe that we
18 should not go through a full hearing and make
19 whatever charges, why should we accept this
20 compromise that you worked out with the
21 government?

22 MR. KAHSAY: What I was doing, I was trying -

1 - not trying -- I'm doing anything within my
2 power to do the correct way, surveillance,
3 security, and I know -- I wasn't in the place at
4 that time. This would not even go further to
5 this situation. But I'll make sure that
6 everything to be done the right way and I plead
7 the board to consider and I'll do the security,
8 the cameras -- the camera already exists but --
9 and I'll do whatever you guys require.

10 CHAIRPERSON ANDERSON: And is it -- it's
11 clear to you, sir, that a transfer is not
12 effective until the board tells you that the
13 transfer is effective? So, therefore, even if
14 you sell your business to someone and until this
15 board tells you that you are no longer -- the
16 transfer has gone through -- and that you are no
17 longer responsible as of this date, that prior to
18 the board informing you that you know what your
19 responsibilities are.

20 MR. KAHSAY: But I had bad advice by --

21 CHAIRPERSON ANDERSON: No, no I'm saying
22 moving forward.

1 MR. KAHSAY: -- by my lawyer, he told us
2 'it's okay, the new owners can take over, the
3 only thing is I need to train them for a month,'
4 and basically I'm there every day. It happened
5 to be after I left this situation happened.

6 CHAIRPERSON ANDERSON: No, but I mean, do you
7 know today --

8 MR. KAHSAY: I understand.

9 CHAIRPERSON ANDERSON: -- what your
10 responsibilities are, that's what I'm asking you?

11 MR. KAHSAY: Yes, sir.

12 CHAIRPERSON ANDERSON: All right, okay. Do
13 we have any questions by the board? Yes, Mr.
14 Alberti.

15 MR. ALBERTI: I want to thank both parties
16 for this OIC. It addresses all of -- at least my
17 concerns. I think it addresses all the concerns
18 I've heard from this board. However, there are
19 two -- there are two key elements here that lack
20 specificity and because of that they -- I believe
21 that they're difficult, if not impossible, to
22 enforce, and I find that a significant problem

1 with this, because they are key elements. And
2 they are #11 and #12. Number 11 says Mr. Kahsay
3 will be responsible for managing the business in
4 person. That's great, I love that, but what's
5 that mean? I mean, how do I know that he's
6 managing it in person? It goes on to say Mr.
7 Kahsay shall provide the board with the days and
8 hours of the week that he'll be working at the
9 establishment. Mr. Kahsay could come and say I'm
10 working one hour. And there's nothing we could
11 do about that if we accept the terms of this
12 agreement because it's not specified here, so let
13 me go on. That's #11. Ms. Schmidt's, you're
14 chomping at the bit to respond. So, #12, it says
15 that the licensee shall provide the board with
16 the names of the establishment's individuals who
17 will be responsible for operating the business in
18 his absence. That's great. Love that. Mr.
19 Kahsay agrees that ABC managers and individuals
20 responsible for operating the licensed
21 establishment will be different than those
22 individuals who ran it under the trade name,

1 Karma. Who are those individuals? I don't know.
2 We haven't heard, had a hearing. I have no idea
3 who was -- I know who responded to our
4 investigators but I have no idea who was running
5 and responsible for operating a business in Mr.
6 Kahsay's absence and without knowing that, I
7 don't know if those are the people who are there.
8 So, you see my problem?

9 MS. SCHMIDT: I understand. With respect to
10 the second -- the second -- the second. Don't
11 forget this is a very small establishment. It's
12 16 seats, so there weren't that many people.
13 There's not a big cast of characters running.

14 MR. ALBERTI: So, it should be easy to tell
15 me who they are.

16 MS. SCHMIDT: I think Mr. Kahsay can --

17 MR. KAHSAY: I'll be there seven days a week
18 until --

19 MR. ALBERTI: No, no, no, no, no. That's not
20 my question.

21 MR. KAHSAY: I hire the people --

22 MR. ALBERTI: Ms. Schmidt, will you handle

1 this? Because he's not answering my question.
2 The ball's in your court.

3 MS. SCHMIDT: Okay, the question is basically
4 -- the question is, he just wants to know who's
5 running your business -- who's running your
6 business -- who's running Karma? We need to
7 provide a list -- the board wants a list of
8 people who used to work for Karma. Is that
9 something you'll be able to provide?

10 MR. KAHSAY: Sure.

11 MR. ALBERTI: Can we have that before we
12 agree to this OIC?

13 MS. SCHMIDT: Can you give him a list?

14 MR. KAHSAY: Yeah, I can give it to him.

15 MR. ALBERTI: Okay, so --

16 MS. SCHMIDT: And also with respect to with
17 how many hours. We had discussed with Mr. Kahsay
18 saying that ABRA investigators can come at any
19 time and they will check to make sure that he's
20 there. He understands that. We spoke to him
21 about the fact that he has to be responsible and
22 that ABRA inves --

1 MR. ALBERTI: I got it. Ms. Schmidt, please
2 read that -- read that #11 carefully.

3 MS. SCHMIDT: If you'll be working at the --

4 MR. ALBERTI: It does not say that whenever
5 the ABRA investigators show up that he will be
6 there.

7 MS. SCHMIDT: No.

8 MR. ALBERTI: It's -- it doesn't say that.

9 MS. SCHMIDT: I didn't say it did.

10 MR. ALBERTI: And so I would like, you know,
11 and once we know what he's obligated -- you can't
12 even tell me in your response, you can't tell me
13 how many hours a week he's obligated to work
14 there.

15 CHAIRPERSON ANDERSON: Well, I -- just hold
16 on, Mr. --

17 MS. SCHMIDT: I think there's a presumption
18 of reasonableness because it's for managing the
19 business in person. One hour a week is not
20 managing the business, so there'd be a
21 presumption there, within there, that he'd be
22 there more than an hour.

1 MR. ALBERTI: But what would the court say is
2 a reasonable number?

3 MR. ADAMS: I would say this: Based upon how
4 I read it, and maybe it can be fleshed out
5 better, but what I read is that he -- first of
6 all, from what I understand from Mr. Kahsay there
7 was a time where he stated that he really had
8 been [inaudible 3:28] at the establishment, so I
9 think. I read it very broadly to almost state
10 that as long as the business is open, that
11 whenever the business is open that he's supposed
12 to be there, and if he's obviously not there --
13 well, it doesn't actually say that, but --

14 MR. ALBERTI: It says just the opposite. It
15 says just the opposite. Because it says Mr.
16 Kahsay will provide the board the days and hours
17 of the week that he will be working at the
18 establishment. The implication, maybe I'm
19 reading too much into this, but I think any
20 reasonable person would say 'okay, that means
21 there are going to be days and hours that it's
22 open and he's not there.'

1 MS. SCHMIDT: Again, reading it the opposite
2 way, no one expects Mr. Kahsay to be there 24/7.

3 MR. ALBERTI: Absolutely. So, can I -- I
4 mean, you know, okay I'm just going to get --
5 since nobody's really coming up with this: Could
6 we have, I'll just throw it out there as a
7 possibility. I'm not -- as a possibility could
8 we have a minimum number of hours? A minimum
9 number of hours a day? A minimum of days a week?
10 You know. I mean, again, I don't know what is
11 reasonable and I don't know the courts even know
12 what's reasonable to manage a restaurant. We
13 have people managing their restaurants who come
14 in two hours a day.

15 MR. ADAMS: Right. But, I think what we're
16 saying here is that by August 29th, he's
17 providing --

18 MR. ALBERTI: It doesn't say we have to
19 approve that.

20 MS. SCHMIDT: No, it does not.

21 MR. ADAMS: That's true.

22 MS. SCHMIDT: That's true.

1 MR. ADAMS: That's true. So, he cannot
2 reopen until you approve it, so he has to provide
3 a schedule, and so if hasn't provided a schedule
4 to the board --

5 MR. ALBERTI: Then maybe it should say --
6 maybe this condition is to say that it has to
7 meet the approval of the board.

8 MR. ADAMS: Well, I think it does and --
9 well, the implication is on #13 that to a certain
10 extent, well I think it is implied on #13 that
11 that has to happen.

12 MR. ALBERTI: It says comply with the terms.
13 And this term is so vague that it doesn't tell me
14 that it -- and it doesn't say that this term is
15 subject to the approval of the board.

16 CHAIRPERSON ANDERSON: Well, let me ask a
17 question and you can answer from this
18 perspective, because we all have different
19 interpretations. Are you aware of any rules or
20 regulations that says if an owner manages a
21 business how long -- what the expectation in the
22 sense of how many hours they should be to manage

1 this establishment?

2 MR. ADAMS: No. My only, and correct me if
3 I'm wrong, Ms. Schmidt, my only understanding is
4 that there isn't any regarding that, the only is
5 either a manager or ABC manager must be in
6 person. That's my only understanding of -- of --
7 of the rules. I don't -- to my knowledge there's
8 no minimum that an owner has to be present. Am I
9 wrong?

10 MS. SCHMIDT: No, what you're saying is
11 correct and especially with the last segment of
12 paragraph 12 saying that since he's going to
13 provide the names of people who were there under
14 Karma, that it's reasonable as any establishment
15 there will be an ABC manager and it won't be the
16 people under Karma. So, either he or an ABC
17 manager will still report to Mr. Kahsay, he may
18 not be there in person, but he's still
19 responsible because he's responsible for his ABC
20 managers.

21 MR. ALBERTI: I didn't write -- I didn't make
22 the offer in #11. You all did. All right? So,

1 this is not my -- this is not my term, all right?
2 But, I'm pointing out and if it's in this OIC I
3 want everything in this OIC -- my desire is that
4 everything in an OIC is enforceable. And this is
5 absolutely -- #11 is -- as written -- it's
6 absolutely next to impossible to enforce. How do
7 we prove that he's not managing the business?
8 How would we know that he's not there actually
9 running, supervising everybody sometime and
10 giving orders, how would you prove that?

11 CHAIRPERSON ANDERSON: But, Mr. Alberti, I'm
12 just asking, how can you disprove that? Let me
13 ask you the other way. I mean, I'm just asking
14 you -- I'm thinking along your lines. How can
15 you disprove it? I mean, I'm just asking a
16 question so at least maybe you can shed some
17 light.

18 MR. ALBERTI: Disprove what?

19 CHAIRPERSON ANDERSON: What you just stated.
20 I mean, in the sense that he can state that --

21 MR. ALBERTI: I couldn't -- I couldn't. If
22 he claims that he was operating it, I don't know

1 how I'd disprove it, that's my problem, it's not
2 enforceable.

3 MS. SCHMIDT: An owner's always responsible
4 whether he's there -- that was the gist of what
5 happened at the hearing. The fact is that he did
6 not -- the fact that even though he sold the lic
7 -- the business, he was still responsible no
8 matter whether he's there or not, whether he
9 sells the business or not.

10 MR. ALBERTI: Then why --

11 MS. SCHMIDT: The owner's always responsible
12 whether he's there or not.

13 MR. ALBERTI: So, why is this term in the OIC
14 then? If it's a given that the owner's
15 responsible, why is this

16 MS. SCHMIDT: [inaudible 3:34]

17 MR. ALBERTI: Trust me. You offered this
18 term, I'm reacting to it.

19 MS. SCHMIDT: Because --

20 MR. ALBERTI: I didn't put this in there, I
21 didn't ask you to put this in there.

22 MS. SCHMIDT: We understand that, sir.

1 MS. MILLER: Can I just ask a question here?

2 CHAIRPERSON ANDERSON: Hold on, Ms. Miller.

3 Mr. Silverstein has been busting at the seams.

4 MR. SILVERSTEIN: I have just as many
5 question marks over my head as Mr. Alberti and
6 for the same reason. And I'm just wondering, is
7 there some -- if we could do a colloquy here, are
8 we saying that managing the business in person is
9 simply a legal term of responsibility? Or are we
10 saying that there are minimum standards that he
11 agrees to to show that he is physically there and
12 physically managing the business? Which?

13 MR. ADAMS: Well, I would say not necessarily
14 physically, but I don't want to say actively
15 managing the business, yeah.

16 MR. SILVERSTEIN: Is there some sort of
17 metric that can --

18 MR. ADAMS: We cannot simply --

19 MR. SILVERSTEIN: Right, okay. I mean we
20 should be putting it on the record here as far as
21 I'm concerned as a step forward.

22 MR. ADAMS: Right.

1 MS. SCHMIDT: Again, I think what Mr. Adams
2 said, that the board still, this is not a done
3 deal until the board approves the hours. I think
4 it's a practical matter and when Mr. Kahsay gives
5 the hours if the board does not approve -- the
6 board under #13 -- the board still has final say
7 whether those hours are okay, so that's #13 is a
8 sort of catch-all clause for this.

9 MR. ALBERTI: So, Ms. Schmidt, we need Mr.
10 Kahsay to tell us that he agrees with that,
11 because that is not here in plain English and I
12 am not confident that Mr. Kahsay agrees to that.
13 Just because you say he does and understands it
14 does not mean that he does, and so we need his --
15 on the record we need his acquiescence that if we
16 do not approve the hours -- days and hours that
17 he stipulates that he will work as sufficient to
18 manage this, then he is not meeting the terms of
19 the OIC.

20 CHAIRPERSON ANDERSON: What I ask for you to
21 do, Mr. Alberti, I think you need to put some
22 numbers out there then. I think we're trying to

1 pigeonhole folks and someone, so therefore you
2 need to say, to put it out there, what is it that
3 you believe is reasonable, and before we're going
4 to discuss it because they might present one hour
5 as you said, and we might say that's not
6 reasonable, some people might say -- he might do
7 five, and you might say that's not reasonable.
8 So, if you have some -- if you have what you
9 believe is what reasonable people could -- why
10 don't you say out there this is what I -- at
11 least in my view, this is what I expect to hear
12 what the parties are saying so at least we'll
13 know -- we'll have a ballpark of what's being
14 discussed. Because I think Mr. Kahsay doesn't --
15 I mean from what I've heard from him, he stated
16 that I was there every day prior to this
17 incident. Once I sold it I left.

18 MR. ALBERTI: So, Mr. Anderson --

19 MR. ADAMS: I'll just add --

20 MR. ALBERTI: Wait, wait, wait. I don't
21 think it's really our place to make the
22 suggestions in an OIC. What I would suggest, and

1 I think that I'd like to talk about what our
2 expectations are maybe with legal and then we
3 could check, but maybe in the interim while we
4 are discussing this, maybe the parties could
5 discuss this with ABRA staff because they have
6 experience and with the OAG office and maybe all
7 the parties could maybe get advice even from ABRA
8 as to what would be an appropriate minimum to
9 show that they're managing it.

10 CHAIRPERSON ANDERSON: I guess the reason I'm
11 stating it out there is because I might differ.
12 I don't necessarily have a problem with the
13 provision and so that's one of the reasons why to
14 further elaborate, we're not making suggestions,
15 that the board has certain expectations and we
16 need to put it out there to say what our
17 expectations are because I'm just saying, my
18 reading of it, I'm fine with it because the law
19 states that --

20 MR. ALBERTI: Well, I'll tell you that my
21 read -- if you want a number, one hour a week
22 would not be sufficient, and this allows him to

1 offer one hour a week and I'm not sure it even
2 allows us not to accept it.

3 MS. SCHMIDT: Again, you must read a legal
4 maxim is you must read reasonableness into the
5 provision and if one hour a week is not
6 reasonable, then --

7 MR. ALBERTI: By who's standards? Who's
8 standards? How do we -- in this day -- okay, Ms.
9 Schmidt, in this case how do we judge
10 reasonableness? Do we have case law to judge
11 reasonableness? How do we come up with a sense
12 of reasonableness? The courts are going to want
13 to know how we came up with this standard of
14 reasonableness.

15 MS. SCHMIDT: Just common sense is
16 reasonableness.

17 MR. ALBERTI: Ah, I don't think that's going
18 to fly in the court of appeals.

19 MS. SCHMIDT: Why don't we confer? If you'll
20 give us time we'd like to confer with Mr. Kahsay
21 and see what he says.

22 MR. ALBERTI: Okay, all right.

1 CHAIRPERSON ANDERSON: Why don't we -- we'll
2 also do that. Why is it that -- I mean, do we
3 have any other questions by any other board
4 members? And then we'll also -- yeah. Yes, Ms.
5 Miller, I think you had some concerns.

6 MS. MILLER: Well, it's just along the same
7 line, I guess. I mean, the way I was
8 interpreting the revision, it's just unusual that
9 we have a piece that's left over for another
10 date, but that it would be enforceable once we
11 got the days and hours of the week and it would
12 be something that I guess we can decide later if
13 we don't think it's adequate.

14 MR. ALBERTI: Do you think it's something we
15 could say, 'well, that's not sufficient so we're
16 not accepting this?'

17 MS. MILLER: Yeah.

18 CHAIRPERSON ANDERSON: I think the problem --

19 MS. MILLER: If that -- I don't think that's
20 going to happen in this case.

21 CHAIRPERSON ANDERSON: I think the problem
22 that we're going to have is that we start putting

1 -- that's what -- I asked the question from Mr.
2 Adams, is there any law that states how many
3 hours a week an owner might be there. When we
4 start putting numbers in it, okay then are we
5 going to start holding owners accountable to say
6 that 'if you don't spend five hours or ten hours
7 or 15 or 20 hours a week in your establishment
8 then that's not appropriate.' I mean -- but I'm
9 just saying --

10 MR. ALBERTI: Could we talk about this in the
11 back? Because I have a different view of it.

12 CHAIRPERSON ANDERSON: But I'm saying, so
13 it's -- we have to be careful, we're going down a
14 slippery slope and I think it's -- that's why I
15 asked the question. If the law says that there
16 has to be an owner or ABC manager there, we had
17 all the cases that I've had so far, the law said
18 it has to be an owner or an ABC manager here.
19 And so, therefore, if the ABC manager is there
20 someone is responsible. But if we start saying
21 that -- putting in any type of agreement that
22 somebody needs to be there five hours a week or

1 10 hours a week or whatever a week, I'm not sure
2 --

3 MR. ALBERTI: But they offered it. They
4 offered it. I didn't offer it. They offered it.
5 And, you know, I didn't open this door, they did,
6 and it's an agreement between the two parties.

7 CHAIRPERSON ANDERSON: And -- and -- and
8 different people have different, mind there are
9 no hours here, and I guess all I'm saying in my
10 reading it's fine. You see it differently,
11 another person sees it differently and I think
12 that's the problem that we're going to have, even
13 if we start putting hours in it. I think that
14 each person, because they might come up with an
15 agreement by saying, 'okay, he needs to spend 20
16 hours a week in there' and then the board can
17 come and say, 'you know what, I don't think 20
18 hours is reasonable.'

19 MR. ALBERTI: Then we can either accept or
20 deny the OIC.

21 CHAIRPERSON ANDERSON: All right, but anyway.
22 So, we're going to discuss this, but I want other

1 members to, if they have any questions, I mean,
2 you guys can think about this, are there any
3 other questions that we've had, any other
4 questions that board members have and then we're
5 going to go back and review this. Yes, Ms.
6 Miller.

7 MS. MILLER: I have another question. Based
8 on what you said, because I somewhat concur with
9 what you were saying that this may be a
10 problematic provision based on the various
11 comments the board has made -- I mean the board
12 members have made from different perspectives, so
13 we're discussing this I would ask if the parties
14 can take another look at this provision as well
15 and see if maybe they can come up with one that's
16 less problematic.

17 MS. SCHMIDT: We'll let Ms. Jenkins or Ms.
18 Randall come out and follow our discussions.

19 CHAIRPERSON ANDERSON: Yes, Mr. Short?

20 MR. SHORT: Listening to all of the debate I
21 understand the concerns, but I think it's going a
22 little deeper than we need to go into this OIC.

1 I really think, suppose the gentleman in the
2 hospital, would we say then 'he didn't spend his
3 hours ' and shut him down? Suppose he had to
4 travel? The provisions we have in the law now,
5 there's an ABC licensee or the owner must be and
6 ultimately the owner is responsible. The owner
7 is responsible regardless of how many hours he's
8 there, how many hours he isn't there. His
9 responsibility he's either there or has an ABC
10 manager to manage it.

11 MR. ALBERTI: So, what I'm hearing from you,
12 Mr. Short, is we should drop this provision.
13 Because, my problem is I really -- it really
14 concerns me when we have a toothless provision in
15 an OIC, one that cannot be enforced, it is a bad
16 way to operate, it is a bad standard. And I will
17 not agree to an OIC that has something in it that
18 cannot be enforced. It is so broadly written
19 that two people could never -- and even the
20 courts might never come -- they'd probably throw
21 it back at us. I think it's an incredibly bad
22 practice.

1 CHAIRPERSON ANDERSON: Mr. Alberti --

2 MR. SHORT: I agree with you, sir, why can't
3 we just drop #11, we don't need that in there.

4 MR. ALBERTI: Well, I think the law --

5 MR. SHORT: The law takes care of that.

6 MR. ALBERTI: We can't [inaudible 3:44]

7 CHAIRPERSON ANDERSON: Mr. Adams the
8 government drafted this provision and can you
9 tell us from the government's perspective, and
10 Mr. Adams and Ms. Schmidt and Ms. Davis.

11 MR. ADAMS: One comment we'll make. The
12 reason that in this case -- this case is kind of
13 unique because we have a situation where the
14 establishment -- where Mr. Kahsay was not
15 involved or he had sold his [inaudible 3:45]. I
16 think maybe the second sentence may be
17 problematic, but I think the reason that this was
18 important -- is important in this case, is
19 because it was assessed there was a sale and that
20 he was no longer -- really had any real direct
21 input with the establishment. I mean, there's
22 been a conflict, so I think the reason that's

1 important in this case to put this language in
2 here was to just say like 'no one else is a
3 manager, you are in charge of managing the
4 affairs of the establishment in person.' And
5 obviously it doesn't negate the fact that if he
6 has an ABC manager, you know, ABC manager can
7 also do it, it's just because that there was a
8 different set of people who were actually
9 operating who were saying that they were owners
10 that we want to make clear to Mr. Kahsay who
11 really provided the violation in this case that
12 he has to be there in person. It doesn't
13 necessarily apply to every other establishment
14 but for this establishment because of this
15 problem that he's there.

16 MR. ALBERTI: Great, so what's that mean? I
17 asked that question before and I really didn't
18 get a satisfactory answer. What's that mean?

19 MR. ADAMS: What is means is that he, again,
20 that Mr. Kahsay is -- unless he is for whatever
21 reason not there and an ABC manager is present,
22 that he is primarily responsible for running this

1 establishment in person, that he's actually at
2 the establishment --

3 MR. ALBERTI: When?

4 MR. ADAMS: Unless there is an ABC manager,
5 he must be there. That means the hours of
6 operation.

7 MR. ALBERTI: He could -- the entire
8 operating hours he could have an ABC manager
9 there. Make sure the ABC manager is there and
10 leave and he would fulfill this provision.
11 That's what you're telling me.

12 MS. SCHMIDT: I think it's more than a
13 physical presence. I think it's more that he
14 takes responsibility for the operation. The way
15 --

16 MR. ALBERTI: What I read -- I'm sorry, Ms.
17 Schmidt, but I read English, "in person" as
18 physically being there.

19 MS. SCHMIDT: Okay, I'm just trying to give
20 an explanation to the rationale. The rationale,
21 as Mr. Adams has said --

22 MR. ALBERTI: I'm going to say this because I

1 know the rationale, I know why you put this in
2 there. I'm just trying -- it's not the rationale
3 for why you put it in there that's bothering me,
4 I want to know what it means. In practice, what
5 does it mean? Don't go back to -- you know, the
6 rationale is very clear to me. I got it, but I
7 want to know what it means in practice.

8 CHAIRPERSON ANDERSON: Well, could I say
9 something? And the reason why is because when
10 this case came about, a call was made to Mr.
11 Kahsay, from what I remember, someone called him
12 at 3:00 or 4:00 in the morning, and Mr. Kahsay
13 said, "Oh, I sold the restaurant. I'm not
14 responsible." If I remember, okay? So, I think
15 if we remember what this case was about, why
16 we're here today, is that an incident occurred as
17 far as -- in all the hearings today I've been
18 screaming at folks to say what the ABRA record
19 says, that you are the owner, and ABRA called
20 someone who we recognize as the owner and that
21 person said, "Oh, I'm not the owner, I sold the
22 place." That's how -- that's the case. And so

1 my interpretation of the proceedings is that
2 there the section is, is that we're telling Mr.
3 Kahsay that if we call you at 4:00 in the morning
4 because an incident occurred, your response is
5 going to be what can I do to help? Not that, I'm
6 not the owner of the establishment, I sold it to
7 someone else. In remembering this case this is
8 how I see this provision and this is what I'm
9 trying to tell the board to look at it from that
10 perspective and I think the government who wrote
11 the provision, the government is saying okay this
12 is what the case is: We call an owner and the
13 owner says "I'm not the owner, I sold it. Go
14 call this other person." And so they put in a
15 provision to let the owner know that anytime we
16 call you, you are responsible and I think that's
17 how -- that's my interpretation of this.

18 MR. ALBERTI: Okay, so you could manage this
19 from California.

20 CHAIRPERSON ANDERSON: Well, but I --

21 MR. ALBERTI: With that interpretation he
22 could move to California and manage the business

1 through his ABC manager.

2 CHAIRPERSON ANDERSON: Which is no different
3 from -- which is no different from any other
4 establishment. We have --

5 MR. ALBERTI: Absolutely. But not every
6 other establishment's telling me that they're
7 going to manage the business in person. That's
8 the difference. It's telling me they're going to
9 manage it in person. Don't tell me -- don't
10 commit -- don't promise me something you're not
11 going to live up to. That's my problem. My
12 problem is accepting an OIC where they make a
13 promise that they may or may not be willing to
14 live up to, I can't do that.

15 MS. SCHMIDT: We can --

16 MR. ADAMS: We can discuss this.

17 MS. SCHMIDT: We'll discuss this while the
18 board is --

19 CHAIRPERSON ANDERSON: All right.

20 MS. SCHMIDT: Okay, thank you.

21 CHAIRPERSON ANDERSON: Mr. Kahsay is there
22 anything you want to add based on the

1 conversation up here, sir?

2 MR. KAHSAY: Yes. Prior to the selling the
3 business, I used to open it and close it myself,
4 being there actually, you might not believe, but
5 I used to be there seven days a week. I never
6 had any off day even though I have an ABC
7 manager. But, after I sold it the only thing I
8 had was the freedom of going anywhere, wherever I
9 go, but I still was there seven days a week, and
10 that's the only place I go, whether I work or
11 not. What I'm trying to say on this case -- on
12 this matter is I'll be there to run it as myself.
13 It don't matter that I sold the business, but
14 I'll run it the way I used to run it until the
15 transfer is done. But, I promise you I'll be
16 there seven days a week. I mean, whether the #11
17 exists or not, I'll be there to run the business.

18 CHAIRPERSON ANDERSON: All right. Any
19 questions in the interim? Okay. Thank you, Mr.
20 Kahsay, for that. As chairperson of the
21 Alcoholic Beverage Control Board for the District
22 of Columbia and in accordance with D.C. section

1 405 of the Open Meetings Amendment Act of 2010, I
2 move that the ABC Board hold a closed meeting for
3 the purpose of seeking legal advice from our
4 counsel on Case #16-251-00087, Salina Restaurant,
5 for the reasons cited per section 405 B4 of the
6 Open Meetings Amendment Act of 2010 and
7 deliberating upon case #16-251-00087, Salina
8 Restaurant, for the reasons cited in section
9 405(b)(13) of the Open Meetings Amendment Act of
10 2010. Is there a second?

11 MR. SHORT: Second.

12 CHAIRPERSON ANDERSON: Mr. Short has seconded
13 the motion. I will now take a roll call vote on
14 the motion before us now that it has been
15 seconded, Ms. Miller?

16 MS. MILLER: I agree.

17 CHAIRPERSON ANDERSON: Mr. Alberti?

18 MR. ALBERTI: I agree.

19 CHAIRPERSON ANDERSON: Mr. Short?

20 MR. SHORT: I agree.

21 CHAIRPERSON ANDERSON: Mr. Silverstein?

22 MR. SILVERSTEIN: I agree.

1 CHAIRPERSON ANDERSON: Mr. Anderson? I
2 agree. As it appears that the motion has passed
3 I hereby give notice that the ABC Board will hold
4 a closed meeting in the ABC Board Conference Room
5 pursuant to the Open Meetings Amendment Act of
6 2010. Thank you very much. We'll come back out
7 and prior to -- this what I'm going to say: I
8 don't know what the vote is going to be, but I
9 will ask you if you want to make any change. If
10 you want to, I'm going to present that to you
11 first before I let you know what our decision is,
12 okay?

13 MS. SCHMIDT: As I said before, if you send
14 out one of the attorneys in about five or ten
15 minutes we --

16 CHAIRPERSON ANDERSON: All right.

17 MR. ADAMS: Go over everything.

18 CHAIRPERSON ANDERSON: Okay. So, we'll go
19 and discuss this. Thank you.

20

21 CHAIRPERSON ANDERSON: We're back on the
22 record for the Salina Case, Case #16-251-00087,

1 I'm sorry, I don't know why I keep on saying Ms.
2 Adams -- Ms. Schmidt. I apologize. Ms. Schmidt,
3 is there an offer that the government wants to
4 make to the board?

5 MS. SCHMIDT: Yes, in light of -- okay, we're
6 eliminating #11, paragraph #11, and we're also --
7 right now, we have a list of the people from #12,
8 however, someone from the agency has that list at
9 this moment.

10 CHAIRPERSON ANDERSON: All right. So, Mr.
11 Kahsay, you've been here, you've heard the board
12 and you are in agreement to eliminate #11 from
13 this?

14 MR. KAHSAY: Yes.

15 CHAIRPERSON ANDERSON: Okay. All right. I
16 then make a motion that the offer in compromise
17 presented by the government in regards that the
18 Salina restaurant be accepted. We'll issue a
19 board order memorializing this offer so that's
20 one of the reasons why I'm not going to verbatim
21 go through it at this juncture, but the board
22 order will reflect the agreement. Is there a

1 second?

2 MR. SHORT: Second.

3 CHAIRPERSON ANDERSON: Mr. Short has
4 seconded the motion. Those in favor say "aye."
5 (chorus of ayes.) Those opposed. (no audible
6 response.) The matter passed 5-zero-zero. So,
7 we'll issue a board order regarding this. Yes,
8 Mr. Adams?

9 MR. ADAMS: May I move for the board to leave
10 the record slightly open just to allow us to
11 provide the names for those people for paragraph
12 #12?

13 CHAIRPERSON ANDERSON: That's fine, thank
14 you. I would really like to thank the parties
15 for coming up with an offer in compromise in this
16 particular case. Although not everyone is happy
17 with the terms of the agreement, but there was a
18 serious incident and I think this is a good offer
19 in compromise to address the incident and we
20 appreciate -- and I'll say this to you, Mr.
21 Kahsay, that you did receive, if I remember
22 correctly, a call at 3:00 or 4:00 in the morning

1 when someone called you regarding what happened
2 in the incident and you responded and I'll say
3 throughout all these proceedings that you've been
4 here faithfully, although in your mind you're not
5 the owner, but the board said that you're the
6 owner, but I just want to comment that you have
7 been here through the thick and thin and I also
8 want to thank the government for working on this
9 case faithfully and to do, to come up with an
10 offer in compromise that's in the best interests
11 of the residents of the District of Columbia.
12 So, again, thank you very much. All right, thank
13 you.

14 MR. ADAMS: Thank you.

15 CHAIRPERSON ANDERSON: We're done and so
16 thank you very much.

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

19