

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

Superclub Ibiza, LLC
t/a Ibiza
1222 1st Street, NE
Retailer CN - ANC-6C
License No. 74456
Case #14-251-00308 and
Case #15-251-00004

Cease and
Desist
Hearing

(Respondent's Request for
Hearing in Response to
Board Order No. 2015-102)

March 25, 2015

The Alcoholic Beverage Control Board
met in the Alcoholic Beverage Control Hearing
Room, Reeves Building, 2000 14th Street, N.W.,
Suite 400S, Washington, D.C. 20009, Chairperson
Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

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

2 11:46 a.m.

3 CHAIRPERSON MILLER: Okay. We're
4 ready to call Case No. 14-251-00308 and 15-251-
5 00004, Ibiza located at 1221 1st Street, N.E.,
6 License No. 74456, in ANC-6C.

7 This is a hearing requested by the
8 respondent in response to Board Order No. 2015-
9 102, which is a Cease and Desist Order.

10 Good morning.

11 MR. BIANCO: Good morning, Madam Chair
12 and Members of the Board. Thank you for hearing
13 us today. My name is Richard Bianco. I
14 represent the licensee. And I have our
15 licensee's representative here.

16 CHAIRPERSON MILLER: Can you speak a
17 little louder? Is your mike on? Yes.

18 MR. BIANCO: It is.

19 MR. TRUONG: Aldo Truong, managing
20 member of Ibiza.

21 CHAIRPERSON MILLER: Okay. So, Mr.
22 Bianco, we have scheduled this hearing as I

1 stated in response to your request, so I first
2 want to ask you how you might want to proceed.
3 We did receive a summary of argument of yours in
4 writing for this hearing. So I'm not sure if you
5 were going to proceed to argue as a motion or
6 whether you plan to put on any testimony. It's
7 up to you.

8 MR. BIANCO: I don't. I prefer to
9 make representations.

10 CHAIRPERSON MILLER: Okay.

11 MR. BIANCO: And if the Board is
12 interested in hearing from my client, he is here,
13 we can swear him, he can testify if need be.

14 Based on that, I'm glad the Board has
15 received my Summary of Argument. I think that
16 will make this go faster. So you know, we are
17 available to provide evidence if need be.

18 CHAIRPERSON MILLER: Okay.

19 MR. BIANCO: But I think the Board can
20 grant the relief that we are requesting by
21 argument of counsel.

22 CHAIRPERSON MILLER: All right. And

1 I also want to note for the record that we have
2 on the dias a document dated March 25, 2015,
3 which I don't know that the Board has had a
4 chance to read thoroughly, but will and have
5 looked over briefly, addressed to the Alcoholic
6 Beverage Control Board from Vincent Parker from
7 DCRA. And do you have a copy of that?

8 MR. BIANCO: I did. I was just given
9 a copy of that moments ago by the Board's
10 attorney.

11 CHAIRPERSON MILLER: Okay. All right.
12 Then I'm going to suggest then that you proceed
13 as you planned to with argument and
14 representation whenever you are ready.

15 MR. BIANCO: Sure. Thank you.

16 CHAIRPERSON MILLER: Okay.

17 MR. BIANCO: First, let me be very
18 clear about what we are asking for here. There
19 is a Cease and Desist. There is an active Cease
20 and Desist Order which has stopped my client's
21 operations since last Friday. It was served on
22 Thursday night.

1 We are not before you today to ask you
2 to lift that Cease and Desist Order. And the
3 reason why we are not asking that today is
4 because I don't think you can. And I think to
5 lift the Cease and Desist Order it would require
6 this Board to overrule a decision that has been
7 made by DCRA. And I don't think that can happen.

8 So DCRA takes the position that my
9 client is operating without a public hall
10 license. It is our position that the only reason
11 they are operating without a public hall license
12 is because of DCRA's breach of contract. My
13 client and DCRA entered into a contract in April
14 of 2014 requiring DCRA to issue them a public
15 hall license.

16 DCRA is in breach of that agreement,
17 has not issued the license and for that reason,
18 this Board has issued a Cease and Desist Order.

19 Our Breach of Contract action is
20 currently before the D.C. Superior Court and this
21 Friday we have a preliminary injunction hearing
22 before Judge Motley. And one of the positions

1 that the Government has taken in that case is
2 that this isn't DCRA's fault, the ABC Board is
3 the one that shut them down. And it's our
4 contention that the only reason the ABC Board
5 shut us down is because of the lack of the public
6 hall license issue.

7 So what we are really asking for here
8 is not that you lift the Cease and Desist Order
9 today, but merely that you make a finding, order
10 or stipulation that once the public hall license
11 issues, the Cease and Desist Order will be
12 lifted.

13 And the reason why we are asking for
14 that specific relief is because I'm confident
15 once Judge Motley has the opportunity to consider
16 DCRA's very clear breach of contract, he will
17 order that they issue the public hall license.

18 That's not an issue -- the DCRA's
19 breach of contract is not before this Board.
20 It's before the Superior Court. And essentially
21 what we are asking for is for the Board to take
22 action that will allow us to have our day in

1 Court. We want to -- we are required to pursue
2 all the administrative remedies and that's one of
3 the reasons why we are here today. And we are
4 pursuing all of our legal remedies in D.C.
5 Superior Court.

6 As I see this case, this is a case of
7 DCRA using this Board as a tool to accomplish its
8 own ends. If DCRA had a problem with my client's
9 operations, DCRA should have taken action within
10 its own statutory purview to have my client
11 correct or to shut my client down or to do
12 whatever it is DCRA contends we should have done.

13 They didn't do that. They came here
14 and they said there is no public hall, so you
15 should shut them down. And by not being
16 completely honest and forthcoming with this
17 Board, the Board ruled based on the evidence that
18 it had before it, at that time, and that
19 evidence, at that time, was incomplete.

20 And it's a shame that DCRA won't do
21 its own dirty work. If DCRA had a problem, they
22 should have filed whatever they needed to file.

1 We could -- we would have had the opportunity to
2 have a hearing and to provide evidence to be
3 treated fairly and to have it adjudicated before
4 the Agency that actually has an issue with my
5 client's actions.

6 So what we are asking for today is
7 that the Board simply order once the public hall
8 license issues, the Cease and Desist will be
9 lifted.

10 CHAIRPERSON MILLER: That's it?

11 MR. BIANCO: There is another issue
12 that we outlined. I don't know that it is a
13 major point, but I can address it briefly. And
14 specifically, when the Cease and Desist Order
15 issued, there were two other grounds cited.

16 CHAIRPERSON MILLER: Yes.

17 MR. BIANCO: And I have provided some
18 legal argument on those grounds. And I think
19 without trying to attack what the Board did,
20 obviously, on a summary basis, I think there are
21 some problems with those grounds.

22 Specifically, the Board did not make

1 any findings that any harm that would occur to
2 the public would be immediate and irreparable and
3 that's statutorily required that the Board make
4 such findings in order to issue a Cease and
5 Desist. You did make findings of immediate and
6 irreparable harm as to the public hall issue in
7 your order, but you did not make findings of
8 immediate and irreparable harm on the other two.

9 And I don't think it was just an
10 omission. I think there was a really good reason
11 why you couldn't or didn't make findings of
12 immediate and irreparable harm and that's because
13 the cited incidents are months old. They are
14 five and four months old, respectively. And it
15 is very difficult to make a finding that
16 something will constitute an immediate harm if it
17 happened five months ago.

18 And my client has been operating
19 continuously since then without similar incident.
20 So clearly, it is not an immediate and
21 irreparable harm, because their continuing
22 operations over the past four months have

1 demonstrated that it's not immediate and
2 irreparable harm.

3 So to the extent that the Board would
4 consider upholding the Cease and Desist based on
5 those other two issues, I don't think that would
6 be appropriate.

7 So again, what I request would be is
8 that the Board order that once the public hall
9 issues -- once the public hall license issues,
10 the Cease and Desist will be lifted. And we
11 think that the D.C. Superior Court is going to
12 give us that opportunity once the case is heard.

13 CHAIRPERSON MILLER: Okay.

14 MR. BIANCO: That's all for now.

15 CHAIRPERSON MILLER: All right. Thank
16 you. Questions? All right. Well, so if you are
17 going to Court on Friday, it seems like one of
18 the reasons you are asking for us to make a
19 finding or a decision, at this time, is really to
20 help you in Court. But basically, you can go to
21 Court, as you will on Friday, and in any event,
22 the Judge can make a decision about whether or

1 not DCRA was in breach with respect to not
2 issuing you a public hall license without any
3 action of this Board.

4 MR. BIANCO: Well, the Government has
5 taken the position that that's not the case. The
6 Government has taken the position that without
7 the Administrative Agency Act, then we can't even
8 come before the Court. I don't think that is
9 true, but again, I think it's an example of this
10 Board being used as a tool.

11 They are taking the position that we
12 are not even entitled to that adjudication
13 because they are saying we have to come before
14 the ABC Board and get the ABC Board to agree or
15 to lift the Cease and Desist before we could even
16 make a complaint in Superior Court.

17 We haven't -- they claim we have an
18 exhaustion of administrative remedy problems, so
19 we are here exhausting our administrative
20 remedies, so that we can be heard in Court.

21 While it would certainly help us, it's
22 not dispositive of the issue in any way. We are

1 not asking the Board to make any findings about
2 the rightfulness or the wrongfulness of my
3 client's operations. Merely that once the
4 conditions set forth -- once the condition of a
5 public hall license set forth in the Cease and
6 Desist is met, that the Cease and Desist will
7 lift. That's really all we are asking for.

8 I think it is a fact and we could come
9 back following the Court hearing, but it
10 certainly simplifies matters both for this Board
11 and for the Superior Court if that stipulation or
12 finding is made preemptively. Otherwise, we are
13 in a situation where we are back in front of you
14 next Wednesday saying okay, now the public hall
15 issued, please, lift the Cease and Desist.

16 CHAIRPERSON MILLER: So but wouldn't
17 we have to address all the other issues before we
18 lift it, the Cease and Desist, so that even if we
19 -- we couldn't necessarily say okay once you meet
20 that requirement, then oh, it doesn't matter
21 about the other requirements. We would have to
22 make a finding about the other requirements that

1 were in that order as well. Isn't that right?

2 MR. BIANCO: Well, I think the other
3 findings in the order are insufficient as a
4 matter of law, because there is no mention of
5 immediate or irreparable harm. I don't know how
6 the Board was counseled on that particular issue,
7 but it's a statutory requirement. The statute is
8 quoted in our submission. And on its face, the
9 order doesn't contain those findings.

10 So if the Board hasn't made the
11 findings of immediate and irreparable harm, it
12 can't form the basis for a Cease and Desist
13 Order. I don't think consideration of those
14 outstanding issues is appropriate for a Cease and
15 Desist Order. They are in the pipeline, okay?

16 One of them is coming up for a Status
17 Hearing before the Board next month. The other
18 hasn't even been petitioned by the AG's office
19 yet. They should be dealt with in the ordinary
20 course of the Board's business, we agree, and
21 they will be, but, as a matter of law, they don't
22 form the appropriate basis for a Cease and Desist

1 because of the deficiency on the immediateness
2 and the irreparability of the harm.

3 CHAIRPERSON MILLER: And it's your
4 representation that the activities that those
5 reports address are no longer taking place?
6 There have been no more violations with respect
7 to those issues?

8 MR. BIANCO: There is nothing that
9 they have been cited for in the interim and
10 intervening four months or so since the last
11 Inspector's report, which was provided to us on
12 Thursday night. So it's a new -- the most recent
13 one is a new issue to us, too. So even though it
14 has allegedly been out there since December, the
15 first we heard of it was on the heels of the
16 Cease and Desist Order.

17 CHAIRPERSON MILLER: Okay. What about
18 it seems like there were some other licenses you
19 didn't have, such as a basic business
20 entertainment services license or does that just
21 go along with the public hall license? It's No.
22 5 of our findings of fact.

1 MR. BIANCO: Any endorsements required
2 are also part of the licensure issue that is
3 pending before the Superior Court. They have in
4 their -- on their previous BBL they had an
5 entertainment endorsement and everything else
6 that was necessary, which is simply going to be
7 reinstated when all issues, which we hope the
8 Court is going to do on Friday. So the public
9 hall license is the main license and then there
10 is whatever endorsement categories are
11 necessary --

12 CHAIRPERSON MILLER: Okay.

13 MR. BIANCO: -- to go along with them.

14 CHAIRPERSON MILLER: Others?

15 MEMBER ALBERTI: Well, just --

16 CHAIRPERSON MILLER: Mr. Alberti?

17 MEMBER ALBERTI: Yes. I just want to
18 make sure that everyone -- that my understanding
19 is the same as everyone else here on the Board,
20 and correct me if I'm wrong, and Mr. Bianco's
21 understanding. It's that really what you are
22 asking for, Mr. Bianco -- well, first of all, I

1 think it goes without saying if your client gets
2 a public hall license from DCRA or approval, it
3 goes without saying that we would recognize that.
4 If DCRA has issued it, we would recognize it.
5 That goes without saying.

6 But I think what you are really asking
7 us is to rule on those other two factors that you
8 referred to here and you are asking us to rule
9 that they don't weigh -- they don't rise to the
10 level of a Cease and Desist. Is that what --
11 really that's the essence of what you are asking
12 us today?

13 MR. BIANCO: Well, I think that's in
14 the spirit of what we are asking for, but I think
15 I could narrow it down even a little bit more.
16 We are not asking for summary adjudication of the
17 issue based on facts. We are asking for a
18 determination of legal sufficiency as a matter of
19 law.

20 The Board met. The Board issued
21 findings. The findings did include statutory
22 criteria. That is my argument. And it is

1 something that can be disposed of without
2 consideration of any facts. It's something that
3 can be disposed of simply as a matter of law and
4 statutory sufficiency.

5 MEMBER ALBERTI: Okay. Thank you.
6 Thank you for that, that's helpful. Thank you.

7 CHAIRPERSON MILLER: So I just want to
8 make sure I understand your argument on that.
9 The legal sufficiency is that those other grounds
10 for Cease and Desist don't meet the test for a
11 Cease and Desist with respect to irreparable harm
12 or immediacy. Not that they will still then
13 proceed through the process of going to OAG or
14 whatever for adjudication, but just that they
15 don't rise to the level to justify a Cease and
16 Desist in this case.

17 MR. BIANCO: I'm not even arguing that
18 the allegations themselves don't justify it. I'm
19 merely arguing that the Board's findings that you
20 already adopted don't meet the statutory criteria
21 for a Cease and Desist. So I'm not saying these
22 allegations are insufficient. I'm saying the

1 Board's Order and the Board's finding is
2 insufficient.

3 CHAIRPERSON MILLER: Why is that? Are
4 you saying it's because of the timing, because
5 some of the incidents have -- were old or what?

6 MR. BIANCO: No. I'm saying that
7 because D.C. Code 25-829 allows the Board to
8 issue a Cease and Desist if they make a finding
9 that the alleged violation, after investigation,
10 may cause immediate and irreparable harm to the
11 public. You made that finding. You made that
12 finding on the public hall allegation. You did
13 not make that finding on the other two.

14 The absence of a finding of immediate
15 and irreparable harm can't --

16 CHAIRPERSON MILLER: Oh, I see what
17 you are saying.

18 MR. BIANCO: -- form the basis of a
19 Cease and Desist, based on the statute. And if
20 you look to the third page -- I'm sorry, the
21 fourth page of my submission, the section of Code
22 is quoted with argument following with regard to

1 that. To the extent that --

2 CHAIRPERSON MILLER: I'm sorry, what
3 did you say?

4 MR. BIANCO: To the extent that the
5 Board is concerned that these matters will be
6 dealt with, they are in the pipeline. So it
7 doesn't really have anything to do with what we
8 are asking for, but they are out there and they
9 are being dealt with by the AG's office.

10 CHAIRPERSON MILLER: Okay. So your
11 argument with respect to those other two issues
12 or the issues related to the reports is that the
13 Board didn't set forth findings in its order to
14 meet the Cease and Desist statute?

15 MR. BIANCO: That's exactly it.

16 CHAIRPERSON MILLER: Okay. Other
17 questions?

18 MEMBER ALBERTI: Yes. So I want to go
19 back and maybe this is a little bit off base, but
20 the comment you made earlier which was well, this
21 licensee has been operating for quite some time
22 since these incidents occurred and so that shows

1 that there is no imminent harm. I'm sort of
2 paraphrasing what you said, but does that sort of
3 -- it's pretty much what your message was in that
4 comment?

5 MR. BIANCO: Yes.

6 MEMBER ALBERTI: Well, wouldn't you
7 agree that when the Board becomes -- at the time
8 -- that even though it has been operating, that
9 at the time the Board became aware of those, like
10 you became aware of that second report, that when
11 the Board becomes aware of it, it doesn't really
12 matter that well, you have been operating. It's
13 really the Board became aware of it and now, we
14 have to judge at that moment whether imminent
15 harm -- there is potential for imminent harm
16 based on the fact that we became knowledgeable of
17 that report.

18 MR. BIANCO: Well, I would --

19 MEMBER ALBERTI: Because I will tell
20 you we don't -- you know, back in December we
21 were not knowledgeable of that report. This
22 Board was not knowledgeable of that report.

1 MR. BIANCO: I would say a couple of
2 things. One, I have no idea when things come to
3 this Board's attention. It apparently came to
4 the Agency's attention through an Investigator in
5 December. After that happens, I don't know when
6 the Board becomes aware of it.

7 MEMBER ALBERTI: Right.

8 MR. BIANCO: I just don't.

9 MEMBER ALBERTI: Right.

10 MR. BIANCO: And I agree that the
11 Board can only act on what is in front of it.
12 However, when considering imminence, I think what
13 also has to be considered is the elapsed time
14 between the date of the infraction and the date
15 that it comes to the Board's attention and
16 whether or not anything occurred in that period
17 of time.

18 So if you are making a finding of
19 imminence, I think the operating history between
20 date of incident and consideration by the Board
21 is certainly relevant. And I think at least, and
22 perhaps this is my assumption, I assumed that the

1 Board considered it in that manner and part of
2 the decision was, okay, well, it has been a few
3 months since that happening, the sky hasn't
4 fallen, so this is not an imminent issue where
5 there is going to be irreparable harm to the
6 public.

7 And I think that's the -- if that was
8 the Board's reasoning for not making an immediate
9 and irreparable harm finding, I think that's
10 solid reasoning, is really my point.

11 MEMBER ALBERTI: Thank you for those
12 comments.

13 MR. BIANCO: Sure.

14 MEMBER ALBERTI: I can see why you
15 would agree with that, but I'm not sure that was
16 really our reasoning.

17 CHAIRPERSON MILLER: Since you are
18 here, I just want to ask you, you know, we had a
19 few things in our order other than that, such as
20 compliance with the security plan. One was the
21 adequate video attention and clickers and name
22 tags, etcetera.

1 MR. BIANCO: I can speak to that.

2 CHAIRPERSON MILLER: Okay.

3 MR. BIANCO: And the Cease and Desist
4 Order specifically ordered us to comply.

5 CHAIRPERSON MILLER: Right.

6 MR. BIANCO: And since the Cease and
7 Desist Order issued, we haven't been open, so in
8 response to the Board's --

9 CHAIRPERSON MILLER: True.

10 MR. BIANCO: -- Order to comply, our
11 response is yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. BIANCO: We will comply as soon as
14 they are open again and there will certainly be
15 compliance. If that's a condition of us opening,
16 then that's one that we are happy to agree with.
17 Once we are at that point where you -- we will
18 gladly --

19 CHAIRPERSON MILLER: Right. Same
20 category was crowds entering the street.

21 MR. BIANCO: Yes, same response.

22 CHAIRPERSON MILLER: Okay. Okay.

1 Other questions? Anything else?

2 MR. BIANCO: That's all we have.

3 CHAIRPERSON MILLER: Okay. So I think
4 that I would recommend that the Board give this
5 thought, take it under advisement. I know we are
6 cognizant of your Friday Court deadline. I don't
7 think that the Board is ready just to, you know,
8 give a decision right now from the Bench.

9 So that would be my recommendation
10 that we take this under advisement and, you know,
11 probably take a look at it today, you know, when
12 we have time and we're all here. Any
13 disagreement with that approach? Okay. Then I'm
14 going to have us take a vote though on
15 considering this in closed session.

16 As Chairperson of the Alcoholic
17 Beverage Control Board for the District of
18 Columbia and in accordance with Section 405 of
19 the Open Meetings Amendment Act of 2010, I move
20 that the ABC Board hold a closed meeting for the
21 purpose of seeking legal advice from our counsel
22 on Case No. 14-251-00308 and 15-251-00004 in the

1 context of the Cease and Desist Order and
2 considering respondent's response to the Board
3 Order No. 2015-102 and deliberating upon this
4 case for the reasons cited in Section 405(b)(13)
5 of the Open Meetings Amendment Act of 2010.

6 Is there a second?

7 MEMBER SHORT: Second.

8 CHAIRPERSON MILLER: Mr. Short has
9 seconded the motion. I'll now take a roll call
10 vote on the motion before us now that it has been
11 seconded.

12 Mr. Brooks?

13 MEMBER BROOKS: I agree.

14 CHAIRPERSON MILLER: Mr. Alberti?

15 MEMBER ALBERTI: I agree.

16 CHAIRPERSON MILLER: Mr. Rodriguez?

17 MEMBER RODRIGUEZ: I agree.

18 CHAIRPERSON MILLER: Ms. Miller

19 agrees.

20 Mr. Silverstein?

21 MEMBER SILVERSTEIN: I agree.

22 CHAIRPERSON MILLER: Mr. Short?

1 MEMBER SHORT: I agree.

2 CHAIRPERSON MILLER: Okay. It appears
3 that the motion has passed by a 6-0-0 vote.

4 I hereby give notice that the ABC
5 Board will hold this aforementioned closed
6 meeting in the ABC Board conference room pursuant
7 to the Open Meetings Act of 2010 and we will get
8 back to you as soon as possible.

9 MR. BIANCO: Thank you so much.

10 CHAIRPERSON MILLER: Okay.

11 MR. BIANCO: I really appreciate the
12 Board hearing us today. Thank you.

13 CHAIRPERSON MILLER: All right. Thank
14 you. Okay. Our next hearing is at 1:30, so the
15 Board will now recess.

16 (Whereupon, the Cease and Desist
17 Hearing in the above-entitled matter was
18 concluded at 12:11 p.m.)

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21

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A

a.m 2:2
ABC 6:2,4 11:14,14
 24:20 26:4,6
above-entitled 26:17
absence 18:14
accomplish 7:7
act 11:7 21:11 24:19
 25:5 26:7
action 5:19 6:22 7:9
 11:3
actions 8:5
active 4:19
activities 14:4
address 8:13 12:17
 14:5
addressed 4:5
adequate 22:21
adjudicated 8:3
adjudication 11:12
 16:16 17:14
administrative 7:2 11:7
 11:18,19
adopted 17:20
advice 24:21
advisement 24:5,10
mentioned 26:5
AG's 13:18 19:9
Agency 8:4 11:7
Agency's 21:4
ago 4:9 9:17
agree 11:14 13:20 20:7
 21:10 22:15 23:16
 25:13,15,17,21 26:1
agreement 5:16
agrees 25:19
Alberti 1:18 15:15,16
 15:17 17:5 19:18 20:6
 20:19 21:7,9 22:11,14
 25:14,15
Alcoholic 1:2,13,14 4:5
 24:16
Aldo 2:19
allegation 18:12
allegations 17:18,22
alleged 18:9
allegedly 14:14
allow 6:22
allows 18:7
Amendment 24:19 25:5
ANC-6C 1:7 2:6
apparently 21:3
appears 26:2
appreciate 26:11
approach 24:13
appropriate 10:6 13:14
 13:22
approval 16:2

April 5:13
argue 3:5
arguing 17:17,19
argument 3:3,15,21
 4:13 8:18 16:22 17:8
 18:22 19:11
asking 4:18 5:3 6:7,13
 6:21 8:6 10:18 12:1,7
 15:22 16:6,8,11,14,16
 16:17 19:8
assumed 21:22
assumption 21:22
attack 8:19
attention 21:3,4,15
 22:21
attorney 4:10
available 3:17
aware 20:9,10,11,13
 21:6

B

back 12:9,13 19:19
 20:20 26:8
base 19:19
based 3:14 7:17 10:4
 16:17 18:19 20:16
basic 14:19
basically 10:20
basis 8:20 13:12,22
 18:18
BBL 15:4
Bench 24:8
Beverage 1:2,13,14 4:6
 24:17
Bianco 2:11,13,18,22
 3:8,11,19 4:8,15,17
 8:11,17 10:14 11:4
 13:2 14:8 15:1,13,22
 16:13 17:17 18:6,18
 19:4,15 20:5,18 21:1
 21:8,10 22:13 23:1,3
 23:6,10,13,21 24:2
 26:9,11
Bianco's 15:20
bit 16:15 19:19
Board 1:2,11,13 2:8,12
 3:11,14,19 4:3,6 5:6
 5:18 6:2,4,19,21 7:7
 7:17,17 8:7,19,22 9:3
 10:3,8 11:3,10,14,14
 12:1,10 13:6,10,17
 15:19 16:20,20 18:7
 19:5,13 20:7,9,11,13
 20:22 21:6,11,20 22:1
 24:4,7,17,20 25:2
 26:5,6,12,15
Board's 4:9 13:20 17:19
 18:1,1 21:3,15 22:8

23:8
breach 5:12,16,19 6:16
 6:19 11:1
briefly 4:5 8:13
Brooks 1:18 25:12,13
Building 1:14
business 13:20 14:19

C

call 2:4 25:9
case 1:8,9 2:4 6:1 7:6,6
 10:12 11:5 17:16
 24:22 25:4
categories 15:10
category 23:20
cause 18:10
Cease 1:6 2:9 4:19,19
 5:2,5,18 6:8,11 8:8,14
 9:4 10:4,10 11:15
 12:5,6,15,18 13:12,14
 13:22 14:16 16:10
 17:10,11,15,21 18:8
 18:19 19:14 23:3,6
 25:1 26:16
certainly 11:21 12:10
 21:21 23:14
Chair 2:11
Chairperson 1:15,17
 2:3,16,21 3:10,18,22
 4:11,16 8:10,16 10:13
 10:15 12:16 14:3,17
 15:12,14,16 17:7 18:3
 18:16 19:2,10,16
 22:17 23:2,5,9,12,19
 23:22 24:3,16 25:8,14
 25:16,18,22 26:2,10
 26:13
chance 4:4
cited 8:15 9:13 14:9
 25:4
claim 11:17
clear 4:18 6:16
clearly 9:20
clickers 22:21
client 3:12 5:9,13 7:10
 7:11 9:18 16:1
client's 4:20 7:8 8:5
 12:3
closed 24:15,20 26:5
CN 1:7
Code 18:7,21
cognizant 24:6
Columbia 1:1 24:18
come 11:8,13 12:8 21:2
comes 21:15
coming 13:16
comment 19:20 20:4
comments 22:12

complaint 11:16
completely 7:16
compliance 22:20
 23:15
comply 23:4,10,13
concerned 19:5
concluded 26:18
condition 12:4 23:15
conditions 12:4
conference 26:6
confident 6:14
consider 6:15 10:4
consideration 13:13
 17:2 21:20
considered 21:13 22:1
considering 21:12
 24:15 25:2
constitute 9:16
contain 13:9
contends 7:12
contention 6:4
context 25:1
continuing 9:21
continuously 9:19
contract 5:12,13,19
 6:16,19
Control 1:2,13,14 4:6
 24:17
copy 4:7,9
correct 7:11 15:20
counsel 3:21 24:21
counseled 13:6
couple 21:1
course 13:20
Court 5:20 6:20 7:1,5
 10:11,17,20,21 11:8
 11:16,20 12:9,11 15:3
 15:8 24:6
criteria 16:22 17:20
crowds 23:20
currently 5:20

D

D.C 1:15 5:20 7:4 10:11
 18:7
date 21:14,14,20
dated 4:2
day 6:22
DCRA 4:7 5:7,8,13,14
 5:16 7:7,8,9,12,20,21
 11:1 16:2,4
DCRA's 5:12 6:2,16,18
deadline 24:6
dealt 13:19 19:6,9
December 14:14 20:20
 21:5
decision 5:6 10:19,22
 22:2 24:8

deficiency 14:1
deliberating 25:3
demonstrated 10:1
Desist 1:7 2:9 4:19,20
 5:2,5,18 6:8,11 8:8,14
 9:5 10:4,10 11:15
 12:6,6,15,18 13:12,15
 13:22 14:16 16:10
 17:10,11,16,21 18:8
 18:19 19:14 23:3,7
 25:1 26:16
determination 16:18
dias 4:2
difficult 9:15
dirty 7:21
disagreement 24:13
disposed 17:1,3
dispositive 11:22
District 1:1 24:17
document 4:2
DONALD 1:18

E

earlier 19:20
elapsed 21:13
endorsement 15:5,10
endorsements 15:1
ends 7:8
entered 5:13
entering 23:20
entertainment 14:20
 15:5
entitled 11:12
essence 16:11
essentially 6:20
etcetera 22:22
event 10:21
evidence 3:17 7:17,19
 8:2
exactly 19:15
example 11:9
exhausting 11:19
exhaustion 11:18
extent 10:3 19:1,4

F

face 13:8
fact 12:8 14:22 20:16
factors 16:7
facts 16:17 17:2
fairly 8:3
fallen 22:4
faster 3:16
fault 6:2
file 7:22
filed 7:22
finding 6:9 9:15 10:19
 12:12,22 18:1,8,11,12

18:13,14 21:18 22:9
findings 9:1,4,5,7,11
 12:1 13:3,9,11 14:22
 16:21,21 17:19 19:13
first 3:1 4:17 14:15
 15:22
five 9:14,17
following 12:9 18:22
form 13:12,22 18:18
forth 12:4,5 19:13
forthcoming 7:16
four 9:14,22 14:10
fourth 18:21
Friday 4:21 5:21 10:17
 10:21 15:8 24:6
front 12:13 21:11

G

give 10:12 24:4,8 26:4
given 4:8
glad 3:14
gladly 23:18
go 3:16 10:20 14:21
 15:13 19:18
goes 16:1,3,5
going 3:5 4:12 10:11,17
 15:6,8 17:13 22:5
 24:14
good 2:10,11 9:10
Government 6:1 11:4,6
grant 3:20
grounds 8:15,18,21
 17:9

H

hall 5:9,11,15 6:6,10,17
 7:14 8:7 9:6 10:8,9
 11:2 12:5,14 14:21
 15:9 16:2 18:12
happen 5:7
happened 9:17
happening 22:3
happens 21:5
happy 23:16
harm 9:1,6,8,12,16,21
 10:2 13:5,11 14:2
 17:11 18:10,15 20:1
 20:15,15 22:5,9
heard 10:12 11:20
 14:15
hearing 1:7,10,14 2:7
 2:12,22 3:4,12 5:21
 8:2 12:9 13:17 26:12
 26:14,17
HECTOR 1:19
heels 14:15
help 10:20 11:21
helpful 17:6

history 21:19
hold 24:20 26:5
honest 7:16
hope 15:7

I

Ibiza 1:6,6 2:5,20
idea 21:2
immediacy 17:12
immediate 9:2,5,8,12
 9:16,20 10:1 13:5,11
 18:10,14 22:8
immediateness 14:1
imminence 21:12,19
imminent 20:1,14,15
 22:4
incident 9:19 21:20
incidents 9:13 18:5
 19:22
include 16:21
incomplete 7:19
infraction 21:14
injunction 5:21
Inspector's 14:11
insufficient 13:3 17:22
 18:2
interested 3:12
interim 14:9
intervening 14:10
investigation 18:9
Investigator 21:4
irreparability 14:2
irreparable 9:2,6,8,12
 9:21 10:2 13:5,11
 17:11 18:10,15 22:5,9
issue 5:14 6:6,17,18 8:4
 8:11 9:4,6 11:22 13:6
 14:13 15:2 16:17 18:8
 22:4
issued 5:17,18 8:15
 12:15 16:4,20 23:7
issues 6:11 8:8 10:5,9,9
 12:17 13:14 14:7 15:7
 19:11,12
issuing 11:2

J

JAMES 1:20
judge 5:22 6:15 10:22
 20:14
justify 17:15,18

K

know 3:16 4:3 8:12 13:5
 20:20 21:5 22:18 24:5
 24:7,10,11
knowledgeable 20:16
 20:21,22

L

lack 6:5
law 13:4,21 16:19 17:3
legal 7:4 8:18 16:18
 17:9 24:21
level 16:10 17:15
license 1:8 2:6 5:10,11
 5:15,17 6:6,10,17 8:8
 10:9 11:2 12:5 14:20
 14:21 15:9,9 16:2
licensee 2:14 19:21
licensee's 2:15
licenses 14:18
licensure 15:2
lift 5:2,5 6:8 11:15 12:7
 12:15,18
lifted 6:12 8:9 10:10
little 2:17 16:15 19:19
LLC 1:6
located 2:5
longer 14:5
look 18:20 24:11
looked 4:5
louder 2:17

M

Madam 2:11
main 15:9
major 8:13
making 21:18 22:8
managing 2:19
manner 22:1
March 1:12 4:2
matter 1:5 12:20 13:4
 13:21 16:18 17:3
 20:12 26:17
matters 12:10 19:5
meet 12:19 17:10,20
 19:14
meeting 1:3 24:20 26:6
Meetings 24:19 25:5
 26:7
member 1:18,18,19,19
 1:20 2:20 15:15,17
 17:5 19:18 20:6,19
 21:7,9 22:11,14 25:7
 25:13,15,17,21 26:1
Members 2:12
mention 13:4
merely 6:9 12:3 17:19
message 20:3
met 1:14 12:6 16:20
mike 1:19 2:17
Miller 1:15,17 2:3,16,21
 3:10,18,22 4:11,16
 8:10,16 10:13,15
 12:16 14:3,17 15:12
 15:14,16 17:7 18:3,16

19:2,10,16 22:17 23:2
23:5,9,12,19,22 24:3
25:8,14,16,18,22
26:2,10,13
moment 20:14
moments 4:9
month 13:17
months 9:13,14,17,22
14:10 22:3
morning 2:10,11
motion 3:5 25:9,10 26:3
Motley 5:22 6:15
move 24:19

N

N.E 2:5
N.W 1:14
name 2:13 22:21
narrow 16:15
NE 1:7
necessarily 12:19
necessary 15:6,11
need 3:13,17
needed 7:22
new 14:12,13
NICK 1:18
night 4:22 14:12
note 4:1
notice 26:4

O

OAG 17:13
obviously 8:20
occur 9:1
occurred 19:22 21:16
office 13:18 19:9
oh 12:20 18:16
okay 2:3,21 3:10,18
4:11,16 10:13 12:14
12:19 13:15 14:17
15:12 17:5 19:10,16
22:2 23:2,12,22,22
24:3,13 26:2,10,14
old 9:13,14 18:5
omission 9:10
once 6:10,15 8:7 10:8,9
10:12 12:3,4,19 23:17
open 23:7,14 24:19
25:5 26:7
opening 23:15
operating 5:9,11 9:18
19:21 20:8,12 21:19
operations 4:21 7:9
9:22 12:3
opportunity 6:15 8:1
10:12
order 1:11 2:8,9 4:20
5:2,5,18 6:8,9,11,17

8:7,14 9:4,7 10:8 13:1
13:3,9,13,15 14:16
18:1 19:13 22:19 23:4
23:7,10 25:1,3
ordered 23:4
ordinary 13:19
outlined 8:12
outstanding 13:14
overrule 5:6

P

P-R-O-C-E-E-D-I-N-G-S
2:1
p.m 26:18
page 18:20,21
paraphrasing 20:2
Parker 4:6
part 15:2 22:1
particular 13:6
passed 26:3
pending 15:3
period 21:16
petitioned 13:18
pipeline 13:15 19:6
place 14:5
plan 3:6 22:20
planned 4:13
please 12:15
point 8:13 22:10 23:17
position 5:8,10 11:5,6
11:11
positions 5:22
possible 26:8
potential 20:15
preemptively 12:12
prefer 3:8
preliminary 5:21
PRESENT 1:16
presiding 1:15
pretty 20:3
previous 15:4
probably 24:11
problem 7:8,21
problems 8:21 11:18
proceed 3:2,5 4:12
17:13
process 17:13
provide 3:17 8:2
provided 8:17 14:11
public 5:9,11,14 6:5,10
6:17 7:14 8:7 9:2,6
10:8,9 11:2 12:5,14
14:21 15:8 16:2 18:11
18:12 22:6
purpose 24:21
pursuant 26:6
pursue 7:1
pursuing 7:4

purview 7:10
put 3:6

Q

questions 10:16 19:17
24:1
quite 19:21
quoted 13:8 18:22

R

read 4:4
ready 2:4 4:14 24:7
really 6:7 9:10 10:19
12:7 15:21 16:6,11
19:7 20:11,13 22:10
22:16 26:11
reason 5:3,10,17 6:4,13
9:10
reasoning 22:8,10,16
reasons 7:3 10:18 25:4
receive 3:3
received 3:15
recess 26:15
recognize 16:3,4
recommend 24:4
recommendation 24:9
record 4:1
Reeves 1:14
referred 16:8
regard 18:22
reinstated 15:7
related 19:12
relevant 21:21
relief 3:20 6:14
remedies 7:2,4 11:20
remedy 11:18
report 14:11 20:10,17
20:21,22
reports 14:5 19:12
represent 2:14
representation 4:14
14:4
representations 3:9
representative 2:15
request 1:10 3:1 10:7
requested 2:7
requesting 3:20
require 5:5
required 7:1 9:3 15:1
requirement 12:20 13:7
requirements 12:21,22
requiring 5:14
respect 11:1 14:6 17:11
19:11
respectively 9:14
respondent 2:8
respondent's 1:10 25:2
response 1:10 2:8 3:1

23:8,11,21 25:2
Retailer 1:7
Richard 2:13
right 3:22 4:11 10:15,16
13:1 21:7,9 23:5,19
24:8 26:13
rightfulness 12:2
rise 16:9 17:15
Rodriguez 1:19 25:16
25:17
roll 25:9
room 1:14 26:6
rule 16:7,8
ruled 7:17
Ruthanne 1:15,17

S

saying 11:13 12:14
16:1,3,5 17:21,22
18:4,6,17
scheduled 2:22
second 20:10 25:6,7
seconded 25:9,11
section 18:21 24:18
25:4
security 22:20
see 7:6 18:16 22:14
seeking 24:21
served 4:21
services 14:20
session 24:15
set 12:4,5 19:13
shame 7:20
Short 1:20 25:7,8,22
26:1
shows 19:22
shut 6:3,5 7:11,15
Silverstein 1:19 25:20
25:21
similar 9:19
simplifies 12:10
simply 8:7 15:6 17:3
situation 12:13
sky 22:3
solid 22:10
soon 23:13 26:8
sorry 18:20 19:2
sort 20:1,2
speak 2:16 23:1
specific 6:14
specifically 8:14,22
23:4
spirit 16:14
stated 3:1
Status 13:16
statute 13:7 18:19
19:14
statutorily 9:3

statutory 7:10 13:7
 16:21 17:4,20
stipulation 6:10 12:11
stopped 4:20
street 1:7,14 2:5 23:20
submission 13:8 18:21
sufficiency 16:18 17:4
 17:9
suggest 4:12
Suite 1:15
summary 3:3,15 8:20
 16:16
Superclub 1:6
Superior 5:20 6:20 7:5
 10:11 11:16 12:11
 15:3
sure 3:4 4:15 15:18
 17:8 22:13,15
swear 3:13

T

t/a 1:6
tags 22:22
take 6:21 24:5,10,11,14
 25:9
taken 6:1 7:9 11:5,6
takes 5:8
tell 20:19
test 17:10
testify 3:13
testimony 3:6
Thank 2:12 4:15 10:15
 17:5,6,6 22:11 26:9
 26:12,13
things 21:2,2 22:19
think 3:15,19 5:4,4,7
 8:18,20 9:9,10 10:5
 10:11 11:8,9 12:8
 13:2,13 16:1,6,13,14
 21:12,19,21 22:7,9
 24:3,7
third 18:20
thoroughly 4:4
thought 24:5
Thursday 4:22 14:12
time 7:18,19 10:19
 19:21 20:7,9 21:13,17
 24:12
timing 18:4
today 2:13 5:1,3 6:9 7:3
 8:6 16:12 24:11 26:12
tool 7:7 11:10
treated 8:3
true 11:9 23:9
Truong 2:19,19
trying 8:19
two 8:15 9:8 10:5 16:7
 18:13 19:11

U

understand 17:8
understanding 15:18
 15:21
upholding 10:4

V

video 22:21
Vincent 4:6
violation 18:9
violations 14:6
vote 24:14 25:10 26:3

W

want 3:2,2 4:1 7:1 15:17
 17:7 19:18 22:18
Washington 1:15
way 11:22
we're 2:3 24:12
Wednesday 12:14
weigh 16:9
work 7:21
wouldn't 12:16 20:6
writing 3:4
wrong 15:20
wrongfulness 12:2

X

Y

Z

0

00004 2:5

1

1:30 26:14
102 2:9
11:46 2:2
12:11 26:18
1221 2:5
1222 1:7
14-251-00308 1:8 2:4
 24:22
14th 1:14
15-251 2:4
15-251-00004 1:9 24:22
1st 1:7 2:5

2

2000 1:14
20009 1:15
2010 24:19 25:5 26:7
2014 5:14
2015 1:12 2:8 4:2
2015-102 1:11 25:3

25 1:12 4:2
25-829 18:7

3

4

400S 1:15
405 24:18
405(b)(13) 25:4

5

5 14:22

6

6-0-0 26:3

7

74456 1:8 2:6