

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Government. 4
 Closing Statement by Government.18
 Closing Statement by Licensee.19

WITNESS	DIRECT CROSS REDIRECT RECROSS
Monica Clark	6
James Eckels	15

EXHIBITS

GOVERNMENT	IDENTIFIED	RECEIVED
1 - Quarterly Filing Receipt	8	12

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

2 12:05 p.m.

3 CHAIRPERSON MILLER: We can go back to
4 our hearing schedule. The next item on the
5 hearing schedule is Case No. 14-AUD-00061,
6 Lindy's Bon Appetit located at 2040 I Street,
7 N.W., License No. 23533 in ANC-2A. Good
8 afternoon.

9 MR. ECKELS: Good afternoon.

10 CHAIRPERSON MILLER: Could you
11 identify yourself for the record?

12 MR. ECKELS: James Eckels, E-C-K-E-L-
13 S. I'm the owner of Lindy's Bon Appetit.

14 CHAIRPERSON MILLER: All right.

15 MS. GEPHARDT: Chrissy Gephardt here
16 on behalf of the Office of the Attorney General.

17 CHAIRPERSON MILLER: Okay. Does
18 anybody need any reminders about how the
19 proceeding goes?

20 MR. ECKELS: No, I'm familiar.

21 CHAIRPERSON MILLER: You have been
22 here before. Okay. All right. Are you ready to

1 proceed then?

2 MS. GEPHARDT: Yes. We are ready to
3 proceed.

4 CHAIRPERSON MILLER: Do you have any
5 preliminary matters?

6 MS. GEPHARDT: I'm sorry?

7 CHAIRPERSON MILLER: Do you have any
8 preliminary matters?

9 MS. GEPHARDT: Oh, no, there are no
10 preliminary matters.

11 CHAIRPERSON MILLER: Okay.

12 MS. GEPHARDT: We are prepared to
13 proceed to a hearing.

14 CHAIRPERSON MILLER: Okay.

15 MS. GEPHARDT: Okay. So Board
16 Members, this is a pretty straightforward case.
17 It is about failing to file with the Board the
18 required quarterly statement for the 1st quarter
19 of 2014 by the deadline of April 1, 2014.

20 You will hear from Monica Clark,
21 ABRA's Compliance Analyst regarding the
22 licensee's first quarter statement. She will

1 state that as of April 1st the statement had not
2 been filed. And in fact was received late on
3 June 30, 2014.

4 I would now like to call my witness.

5 CHAIRPERSON MILLER: Wait if he has an
6 opening statement.

7 MS. GEPHARDT: Oh, I'm sorry.

8 CHAIRPERSON MILLER: That's all right.
9 You can either make one now or later.

10 MR. ECKELS: I'm fine.

11 CHAIRPERSON MILLER: You're fine.

12 MR. ECKELS: I'll listen.

13 CHAIRPERSON MILLER: Okay. Okay.
14 That's fine.

15 MS. GEPHARDT: Okay.

16 CHAIRPERSON MILLER: Okay.

17 MS. GEPHARDT: I would now like to
18 call Monica Clark to the stand.

19 CHAIRPERSON MILLER: Okay. Good
20 afternoon.

21 MS. CLARK: Good afternoon.

22 Whereupon

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MONICA CLARK

was called as a witness by Counsel for the Government, and having been first duly sworn, assumed the witness stand and was examined and testified as follows:

MS. CLARK: I do.

CHAIRPERSON MILLER: Okay.

DIRECT EXAMINATION

MS. GEPHARDT: All right. Good afternoon, Ms. Clark. Can you just, please, spell your name for the record?

MS. CLARK: It's Monica Clark. M-O-N-I-C-A C-L-A-R-K.

MS. GEPHARDT: Okay. And where do you work?

MS. CLARK: For the Alcoholic Beverage Regulation Administration.

MS. GEPHARDT: And what is your title?

MS. CLARK: Compliance Analyst.

MS. GEPHARDT: And what are the responsibilities of a Compliance Analyst? What kind of work do you do?

1 MS. CLARK: Well, I receive, review
2 and record quarterly statements received from
3 licensees for ABRA.

4 MS. GEPHARDT: Okay. And how long
5 have you been in this position?

6 MS. CLARK: For about three years.

7 MS. GEPHARDT: Okay. Are you familiar
8 with a licensee by the name of Lindy's Bon
9 Appetit?

10 MS. CLARK: Yes, I am.

11 MS. GEPHARDT: I want to draw your
12 attention to the quarterly statement filing
13 period for the first quarter of 2014. Do you
14 know what date those filings are due?

15 MS. CLARK: Yes. Those -- that's for
16 the period of January through March, so that
17 would be due by the end of April. The 30th.

18 MS. GEPHARDT: April. Oh, April the
19 30th. Okay. I had it incorrect. I apologize.
20 April 30th. Thank you. So your testimony is that
21 no they did not file by April 30th?

22 MS. CLARK: No, it had not been filed

1 by April 30th.

2 MS. GEPHARDT: Okay. And how do you
3 know that?

4 MS. CLARK: Well, I review the files
5 of received quarterly statements and the one from
6 Lindy's Bon Appetit had not -- was not amongst
7 those.

8 MS. GEPHARDT: Okay. I would like to
9 show the witness -- well, first of all, I would
10 like to show Mr. Eckels the Exhibit No. 1 for the
11 Government. And now I would like to show Ms.
12 Clark Exhibit No. 1.

13 Ms. Clark, can you explain what
14 Exhibit No. 1 is?

15 MS. CLARK: This is a printout of the
16 quarterly statement that was received on June 30th
17 from Lindy's Bon Appetit.

18 (Whereupon, the above-referred to
19 document was marked as Government
20 Exhibit No. 1 for identification.)

21 MS. GEPHARDT: And how was the
22 quarterly statement submitted in this case?

1 MS. CLARK: In this particular case,
2 it was submitted on-line using our quick pay
3 system.

4 MS. GEPHARDT: Okay. And what is the
5 quick pay system?

6 MS. CLARK: It is a method that is
7 connected to our website that allows a licensee
8 to submit their quarterly statement directly to
9 this Agency.

10 MS. GEPHARDT: And so in this case,
11 did this licensee submit their first quarter --
12 2014 quarterly statement via this system?

13 MS. CLARK: Yes, they did.

14 MS. GEPHARDT: And can you tell us
15 what date they submitted that statement?

16 MS. CLARK: This statement was
17 submitted on Monday, June 30, 2014.

18 MS. GEPHARDT: Okay. And is this an
19 accurate, true and accurate representation of the
20 printout of what you would find when you printout
21 the submission of a quarterly statement?

22 MS. CLARK: Yes, this is an exact

1 replica.

2 MS. GEPHARDT: Okay. The Government
3 asks that Government Exhibit No. 1 be admitted
4 into evidence.

5 CHAIRPERSON MILLER: Do you have any
6 objection?

7 MR. ECKELS: No.

8 CHAIRPERSON MILLER: Okay. Do you
9 have something to give to us?

10 MS. GEPHARDT: I'm sorry?

11 CHAIRPERSON MILLER: Do you have the
12 exhibit to give to us?

13 MS. GEPHARDT: Oh.

14 MR. ECKELS: I have Exhibit 1.

15 MS. GEPHARDT: I'm sorry. I just
16 assumed the Board just knows these things. Just
17 kidding.

18 CHAIRPERSON MILLER: It's not like the
19 case reports we have, but we don't have that.

20 MS. GEPHARDT: I know. You're right.

21 CHAIRPERSON MILLER: Okay.

22 MS. GEPHARDT: You're right. My

1 apologies.

2 MEMBER RODRIGUEZ: Thank you.

3 CHAIRPERSON MILLER: Thank you.

4 MS. GEPHARDT: Yes.

5 CHAIRPERSON MILLER: Okay. Oh, did
6 you finish?

7 MS. GEPHARDT: Oh, I just have one
8 final question.

9 CHAIRPERSON MILLER: Oh, okay. Sorry.

10 MS. GEPHARDT: Do you know, does this
11 licensee typically submit their quarterly
12 statements electronically?

13 MS. CLARK: Yes.

14 MS. GEPHARDT: Okay. That's all I
15 have for this witness. Thank you.

16 CHAIRPERSON MILLER: Okay. Sure. Do
17 you have any questions of the witness?

18 MR. ECKELS: No.

19 CHAIRPERSON MILLER: Okay. Does the
20 Board have any questions for the witness? No.
21 Thank you very much.

22 MS. CLARK: Thank you.

1 MR. ECKELS: Thank you.

2 MS. GEPHARDT: Thanks.

3 (Whereupon, the witness was excused.)

4 CHAIRPERSON MILLER: Ms. Gephardt?

5 MS. GEPHARDT: Yes. I just --

6 CHAIRPERSON MILLER: Did you ask that
7 this be admitted as Exhibit 1?

8 MS. GEPHARDT: Oh, I think I did ask,
9 but, yes.

10 CHAIRPERSON MILLER: Okay. I don't
11 think that I admitted it yet.

12 MS. GEPHARDT: Oh, okay.

13 CHAIRPERSON MILLER: I don't know.

14 MS. GEPHARDT: The Government requests
15 that this Exhibit No. 1 be admitted into
16 evidence.

17 CHAIRPERSON MILLER: Okay. And there
18 was no objection. I did you did, right. Okay.
19 I just wanted to make sure. Okay. So this
20 statement is admitted as Exhibit No. 1.

21 (Whereupon, the above-referred to
22 document marked as Government Exhibit

1 No. 1 was received into evidence.)

2 CHAIRPERSON MILLER: Did you call it
3 something in general?

4 MS. GEPHARDT: Did I what?

5 CHAIRPERSON MILLER: What is this
6 called?

7 MS. GEPHARDT: This is a quarterly
8 filing receipt for Lindy's Bon Appetit for the
9 first quarter of 2014 showing the date that it
10 was submitted, which is June 30, 2014.

11 CHAIRPERSON MILLER: Okay. Good.
12 Okay.

13 MS. GEPHARDT: Okay.

14 CHAIRPERSON MILLER: Are you finished?

15 MS. GEPHARDT: Yes, I'm finished.

16 Basically, just to finish, wrap it up here, the
17 Government --

18 CHAIRPERSON MILLER: We didn't have
19 Board -- oh, yes, we did. I'm sorry.

20 MS. GEPHARDT: Oh, do you have Board
21 questions?

22 CHAIRPERSON MILLER: No. So you are

1 finished with your case?

2 MS. GEPHARDT: Oh, that's right.

3 CHAIRPERSON MILLER: Except for
4 closing. He hasn't done his case yet.

5 MS. GEPHARDT: Right.

6 CHAIRPERSON MILLER: Right.

7 MS. GEPHARDT: Yes, go ahead. Sorry.

8 CHAIRPERSON MILLER: There were no
9 Board questions. We excused the witness. You
10 have no other witnesses, right?

11 MS. GEPHARDT: No, I do not.

12 CHAIRPERSON MILLER: Okay. Right.
13 Okay. All right. Do you want to testify or do
14 you --

15 MR. ECKELS: No. It was just an
16 oversight.

17 CHAIRPERSON MILLER: But do you want
18 to -- well, I can put you under oath if you --

19 MR. ECKELS: Put me under oath?

20 CHAIRPERSON MILLER: Yes, you can stay
21 there if you don't have much to say.

22 MR. ECKELS: Okay. There is nothing

1 to say really.

2 Whereupon,

3 JAMES ECKELS

4 was called as a witness for the Licensee, and
5 having been first duly sworn, assumed the witness
6 stand and was examined and testified as follows:

7 MR. ECKELS: I do.

8 CHAIRPERSON MILLER: Okay.

9 DIRECT EXAMINATION

10 MR. ECKELS: Like I said, it was just
11 an oversight and one of the ABRA Officers came in
12 probably, you know, mid-May or so and said, you
13 know, you didn't file this report and, you know,
14 I'm checking records. I checked it again like,
15 you know, I thought I had, but I hadn't. And
16 there was a lot of stuff going on with the
17 business at that time. My landlord had just
18 passed away and they were selling --

19 MEMBER SILVERSTEIN: I'm sorry?

20 MR. ECKELS: -- the building. I'm
21 sorry?

22 MEMBER SILVERSTEIN: What did you just

1 say?

2 MR. ECKELS: I said my landlord he
3 just passed away and they were selling my
4 building and, you know, trying to get me out of
5 there, but I stayed. You know, but I had a lot
6 of stuff, you know, on the table. It was just an
7 oversight.

8 CHAIRPERSON MILLER: Okay. Does
9 anybody have any questions? Okay. So then you
10 don't have anything you want to put into evidence
11 or anything like that?

12 MR. ECKELS: No, I have nothing to
13 say. You know, I'm guilty.

14 CHAIRPERSON MILLER: You know, I'm
15 going to ask you a question then.

16 MR. ECKELS: Sure.

17 CHAIRPERSON MILLER: You were given an
18 opportunity that you wouldn't have to have had a
19 hearing and so people usually come in for a
20 hearing because they want to produce evidence or
21 argue the case.

22 MR. ECKELS: We came in for that and

1 then you, you know, postponed it and brought us
2 back. We were here like a couple of weeks ago.

3 CHAIRPERSON MILLER: For the status.
4 You were here for status?

5 MR. ECKELS: No. It was for this.

6 CHAIRPERSON MILLER: Oh, for this?

7 MR. ECKELS: And then Mr. Alberti had
8 some objections of some sort and, you know,
9 everything was rescheduled for today.

10 CHAIRPERSON MILLER: Oh, okay. Okay.

11 MR. ECKELS: If you would recall, you
12 know, it was the date we had like a --

13 CHAIRPERSON MILLER: Okay.

14 MR. ECKELS: -- bar crawl guy was
15 here.

16 CHAIRPERSON MILLER: Okay.

17 MR. ECKELS: I don't know if you
18 recall that date or not.

19 CHAIRPERSON MILLER: Okay. All right.
20 I was just curious.

21 MR. ECKELS: Yes.

22 CHAIRPERSON MILLER: Because you don't

1 want to produce any evidence and you say you are
2 guilty and so okay.

3 MR. ECKELS: You know, it says right
4 here on June 30th. It wasn't April 30th.

5 CHAIRPERSON MILLER: Okay.

6 MR. ECKELS: I know she has April 1st,
7 but, you know.

8 CHAIRPERSON MILLER: All right. Then
9 so that's it. Okay. Ms. Gephardt, did you want
10 to do a closing?

11 MS. GEPHARDT: Yes, just briefly.

12 CHAIRPERSON MILLER: Okay.

13 MS. GEPHARDT: The Government has
14 shown through the testimony of Ms. Monica Clark
15 that this licensee's quarterly report for the
16 first quarter of 2014 was not received by April
17 30th, but rather it was received on June 30th,
18 almost three months late. Two months, excuse me,
19 two months late.

20 Based on this evidence, the Government
21 requests that the Board fine this licensee \$3,000
22 for this violation.

1 MR. ECKELS: I do object to that.

2 Last time it was \$2,000.

3 CHAIRPERSON MILLER: Okay. So are you
4 finished with your closing?

5 MS. GEPHARDT: Yes.

6 CHAIRPERSON MILLER: Okay. So you can
7 now argue, yes, the penalty.

8 MR. ECKELS: Yes. Well, the penalty,
9 I think is absurd, but, you know, when I was here
10 two weeks ago, it was \$2,000 and now, you know,
11 this time it's, you know, \$3,000.

12 CHAIRPERSON MILLER: Okay.

13 MR. ECKELS: And \$1,000 a month is
14 fine, but --

15 MEMBER SHORT: Madam Chair, I just
16 have one question.

17 CHAIRPERSON MILLER: Yes. All right.

18 MEMBER SHORT: I'm just looking at
19 your history. It looks like you have a little
20 problem with bookkeeping over the years.

21 MR. ECKELS: I'm getting better.

22 MEMBER SHORT: Then why are we here

1 today?

2 MR. ECKELS: Well, this was a year
3 ago.

4 MEMBER SHORT: I understand.

5 MR. ECKELS: Yes.

6 MEMBER SHORT: But I'm saying before
7 last year, a year ago, you had some problems
8 years prior to that.

9 MR. ECKELS: Right.

10 MEMBER SHORT: Is there -- do you have
11 a CPA? Do you have a person that does your
12 books?

13 MR. ECKELS: I have Liberty Tax, yes.
14 They take care of my bookworking like that.

15 MEMBER SHORT: Okay. So if are not
16 keeping the appropriate records, are you paying
17 the appropriate amount of taxes to the city?

18 MR. ECKELS: Yes.

19 MEMBER SHORT: How do we know?

20 MR. ECKELS: I guess you have to take
21 my word for it or just check the records.

22 MEMBER SHORT: Oh, okay. So this

1 won't happen again, I hope?

2 MR. ECKELS: I hope not, too, but, no,
3 it will not.

4 MEMBER SHORT: Okay. That's all I
5 have, Madam Chair. Thank you.

6 CHAIRPERSON MILLER: Okay. Anything
7 else? Okay. So I'm going to close the record
8 now in this case and ask the parties if they want
9 to file proposed findings of facts and
10 conclusions of law or waive your right to do so?

11 MS. GEPHARDT: No. The Government
12 waives.

13 CHAIRPERSON MILLER: Okay.

14 MR. ECKELS: I'm good.

15 CHAIRPERSON MILLER: Okay. Good. You
16 waive, yes. All right. Okay. So the Board will
17 consider this in closed session and issue a
18 written order in 90 days.

19 I'm going to now take a roll call vote
20 to deliberate in closed session.

21 As Chairperson of the Alcoholic
22 Beverage Control Board for the District of

1 Columbia and in accordance with Section 405 of
2 the Open Meetings Amendment Act of 2010, I move
3 that the ABC Board hold a closed meeting for the
4 purpose of seeking legal advice from our counsel
5 on Case No. 14-AUD-00061, Lindy's Bon Appetit,
6 per Section 405(b)(4) of the Open Meetings
7 Amendment Act of 2010, and deliberating upon this
8 case for the reasons cited in Section 405(b)(13)
9 of the Open Meetings Amendment Act of 2010.

10 Is there a second?

11 MEMBER SILVERSTEIN: Second.

12 CHAIRPERSON MILLER: Mr. Silverstein
13 has seconded the motion. I'll now take a roll
14 call vote on the motion before us now that it has
15 been seconded.

16 Mr. Brooks?

17 MEMBER BROOKS: I agree.

18 CHAIRPERSON MILLER: Mr. Rodriguez?

19 MEMBER RODRIGUEZ: I agree.

20 CHAIRPERSON MILLER: Ms. Miller
21 agrees.

22 Mr. Silverstein?

1 CHAIRPERSON MILLER: I agree.

2 CHAIRPERSON MILLER: Mr. Short?

3 MEMBER SHORT: I agree.

4 CHAIRPERSON MILLER: It appears that
5 the motion has passed by a 5-0-0 vote.

6 I hereby give notice that the ABC
7 Board will hold this aforementioned closed
8 meeting in the ABC Board conference room pursuant
9 to the Open Meetings Amendment Act of 2010 and
10 issue an order within 90 days, in writing. Okay.

11 MS. GEPHARDT: Thank you.

12 MR. ECKELS: I'll receive a letter in
13 the mail?

14 CHAIRPERSON MILLER: Yes.

15 MR. ECKELS: Okay.

16 CHAIRPERSON MILLER: Okay. Thank you
17 all. Have a good day.

18 MR. ECKELS: Take care.

19 MS. GEPHARDT: Thank you.

20 MR. ECKELS: Have a nice afternoon.

21 (Whereupon, the Show Cause Hearing was
22 concluded at 12:19 p.m.)

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