

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

IN THE MATTER OF:

Taj Mahal Enterprises, Ltd
t/a Fiesta Restaurant
& Lounge
1327 Connecticut Ave, NW
Retailer CR
License No. 882
Failure to comply
Case No. 14-AUD-00032

Show Cause
Hearing
(Status)

May 13, 2015

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

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

Fernando Rivero, OAG

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

(11:30 a.m.)

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3 CHAIR MILLER: So the second case
4 concerning Fiesta Restaurant & Lounge, is Case
5 14-AUD-00032. Located at 1327 Connecticut
6 Avenue, Northwest in ANC 2B.

7 So this case was scheduled or is
8 scheduled for today, at 11:00 a.m. So can you
9 address this case? Some of it may be
10 overlapping, but probably not.

11 MR. RIVERO: As I had explained to the
12 Board, we met in my office to take care of both
13 cases. This case concerned an audit that was
14 attempted around last summer.

15 And I met with the Licensee and we
16 agreed on a Offer in Compromise by way of a
17 proffer.

18 It was around last summer the Licensee
19 advised me that Mr. Tuli left the premises. And
20 he had -- I asked him for records and the like.
21 And that he was not able to find them on the
22 premises. That they were not in good condition.

1 So the Offer in Compromise, there are
2 three charges in this case. Charge 2 will be
3 dismissed.

4 MEMBER ALBERTI: Could you state what
5 that charge is, just for the record please?

6 MR. RIVERO: Yes. I believe it's
7 failure to prove that you met the food service
8 requirement.

9 MEMBER ALBERTI: It qualifies the
10 restaurant, is that --

11 MR. RIVERO: The food sales
12 requirement.

13 MEMBER ALBERTI: Thank you.

14 MR. RIVERO: Charge 1 would have a
15 fine of \$2,000. And it's for failure to allow
16 inspectors to enter the premises and check the
17 records. Payable in 60 days.

18 Charge 3 is a fine of \$2,000. For the
19 charge of not having maintained the records on
20 the premises for three years. That is also
21 payable in 60 days.

22 So we come up with a \$4,000 fine for

1 this particular case. Within 60 days.

2 MEMBER SHORT: Madam Chair?

3 CHAIR MILLER: Questions? Yes.

4 MEMBER SHORT: I'd just like to ask
5 Mr. Rivero. If failed to qualify as a
6 restaurant, why is that being -- why are being
7 asked to drop that?

8 MR. RIVERO: Certainly. When the
9 Government engages in negotiations, the number of
10 things that the Government considers, one of the
11 things that the Government considers is the
12 evidence as it exists at the time.

13 The evidence on record is that the
14 Licensee has filed quarterly statements that
15 indicate that the sales were actually made. In
16 this case, the burden is on the Government, not
17 the Licensee, to prove by preponderance of the
18 evidence.

19 And so because of the way that the
20 facts panned out, the Government would not have
21 that evidence to present. And there being
22 contrary evidence, we don't believe we would meet

1 the preponderance standard.

2 For that reason, the charge is
3 dismissed. But the other two are not. Since we
4 would have the evidence to meet that.

5 MEMBER SHORT: Okay. Just one last
6 question. And that was based on the operator,
7 Mr. Tuli, not to provide books and records, is
8 that correct?

9 MR. RIVERO: Correct. The report in
10 this case indicates that an audit was arranged
11 with Ms. Tuli actually. Is what the report
12 shows.

13 MEMBER SHORT: Okay.

14 MR. RIVERO: The report reflects, and
15 it's in the Board file --

16 MEMBER SHORT: For the records sake,
17 Mister and Ms. Tuli both apart of this business?

18 MR. RIVERO: Yes.

19 MEMBER SHORT: And one is saying the
20 other one couldn't provide the books?

21 MR. RIVERO: Pardon me?

22 MEMBER SHORT: They both, Mister and

1 Ms. Tuli --

2 MR. RIVERO: Yes.

3 MEMBER SHORT: -- both own this
4 business.

5 MR. RIVERO: Yes.

6 MEMBER SHORT: One is saying the other
7 was responsible for getting the books, we never
8 got the books.

9 MR. RIVERO: What the report reflects
10 is that Ms. Tuli made an arrangement with the
11 Agency to have the audit extended to another
12 date, the Agency agreed. They showed up on the
13 date agreed upon, with Ms. Tuli, which was the
14 29th of April. Nobody was present, so nobody
15 could get in.

16 Subsequently what the report shows is
17 that the auditor went back and sent an email to
18 Ms. Tuli, you weren't there, what happened? No
19 response was received.

20 And the report also reflects that
21 about a month or so later the auditor again sent
22 an email saying, well you didn't respond. And

1 there was never any response.

2 The only other evidence that is
3 relevant is the proffer that I made, that I
4 consulted the Licensee and he tried to get in
5 touch with the individuals and they weren't
6 responsive to him either. So they disappeared,
7 basically is the bottom line.

8 MEMBER SHORT: I don't understand the
9 response, but I'll accept it. Thank you very
10 much.

11 MR. RIVERO: It's the only response --

12 CHAIR MILLER: Do you want to ask a
13 clarified --

14 MEMBER SHORT: No, no. The answer is
15 going to be the answer, why should I ask the same
16 question over again.

17 CHAIR MILLER: Okay. With respect to
18 the two counts, to which you're seeking a \$2,000
19 penalty for each, is there anything else you want
20 to say with respect to why the lower end of the
21 fine range is appropriate? Other than this is an
22 Offer in Compromise.

1 MR. RIVERO: And the Board understands
2 the negotiations that take place in Offer and
3 Compromise. But also that this was actually done
4 as part of a global package right?

5 Because I wanted to make sure that all
6 outstanding cases associated with this license
7 were dealt with.

8 CHAIR MILLER: Okay.

9 MR. RIVERO: And so we agreed upon,
10 essentially, what is a \$6,000 payment to get rid
11 of these particular cases.

12 Now the Licensee does understand that
13 while other persons, were the ones responsibly,
14 that he's the license holder. And he's accepting
15 responsibility for that.

16 CHAIR MILLER: Okay.

17 MR. RIVERO: And once I explained to
18 him that also that anybody who's operating there,
19 they need to be on the licensee. He agreed, and
20 he's cooperating with the agency. So all of
21 that.

22 The Licensee's cooperation factors

1 into the offer that you have before you. Which
2 again, also consisted of the prior case.

3 CHAIR MILLER: Okay. Thank you. Any
4 other questions? Mr. Alberti.

5 MEMBER ALBERTI: As you've been
6 speaking, and as we discussed in the early case,
7 and I should have come to this sort of position
8 for that case, but I'm here, this is where I'm
9 at.

10 I'm bothered by the 60 day request.
11 And here's why.

12 Why recently had a fact finding and at
13 that fact finding Mr. Mallick admitted that other
14 people have been managing this restaurant and he
15 currently, someone else, until that fact finding,
16 was managing this, at least until that fact
17 finding, was managing this restaurant. And he
18 was under the impression that was okay.

19 And at that fact finding, the person
20 who had been managing it and who has filed the
21 transfer application, sort of admitted that yes,
22 you know, they really didn't understand all the

1 ins and outs of ABRA law and had been managing
2 the restaurant, thinking that they had the
3 authority to do that. All right.

4 Well, so we had the fact finding and
5 we've given them 30 days to straighten out, to
6 file -- complete an application for transfer.
7 That is -- that satisfies the Board, has
8 documents that satisfy the Board.

9 So we ironed that out at the fact
10 finding. So if we give Mr. Mallick 60 days, well
11 then what do we do in the interim?

12 Do we allow -- I certainly have
13 problems. I would not -- I personally would not
14 approve a transfer until this fine is paid,
15 because once it transfers, hey, Mr. Mallick has
16 no obligation to pay us.

17 So I would not approve this transfer
18 until, that's my opinion, I would not approve
19 this until the fine is paid.

20 But that kind of puts us in limbo. Do
21 we allow this other person to operate with, and
22 I've got to tell you, I'm wondering who's

1 operating this. I have to wonder, who's
2 operating this licensee right now.

3 Because Mr. Mallick hasn't taken
4 responsibility. Certainly didn't understand he
5 had responsibility until the fact finding.

6 So I am uneasy allowing this to go on
7 for 60 days. That's really where I'm at. So I
8 can't approve this Offer in Compromise with a 60
9 day window to pay.

10 MEMBER BROOKS: I'll support that,
11 Madam Chair. The comments of Board Member
12 Alberti.

13 MEMBER RODRIGUEZ: I agree with that
14 comment as well, Madam Chair.

15 CHAIR MILLER: Okay. Do you want to
16 say something, Mr. Rivero?

17 MR. RIVERO: Yes.

18 CHAIR MILLER: Okay.

19 MR. RIVERO: I don't know if this is
20 an unusual procedure. First of all I would like
21 to say that.

22 Secondly this Board is well within its

1 rights to not approve a transfer application if
2 it feels that the payments need to be made.

3 CHAIR MILLER: Yes.

4 MR. RIVERO: The 60 days here are just
5 calculated as a result of this offer. Today, the
6 Board is letting the Licensee know, as I have
7 attempted to facilitate, that if this Board wants
8 to approve the transfer, but the Licensee has not
9 paid the fines that are due, the transfer will
10 not be approved. And it is up to the Licensee to
11 ensure payment of the fine, if the Licensee
12 wishes that transfer application to be approved.

13 This is how I believe, legally, it
14 should operate. But that's just my personal
15 view.

16 The Board has every legal authority to
17 approve this Offer in Compromise and not approve
18 the transfer application, if at the time the
19 transfer application is presented to the Board
20 for decision, the \$6,000 is still pending,
21 because the Licensee still has time to pay. Is
22 my understanding.

1 And I'm trying to speak as loud as I'm
2 able to do, so that the Licensee, who's next me,
3 can hear and understand the Board's concern. And
4 so I'm trying to facilitate that.

5 CHAIR MILLER: Yes, sir?

6 MR. MALLICK: May I be permitted --

7 CHAIR MILLER: Absolutely. Go ahead.

8 MR. MALLICK: -- say a few words
9 please?

10 CHAIR MILLER: Yes.

11 MR. MALLICK: In view of what has been
12 said just now, I very respectfully submitted, we
13 have had this licensee since 1965.

14 And throughout that period of almost
15 50 years, there has never ever been a single
16 instance of our operation of that restaurant, and
17 the liquor license, in perfect form. It has been
18 the rule of law for our family to be able to
19 abide by the regulations set.

20 In 2010, for the first time that we
21 were not able to operate the restaurant, that we
22 considered leasing it. At that time, as a -- an

1 American, we made sure that all the applications
2 were approved by the Alcoholic Beverage Board.

3 The certificate of occupancy were open
4 and given. The restaurant, in 2010, and the
5 Manor in 2014 received all their approvals. Only
6 then they opened their gates for business.

7 So as far as I am concerned, no rules
8 were ever attempted to be broken. Or had been
9 broken.

10 But since the license has been in our
11 name, I have accepted the responsibility. And
12 had the pleasure of talking with the Government
13 representative to be able to do what is right.

14 And this is where I sit today to
15 submit to you, that what we make a commitment on,
16 we accept the Government position. It is really
17 a case of the messenger being punished. But the
18 rules say so and will be abided by. I thank you.

19 CHAIR MILLER: Okay. Anything else?
20 Okay, so I just want to say -- well I'm not sure
21 if I've asked you, Mr. Mallick, we've got a
22 little off here.

1 Did I ask you if you agreed to the
2 Offer in Compromise that Mr. Rivero presented of
3 a \$4,000 penalty to be paid within 60 days? If
4 not paid within 60 days, the license will be
5 suspended until it is paid.

6 Charge 2 will be dismissed. And there
7 will be Charge 1 and 2 for \$2,000 each, totaling
8 \$4,000. Mr. Rivero, you may need to repeat it
9 again to him.

10 MR. RIVERO: Yes, I do.

11 CHAIR MILLER: Okay.

12 MR. RIVERO: She said, asked you
13 whether you agree to pay for this case, \$2,000
14 for Charge 1 and \$2,000 for Charge 3.

15 MR. MALLICK: Okay.

16 MR. RIVERO: That's \$4,000 --

17 MR. MALLICK: Yes.

18 MR. RIVERO: -- in 60 days. And
19 Charge 2 would be dismissed.

20 MR. MALLICK: Yes.

21 MR. RIVERO: So you agree?

22 MR. MALLICK: Yes.

1 CHAIR MILLER: Okay. Yes? Okay. I
2 just, I got a request that we recess momentarily.
3 I think because different issues have been flying
4 around here perhaps.

5 So we're going to take a quick legal
6 break. A quick break to consult with counsel and
7 come back shortly.

8 MR. RIVERO: Thank you.

9 CHAIR MILLER: As Chairperson of the
10 Alcoholic Beverage Control Board of the District
11 of Columbia, and in accordance with DC Official
12 Code 2-574(b) of the Open Meetings Amendment Act,
13 I move that the ABC Board hold a brief closed
14 meeting to address this issue in our boardroom.
15 In the Case Number 00032 Fiesta Restaurant &
16 Lounge.

17 Pursuant to Section 2-574(b)(4) of the
18 Open Meetings Act to seek advice from counsel and
19 to deliberate briefly on any issues related to
20 this for the -- in accordance with Section 2-
21 574(b)(13) of the Open Meetings Act. Is there a
22 second?

1 MEMBER SHORT: Second.

2 MEMBER BROOKS: Second.

3 CHAIR MILLER: Mr. Short, seconded the
4 motion. I'll now take a roll call vote on this
5 motion, now that it's been seconded. Mr. Brooks?

6 MEMBER BROOKS: I agree.

7 CHAIR MILLER: Mr. Alberti?

8 MEMBER ALBERTI: I agree.

9 CHAIR MILLER: Mr. Rodriguez?

10 MEMBER RODRIGUEZ: I agree.

11 CHAIR MILLER: Ms. Miller agrees. Mr.
12 Silverstein?

13 MEMBER SILVERSTEIN: I agree.

14 CHAIR MILLER: And Mr. Short?

15 MEMBER SHORT: I agree.

16 CHAIR MILLER: Okay. The motion is
17 passed by a 6-0-0 vote. I hereby give notice
18 that the ABC Board will recess this proceeding
19 briefly to hold a closed meeting in the ABC board
20 conference room, pursuant to Section 2-574(b) of
21 the Open Meetings Act, and we will return
22 shortly. Thank you.

1 (Whereupon, the above-entitled matter
2 went off the record at 11:47 a.m. and resumed at
3 12:04 p.m.)

4 CHAIR MILLER: Okay, the Board is back
5 on the record. Mr. Rivero.

6 MR. RIVERO: Thank you. We have a
7 preliminary matter --

8 CHAIR MILLER: Okay.

9 MR. RIVERO: -- to bring to the
10 Board's attention. The parties have been
11 discussing, again, this has always been a global
12 understanding.

13 We had a \$6,000 fine to pay to get rid
14 of all the pending charges. The understanding
15 was that was to be done within 60 days.

16 We proposed a revised term that the
17 same fine will be paid, but rather than 60, 30
18 days.

19 MR. MALLICK: Could there be some
20 leniency in view of all of --

21 CHAIR MILLER: Okay.

22 MR. RIVERO: -- what has happened?

1 CHAIR MILLER: There is an Offer in
2 Compromise to be presented by you. So at this
3 point, I need to ask you if you agree to Mr.
4 Rivero's characterization of the New Offer in
5 Compromise.

6 MR. RIVERO: So asked you a question,
7 you have to answer her question for the record.

8 MR. MALLICK: Can I come up there to
9 hear what you are saying?

10 MR. RIVERO: No, no, you can go ahead.

11 CHAIR MILLER: No --

12 MR. RIVERO: No, she asked you if
13 agreed.

14 MR. MALLICK: I could not hear you,
15 I'm sorry.

16 CHAIR MILLER: Okay.

17 MR. RIVERO: She asked you if you
18 agreed to the payment of the \$4,000 in this case
19 in 30 days.

20 MR. MALLICK: Yes.

21 CHAIR MILLER: Okay, what's what the
22 Board needs to know in order to move forward with

1 considering the Offer in Compromise.

2 Okay. At this point then I think that
3 we are ready to vote on this Offer in Compromise.

4 I would move that we approve the Offer
5 in Compromise of \$4,000 for Charges 1 and 2,
6 \$2,000 each respectively, within 30 days. If not
7 paid within 30 days, the license will be
8 suspended until paid. And Charge 2 would be
9 dismissed.

10 Do I have a second?

11 MEMBER SILVERSTEIN: Second.

12 CHAIR MILLER: Okay, Mr. Silverstein
13 has seconded the motion. All those in favor say
14 aye?

15 (Chorus of ayes)

16 CHAIR MILLER: All those opposed? All
17 those abstaining? Motion passes 6-0-0. Okay,
18 thank you.

19 MR. RIVERO: Okay, thank you.

20 CHAIR MILLER: We'll be issuing an
21 order on this.

22 MR. RIVERO: Oh.

1 CHAIR MILLER: Correct?

2 MEMBER SHORT: Yes.

3 CHAIR MILLER: Yes.

4 MR. RIVERO: So no form?

5 CHAIR MILLER: No form today --

6 MR. RIVERO: Okay.

7 CHAIR MILLER: -- but it will be
8 coming very shortly.

9 (Whereupon, the above-entitled matter
10 went off the record at 12:08 p.m.)

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\$2,000 3:15,18 7:18
15:7,13,14 20:6
\$4,000 3:22 15:3,8,16
19:18 20:5
\$6,000 8:10 12:20 18:13
a.m 2:2,8 18:2
ABC 16:13 17:18,19
abide 13:19
abided 14:18
able 2:21 13:2,18,21
14:13
above-entitled 18:1
21:9
ABRA 10:1
Absolutely 13:7
abstaining 20:17
accept 7:9 14:16
accepted 14:11
accepting 8:14
Act 16:12,18,21 17:21
address 2:9 16:14
admitted 9:13,21
advice 16:18
advised 2:19
agency 6:11,12 8:20
agree 11:13 15:13,21
17:6,8,10,13,15 19:3
agreed 2:16 6:12,13 8:9
8:19 15:1 19:13,18
agrees 17:11
ahead 13:7 19:10
Alberti 1:16 3:4,9,13 9:4
9:5 11:12 17:7,8
Alcoholic 1:2,12,12
14:2 16:10
allow 3:15 10:12,21
allowing 11:6
Amendment 16:12
American 14:1
ANC 2:6
answer 7:14,15 19:7
anybody 8:18
apart 5:17
application 9:21 10:6
12:1,12,18,19
applications 14:1
appropriate 7:21
approvals 14:5
approve 10:14,17,18
11:8 12:1,8,17,17
20:4
approved 12:10,12 14:2
April 6:14
arranged 5:10
arrangement 6:10
asked 2:20 4:7 14:21
15:12 19:6,12,17

B

associated 8:6
attempted 2:14 12:7
14:8
attention 18:10
audit 2:13 5:10 6:11
auditor 6:17,21
authority 10:3 12:16
Ave 1:7
Avenue 2:6
aye 20:14
eyes 20:15

back 6:17 16:7 18:4
based 5:6
basically 7:7
believe 3:6 4:22 12:13
Beverage 1:2,12,12
14:2 16:10
board 1:2,12 2:12 5:15
8:1 10:7,8 11:11,22
12:6,7,16,19 14:2
16:10,13 17:18,19
18:4 19:22
Board's 13:3 18:10
boardroom 16:14
books 5:7,20 6:7,8
bothered 9:10
bottom 7:7
break 16:6,6
brief 16:13
briefly 16:19 17:19
bring 18:9
broken 14:8,9
Brooks 1:16 11:10 17:2
17:5,6
Building 1:13
burden 4:16
business 5:17 6:4 14:6

C

calculated 12:5
call 17:4
care 2:12
case 1:9 2:3,4,7,9,13
3:2 4:1,16 5:10 9:2,6
9:8 14:17 15:13 16:15
19:18
cases 2:13 8:6,11
Cause 1:7
certainly 4:8 10:12 11:4
certificate 14:3
Chair 2:3 4:2,3 7:12,17
8:8,16 9:3 11:11,14
11:15,18 12:3 13:5,7
13:10 14:19 15:11
16:1,9 17:3,7,9,11,14
17:16 18:4,8,21 19:1

19:11,16,21 20:12,16
20:20 21:1,3,5,7
Chairperson 1:13,15
16:9
characterization 19:4
charge 3:2,5,14,18,19
5:2 15:6,7,14,14,19
20:8
charges 3:2 18:14 20:5
check 3:16
Chorus 20:15
clarified 7:13
closed 16:13 17:19
Code 16:12
Columbia 1:1 16:11
come 3:22 9:7 16:7
19:8
coming 21:8
comment 11:14
comments 11:11
commitment 14:15
complete 10:6
comply 1:9
Compromise 2:16 3:1
7:22 8:3 11:8 12:17
15:2 19:2,5 20:1,3,5
concern 13:3
concerned 2:13 14:7
concerning 2:4
condition 2:22
conference 17:20
Connecticut 1:7 2:5
considered 13:22
considering 20:1
considers 4:10,11
consisted 9:2
consult 16:6
consulted 7:4
contrary 4:22
Control 1:2,12,12 16:10
cooperating 8:20
cooperation 8:22
correct 5:8,9 21:1
counsel 16:6,18
counts 7:18
CR 1:8
currently 9:15

D

D.C 1:13
date 6:12,13
day 9:10 11:9
days 3:17,21 4:1 10:5
10:10 11:7 12:4 15:3
15:4,18 18:15,18
19:19 20:6,7
DC 16:11
dealt 8:7

decision 12:20
deliberate 16:19
different 16:3
disappeared 7:6
discussed 9:6
discussing 18:11
dismissed 3:3 5:3 15:6
15:19 20:9
District 1:1 16:10
documents 10:8
DONALD 1:16
drop 4:7
due 12:9

E

early 9:6
either 7:6
email 6:17,22
engages 4:9
ensure 12:11
enter 3:16
Enterprises 1:6
essentially 8:10
evidence 4:12,13,18,21
4:22 5:4 7:2
exists 4:12
explained 2:11 8:17
extended 6:11

F

facilitate 12:7 13:4
fact 9:12,13,15,16,19
10:4,9 11:5
factors 8:22
facts 4:20
failed 4:5
failure 1:9 3:7,15
family 13:18
far 14:7
favor 20:13
feels 12:2
Fernando 1:20
Fiesta 1:6 2:4 16:15
file 5:15 10:6
filed 4:14 9:20
find 2:21
finding 9:12,13,15,17
9:19 10:4,10 11:5
fine 3:15,18,22 7:21
10:14,19 12:11 18:13
18:17
finances 12:9
first 11:20 13:20
flying 16:3
food 3:7,11
form 13:17 21:4,5
forward 19:22

G

gates 14:6
getting 6:7
give 10:10 17:17
given 10:5 14:4
global 8:4 18:11
go 11:6 13:7 19:10
going 7:15 16:5
good 2:22
Government 4:9,10,11
 4:16,20 14:12,16

H

happened 6:18 18:22
hear 13:3 19:9,14
Hearing 1:3,7,12
HECTOR 1:18
HERMAN 1:17
hey 10:15
hold 16:13 17:19
holder 8:14

I

impression 9:18
indicate 4:15
indicates 5:10
individuals 7:5
ins 10:1
inspectors 3:16
instance 13:16
interim 10:11
ironed 10:9
issue 16:14
issues 16:3,19
issuing 20:20

J

JAMES 1:18
JONES 1:17

K

kind 10:20
know 9:22 11:19 12:6
 19:22

L

law 10:1 13:18
leasing 13:22
left 2:19
legal 12:16 16:5
legally 12:13
leniency 18:20
letting 12:6
license 1:8 8:6,14 13:17
 14:10 15:4 20:7
licensee 2:15,18 4:14
 4:17 7:4 8:12,19 11:2
 12:6,8,10,11,21 13:2

13:13

Licensee's 8:22
limbo 10:20
line 7:7
liquor 13:17
little 14:22
Located 2:5
loud 13:1
Lounge 1:7 2:4 16:16
lower 7:20

M

Madam 4:2 11:11,14
Mahal 1:6
maintained 3:19
Mallick 9:13 10:10,15
 11:3 13:6,8,11 14:21
 15:15,17,20,22 18:19
 19:8,14,20
managing 9:14,16,17
 9:20 10:1
Manor 14:5
matter 1:5 18:1,7 21:9
meet 4:22 5:4
meeting 16:14 17:19
Meetings 16:12,18,21
 17:21
Member 1:16,16,17,17
 1:18,18 3:4,9,13 4:2,4
 5:5,13,16,19,22 6:3,6
 7:8,14 9:5 11:10,11
 11:13 17:1,2,6,8,10
 17:13,15 20:11 21:2
messenger 14:17
met 1:12 2:12,15 3:7
MICHAEL 1:17
Miller 1:13,15 2:3 4:3
 7:12,17 8:8,16 9:3
 11:15,18 12:3 13:5,7
 13:10 14:19 15:11
 16:1,9 17:3,7,9,11,11
 17:14,16 18:4,8,21
 19:1,11,16,21 20:12
 20:16,20 21:1,3,5,7

Mister 5:17,22
momentarily 16:2
month 6:21
motion 17:4,5,16 20:13
 20:17
move 16:13 19:22 20:4

N

N.W 1:13
name 14:11
need 8:19 12:2 15:8
 19:3
needs 19:22
negotiations 4:9 8:2

never 6:7 7:1 13:15
New 19:4
NICK 1:16
Northwest 2:6
notice 17:17
number 4:9 16:15
NW 1:7

O

OAG 1:20
obligation 10:16
occupancy 14:3
offer 2:16 3:1 7:22 8:2
 9:1 11:8 12:5,17 15:2
 19:1,4 20:1,3,4
office 2:12
Official 16:11
Oh 20:22
okay 5:5,13 7:17 8:8,16
 9:3,18 11:15,18 14:19
 14:20 15:11,15 16:1,1
 17:16 18:4,8,21 19:16
 19:21 20:2,12,17,19
 21:6
once 8:17 10:15
ones 8:13
open 14:3 16:12,18,21
 17:21
opened 14:6
operate 10:21 12:14
 13:21
operating 8:18 11:1,2
operation 13:16
operator 5:6
opinion 10:18
opposed 20:16
order 19:22 20:21
outs 10:1
outstanding 8:6
overlapping 2:10

P

P-R-O-C-E-E-D-I-N-G-S
 2:1
p.m 18:3 21:10
package 8:4
paid 10:14,19 12:9 15:3
 15:4,5 18:17 20:7,8
panned 4:20
Pardon 5:21
part 8:4
particular 4:1 8:11
parties 18:10
passed 17:17
passes 20:17
pay 10:16 11:9 12:21
 15:13 18:13
payable 3:17,21

payment 8:10 12:11
 19:18
payments 12:2
penalty 7:19 15:3
pending 12:20 18:14
people 9:14
perfect 13:17
period 13:14
permitted 13:6
person 9:19 10:21
personal 12:14
personally 10:13
persons 8:13
place 8:2
please 3:5 13:9
pleasure 14:12
point 19:3 20:2
position 9:7 14:16
preliminary 18:7
premises 2:19,22 3:16
 3:20
preponderance 4:17
 5:1
present 1:15,19 4:21
 6:14
presented 12:19 15:2
 19:2
presiding 1:14
prior 9:2
probably 2:10
problems 10:13
procedure 11:20
proceeding 17:18
proffer 2:17 7:3
proposed 18:16
prove 3:7 4:17
provide 5:7,20
punished 14:17
pursuant 16:17 17:20
puts 10:20

Q

qualifies 3:9
qualify 4:5
quarterly 4:14
question 5:6 7:16 19:6
 19:7
questions 4:3 9:4
quick 16:5,6

R

range 7:21
ready 20:3
really 9:22 11:7 14:16
reason 5:2
received 6:19 14:5
recess 16:2 17:18
record 3:5 4:13 18:2,5

19:7 21:10
records 2:20 3:17,19
 5:7,16
Reeves 1:13
reflects 5:14 6:9,20
regulations 13:19
related 16:19
relevant 7:3
repeat 15:8
report 5:9,11,14 6:9,16
 6:20
representative 14:13
request 9:10 16:2
requirement 3:8,12
respect 7:17,20
respectfully 13:12
respectively 20:6
respond 6:22
response 6:19 7:1,9,11
responsibility 8:15
 11:4,5 14:11
responsible 6:7
responsibly 8:13
responsive 7:6
restaurant 1:6 2:4 3:10
 4:6 9:14,17 10:2
 13:16,21 14:4 16:15
result 12:5
resumed 18:2
Retailer 1:8
return 17:21
revised 18:16
rid 8:10 18:13
right 8:4 10:3 11:2
 14:13
rights 12:1
Rivero 1:20 2:11 3:6,11
 3:14 4:5,8 5:9,14,18
 5:21 6:2,5,9 7:11 8:1
 8:9,17 11:16,17,19
 12:4 15:2,8,10,12,16
 15:18,21 16:8 18:5,6
 18:9,22 19:6,10,12,17
 20:19,22 21:4,6
Rivero's 19:4
Rodriguez 1:18 11:13
 17:9,10
roll 17:4
room 1:12 17:20
rule 13:18
rules 14:7,18
Ruthanne 1:13,15

S

sake 5:16
sales 3:11 4:15
satisfies 10:7
satisfy 10:8

saying 5:19 6:6,22 19:9
scheduled 2:7,8
second 2:3 16:22 17:1
 17:2 20:10,11
seconded 17:3,5 20:13
Secondly 11:22
Section 16:17,20 17:20
seek 16:18
seeking 7:18
sent 6:17,21
service 3:7
set 13:19
Short 1:18 4:2,4 5:5,13
 5:16,19,22 6:3,6 7:8
 7:14 17:1,3,14,15
 21:2
shortly 16:7 17:22 21:8
Show 1:7
showed 6:12
shows 5:12 6:16
Silverstein 1:17 17:12
 17:13 20:11,12
single 13:15
sir 13:5
sit 14:14
sorry 19:15
sort 9:7,21
speak 13:1
speaking 9:6
standard 5:1
state 3:4
statements 4:14
Status 1:8
straighten 10:5
Street 1:13
submit 14:15
submitted 13:12
Subsequently 6:16
summer 2:14,18
support 11:10
sure 8:5 14:1,20
suspended 15:5 20:8

T

t/a 1:6
Taj 1:6
take 2:12 8:2 16:5 17:4
taken 11:3
talking 14:12
tell 10:22
term 18:16
thank 3:13 7:9 9:3
 14:18 16:8 17:22 18:6
 20:18,19
things 4:10,11
think 16:3 20:2
thinking 10:2
three 3:2,20

time 4:12 12:18,21
 13:20,22
today 2:8 12:5 14:14
 21:5
totaling 15:7
touch 7:5
transfer 9:21 10:6,14
 10:17 12:1,8,9,12,18
 12:19
transfers 10:15
tried 7:4
trying 13:1,4
Tuli 2:19 5:7,11,17 6:1
 6:10,13,18
two 5:3 7:18

U

understand 7:8 8:12
 9:22 11:4 13:3
understanding 12:22
 18:12,14
understands 8:1
uneasy 11:6
unusual 11:20

V

view 12:15 13:11 18:20
vote 17:4,17 20:3

W

want 7:12,19 11:15
 14:20
wanted 8:5
wants 12:7
Washington 1:13
way 2:16 4:19
We'll 20:20
we're 16:5
we've 10:5 14:21
went 6:17 18:2 21:10
weren't 6:18 7:5
window 11:9
wishes 12:12
wonder 11:1
wondering 10:22
words 13:8

X

Y

years 3:20 13:15

Z

0

00032 16:15

1

1 3:14 15:7,14 20:5
11:00 2:8
11:30 2:2
11:47 18:2
12:04 18:3
12:08 21:10
13 1:11
1327 1:7 2:5
14-AUD-00032 1:9 2:5
14th 1:13
1965 13:13

2

2 3:2 15:6,7,19 16:20
 20:5,8
2-574(b) 16:12 17:20
2-574(b)(4) 16:17
2000 1:13
2010 13:20 14:4
2014 14:5
2015 1:11
29th 6:14
2B 2:6

3

3 3:18 15:14
30 10:5 18:17 19:19
 20:6,7

4

5

50 13:15
574(b)(13) 16:21

6

6-0-0 17:17 20:17
60 3:17,21 4:1 9:10
 10:10 11:7,8 12:4
 15:3,4,18 18:15,17

7

8

882 1:8