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

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IN THE MATTER OF: :  
Black Whiskey, LLC, : Show Cause Hearing  
t/a Black Whiskey : Case # 15-AUD-00055  
1410 14th Street NW :  
License # 91434 :  
Retailer Class CT :  
ANC-2F :  
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Wednesday, January 13, 2016

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

1 CHAIRPERSON:

2 DONOVAN ANDERSON, Presiding

3

4 BOARD MEMBERS:

5 RUTHANNE MILLER

6 NICK ALBERTI

7 MICHAEL SILVERSTEIN

8 JAMES SHORT

9

10 ALSO PRESENT:

11 FERNANDO RIVERO, Assistant Attorney General

12 On behalf of the District of Columbia

13 MARC ZAHORCHACK,

14 On behalf Black Whiskey

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

2 [1:38 p.m.]

3 CHAIRMAN ANDERSON: We're back on the record.

4 The next case on our calendar -- the next case on our  
5 calendar is case number -- case number 15-CMP-00592, The  
6 Black Whiskey, license number 91434. Will the parties  
7 please approach? Please identify yourselves for the record,  
8 and there's a sign in sheet. If you would, please sign in  
9 on the sign-in sheet, please.

10 MR. RIVERO: Good afternoon, board members.

11 Fernando Rivero for the District of Columbia.

12 MR. ZAHORCHAK: My name is Marc Zahorchak. I'm  
13 the general manager of The Black Whiskey.

14 CHAIRMAN ANDERSON: All right. Are there any  
15 preliminary matters in this case?

16 MR. RIVERO: There are none.

17 CHAIRMAN ANDERSON: All right. Are the parties  
18 both prepared to move forward?

19 MALE SPEAKER: Is he ready? Does he have  
20 representation?

21 CHAIRMAN ANDERSON: I'm sorry.

22 (A discussion was held off the record.)

1 MR. RIVERO: The licensee has apparently written  
2 an email statement designating the general manager as the  
3 representative.

4 CHAIRMAN ANDERSON: Provide that statement to  
5 Ms. Jenkins.

6 MR. ALBERTI: An email statement?

7 MR. RIVERO: I'm not going to object to it, but  
8 we'll have to -- provided that there's testimony from the  
9 licensee to that point.

10 (A discussion was held off the record.)

11 CHAIRMAN ANDERSON: All right. We have an email  
12 dated January 10, 2016. "To Whom it may concern, I, Darren  
13 Norris Magin (phonetic), Member Co-Owner, Black Whiskey, do  
14 hereby assign Marc Zahorchak --

15 MR. ZAHORCHAK: It's Zahorchak.

16 CHAIRMAN ANDERSON: -- "General Manager, Black  
17 Whiskey, as my proxy to attend the ABRA hearing on" -- it  
18 says -- the letter says, "January 12, 2016, to represent our  
19 interest." And today is January 13, if I remember  
20 correctly.

21 What we will ask is that we need to get a --  
22 prior to the board issuing a decision that we have a signed

1 letter. Since this is an email, it's not signed. I just  
2 want to make sure that you provide us a signed -- this email  
3 will be sufficient, but it should be signed as soon as  
4 possible.

5 MR. ZAHORCHAK: Okay.

6 CHAIRMAN ANDERSON: All right. So are the  
7 parties ready to proceed?

8 MS. MILLER: Yes.

9 MR. ZAHORCHAK: Pardon me. Would I bring that  
10 signed letter back here to the -- to the front desk?

11 MR. SILVERSTEIN: To our attorney, Martha  
12 Jenkins.

13 MR. ALBERTI: Please submit it to our General  
14 Counsel, Martha Jenkins. And before the -- before you leave  
15 today, Martha will give you her contact.

16 MR. ZAHORCHAK: Okay.

17 CHAIRMAN ANDERSON: All right. Does the  
18 government wish to make an opening statement?

19 MR. RIVERO: Yes.

20 CHAIRMAN ANDERSON: Proceed, please.

21 MR. RIVERO: Good afternoon, board members. We  
22 are here in the show cause matter of Black Whiskey, LLC,

1 trading as Black Whiskey, located at 1410 14th Street North  
2 West. The show cause notice issued in this matter concerns  
3 the charge that the licensee permitted the establishment to  
4 operate without the presence of a board-approved manager,  
5 contrary to DC Official Code 25-701. It is the District's  
6 belief that a preponderance of the evidence, based on the  
7 testimony of our witness, Investigator Howze, will show that  
8 the licensee permitted the establishment to operate without  
9 the presence of a board-approved ABC manager on the evening  
10 of Wednesday, August 19, 2015.

11 CHAIRMAN ANDERSON: Do you wish to make an  
12 opening statement, or would you preserve your right until  
13 the presentation of your case?

14 MR. ZAHORCHAK: I've never been through one of  
15 these processes so --

16 CHAIRMAN ANDERSON: All right.

17 MR. ZAHORCHAK: -- I'm not sure what to do.

18 CHAIRMAN ANDERSON: Basically what we have -- do  
19 you know why you're here?

20 MR. ZAHORCHAK: Yes.

21 CHAIRMAN ANDERSON: All right. So you know what  
22 the charges are?

1 MR. ZAHORCHAK: Yes.

2 CHAIRMAN ANDERSON: All right. And so we're  
3 having a hearing because -- we're having a show cause  
4 hearing. So basically the charge is that there was a -- on  
5 the 19th of August 2015 at 11:10 that an investigator  
6 entered the establishment and there was no ABC manager on  
7 duty. So you understand -- are you aware --

8 MR. ZAHORCHAK: I understand that's the charge.  
9 I'm basically here to refute -- explain our side of the  
10 story.

11 CHAIRMAN ANDERSON: Okay. So you know -- that is  
12 the charge. So you're gonna -- you're gonna explain your  
13 side, your side. The government's going to present its  
14 side, and you're gonna explain your side. So at this  
15 juncture you can -- you can make an opening statement to say  
16 why you disagree with the charge and what is it that you  
17 intend to show, and what you intend -- if you have any  
18 witnesses, you're going to call the witnesses; or, if you  
19 have documents to present, or you're just going to make an  
20 oral representation.

21 MR. ZAHORCHAK: Oral representation.

22 CHAIRMAN ANDERSON: All right.

1 MR. ZAHORCHAK: I am basically the only witness.

2 CHAIRMAN ANDERSON: All right.

3 MR. ZAHORCHAK: Because I was the bartender on  
4 duty.

5 CHAIRMAN ANDERSON: So the government then --  
6 they go first. They'll call their witness. The government  
7 will ask questions, and then the board will ask questions of  
8 the government witness, the government's witness. And after  
9 the board asks questions, then you have the right to ask  
10 questions from the witness.

11 MR. ZAHORCHAK: Thank you.

12 CHAIRMAN ANDERSON: And then that will go on for  
13 a couple. And then I'm not sure how many witnesses the  
14 government has, then the government presents its case. Then  
15 you will present your case. So you're -- if you're  
16 representing yourself and you're going to testify, then I'm  
17 going to swear you in, and then you can explain your  
18 position. Then the board will ask questions, the government  
19 will ask questions, if they feel like. At the end of the  
20 presentation, the government will make a closing statement  
21 to say why is it that they believe that the evidence  
22 presented proves their case, and you will state why you

1 believe that the evidence that you present proves your case.

2 And then we will make a decision.

3 MR. ZAHORCHAK: Okay.

4 CHAIRMAN ANDERSON: Okay.

5 MR. ZAHORCHAK: Thank you.

6 CHAIRMAN ANDERSON: All right. So the  
7 government, call your first witness, please.

8 MR. RIVERO: Thank you. The government will call  
9 Investigator Howze.

10 CHAIRMAN ANDERSON: Can you raise your right  
11 hand, please? Do you swear or affirm to tell the truth and  
12 nothing but the truth?

13 All right. Your witness.

14 DIRECT EXAMINATION

15 BY MR. RIVERO:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Could you please state your name?

19 A. Anthony Howze.

20 Q. Can you spell your last name for the record?

21 A. H-O-W-Z-E.

22 Q. Thank you. Mr. Howze, what is your occupation?

1 A. I'm an investigator.

2 Q. **And who is your employer?**

3 MR. ALBERTI: Just one moment, please.

4 A. Alcoholic Beverage --

5 MR. ALBERTI: Make sure you speak into the mic so  
6 it's -- it's a little faint. All right. Thank you.

7 A. Alcoholic Beverage Regulation Administration.

8 Q. **Thank you. And what are your duties as an**  
9 **investigator?**

10 A. To conduct inspections and investigations for ABC  
11 licensed establishments for the District of Columbia.

12 Q. **Thank you. And are you familiar with Black**  
13 **Whiskey?**

14 A. I am familiar with Black Whiskey.

15 Q. **And how so?**

16 A. I did a regulatory inspection on August 19.

17 Q. **Of what --**

18 A. Of 2015.

19 Q. **Thank you. Now, what time was it when you went**  
20 **into the establishment approximately?**

21 A. Approximately 11:10 p.m.

22 Q. **Thank you. And what did you do once you arrived**

1 at the establishment?

2 A. Identify myself as an ABRA investigator to the  
3 male bartender at the time, and ask to speak to ABC manager  
4 or owner of the establishment.

5 Q. Okay. And what did that individual say to you in  
6 response?

7 A. He stated that there was not an ABC manager on at  
8 present, and that the owner stepped away to -- for closing  
9 of another establishment, and that he would be back  
10 shortly.

11 Q. Okay. Did you say that that person -- you  
12 thought that person was a bartender?

13 A. He was a bartender.

14 Q. How do you know that?

15 A. He was serving drinks.

16 Q. Okay. And that person with whom you spoke that  
17 evening, is that person present today?

18 A. Yes, he is.

19 Q. Where is that person?

20 A. He's sitting to the left of you.

21 MR. RIVERO: Okay. The record will indicate that  
22 the witness has indicated the licensee's representative at

1 this time.

2 BY MR. RIVERO:

3 Q. Now, so, again, the individual, the bartender  
4 said what to you?

5 A. That the owner is not present at the time. He  
6 will be back shortly.

7 Q. Okay.

8 A. And he's at another establishment for a closing.

9 Q. Okay. Let me show you a document that's marked  
10 Government's Exhibit 1 for identification, if I may  
11 approach the witness, a copy of which has been provided to  
12 the licensee's representative.

13 CHAIRMAN ANDERSON: Can you -- I don't -- what --  
14 what's the document that you have?

15 MR. RIVERO: I'll get the witness to identify  
16 that first.

17 BY MR. RIVERO:

18 Q. What does this look like to you?

19 A. My investigative report.

20 MR. RIVERO: It is the investigative report of  
21 the investigator.

22 CHAIRMAN ANDERSON: Okay.

1 BY MR. RIVERO:

2 Q. I'd like you to take a moment and flip through  
3 the pages to make sure that that document is complete.

4 A. It is complete.

5 Q. And would you say this is an accurate copy of the  
6 report that you created?

7 A. Yes, it is.

8 MR. RIVERO: The government would move into  
9 evidence at this time Exhibit 1, which is the investigator's  
10 investigative report.

11 CHAIRMAN ANDERSON: So moved.

12 I'm sorry. Do you have an objection to this  
13 document being presented in the record?

14 MR. ZAHORCHAK: Only that I can't remember what I  
15 said to him. I was the only bartender at the time.

16 CHAIRMAN ANDERSON: No. Not the document's --  
17 you can -- you're going to have an opportunity to question  
18 about the validity of what's in the document, but the  
19 government wants to move this in to the evidence as one of  
20 their documents. I'm just asking do you have a problem with  
21 this document itself.

22 MR. ZAHORCHAK: No.

1 CHAIRMAN ANDERSON: Okay. So moved.

2 (Exhibit 1 was admitted into evidence.)

3 BY MR. RIVERO:

4 Q. Okay. I'm going to go ahead and now,  
5 Investigator Howze, turn your attention to your report.  
6 And there is an -- you have an exhibit to your report  
7 called Exhibit 1; do you not?

8 A. I do.

9 Q. Okay. And what is that Exhibit 1?

10 A. It's a copy of the regulatory inspection.

11 Q. Okay. It indicates -- there's a field in the  
12 report called approved floors, right?

13 A. Yes, sir.

14 Q. What did -- what did you write in there?

15 A. First and second.

16 Q. Okay. And where did you get that information?

17 A. From the certificate of occupancy.

18 Q. And where was the certificate of occupancy that  
19 you saw?

20 A. Next to the bar.

21 Q. At the establishment?

22 A. Yes, sir.

1 Q. Okay. I'm going to go ahead, Investigator Howze,  
2 and show you a copy of what has been marked Government  
3 Exhibit 2 for identification, a copy of which has been  
4 provided to the respondent's representative. If I may  
5 approach, I'd like you to simply identify what this is.

6 A. This is a ABRA application.

7 Q. Okay. So this is the license application. Now  
8 I'd like you to --

9 CHAIRMAN ANDERSON: Just hold on a minute. You  
10 said that's Exhibit 2?

11 MR. RIVERO: Government's Exhibit 2.

12 CHAIRMAN ANDERSON: I don't have a -- I don't  
13 have a copy. I don't have a copy of the document so -- I  
14 don't have a copy of that document. What I have in front of  
15 me that says Exhibit 2 is not the same document that you  
16 have.

17 MR. ALBERTI: He's referring to Exhibit 2 of the  
18 report.

19 MR. RIVERO: Right.

20 MR. ALBERTI: That's not that.

21 MR. RIVERO: No. Exhibit 2 of the report is  
22 within Exhibit 1 of the government's exhibit.

1           CHAIRMAN ANDERSON: I don't have a copy of the  
2 document. So just hold on a minute, please, so I can follow  
3 along.

4           MR. RIVERO: It's in the licensee's file. So I  
5 will provide that shortly.

6           CHAIRMAN ANDERSON: Does he have a copy of it?

7           MR. RIVERO: He does.

8           CHAIRMAN ANDERSON: All right. Go ahead. I mean  
9 we'll -- I don't -- yeah. Go ahead, please. One of the  
10 things I'll ask -- because I'm still new to this, I would  
11 ask that the government provides us a copy of their full  
12 exhibits. So when I'm moving along, I like to have the  
13 document to look at it.

14          MR. RIVERO: Certainly.

15          CHAIRMAN ANDERSON: All right. But go ahead,  
16 please.

17 BY MR. RIVERO:

18           **Q. I'd like you to, again, identify this as the**  
19 **license application for Black Whiskey.**

20           A. Yes, it is.

21          MR. RIVERO: Okay. The government would move  
22 into evidence at this time what's in the agency's file, the

1 license application for the licensee.

2 CHAIRMAN ANDERSON: All right. Do you have an  
3 objection to it?

4 MR. ZAHORCHAK: None.

5 CHAIRMAN ANDERSON: So moved.

6 (Exhibit 2 was admitted into evidence.)

7 BY MR. RIVERO:

8 Q. I'm turning your attention to page two of the  
9 application, and there are these fields called floors per  
10 area of storage and floors of licensed business. What  
11 information did the licensee --

12 CHAIRMAN ANDERSON: Hold on a minute, please,  
13 Mr. Rivero. I'm confused. I don't have a copy of the  
14 document, and the charge is failure to have an ABC manager  
15 on duty.

16 MR. RIVERO: Right.

17 CHAIRMAN ANDERSON: And so I'm not following the  
18 question why that is relevant to the issue at hand.

19 MR. ZAHORCHAK: Because --

20 CHAIRMAN ANDERSON: No. Hold on. I'm asking him  
21 to explain, and then -- it's to help you. So it's not for  
22 you to help him. He needs to explain it to me, because I'm

1 not following.

2 MR. RIVERO: That's fine. The establishment has  
3 assets or had assets at the time on the basement level, and  
4 you'll hear that with the licensee's representations that,  
5 in fact, the individual who should have been on the second  
6 floor was on the basement level. So there is a directly  
7 relevant question of this case of just how much physical  
8 space is covered by the license itself.

9 CHAIRMAN ANDERSON: But why is that relevant?  
10 It's -- the charge is that it's a failure to have an ABC  
11 manager on duty. I don't care about that because I don't --  
12 that's not going to make -- at least for me, and it may  
13 be --

14 MR. ALBERTI: I think you'll see the -- I  
15 think -- if you let Mr. Rivero continue, I think you'll see  
16 the connection. I see where Mr. Rivero is going.

17 MR. RIVERO: I can answer the question, actually.

18 CHAIRMAN ANDERSON: Yeah, and I said it's like --  
19 I'll give you some leeway, but I don't really see it here,  
20 and because I don't have the document in front of me, and  
21 I'm trying to think along. I don't see it, but I'll give  
22 you some leeway and a couple of questions to bring it

1 into --

2 MR. RIVERO: The releven --

3 CHAIRMAN ANDERSON: All right.

4 MR. RIVERO: The relevancy is that if the license  
5 itself covers every conceivable floor, then the government  
6 has no business being here presenting a case because any  
7 floor that is covered by the license is allowed to have the  
8 presence of an owner or board-approved manager. So,  
9 therefore, the number of floors that are covered by the  
10 license is really the main question of this case.

11 BY MR. RIVERO:

12 Q. So as I was indicating to you, Investigator  
13 Howze, you looked at the second page of the license  
14 application and there are these areas called floors for  
15 area of storage and floors of licensed business. Let's  
16 take the first one, floors of area of storage. What  
17 information did the licensee indicate there?

18 A. First and second.

19 Q. And let's look at floors of licensed business.  
20 What information did the licensee indicate there?

21 A. First and second.

22 MR. RIVERO: Thank you very much.

1           The government will now pass forward Exhibit 2 so  
2 that it could be quickly viewed.

3           CHAIRMAN ANDERSON: I -- well, let me see if it's  
4 the same document that I'm looking at here.

5           MALE SPEAKER: If I may, I can --

6           (A discussion was held off the record.)

7 BY MR. RIVERO:

8           **Q. After the bartender had indicated to you that the**  
9 **owner wasn't present because he was somewhere else and he**  
10 **would be back shortly, what did you do after that?**

11          A. I did a regulatory inspection.

12          **Q. Okay. And that's that Exhibit 1 in the report**  
13 **that I showed you, right?**

14          A. Correct.

15          **Q. Okay. Did you complete that all by yourself?**

16          A. Mr. -- I don't want to get his name wrong --

17 Zahorchak assisted me with the --

18          **Q. The bartender?**

19          A. Correct.

20          **Q. Okay.**

21          A. -- with the inspection.

22          **Q. And then after you completed that inspection,**

1 what did you do next?

2 A. Proceeded to leave the establishment.

3 Q. Okay. And you left the establishment without  
4 speaking to anyone else, or did you speak to anyone else  
5 before you left the establishment?

6 A. When I was leaving, the owner actually did come  
7 in and I spoke to him.

8 Q. What did you say?

9 A. I told him the reason for my visit was a  
10 regulatory inspection, and that a owner or manager needed  
11 to be present during their licensed hours of sale.

12 Q. Okay. And did this individual respond to you?

13 A. He agreed that he understood, and he said that he  
14 was just at another establishment for a closing.

15 Q. Okay. And then what happened after that?

16 A. I left the establishment.

17 MR. RIVERO: Okay. Thank you.

18 No further questions for the witness at this  
19 time.

20 CHAIRMAN ANDERSON: Does any board members have  
21 any questions?

22 MR. ALBERTI: I think the representative does.

1 CHAIRMAN ANDERSON: No. Well, he has a chance.

2 MR. ALBERTI: Yeah, but you have to give him the  
3 opportunity to ask questions.

4 CHAIRMAN ANDERSON: I know. I know. I was -- I  
5 thought that the government asks first, and then he goes  
6 second. But he will get his chance.

7 So go ahead, sir. You can ask questions as the  
8 licensee. You can ask him -- you were paying attention to  
9 the questions that --

10 MR. ZAHORCHAK: The only thing -- the only thing  
11 that I would --

12 CHAIRMAN ANDERSON: No, no. All right.

13 Oh, I'm sorry. So you can now look through the  
14 documents. You have heard the testimony. So you can now  
15 ask him questions based on what he just testified to. So  
16 you're free to ask him questions based on what he was just  
17 asked and for clarification, if you think there are things  
18 you need to bring to our attention that he didn't explain it  
19 properly, you can ask him those questions.

20 MR. ZAHORCHAK: Right. I read the document and  
21 nowhere in here did I see mention that Darren said he was  
22 coming from another restaurant.

1                   CHAIRMAN ANDERSON: So you have to ask him in a  
2 question. You're making a statement. So ask him in a  
3 question.

4   CROSS-EXAMINATION

5 BY MR. ZAHORCHAK:

6           Q. So your recollection is ba -- you -- you're  
7 saying that Darren told you he was coming from another  
8 establishment. That's based purely on recollection, not --  
9 I don't see anything in the document about that.

10           A. Correct.

11           Q. In fact, he was in our basement doing paperwork.  
12 I just explained to you that he wasn't there. He told me  
13 he was stepping away for a moment. I'm getting to a  
14 question. I assumed that he was going because we have a  
15 sister restaurant right next door that that's where he was;  
16 but, in fact, he was downstairs while I was providing you  
17 the documentation and I quickly called his phone number and  
18 he says, "Yeah. I'm in the basement. I'll be right up."  
19 And, in fact, he came right up.

20                   MR. RIVERO: Okay. I --

21                   MR. ZAHORCHAK: That's why I think he's making  
22 the --

1                   CHAIRMAN ANDERSON: He's not a lawyer, so I  
2 understand --

3                   MR. RIVERO: I'd like to object at this time. He  
4 obviously will have the opportunity to say all this in his  
5 testimony. But if there isn't a question to ask to the  
6 witness, then --

7                   CHAIRMAN ANDERSON: I do understand, and I am  
8 giving him some leeway. I remember I pointed out to him  
9 that he needs to ask a question. So I'm not going to be as  
10 strict with him as I am with you because I know that, as  
11 lawyers, we know how to formulate questions but -- so that's  
12 why I tried to explain to him the process.

13                   So you can take a -- take a couple of minutes.  
14 Think about what you want to say and ask him in a question.  
15 You can ask him the same thing --

16 BY MR. ZAHORCHAK:

17                   **Q. I guess my only question is the statement -- the**  
18 **statement you just made saying that the owner said he was**  
19 **coming from a different establishment is based purely on**  
20 **your memory and not on your notes?**

21                   A. Correct.

22                   MR. ZAHORCHAK: Okay. That's all.

1 CHAIRMAN ANDERSON: All right. Now, does -- do  
2 you have any other questions you want to ask him?

3 MR. ZAHORCHAK: That's it.

4 CHAIRMAN ANDERSON: You sure?

5 MR. ZAHORCHAK: I have a chance to make a  
6 statement, correct?

7 CHAIRMAN ANDERSON: You can. But I'm just saying  
8 if you don't ask it to him now, you can't ask again.

9 MR. ZAHORCHAK: Everything else is absolutely --

10 CHAIRMAN ANDERSON: All right. Do we have any  
11 questions from any board members?

12 Yes, Mr. Short.

13 CROSS-EXAMINATION

14 BY MR. SHORT:

15 Q. Good afternoon, Mr. Howze.

16 A. Good afternoon.

17 Q. Investigator, when you did your regulatory  
18 inspection on the night of this violation, tell me exactly  
19 what you did. What were you looking for, and what did you  
20 do inside of the building itself?

21 A. Like I said, I identified myself as an ABRA  
22 investigator. I made it clear I was -- I was here to do a

1 regulatory inspection. I asked Mr. --

2 MR. ZAHORCHAK: Zahorchak.

3 A. -- the bartender for his ID, because he was the  
4 only -- only person present at the establishment who was an  
5 employee. And I looked at the certificate of occupancy.  
6 And I finished my inspection.

7 Q. Okay. What I'm trying to do is get you to walk  
8 me through from the time you walked in the front door,  
9 talked with the bartender, what did you do next. Where did  
10 you go inside of the club next?

11 A. Well, it's kind of set up where you walk up the  
12 stairs.

13 Q. Okay.

14 A. And once you walk up the stairs, that's actually  
15 the establishment. So --

16 Q. So you walked up the stairs?

17 A. Correct.

18 Q. Everything was fine?

19 A. And I walked to the -- to the bar where -- where  
20 he was standing.

21 Q. Okay. All right. Then that's the only part of  
22 the -- I see where the certificate of occupancy is the

1 first and second floor. So nobody was on the first floor?

2 A. I'm guessing that the first floor was where I  
3 walked up to, and there was another floor upstairs.

4 Q. Did you go to that floor also?

5 A. I did not.

6 Q. You just went to one floor?

7 A. Where the employee was, correct.

8 Q. Okay. And you said no one was there at that  
9 time?

10 A. A ABC manager or owner was not there. That I  
11 didn't see.

12 Q. When was the first time you encountered the owner  
13 or anyone who owned the business?

14 A. When I was leaving the establishment.

15 Q. So you encountered the owner?

16 A. I did encounter the owner.

17 Q. Were you going down the steps to go out?

18 A. I was -- I was going down the stairs to leave the  
19 establishment is when I encountered the owner.

20 Q. And you encountered him at the front door? Where  
21 was he when you encountered him?

22 A. On the stairs.

1 Q. On the stairs. So he was coming into the club?

2 A. He was coming in. I was leaving.

3 Q. Okay. And that's the only part of the club you  
4 went to?

5 A. Correct.

6 Q. What was your conversation with the owner?

7 A. I explained why I was -- why I was here, and I  
8 was here to do a regulatory inspection and there needed to  
9 be -- that they were in violation because there needed to  
10 be a ABC manager or owner here during their licensed hours  
11 of sale.

12 Q. And his response was?

13 A. That he understood the violation, and I can't  
14 recall exactly what he said after that.

15 Q. It wasn't that he was in the building? He just  
16 said he understood what was going on?

17 A. Correct.

18 MR. SHORT: That's all I have, Mr. Chair. Thank  
19 you.

20 CHAIRMAN ANDERSON: Do we have any other board  
21 members' questions?

22 Yes, Mr. Alberti.

1 CROSS-EXAMINATION

2 BY MR. ALBERTI:

3 Q. Investigator Howzer -- Howze?

4 A. Correct.

5 Q. Howze. How long were you -- from the time you  
6 walked in to the time you left and encountered the owner,  
7 how long? Approximately how long?

8 A. I would say roughly 15 minutes.

9 Q. 15 minutes roughly. Okay. You know, you wrote  
10 in your report that the owner told you that they were at  
11 another establishment, I think. Yeah. That -- okay.  
12 Okay. In your report you said that Mr. Zahorchak told you  
13 that the owner had gone to another establishment for  
14 closing?

15 A. Correct.

16 Q. Okay. Is that correct, according to your  
17 recollection now?

18 A. Yes.

19 Q. Okay. When you -- when you entered this  
20 establishment, were you aware that the owner had another  
21 establishment?

22 A. I was not.

1 MR. ALBERTI: I have no further questions.

2 CHAIRMAN ANDERSON: Any other board members'  
3 questions?

4 Yes, Mr. Silverstein.

5 CROSS-EXAMINATION

6 BY MR. SILVERSTEIN:

7 Q. Mr. Howze, do you know what the -- what the other  
8 establishment was, the name of it, or its location?

9 A. I do not, sir.

10 MR. SILVERSTEIN: Okay. No further questions.

11 CHAIRMAN ANDERSON: Mr. Rivero, do you have any  
12 questions for the witness based on the board's questions?

13 MR. RIVERO: I do. I have redirect.

14 REDIRECT EXAMINATION

15 BY MR. RIVERO:

16 Q. Investigator Howze, this establishment, Black  
17 Whiskey, it's a bar, right?

18 A. Yes.

19 Q. Okay. Now, you indicated that to enter the  
20 establishment you went up stairs?

21 A. Yes.

22 Q. Up a set of stairs?

1 A. Correct.

2 Q. Those stairs are located at ground level?

3 A. Ground level.

4 Q. On the sidewalk?

5 A. Yes. I would say yes, sir.

6 Q. Okay. So from the sidewalk you go up some  
7 stairs. And you went up how many floors?

8 A. Just to that one floor.

9 Q. Yeah. So you went up one floor?

10 A. Correct.

11 Q. That means that at the sidewalk level you went up  
12 to the second floor. There was a first floor of the  
13 building, right? It wasn't just empty space?

14 A. It looked like empty space to me.

15 Q. Well, I mean there was a solid structure there?

16 A. Correct.

17 Q. Okay. All right. So you don't know what that  
18 first -- I'm calling that the first floor, and the second  
19 floor is where you went up, of the building, right?

20 A. Yes.

21 Q. Okay. So that first floor, did you happen to  
22 notice what it was, or do you not recall?

1 A. I do not recall.

2 Q. That's fine. And then you went to the building's  
3 second floor, right, because you went up a set of stairs?

4 A. Stairs correct.

5 Q. And is that what you call Black Whiskey?

6 A. Yes.

7 MR. RIVERO: Okay. No further questions.

8 CHAIRMAN ANDERSON: You have an opportunity to  
9 ask questions based on the questions that were just asked or  
10 questions that the board had asked him.

11 MR. ZAHORCHAK: Okay.

12 CHAIRMAN ANDERSON: All right.

13 MR. ZAHORCHAK: I still have a chance to make a  
14 statement then?

15 MR. RIVERO: Yes.

16 MR. ZAHORCHAK: All right. That's all -- that's  
17 all I'm --

18 CHAIRMAN ANDERSON: He's going to present his  
19 case, and then you're going to present your case. As I said  
20 before, I'm going to swear you in, and then you can say --  
21 you can put on your defense based on what the government  
22 stated. So you'll have your opportunity, but now the

1 government has the opportunity to go first. So therefore,  
2 they're presenting this case. You need to listen to the  
3 questions that were asked and make sure that when you're  
4 presenting your case that you try to rebut everything that  
5 they put on. That's -- that's what your expectation is.

6 The witness, are you -- if there are no further  
7 questions, the witness is free to go.

8 MR. RIVERO: No further questions. Thank you.

9 CHAIRMAN ANDERSON: All right. Thank you. Does  
10 the government have another witness?

11 MR. RIVERO: No.

12 CHAIRMAN ANDERSON: Does the government rest?

13 MR. RIVERO: The government has no further  
14 witnesses or exhibits. So the government rests.

15 CHAIRMAN ANDERSON: All right. Thank you.

16 All right. I'm going to swear you in because  
17 since you -- it appears that you're going to be the lawyer  
18 and the witness. So this is why -- so therefore you'll have  
19 an opportunity, and also once you make your statement,  
20 Mr. Rivero's going to have an opportunity to question you on  
21 everything that you state and the board will also ask  
22 questions.

1           So can you raise your right hand please? Do you  
2 swear or affirm to tell the truth and nothing but the truth?

3           MR. ZAHORCHAK: I do.

4           CHAIRMAN ANDERSON: Okay. Now is your  
5 opportunity.

6           MR. ZAHORCHAK: That evening the investigator  
7 came in. We spoke briefly. He asked if there was a  
8 licensed manager, and I said there was. And he says, "Is he  
9 here now?" And I -- I think I quickly made a quick scan. I  
10 said, "He's not." The investigator said, "Well, where is  
11 he?" And I said, "Well, he may have stepped away to deal  
12 with our other restaurant." In fact, he was in our basement  
13 doing paperwork. That's why he stepped away from the floor.  
14 He was still in the building, but he was in the basement.

15           After providing him with the documents that he  
16 asked me to provide him, I quickly called him. I said,  
17 "Where are you?" And he says, "I'm in the basement." And I  
18 said, "Well, there's an ABRA investigator up here. Can you  
19 please come up?" At which time he did.

20           Our building is kind of funny in that our spaces  
21 are separated. The one entrance, immediately once you're  
22 inside the front entrance there's a sliding door that is

1 access to the main floor or ground floor, and that's the  
2 only access to our basement. So that's -- so when I called  
3 him, he came up through the building through that access and  
4 up through the front stairs. That's really the only access,  
5 other than the rear fire escape to get into our place. But  
6 to get to that, you have to go through a storm door and kind  
7 of those midwestern kind of push-up delivery doors. So he  
8 used the easiest route to get upstairs and then the two of  
9 them spoke. That's simple -- I think the issue and why the  
10 attorney was making such a big deal of ground floor one and  
11 two is because the basement is -- actually is not stated in  
12 the certificate of occupancy and that's where the owner, the  
13 ABC licensed manager was at the time. So he was on premise.  
14 He was there.

15           You know, we were a little bit busy. When the  
16 investigator came in, it took me a second to give him a call  
17 and he came directly straight up and then -- and then the  
18 two of them finished the conversation and I went back to  
19 work. So he in actual -- the investigator's -- that's why I  
20 asked if he made a notation that the owner said that he was  
21 somewhere else, because he actually told me -- I said,  
22 "Where were you?" He says, "I was in the basement doing

1 paperwork," because that's where our office is.

2 So he never actually did leave the building, as I  
3 had stated, but it was purely based on my conjecture.

4 That's all. So does that make sense?

5 CHAIRMAN ANDERSON: Well, I mean it's -- you're  
6 presenting your case. I mean --

7 MR. ZAHORCHAK: Right.

8 CHAIRMAN ANDERSON: We can't answer whether it  
9 makes sense or not. You're telling us --

10 MR. ZAHORCHAK: Darren, my boss, the owner of the  
11 place, in fact, did not leave the building to go deal with  
12 another restaurant. He was actually on premise the entire  
13 time. He was just a floor, two floors below us doing some  
14 paperwork, paying some bills, I guess. After I dealt with  
15 the investigator initially, I made a quick call and I said,  
16 "Hey, where are you?" And he said, "I'll be right up." And  
17 that was the end of that -- that was the end of my  
18 interaction with the investigator. That was the end of my  
19 interaction with the owner. That's all.

20 CHAIRMAN ANDERSON: All right. Now Mr. Rivero  
21 can ask you some questions.

22 MR. ZAHORCHAK: Sure.

1 MR. RIVERO: Thank you.

2 DIRECT EXAMINATION

3 BY MR. RIVERO:

4 Q. I'd like you to go ahead, if you can, and state  
5 your --

6 MR. SILVERSTEIN: Mr. Rivero, I need to hear you.

7 BY MR. RIVERO:

8 Q. State your name for the record, and spell your  
9 last name.

10 A. Marc Zahorchak. Marc with a C. The last name is  
11 Z-A-H-O-R-C-H-A-K.

12 Q. Thank you, Mr. Zahorchak. Did I get that right?

13 A. You did. The first one.

14 Q. Okay. I do want to ask you a question about the  
15 owner's trajectory. You testified that he had come up from  
16 the basement through the first floor and then up the steps.

17 A. That's my assumption.

18 Q. Your assumption.

19 A. Again, I was working at the time.

20 Q. I understand.

21 A. So I never saw him.

22 Q. Whether or not --

1 A. That's the -- that's the route I would take.

2 Q. Right. Whether or not that happened is not the  
3 point of my question.

4 A. Okay.

5 Q. But you indicated that if he were to go through  
6 the first floor, what's in that space?

7 A. At the time nothing really. We had sublet to a  
8 Italian men's clothier, or we -- we allowed him to use our  
9 space to do that. That's about it.

10 Q. So at the time that was not part of Black  
11 Whiskey, the first floor?

12 A. Absolutely it was, yes, because if we ever -- if  
13 we had events, if we had like a -- if we had somebody to --  
14 like just this past -- past weekend, you know -- we often  
15 get calls, "We have a group of 15. Can we get a spot  
16 reserved for us?" "We have a group of 60." Well, that's  
17 when we use the first floor, if we have a -- if we have a  
18 larger event, we will use that space for that event.

19 Q. Okay. So is it correct to say that's not a space  
20 that you use every day normally --

21 A. No.

22 Q. -- customers in there just like --

1 A. Not every day, no. No, no.

2 Q. Okay.

3 A. It's more special events.

4 Q. And it's true that on the day in question the  
5 operating space was just the second floor?

6 A. Correct.

7 Q. And that's where you were?

8 A. That's where I was.

9 Q. Okay. What other restaurant -- you testified  
10 that you thought, although incorrectly, that the owner  
11 might have been at another restaurant?

12 A. Maki Shop.

13 Q. Maki Shop?

14 A. M-A-K-I.

15 Q. Where is that located?

16 A. One block --

17 Is this north, this direction?

18 Q. Yes.

19 A. Yes. One block north on 14th.

20 In hindsight, it being 11:15 -- I had no idea  
21 really what time it was. The shop closes at 9:00. So I  
22 was wrong in my assumption that he was there, because it

1 would have been two and a half hours late.

2 MR. RIVERO: No further questions.

3 CHAIRMAN ANDERSON: Board questions?

4 Yes, Ms. Miller.

5 CROSS-EXAMINATION

6 BY MS. MILLER:

7 Q. I just wanted to ask you, do you have any idea  
8 how long the owner was on the first floor?

9 A. Minutes.

10 Q. Minutes? Why do you say that?

11 A. Because I didn't know that he -- I didn't -- I  
12 hadn't realized that he wasn't on the floor, and he's -- he  
13 usually will step behind the bar at times, you know, ask if  
14 I need help or -- you know, he -- oftentimes, you know, if  
15 we have a tendency to get busy, he'll be right across the  
16 bar from me at the top of the stairs carding people and  
17 managing crowds. So I -- I actually didn't even notice  
18 that he was gone until the investigator came here -- came  
19 in.

20 Q. So how would you characterize the crowd at that  
21 time? Were you busy? Were you not very busy?

22 A. Medium busy. Maybe half at occupancy, 40, 50

1 people.

2 Q. And just for context, what time was closing?

3 A. We stay open until last call.

4 Q. What time is that?

5 A. 1:30. Well, we give last call 1:30 and

6 everybody's out the door by two.

7 MS. MILLER: Thank you.

8 MR. ZAHORCHAK: Hm-hm.

9 CHAIRMAN ANDERSON: Any other board members'  
10 questions?

11 Yes, Ms. Short.

12 MR. SHORT: Thank you.

13 CROSS-EXAMINATION

14 BY MR. SHORT:

15 Q. Good afternoon.

16 A. Oh, I'm sorry. I thought this gentleman was  
17 about to ask.

18 Q. Not a problem. You state that the owner was in  
19 the building. Now, your C of O says you sell alcohol on  
20 what floors?

21 A. First and second is what is stated there.

22 Q. Okay. Which that means that the investigator

1 said you come up a set of steps, you're on the first floor;  
2 and then when you actually go to your third floor that's  
3 what you consider the second story of your business?

4 A. There's a basement.

5 Q. I understand. I'm asking you what is on your C  
6 of O for where you can sell alcohol.

7 A. First and second floor.

8 Q. Certificate of occupancy. Okay. So the basement  
9 isn't considered a part of the business?

10 A. Correct.

11 Q. So if somebody's in the basement, that's not  
12 really a part of the alcohol-selling portion of the  
13 building, correct?

14 A. I was just made aware of that before the hearing.

15 Q. You were?

16 A. Yeah.

17 Q. So it's your testimony right now then that the  
18 owner was not in the business part of the building; he was  
19 in another part of the building; is that correct?

20 A. If you ask me my opinion, yes, he was part of the  
21 business.

22 Q. No, no, no. I'm asking you according --

1 A. I'm not a lawyer.

2 Q. -- to the certificate of occupancy, not a lawyer.

3 Your certificate of occupancy says you can only sell  
4 alcohol in certain parts of the building, correct? And if  
5 someone or the owner's not in that part of the building,  
6 then he's not actually in the business.

7 A. If you say so.

8 MR. SHORT: Well, let me -- let me --

9 CHAIRMAN ANDERSON: The law says so. Let me --  
10 let me ask -- let me say this to you. When you're answering  
11 a question, if you don't know, say you don't know. You  
12 don't need to presuppose.

13 MR. ZAHORCHAK: Yeah. I don't know. I don't  
14 know.

15 CHAIRMAN ANDERSON: Okay. That's --

16 MR. ZAHORCHAK: That's why all these documents  
17 exist.

18 CHAIRMAN ANDERSON: So when someone asks you a  
19 question, if you don't know the answer, I don't know the  
20 answer; I can't answer it. But you don't have to make up or  
21 think on the fly. That's your right, okay?

22 MR. ZAHORCHAK: Thank you.

1 MR. SHORT: That's all I have. Thank you,  
2 Mr. Chair.

3 CHAIRMAN ANDERSON: Yes, Mr. Alberti.

4 CROSS-EXAMINATION

5 BY MR. ALBERTI:

6 Q. Mr. Zahorchak, just for absolute clarity, the  
7 investigator, when he went in he went upstairs to the bar,  
8 which I understand is the sec -- well, is being referred to  
9 as the second floor; is that correct?

10 A. That is absolutely correct.

11 Q. All right. One level below that is what's being  
12 referred to as the first floor where you sometimes host  
13 patrons?

14 A. Correct.

15 Q. Where is the basement located in relationship to  
16 those two floors?

17 A. Directly beneath.

18 Q. Directly beneath the first floor?

19 A. Directly beneath the first floor.

20 Q. Okay. Very good. Now, you said that the  
21 owner -- you presumed that the owner -- all right. You  
22 said something about the owner being in the basement paying

1 bills or doing recordkeeping. Am I correct that's what you  
2 said?

3 A. That's what I said just now.

4 Q. All right. All right. Is that your -- is that  
5 your presumption, or did -- or do you know that based on  
6 something the owner told you?

7 A. Something that the owner told me.

8 Q. Okay. So he told you he was in the basement  
9 doing recordkeeping?

10 A. Correct.

11 Q. All right.

12 A. I just erroneously told the investigator --

13 Q. Wait. Wait. Wait. Wait. You have -- is it  
14 correct to assume that the owner could be down there for  
15 more than just a few minutes doing recordkeeping? I  
16 mean -- is it reasonable to assume that the owner would be  
17 down there for more than just for a minute to do  
18 recordkeeping?

19 A. No, not really because the other partner,  
20 Darren's partner, Todd Cuba, is basically the financial  
21 guy. He's the guy who pays all the bills and he was the  
22 one who would come in during the day and sit in the office.

1 We keep our checkbook downstairs. So Darren will from time  
2 to time just walk down there to sign a check for a DJ or  
3 for security, if we ever need it. Normally he's -- he's  
4 the creative type.

5 **Q. Was he doing either of those tasks that night?**

6 A. Again, I have no idea. I --

7 **Q. Did you --**

8 A. I just -- I just said, "Where are you?" And he  
9 says, "I'm downstairs, and I'll come up."

10 **Q. Was it a time to pay the DJ, or was it a time to**  
11 **pay security?**

12 A. I have no recollection.

13 **Q. All right. So when Darren's in -- the owner is**  
14 **in the basement, how does he communicate with you upstairs?**

15 A. He would have to text me or call me.

16 **Q. Okay. On the telephone, right?**

17 A. Yeah.

18 **Q. There's no intercom? Is there any cameras down**  
19 **there?**

20 A. At the time there was. I believe there was. I'm  
21 not sure.

22 **Q. You don't know. So you don't know if there was**

1 any way for him to superintend what's going on upstairs.  
2 He's -- he's totally ignorant of what's going on upstairs  
3 while he's downstairs. Is that a correct assumption?

4 A. Actually, no, because we do have a security  
5 system on the front stairs, front walk, front of the bar,  
6 back of the bar, and parking spot in the basement and that  
7 is -- I'm actually able to access that information on my  
8 cell phone, which would make him able to access that  
9 information on his cell phone, and probably on the computer  
10 in the office as well. So yes, he -- if he were down in  
11 the basement and he wanted to monitor the bar, he could  
12 from that space, yes, he could.

13 Q. All right.

14 A. There is no camera in the basement, though. The  
15 camera is all on -- the cameras I mentioned are all in the  
16 bar area on the second floor.

17 Q. You don't know what he was doing down there; do  
18 you?

19 A. Exactly. I don't know what he was doing down  
20 there.

21 MR. ALBERTI: Okay. I have no further questions.

22 MS. MILLER: Mr. Chairman?

1           CHAIRMAN ANDERSON:  Yes, Ms. Miller.

2           MS. MILLER:  Can I have some followup?  I missed  
3 some of those responses.

4                                   RE CROSS-EXAMINATION

5 BY MS. MILLER:

6           Q.  I know he asked you.  In your phone  
7 conversations, what exactly was said?  You said, "Where are  
8 you," or, "Can you come up," or what --

9           A.  Exactly what I said, I said, "Where are you?"  He  
10 says, "I'm downstairs.  Why do you ask?"  And I said  
11 there's an ABRA investigator here who'd like your time," or  
12 something to that effect.  I was trying to work at the same  
13 time as making this phone call.  And he said, "Okay.  I'll  
14 be right there," and within a matter of minutes, I assume,  
15 there.

16          Q.  Okay.  And then I just wanted to clarify.  So  
17 there's a first floor below and then a basement below --

18          A.  Correct.  We have three floors.

19          Q.  Okay.  What -- what's in the basement?

20          A.  Storage, dry storage, a kitchen, and an office.  
21 Not a kitchen.  A prep area and a large dishwashing  
22 machine, commercial -- commercial dishwashing machine, and

1 an office.

2 MS. MILLER: Okay. Thank you. That's all.

3 MR. SHORT: One more?

4 CHAIRMAN ANDERSON: Yes, Mr. Short.

5 RE-CROSS-EXAMINATION

6 BY MR. SHORT:

7 Q. You stated the owner normally stands at the front  
8 and cards people as they come in. Is that to keep people  
9 from underage drinking or people --

10 A. Correct. Yes.

11 Q. -- who don't have ID?

12 A. Absolutely.

13 Q. So when he's in the basement, who actually does  
14 all of that activity?

15 A. I do.

16 Q. So you bartend --

17 A. It's a rather small place.

18 MR. SHORT: Okay. All right. That's all I have.

19 MR. ZAHORCHAK: If he steps away, I mean, it's a  
20 small place with a small occupancy, and I see everything.  
21 I'm 51, so everybody looks young to me. So almost everybody  
22 gets carded.

1 MR. SHORT: Thank you. That's all I have. Great  
2 answer.

3 CHAIRMAN ANDERSON: Do we have any other  
4 questions by board members?

5 (No response heard.)

6 MR. RIVERO: The government has questions based  
7 on the board members' questions.

8 CHAIRMAN ANDERSON: Sure. Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. RIVERO:

11 Q. You indicated that there's some storage in the  
12 basement?

13 A. Hm-hm.

14 Q. Okay. Do you store alcoholic beverages there?

15 A. We -- our keg cooler, our tap system, and air  
16 system was down there.

17 Q. What does that mean, tap system and air system?

18 A. The beer that we draw on draft from the --  
19 from -- from the bar area is drawn from the basement.

20 Q. So would it be correct to say that there are  
21 pipes from the second floor down to the basement?

22 A. Hoses, yes.

1 Q. Hoses?

2 A. Yes.

3 Q. And that's how the beverages get up to --

4 A. Beer. Beer only, yeah.

5 Q. The beer only, okay.

6 Now, is there an actual office in the basement?

7 A. There -- there is, yes.

8 Q. At the time of the incident --

9 A. Absolutely there was, yes.

10 Q. Now?

11 A. There is, but we don't use it anymore.

12 Q. Why not?

13 A. Well, because we -- we -- we improved our storage  
14 area where we can keep everything there. And, as the  
15 general manager, it just makes it easier for me to keep the  
16 paperwork and the printer and all that stuff close to the  
17 bar now.

18 Q. So where is it now exactly, the paperwork, as you  
19 say?

20 A. Adjacent to the bar on the same floor, one door  
21 away.

22 Q. So is it just lying on a table next to the bar?

1 A. We have a file system.

2 Q. You have a file system?

3 A. Yeah.

4 Q. A cabinet?

5 A. Cabinet, yes.

6 Q. And that cabinet contains, you said, paperwork?

7 A. Our daily sales, our invoices, documents like  
8 this.

9 MR. RIVERO: Okay. No further questions. Thank  
10 you.

11 CHAIRMAN ANDERSON: Do you need to rebut? Do you  
12 need to clarify anything based on what was just said?

13 MR. ZAHORCHAK: No.

14 CHAIRMAN ANDERSON: All right. Do you have  
15 anything else to present, or that's your case in chief?

16 MR. ZAHORCHAK: That is my case.

17 CHAIRMAN ANDERSON: Does the government wish to  
18 make a closing statement?

19 MR. RIVERO: Yes.

20 CHAIRMAN ANDERSON: Go ahead, please.

21 MR. RIVERO: Board members, the government has,  
22 by a resounding preponderance of the evidence today, proven

1 its allegation. The allegation is a simple one, that there  
2 was no owner or board-approved manager on the licensed  
3 premises; and this is why there has been a lot of testimony  
4 about things other than the physical presence of a body in a  
5 room.

6           There's a lot of emphasis on the floors. The  
7 testimony, although a bit scattered, is reduced to the  
8 following, based on what the licensee says and what the  
9 government's witness said: We're dealing with three floors,  
10 but really what you're dealing with is a two-story building  
11 that has a basement. Both the first floor, which is what we  
12 call the floor that you access on the sidewalk, and the  
13 floor above it, which we call the second floor, the floor  
14 above the first, are the floors that are indicated on the  
15 certificate of occupancy and in the ABC license application.  
16 The basement is underground. You can't see it. You have to  
17 go downstairs under the sidewalk. Those are the three  
18 floors to the two-story building that is in question. The  
19 floors are important because the certificate of occupancy  
20 doesn't mention a basement.

21           And an important note of clarification here,  
22 because I believe that a statement was made, a C of O, a

1 certificate of occupancy says absolutely nothing about  
2 selling alcoholic beverages. It is a permit for precisely  
3 that, occupancy, issued by the District of Columbia  
4 Regulatory Affairs Department and not this agency, ABRA.

5 This agency, on the other hand, has its own  
6 application, and it issues a license based on  
7 representations made by the licensee. Those representations  
8 happen to be exactly the same as that as seen on the  
9 certificate of occupancy. So the investigator's testimony  
10 is absolutely accurate. At no point has there been any  
11 evidence presented that there's any legal right either as  
12 far as DCRA is concerned or ABRA is concerned to conduct  
13 business or even store anything or occupy anybody on the  
14 basement.

15 Now, this may be the case, and it may be  
16 happening, but all of that is irrelevant to the question of  
17 the law, which is whether there was or was not an ABC  
18 licensed manager or owner on the licensed premises. The  
19 licensed premises are the first and second floor. You heard  
20 evidence that the first floor had nothing to do with this  
21 story. There was no business going on that night on the  
22 first floor. Everything happened on the second floor,

1 plenty of operations. The licensee admitted there was a  
2 midsized crowd there. So that is the floor on which an  
3 owner or ABC manager needed to be present when the  
4 investigator showed up. The investigator showed up and  
5 conducted a regulatory inspection.

6 So board members may be wondering about the  
7 amount of time. Is there a tiny little bit of time during  
8 which perhaps the owner is allowed to go across the street  
9 and put money in the parking meter and it's okay not to be  
10 present? The law doesn't make any kinds of allowances like  
11 that whatsoever. You're supposed to be there when the  
12 government shows up, period, end of the story.

13 So the government showed up, and it's probably  
14 the case that the government spent more than one or two  
15 minutes there, because the government had to conduct a  
16 regulatory inspection. You have the document in your  
17 records and it's in evidence. It would take a little bit of  
18 time to write information from another source. The  
19 investigator wasn't making stuff up, and he hadn't memorized  
20 anything to be able to write that piece of paper out in 60  
21 seconds.

22 So even if it's five minutes, there's no de

1 minimis exception in the law. Somebody needed to have been  
2 there. Now, whether the manager or the owner was in the  
3 basement, across the street, up the block doesn't matter.  
4 So the licensee's testimony about the fact that he thought  
5 the owner was someplace else, but it turned out he was only  
6 in the basement, oh, I'm sorry, you know, not relevant. Not  
7 important, because the law says he needed to be in that  
8 room.

9           So while I understand that this might seem to be  
10 a bit of a stretch, the guy was in the same building after  
11 all, we have to take into account that there's a reason why  
12 the government produces this paperwork and asks these  
13 questions. The application is clear. We give the licensees  
14 the opportunity to say, "Well, we're gonna store stuff in  
15 the basement too," or across the street or anywhere. The  
16 government doesn't have a million eyes everywhere. We must  
17 rely on the representations of the licensee, and that is why  
18 the license extends to the area that is specified in the  
19 application. Otherwise, law enforcement is gonna get very  
20 complicated and very difficult in short order. That is the  
21 reason why the government has made the efforts today to let  
22 the board understand that this isn't really about five

1 minutes or two minutes just downstairs in the basement.

2 This is about understanding that the government has got to  
3 rely on licensees' representations and that the extent of  
4 the licensed premises is coextensive with the extent of the  
5 law, which is what I'm here to enforce.

6 And for the reasons that I've stated, I think  
7 it's important to understand that there's ample evidence  
8 here to meet the government's burden.

9 Thank you very much.

10 CHAIRMAN ANDERSON: Thank you.

11 You have an opportunity to make a closing  
12 statement, if you want.

13 MR. ZAHORCHAK: I cannot be as eloquent. Thank  
14 you.

15 CHAIRMAN ANDERSON: You don't want to say  
16 nothing? No. You don't have to -- I'm just -- you don't  
17 have to.

18 MR. ZAHORCHAK: I've said everything I wanted to  
19 say. Thank you.

20 CHAIRMAN ANDERSON: All right. Okay. Thank you.

21 Do the parties wish to file proposed findings of  
22 fact and conclusions of law, or waive their right to a

1 hearing? Meaning that you hear all of this was said. You  
2 can go ahead and find some law based on what was just said,  
3 and you can write up something and give it to us, or you  
4 just want to rest on what was said today?

5 MR. ZAHORCHAK: Yeah, rest on what was said  
6 today.

7 MR. RIVERO: The government waives its right.

8 CHAIRMAN ANDERSON: Okay. Thank you.

9 All right. The board will issue a decision  
10 within 90 days. All right.

11 All right. So as -- I'm sorry. I'm not as  
12 organized as I need to be at this moment. As Chairperson of  
13 the Alcoholic Beverage Control Board of the District of  
14 Columbia and accordance with DC Official Code Section  
15 2574(b) of the Open Meetings Amendment Act of 2010, I move  
16 that the board hold a closed meeting for the purpose of  
17 seeking legal advice from our counsel on case number  
18 15-CMP-00592, the Black Whiskey, pursuant to DC Official  
19 Code Section 2574(b)(4) of the Open Meetings Amendment Act  
20 and deliberation upon case number 15-CMP-00592, Black  
21 Whiskey for the reasons cited in DC Official Code Section  
22 2574(b)(13) of the Open Meetings Amendment Act. Is there a

1 second?

2 MR. SHORT: Second.

3 CHAIRMAN ANDERSON: Mr. Short has seconded the  
4 motion. I will now take a roll call vote on the motion  
5 before us now that has been seconded.

6 Ms. Miller?

7 MS. MILLER: I agree.

8 CHAIRMAN ANDERSON: Mr. Alberti?

9 MR. ALBERTI: I agree.

10 CHAIRMAN ANDERSON: Mr. Short?

11 MR. SHORT: I agree.

12 CHAIRMAN ANDERSON: Mr. Silverstein?

13 MR. SILVERSTEIN: I agree.

14 CHAIRMAN ANDERSON: And Mr. Anderson. The matter  
15 is -- as it appears that the motion has been passed, five,  
16 zero, I hereby give notice that ABC Board will recess these  
17 proceedings to hold a closed meeting in the board conference  
18 room pursuant to Section 574(b) of the Open Meetings  
19 Amendment Act. We are now in recess. So we'll issue a  
20 decision within 90 days.

21 MR. ZAHORCHAK: All right.

22 CHAIRMAN ANDERSON: Thank you.

1 MS. MILLER: Thank you.

2 (Whereupon, the above-entitled matter is in  
3 recess.)

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