

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
M&T Grocer's Beer and Wine, :
Inc. t/a M&T Grocer's Beer : Show Cause
and Wine : Hearing
201 15th Street, NE :
Retailer B - ANC-6A :
License No. 77390 :
Case# 12-CMP-00392 :
 :
(Violation of Settlement :
Agreement (Sold Individual :
Containers) :
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June 5, 2013

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
DONALD BROOKS, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT:

WALTER ADAMS, OAG
BRIAN MOLLOY, ABRA Investigator

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

(1:34 p.m.)

CHAIRPERSON MILLER: Okay. Good afternoon. We are on the record now for the first case in the afternoon, which is Case No. 12-CMP-00392, M&T Grocery's Beer and Wine located at 201 15th Street, N.E., License No. 77390, in ANC-6A.

Would the parties introduce yourselves for the record, please?

MR. ADAMS: Good afternoon, Madam Chair and Members of the Board, Walter Adams representing the District of Columbia.

MR. MISIEL: My name is Mulugeta Misiel, M&T Grocer owner.

CHAIRPERSON MILLER: You're the owner?

MR. MISIEL: Yes, ma'am.

CHAIRPERSON MILLER: Okay. And there is also a sign-in sheet. Did you sign-in?

MR. MISIEL: I signed in.

1 CHAIRPERSON MILLER: Okay. Good.
2 All right. This is a Show Cause Hearing. Are
3 there any preliminary matters?

4 MR. ADAMS: There are no
5 preliminary matters, Madam Chairman.

6 CHAIRPERSON MILLER: Okay. And I
7 just want to ask Mr. Obosgi --

8 MR. MISIEL: No, that's not me.

9 CHAIRPERSON MILLER: That's not
10 you?

11 MR. MISIEL: My name is Mulugeta.

12 CHAIRPERSON MILLER: Oh, could you
13 spell it?

14 MR. MISIEL: It's M-U-L-U-G-E-T-A.

15 CHAIRPERSON MILLER: And how do
16 you pronounce it?

17 MR. MISIEL: Mulugeta.

18 CHAIRPERSON MILLER: Mulugeta?

19 MR. MISIEL: Yes, ma'am.

20 CHAIRPERSON MILLER: Okay. And
21 you are an owner as well?

22 MR. MISIEL: Yes, ma'am.

1 CHAIRPERSON MILLER: Okay. How
2 many owners are there?

3 MR. MISIEL: We have two.

4 CHAIRPERSON MILLER: Two, okay.
5 Have you participated in a hearing before the
6 ABC Board before?

7 MR. MISIEL: No, I come the other
8 day in May and they tell me if you want to
9 contest and then I contested, that's why I
10 came today.

11 CHAIRPERSON MILLER: Okay. So I
12 just want to just tell you how it is going to
13 go and then if you have any questions, you can
14 let me know.

15 MR. MISIEL: Sure.

16 CHAIRPERSON MILLER: So Mr. Adams
17 represents the Government. They have the
18 burden of proof, so he is going to go first to
19 present the case against you basically.

20 MR. MISIEL: Okay.

21 CHAIRPERSON MILLER: And he will
22 start probably maybe with an opening statement

1 to say what he is going to prove, that's
2 optional, and then put on any witnesses that
3 he has and any documents.

4 And you can ask questions of the
5 witness after the witness has finished
6 testifying. I'll let you know when it is your
7 turn if you have questions about what he
8 testifies to.

9 And then when he is finished, the
10 Board will ask questions, too. When he is
11 finished, then -- you don't have any
12 witnesses, do you?

13 MR. MISIEL: No.

14 CHAIRPERSON MILLER: Just
15 yourself. You can testify yourself. You can
16 do an opening statement, too, if you want to,
17 but you don't have to. And then when all that
18 is done, each side can do a closing statement.
19 Okay?

20 MR. MISIEL: Okay.

21 CHAIRPERSON MILLER: But I just
22 wanted to give you the general idea.

1 MR. MISIEL: Okay, thank you. I
2 appreciate that.

3 CHAIRPERSON MILLER: And you will
4 see how it goes and ask me if you don't
5 understand something.

6 MR. MISIEL: Sure.

7 CHAIRPERSON MILLER: Okay. Mr.
8 Adams?

9 MR. ADAMS: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. ADAMS: Madam Chair, may I
12 just make a very brief opening statement?
13 This is a very basic case in which the
14 establishment is charged with being in
15 violation of its voluntary agreement.

16 Specifically, this is a voluntary
17 agreement that was approved by the Board back
18 in 2005 that -- in which one of the terms of
19 this agreement is that the store or that the
20 establishment or the licensee must not sell,
21 give, offer, expose for sale or deliver an
22 individual container of wine or fortified wine

1 in a container with the capacity of less than
2 750 milliliters.

3 The evidence will show that this
4 establishment, M&T Grocery's Beer and Wine,
5 which took over this license did on August 8,
6 2012 expose for sale within one of the coolers
7 within the establishment wine or fortified
8 wine products that were in containers of
9 capacity of less than 750 milliliters.

10 As a result, very simply, the
11 establishment is in -- was in or is in
12 violation of its voluntary agreement. And as
13 a result, the Board should find them liable.

14 CHAIRPERSON MILLER: Okay.
15 Usually when a party isn't represented by
16 counsel, I suggest that if they have an
17 opening statement, they do it later. You have
18 an option. If you do an opening statement,
19 you can do it right after the Government's or
20 later.

21 But if you are ready to do an
22 opening statement, you can, but, otherwise,

1 you can reserve your right to do it later when
2 you present your case.

3 MR. MISIEL: I can just do it
4 right now.

5 CHAIRPERSON MILLER: Later? Now?

6 MR. MISIEL: Now, yes.

7 CHAIRPERSON MILLER: Now, good.

8 Oh, okay.

9 MR. MISIEL: Yes.

10 CHAIRPERSON MILLER: Go ahead.

11 MR. MISIEL: Okay. Yes. One
12 thing I want to do, when we just buy the
13 business, we never sign any voluntary
14 agreement.

15 CHAIRPERSON MILLER: Okay. Wait a
16 second. Wait. Let me just hold you right
17 there, okay?

18 MR. MISIEL: Sure.

19 CHAIRPERSON MILLER: See, you are
20 going to get a chance to testify. It sounds
21 like you are testifying of what you did or
22 what you knew. And what he just did was say,

1 this is what the overall of what I'm going to
2 show. If you want to do a general of like
3 what you are going to show, you can do that,
4 but this isn't -- I just want to let you know
5 this isn't the time for your testimony.

6 MR. MISIEL: Okay.

7 CHAIRPERSON MILLER: You want to
8 wait?

9 MR. MISIEL: Yes, I'll wait.

10 CHAIRPERSON MILLER: Okay. Okay.

11 MR. ADAMS: All right?

12 CHAIRPERSON MILLER: Yes. Thank
13 you.

14 MR. ADAMS: Okay.

15 CHAIRPERSON MILLER: So do you
16 want to call your first witness?

17 MR. ADAMS: Yes. The District has
18 one witness, Investigator Molloy.

19 CHAIRPERSON MILLER: Hi.

20 Whereupon,

21 INVESTIGATOR BRIAN MOLLOY

22 was called as a witness by Counsel for the

1 Government, and having been first duly sworn,
2 assumed the witness stand and was examined and
3 testified as follows:

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 DIRECT EXAMINATION

7 MR. ADAMS: Good afternoon.

8 INVESTIGATOR MOLLOY: Good
9 afternoon.

10 MR. ADAMS: Sir, can you, please,
11 state your name and spell it for the record?

12 INVESTIGATOR MOLLOY: My name is
13 Brian Molloy, B-R-I-A-N last name M-O-L-L-O-Y.

14 MR. ADAMS: Investigator Molloy,
15 you are employed by the Alcoholic Beverage
16 Regulation Administration. Is that correct?

17 INVESTIGATOR MOLLOY: That is
18 correct.

19 MR. ADAMS: All right. How long
20 have you been employed in that position?

21 INVESTIGATOR MOLLOY: A little
22 over 11 months.

1 MR. ADAMS: Okay. And you are
2 employed as an investigator?

3 INVESTIGATOR MOLLOY: As an
4 investigator, correct.

5 MR. ADAMS: All right. All right.
6 Investigator Molloy, were you on duty on
7 August 8, 2012?

8 INVESTIGATOR MOLLOY: I was.

9 MR. ADAMS: And did you have the
10 occasion to be present at the establishment
11 known as M&T Grocery's Beer and Wine?

12 INVESTIGATOR MOLLOY: I was.

13 MR. ADAMS: Okay. And why were
14 you there?

15 INVESTIGATOR MOLLOY: I was
16 training at the time and another ABRA
17 Investigator, Investigator Vincent Parker,
18 received a complaint that M&T Grocer's Beer
19 and Wine was violating its voluntary
20 agreement. So we followed up on that
21 complaint to go and investigate to see if they
22 were, in fact, violating the voluntary

1 agreement.

2 MR. ADAMS: And what was the
3 nature of that complaint?

4 INVESTIGATOR MOLLOY: The
5 complaint stated that M&T was selling wine or
6 fortified wine in bottles that were 375
7 milliliters, while their VA prohibited them
8 from selling in any size less than 750
9 milliliters.

10 MR. ADAMS: All right. And do you
11 remember going out and being at the
12 establishment?

13 INVESTIGATOR MOLLOY: Yes, I do.

14 MR. ADAMS: All right. Once you
15 arrived at the establishment, what happened?

16 INVESTIGATOR MOLLOY: I walked in
17 with Investigator Parker. We identified
18 ourselves as ABRA Investigators to a man
19 behind the counter who said he was the owner.
20 I told him I would be conducting a regulatory
21 inspection.

22 And while I was conducting the

1 regulatory inspection, we saw a cooler near
2 the back of the store that had lots of MD
3 20/20 in it and Wild Irish Rose and possibly
4 some other things. We looked in the cooler to
5 see the size of the bottles and just from
6 looking at the outside, you could tell that
7 they had some small bottles in there, because
8 the top shelf was all -- the bottles on that
9 were much smaller than any of the bottles on
10 the second shelf.

11 We took out a couple of the
12 bottles to look at the sizes and on the top
13 shelf there was both MD 20/20 and Wild Irish
14 Rose in bottles that were 375 milliliters.

15 MR. ADAMS: And how were you able
16 to -- first of all, MD and Wild Irish Rose,
17 what kind of drinks are they?

18 INVESTIGATOR MOLLOY: They are
19 fortified wine. They are an alcoholic
20 beverage. I think they are roughly around 13
21 percent alcohol.

22 MR. ADAMS: All right. And how

1 were you able to determine the size of those
2 bottles?

3 INVESTIGATOR MOLLOY: On the
4 bottom of both the bottles, they have an
5 imprint in the glass or it's actually the
6 imprint is raised and it says 375 milliliters
7 and it is listed right there.

8 MR. ADAMS: Okay. And what did
9 you do, at that point?

10 INVESTIGATOR MOLLOY: Once we
11 confirmed that the size was 375 milliliters,
12 we photographed the bottles. We photographed
13 them also and made comparison, because it's
14 kind of hard to see the size on the bottle and
15 then we informed the owner, who was there at
16 the time, that they were violating their
17 voluntary agreement by selling bottles in this
18 size and we told them they had to remove those
19 off from the place where the patrons could see
20 them and think they could buy them.

21 MR. ADAMS: And how did you know
22 that they were in violation of their voluntary

1 agreement?

2 INVESTIGATOR MOLLOY: Because of
3 the complaint and actually before we even
4 went, we looked at their voluntary agreement
5 to make certain the complaint was accurate and
6 so we brought a copy with us.

7 MR. ADAMS: Okay. So you say you
8 brought a copy with you. In terms of -- you
9 stated that you had interaction with the
10 owner. Can you describe, I mean, what
11 occurred during -- I mean, your conversation
12 with the owner?

13 INVESTIGATOR MOLLOY: Yes. Once
14 we informed the owner that he was in violation
15 of his voluntary agreement, he initially was
16 confused. He didn't know anything about the
17 voluntary agreement. And so one of the things
18 we did was we looked at the liquor license
19 that they had posted and on there it lists
20 that the establishment has a voluntary
21 agreement.

22 We pointed to that to say, you

1 know, this is one of the reasons you should
2 know about your voluntary agreement, because
3 you license lists that you have one. And then
4 we showed him the copy we had and how it, you
5 know, lists that they are not allowed to sell
6 bottles that are 375 milliliters.

7 MR. ADAMS: Now, you stated that
8 the bottles were in a cooler, correct?

9 INVESTIGATOR MOLLOY: Correct.

10 MR. ADAMS: Was the -- the cooler,
11 was it hidden from customers or was it
12 available to customers?

13 INVESTIGATOR MOLLOY: It was very
14 available to customer. It was in, I think,
15 the middle aisle of the store and if you just
16 walked down that aisle if you were looking for
17 products, you would see that. It was clear.
18 It was unobstructed and it wasn't locked. You
19 could just open it up and take a bottle out.

20 MR. ADAMS: And so you were really
21 able to pull open with no difficulty and your
22 opinion was that it was readily available for

1 sale?

2 INVESTIGATOR MOLLOY: Yes.

3 MR. ADAMS: All right. I have no
4 further questions for Investigator Molloy.

5 CHAIRPERSON MILLER: Okay. Would
6 you like to ask him some questions?

7 MR. MISIEL: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. MISIEL: And can I just ask
10 him questions, if you don't mind?

11 MR. MISIEL: Yes.

12 CROSS-EXAMINATION

13 MR. MISIEL: Sir, can you explain
14 for me the meaning of voluntary agreement and
15 you say that it's specifically on the license
16 there, right?

17 INVESTIGATOR MOLLOY: Yes.

18 MR. MISIEL: Okay. And then if we
19 just buy one place from the previous owner and
20 this is the other people, the ABC has got a
21 job to do that the voluntary agreement to
22 extend for us or to make us sign, right?

1 INVESTIGATOR MOLLOY: I'm sorry?

2 MR. MISIEL: Do you have that kind
3 of paper with you? The document that we
4 signed it?

5 INVESTIGATOR MOLLOY: A document
6 that --

7 MR. MISIEL: For the voluntary
8 agreement that we cannot sell MD 20/20 at all?

9 INVESTIGATOR MOLLOY: I have a
10 copy of the voluntary agreement, yes.

11 MR. MISIEL: Can I see my
12 signature, my partner signature on it, if I
13 may?

14 INVESTIGATOR MOLLOY: I don't
15 believe either of you signed it. It is from
16 a previous establishment.

17 MR. MISIEL: Okay. When the
18 previous owner would try sell to us, they have
19 not first asked us --

20 CHAIRPERSON MILLER: Okay. Wait.

21 MR. MISIEL: -- we have to sign,
22 too, right?

1 CHAIRPERSON MILLER: Oh, okay. I
2 just want to make sure you are asking him
3 questions.

4 MR. MISIEL: Yes.

5 CHAIRPERSON MILLER: Because you
6 will get a chance to testify as to what
7 happened with you and the previous agreement
8 and whatever, owner or whatever. Right now,
9 just ask him questions.

10 MR. MISIEL: Yes.

11 CHAIRPERSON MILLER: Okay. You're
12 doing fine.

13 MR. MISIEL: Okay. Because when
14 we just bought this place, we don't sign
15 anything. We don't know anything about it.
16 And the store being like that before when we
17 bought it, they were selling and they would
18 take over. We just was selling the same type.

19 Even when he was claiming about
20 the beer --

21 MR. ADAMS: I'm sorry, objection.

22 CHAIRPERSON MILLER: Okay. Sir,

1 sir?

2 MR. ADAMS: There's no question.

3 CHAIRPERSON MILLER: Sir, you will
4 get a chance to testify to that.

5 MR. MISIEL: Okay.

6 CHAIRPERSON MILLER: We have
7 specific procedures, so right now you can ask
8 Mr. Molloy any questions about his testimony.
9 And then later you can testify.

10 MR. MISIEL: Okay.

11 CHAIRPERSON MILLER: Do you have
12 any more questions?

13 MR. MISIEL: No.

14 CHAIRPERSON MILLER: Okay. Are
15 there --

16 MR. ADAMS: The Board's
17 indulgence. I would -- the District just
18 wants to go back on direct for one thing.
19 Actually, the District would just like to
20 introduce one document into evidence --

21 CHAIRPERSON MILLER: Okay.

22 MR. ADAMS: -- of Mr. Molloy.

1 CHAIRPERSON MILLER: Okay.

2 REDIRECT EXAMINATION

3 MR. ADAMS: Mr. Molloy or
4 Investigator Molloy, do you have --

5 CHAIRPERSON MILLER: Are you
6 showing it to the --

7 MR. ADAMS: Sure. I'm going to
8 show it --

9 CHAIRPERSON MILLER: Okay.

10 MR. ADAMS: -- the witness.

11 CHAIRPERSON MILLER: Okay.

12 MR. ADAMS: May I approach the
13 witness with what is marked as District's
14 Exhibit No. 1.

15 CHAIRPERSON MILLER: Now, Mr.
16 Mulugeta has a copy as well?

17 MR. MISIEL: Yes.

18 MR. ADAMS: Yes, he does.

19 CHAIRPERSON MILLER: Okay.

20 MR. MISIEL: Yes.

21 (Whereupon, the document was
22 marked as Government Exhibit 1 for

1 identification.)

2 MR. ADAMS: Investigator Molloy,
3 do you recognize the document that is in front
4 of you?

5 INVESTIGATOR MOLLOY: Yes, it's a
6 case report about this incident at M&T
7 Grocer's.

8 MR. ADAMS: And how are you
9 familiar with that case report?

10 INVESTIGATOR MOLLOY: Vincent
11 Parker wrote it and it's about our
12 investigation, so he let me see it as he was
13 going through it and what he put in it.

14 MR. ADAMS: And did you review the
15 content of that report?

16 INVESTIGATOR MOLLOY: Yes, I did.

17 MR. ADAMS: All right. And in
18 reviewing the content of the report, is it --
19 does it fairly accurately describe your -- the
20 investigation on August 8, 2012?

21 INVESTIGATOR MOLLOY: It does.

22 MR. ADAMS: All right. Now, as

1 part of the report, this report also has
2 exhibits. Is that correct?

3 INVESTIGATOR MOLLOY: Yes.

4 MR. ADAMS: Okay. Exhibit 1 is a
5 part of the report. What is Exhibit 1?

6 INVESTIGATOR MOLLOY: Just
7 flipping.

8 MR. ADAMS: Sure.

9 INVESTIGATOR MOLLOY: Exhibit 1 is
10 a copy of the voluntary agreement.

11 MR. ADAMS: All right. And I know
12 there is a few pages in this. Exhibit 2,
13 what's Exhibit 2?

14 INVESTIGATOR MOLLOY: Exhibit 2 is
15 a copy of the regulatory inspection I
16 conducted.

17 MR. ADAMS: Okay. And whose
18 signature is on the regulatory inspection?

19 INVESTIGATOR MOLLOY: My signature
20 and then also the signature of the owner who
21 was there at the time, Mr. Obosgi.

22 MR. ADAMS: Exhibit 3, can you

1 look at Exhibit 3? What is Exhibit 3?

2 INVESTIGATOR MOLLOY: Exhibit 3 is
3 a photo of the two sizes of MD 20/20 the
4 establishment had for sale on August 8th. As
5 you can see, when you get a chance to look at
6 the photo, one bottle is much smaller than the
7 other bottle and that's to show that it was
8 the 375 milliliter size versus the 750
9 milliliters.

10 MR. ADAMS: All right. Okay. And
11 that explains the difference. All right. And
12 Exhibit 4 is -- what is that?

13 INVESTIGATOR MOLLOY: Exhibit 4
14 is --

15 MR. ADAMS: 4 and 5, I should say.

16 INVESTIGATOR MOLLOY: 4 and 5 are
17 an attempt to show the size indication on the
18 bottles of the MD 20/20 and the Wild Irish
19 Rose. As I said --

20 MR. ADAMS: Per your recollection,
21 what were --

22 INVESTIGATOR MOLLOY: Yes.

1 MR. ADAMS: -- the sizes they are
2 indicating?

3 INVESTIGATOR MOLLOY: 375
4 milliliters. It's hard to see in the photo.

5 MR. ADAMS: And Exhibit 6 was?
6 What is described in Exhibit 6?

7 INVESTIGATOR MOLLOY: Now, Exhibit
8 6 is a photo of the cooler in the aisle of the
9 store where the bottles of Wild Irish Rose and
10 MD 20/20 were for sale.

11 MR. ADAMS: Now, from your
12 recollection, you stated that there are, I
13 guess, several shelves. Which shelf is
14 featured in that photograph?

15 INVESTIGATOR MOLLOY: That's the
16 top shelf of the cooler and that's the one
17 that had all the 375 milliliter bottles on it.
18 The shelf below had the larger bottles.

19 MR. ADAMS: Okay. All right. Is
20 this a fair and accurate representation of the
21 investigative report by Mr. Parker as well as
22 the exhibits that you added to this report?

1 INVESTIGATOR MOLLOY: Yes, it is.

2 MR. ADAMS: All right. I would
3 like to move into evidence what is marked for
4 identification purposes as District's Exhibit
5 No. 1.

6 CHAIRPERSON MILLER: Okay. Do you
7 have a copy for us? Okay. Now, do you have
8 any objection to this report being in
9 evidence?

10 MR. MISIEL: No, not really. I
11 mean, the one he say, the one we just still
12 sell. We were selling them at that time, yes.
13 He is right.

14 CHAIRPERSON MILLER: You will get
15 to address it in your testimony.

16 MR. MISIEL: Okay.

17 CHAIRPERSON MILLER: Okay. And it
18 is actually in the record anyway, the case
19 report, but just for purposes of this case, we
20 will call it Government's Exhibit No. 1. Then
21 it is admitted.

22 (Whereupon, the document marked as

1 Government Exhibit 1 was received
2 in evidence.)

3 CHAIRPERSON MILLER: All right.
4 The District has no further questions again
5 for the Investigator.

6 CHAIRPERSON MILLER: Okay. Now,
7 do you have -- you can ask questions about --

8 MR. MISIEL: Yes.

9 CHAIRPERSON MILLER: Okay.

10 RE-RE-CROSS-EXAMINATION

11 MR. MISIEL: One thing I want to
12 ask a question is voluntary agreement, this is
13 the previous owner. I'm not there. Can you
14 show me that also?

15 INVESTIGATOR MOLLOY: That is your
16 voluntary agreement. The voluntary agreements
17 stay at the address.

18 MR. MISIEL: It's not me. This is
19 previous owner. The old one that was there.
20 It's not us. It's not M&T. This is S&T.

21 CHAIRPERSON MILLER: Okay. This
22 is -- you can't really argue with him.

1 MR. MISIEL: No, I'm not --

2 CHAIRPERSON MILLER: You can --

3 MR. MISIEL: -- arguing. I'm
4 sorry. I just --

5 CHAIRPERSON MILLER: That's okay.

6 MR. MISIEL: -- mention the
7 report.

8 CHAIRPERSON MILLER: I just want
9 to guide you a little bit. You can ask him
10 questions and then later whatever you want to
11 say about it, you can.

12 MR. ADAMS: All right. Just for
13 clarification, the question may have been was
14 the agreement signed by -- from the owner S&T.
15 Is that what your question was?

16 MR. MISIEL: Yes, sir.

17 MR. ADAMS: Okay. And I think I
18 was just clarifying the question for him.

19 MR. MISIEL: That was the previous
20 owner signing that.

21 CHAIRPERSON MILLER: Okay.

22 MR. MISIEL: Not us.

1 CHAIRPERSON MILLER: You can
2 answer that, yes.

3 INVESTIGATOR MOLLOY: I mean, I
4 don't -- I would have to flip through and see
5 exactly who signed it. So if you'll give me
6 a second?

7 MR. MISIEL: It's right here.

8 INVESTIGATOR MOLLOY: I believe it
9 was -- it looks like it was signed on December
10 7, 2004.

11 CHAIRPERSON MILLER: The voluntary
12 agreement is a part of the case report. Is
13 that correct?

14 MR. ADAMS: Yes, I think it's
15 Exhibit 1.

16 CHAIRPERSON MILLER: Exhibit 1,
17 okay. Do you have any other questions?

18 MR. MISIEL: Not really. Only
19 that one.

20 CHAIRPERSON MILLER: Okay. Okay.
21 Are there Board questions? Mr. Molloy, I
22 think that you started to address this issue,

1 but I'm going to ask you a question.

2 If this voluntary agreement was
3 signed by the previous owner, is it applicable
4 to the new owner? And if so, can you say why?

5 INVESTIGATOR MOLLOY: Yes, it is.
6 As long as whoever signs it transfers their
7 license to a new owner, the voluntary
8 agreement is part of that license. And that's
9 why it applies to the new owner. And that
10 could happen through multiple transfers. And
11 that's why M&T Grocer's license, even though
12 they are the new owners with the new name,
13 still lists the voluntary agreement being as
14 a part of their license.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. And you didn't write the case report?

17 INVESTIGATOR MOLLOY: I did not.
18 Investigator Parker did.

19 CHAIRPERSON MILLER: Okay. And
20 when did you review it?

21 INVESTIGATOR MOLLOY: I reviewed
22 it yesterday and earlier today once I found

1 out that I would be testifying because
2 Investigator Parker no longer works here.

3 CHAIRPERSON MILLER: Did you see
4 it soon after Investigator Parker wrote it?

5 INVESTIGATOR MOLLOY: Oh, I also
6 got to see it as he completed it.

7 CHAIRPERSON MILLER: Okay. And it
8 represents your recollection of the
9 investigation as well?

10 INVESTIGATOR MOLLOY: It's very
11 accurate, yes.

12 CHAIRPERSON MILLER: Okay. All
13 right. Any other questions? Okay. Any
14 questions on Board questions?

15 MR. ADAMS: One question based
16 upon Board's questions.

17 RE-REDIRECT EXAMINATION

18 MR. ADAMS: In terms of whether it
19 applies -- to whom it applies, now, frankly
20 you did answer that question. From the
21 voluntary agreement, I guess that signature
22 page of the voluntary agreement, do you have

1 that in front of you?

2 INVESTIGATOR MOLLOY: Yes.

3 MR. ADAMS: All right. There is
4 an item that starts off with see, do you see
5 that, Investigator Molloy?

6 INVESTIGATOR MOLLOY: See, yes.

7 MR. ADAMS: Can you read that?

8 INVESTIGATOR MOLLOY: "This
9 cooperative agreement is binding on the
10 applicant and will continue in force for all
11 subsequent renewals of the license and for any
12 and all subsequent applicants operating at
13 this location."

14 MR. ADAMS: All right. I have no
15 further questions.

16 CHAIRPERSON MILLER: Okay. Any
17 other questions?

18 MR. MISIEL: No.

19 CHAIRPERSON MILLER: Okay. All
20 right. Thank you very much.

21 INVESTIGATOR MOLLOY: Thank you.

22 MR. ADAMS: I rest.

1 CHAIRPERSON MILLER: Mr. Adams, do
2 you have any other witnesses or documents?

3 MR. ADAMS: The District has no
4 further witnesses or documents and it closes--
5 it rests its case.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Mulugeta, do you want to take the stand and
8 testify?

9 MR. MISIEL: Yes, sure.

10 CHAIRPERSON MILLER: Okay. I'll
11 swear you in, because your testimony should be
12 under oath. It's evidence. Okay.

13 Whereupon,

14 MULUGETA MISIEL
15 was called as a witness by the licensee, and
16 having been first duly sworn, assumed the
17 witness stand and was examined and testified
18 as follows:

19 CHAIRPERSON MILLER: Okay. You
20 can have a seat.

21 MR. MISIEL: Sure.

22 CHAIRPERSON MILLER: And this is

1 your chance to put your side of the case on.
2 So you can now testify, say whatever it is you
3 want to say about why you should be --

4 MR. MISIEL: Okay.

5 CHAIRPERSON MILLER: -- you know,
6 not liable or liable or whatever.

7 MR. MISIEL: Okay. So I can speak
8 generally, right?

9 CHAIRPERSON MILLER: Whatever you
10 want to say in your defense.

11 MR. MISIEL: Yes.

12 CHAIRPERSON MILLER: You can say.

13 DIRECT EXAMINATION

14 MR. MISIEL: Yes. Well, one thing
15 I want to say is if the business what I just
16 bought was -- they was telling me I cannot do
17 that one, I would do it. But I don't know
18 that it would be transferred the system or
19 through the lawyer, everything, but my
20 document I never see that thing. I just see
21 from him right now. He just receive that, the
22 previous owner then who had it.

1 And by the time when the officer
2 come, when they tell them we can't sell this
3 one, we just pick it up. From that day we
4 never sell anything. And then in our
5 neighbor, they sell different thing, but when
6 the officer come to us, you can't sell this,
7 you can't sell this, we just take them off.
8 We not -- I guess, we just follow the rules.

9 CHAIRPERSON MILLER: Okay.

10 MR. MISIEL: But in general, one
11 thing I would say is I think it's good to be
12 sure all of us, we are business people. We
13 are taxpayers. For some -- we have fair and
14 for some it was -- we don't have a fair and we
15 -- which is no good, you know.

16 I'm done. That's it. Thank you.

17 CHAIRPERSON MILLER: Okay. So
18 now, we will ask you questions, okay?

19 MR. MISIEL: Sure.

20 CHAIRPERSON MILLER: But Mr. Adams
21 has a chance to go first.

22 MR. ADAMS: All right.

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CROSS-EXAMINATION

MR. ADAMS: How are you doing, sir?

MR. MISIEL: Okay.

MR. ADAMS: Mr. Mulugeta, very quickly, so last year you were selling wine that was in the 375 milliliter bottles.

MR. MISIEL: Yes.

MR. ADAMS: Okay.

MR. MISIEL: All the way.

MR. ADAMS: Right.

MR. MISIEL: Yes.

MR. ADAMS: Now, the question I have for you is this. You did -- you weren't there that day. Your partner was there that day.

MR. MISIEL: Yes.

MR. ADAMS: Okay.

MR. MISIEL: That was --

MR. ADAMS: So basically, you are not sure if they -- if the Investigators did show -- on that date, show you the -- show

1 your partner the investigative -- not the
2 investigative -- the voluntary agreement. You
3 are not sure if that actually did occur,
4 because you weren't there?

5 MR. MISIEL: No, it's not that I
6 was not there, but I didn't know that.

7 MR. ADAMS: Okay.

8 MR. MISIEL: Also before ABC they
9 came to us, we were selling different thing.
10 Like see all the different things, they said
11 you can't sell it.

12 MR. ADAMS: Right.

13 MR. MISIEL: We just take it off
14 from the shelf.

15 MR. ADAMS: Okay. All right. I
16 have no further questions for Mr. Mulugeta.

17 CHAIRPERSON MILLER: Okay. Board
18 Members? I just have a few.

19 So when did you buy the business?

20 MR. MISIEL: That was almost like
21 six and a half or seven years ago.

22 CHAIRPERSON MILLER: Seven years

1 ago about?

2 MR. MISIEL: Yes.

3 CHAIRPERSON MILLER: Okay. And
4 you didn't know anything about the voluntary
5 agreement -

6 MR. MISIEL: No.

7 CHAIRPERSON MILLER: -- until this
8 incident?

9 MR. MISIEL: No, I don't.

10 CHAIRPERSON MILLER: Okay. Did
11 you ever have -- did anyone complain to you
12 about selling these containers?

13 MR. MISIEL: No.

14 CHAIRPERSON MILLER: So the first
15 you learned that you couldn't sell them was
16 when the ABRA Investigators came in to the --

17 MR. MISIEL: Yes.

18 CHAIRPERSON MILLER: -- store?

19 MR. MISIEL: That's the -- that
20 was the first time.

21 CHAIRPERSON MILLER: Okay. And
22 you weren't there though?

1 MR. MISIEL: No, I was in the
2 vacation that day.

3 CHAIRPERSON MILLER: Okay. So did
4 you say that once they told you you couldn't
5 sell them, you took everything off the
6 shelves?

7 MR. MISIEL: Yes, ma'am.

8 CHAIRPERSON MILLER: I mean all
9 these containers? Okay. Your partner did
10 that before you got back?

11 MR. MISIEL: Yes, he did it.
12 Everything he did it.

13 CHAIRPERSON MILLER: Okay.

14 MR. MISIEL: Yes, we have another,
15 so he just take it over there.

16 CHAIRPERSON MILLER: You have
17 another store at another neighborhood where --

18 MR. MISIEL: No, there is one
19 outfit. They sell like that, by the sizes,
20 just took it up there and give it to them.

21 CHAIRPERSON MILLER: Okay. Okay.
22 Do you have a copy of the voluntary agreement

1 now?

2 MR. MISIEL: Yes, he just give it
3 to me right now.

4 CHAIRPERSON MILLER: You just got
5 it?

6 MR. MISIEL: Yes, ma'am, yes.

7 CHAIRPERSON MILLER: Okay.

8 MR. MISIEL: Can we would sell the
9 MD 20/20 750, that was -- we still carry. We
10 still have that.

11 CHAIRPERSON MILLER: Okay. Do you
12 know, did they tell you you are supposed to
13 keep the voluntary agreement at the business?

14 MR. MISIEL: Really when we signed
15 the document, me and my partner, we did not
16 see the document. I was checking it
17 yesterday. I didn't have it in there.

18 CHAIRPERSON MILLER: Okay.

19 MR. MISIEL: I was just surprised
20 when he just showed me right there, because
21 that's the previous owner guy. That would
22 have come from him.

1 CHAIRPERSON MILLER: Okay. And
2 you were represented by a lawyer when you
3 bought the business?

4 MR. MISIEL: Yes, ma'am.

5 CHAIRPERSON MILLER: And the
6 lawyer didn't tell you anything about this?

7 MR. MISIEL: I got all the
8 document. I didn't have the right date.

9 CHAIRPERSON MILLER: Okay. All
10 right. Any other questions, Board Members?
11 Mr. Adams?

12 MEMBER SILVERSTEIN: Just one.

13 CHAIRPERSON MILLER: Mr.
14 Silverstein?

15 MEMBER SILVERSTEIN: How long have
16 you owned the business? How long have you had
17 the business?

18 MR. MISIEL: About six and a half,
19 seven years there.

20 MEMBER SILVERSTEIN: Six and a
21 half years?

22 MR. MISIEL: Yes. Yes, sir.

1 MEMBER SILVERSTEIN: Thank you.

2 No further questions.

3 CHAIRPERSON MILLER: Okay. Thank
4 you.

5 MR. MISIEL: Okay. Thank you.

6 CHAIRPERSON MILLER: And you don't
7 have any documents you want to put into the
8 record, do you?

9 MR. MISIEL: No.

10 CHAIRPERSON MILLER: Okay. Then
11 we are ready for closing, I believe, whenever
12 you're ready, Mr. Adams.

13 MR. ADAMS: Yes, Madam Chairman.
14 I think the evidence has already been proven.
15 Mr. Mulugeta admits that they did sell 375
16 milliliter bottles last year until they were
17 told by ABRA Investigators that they were not
18 able to do so or that action was prohibited.

19 So essentially, the District's
20 charge has been proven that they did sell it
21 and that the establishment did sell it and
22 they offered for sale those size beverages.

1 In terms of the voluntary
2 agreement, obviously, mistakes of law versus
3 mistakes of fact cannot be considered by the
4 Board. More or less, it was -- is the
5 establishment's obligation to know of the
6 voluntary agreements and rules that apply to
7 it.

8 And, you know, if there's a
9 situation where someone informs them that's a
10 situation between the prior owner and not --
11 the prior owner and themselves and not between
12 the establishment and the Board.

13 But in this case, you know, it
14 seems as though they did have at least some
15 opportunity to know of it, but the bottom
16 line, it doesn't matter whether or not they
17 knew of the voluntary agreement or not. The
18 simple fact of the matter is that this rider
19 came with the license. And as a result, since
20 the -- even if it is a mistake of law, they
21 are responsible for it and to the requirement.
22 So as a result, the establishment is liable in

1 this case.

2 So very briefly, the District
3 would make a penalty recommendation. This
4 would be the establishment's first violation
5 of any form. This is a secondary tier
6 violation. So as a result, the most the
7 District can ask for is a \$500 fine. And the
8 most the District is asking for is a \$500
9 fine.

10 CHAIRPERSON MILLER: Okay. And
11 you are asking for the most the District can
12 ask for?

13 MR. ADAMS: In this case. Well,
14 actually, there could be more, but the
15 District's recommendation is a \$500 fine.

16 CHAIRPERSON MILLER: Okay. Okay.
17 All right. Mr. Mulugeta, do you want to make
18 some closing remarks?

19 MR. MISIEL: Yes. What officer
20 says, generally, I don't agree with it,
21 because if I was know the law, it's there, I
22 won't do it at all. And I keep tell -- I keep

1 asking that if a different place become
2 different, they tell us you can't sell this,
3 we don't sell it. We follow the rules every
4 day.

5 You know, and the day he told us
6 we just take it off from the shelf. We don't
7 sell no more. And it hasn't happened again
8 and we are not going to do it. This need to
9 be guys tell, you know, we just -- I don't
10 know. If I know, I'm happy to do my -- pay my
11 things, because I know what I'm doing, but I
12 didn't know.

13 I'm responsible if that's the way
14 goes the law, that's the law, I know that, you
15 know.

16 CHAIRPERSON MILLER: Okay. All
17 right. Then I'm going to close the record in
18 this case. So what the Board will consider is
19 what has been said today and then also
20 Government Exhibit No. 1.

21 Finally, parties have an
22 opportunity to file proposed findings of fact

1 and conclusions of law or they can waive their
2 right to do that.

3 MR. ADAMS: The District waives
4 the right to file findings of fact and
5 conclusions of law.

6 CHAIRPERSON MILLER: Do you
7 understand that, sir?

8 MR. ADAMS: With respect to the
9 law, like we would have to write -- basically
10 write our testimony and say what we want the
11 Board to do. Basically, it would be the same
12 thing, but just do it in writing.

13 MR. MISIEL: Okay.

14 MR. ADAMS: All right. But we are
15 saying I don't want to do that. So it's up to
16 you.

17 CHAIRPERSON MILLER: Most people
18 don't do it, but you can if you want to.

19 MR. MISIEL: No.

20 CHAIRPERSON MILLER: Okay. So
21 both parties waive their right to file
22 proposed findings of fact and conclusions of

1 law.

2 So okay. The Board will consider
3 this in closed session and we will issue a
4 written order with 90 days.

5 So that's the process. You know,
6 there is -- and if you don't like the order,
7 you can move for reconsideration and things
8 like that, but, basically, there is nothing
9 more for you to do now. And we will have our
10 deliberation and then you will get that order,
11 written order.

12 Okay. Thank you. So left only
13 for the Board to do and you don't have to stay
14 if you don't want to, but I'm going to take a
15 vote of Board Members on having our closed
16 meeting for deliberations.

17 As Chairperson of the Alcoholic
18 Beverage Control Board for the District of
19 Columbia and in accordance with Section 405 of
20 the Open Meetings Amendment Act of 2010, I
21 move that the ABC Board hold a closed meeting
22 for the purpose of seeking legal advice from

1 our counsel on Case No. 12-CMP-00392, M&T
2 Grocer's Beer and Wine, per Section 405(b)(4)
3 of the Open Meetings Amendment Act of 2010,
4 and deliberating upon this case for the
5 reasons cited in Section 405(b)(13) of the
6 Open Meetings Amendment Act of 2010.

7 Is there a second?

8 MEMBER BROOKS: Second.

9 CHAIRPERSON MILLER: Mr. Brooks
10 has seconded the motion. I will now take a
11 roll call vote.

12 Mr. Brooks?

13 MEMBER BROOKS: I agree.

14 CHAIRPERSON MILLER: Ms. Miller
15 agrees.

16 Mr. Silverstein.

17 MEMBER SILVERSTEIN: I agree.

18 CHAIRPERSON MILLER: It appears
19 the motion has passed by a vote of 3-0-0. I
20 hereby give notice that the ABC Board will
21 hold a closed meeting in the ABC Board
22 conference room today pursuant to the Open

1 Meetings Amendment Act of 2010 and issue a
2 written order within 90 days.

3 Okay. Thank you very much.

4 MR. ADAMS: All right.

5 CHAIRPERSON MILLER: Okay. Our
6 next hearing is at 2:30 p.m., so the Board
7 will recess and come back at that time.

8 (Whereupon, the Show Cause Hearing
9 in the above-entitled matter was concluded at
10 2:08 p.m.)

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A	ago 37:21 38:1	attempt 24:17	briefly 44:2	33:1,6,10,19,22
ABC 4:6 17:20	agree 44:20 48:13	August 7:5 11:7	Brooks 1:22 48:8,9	34:5,9,12 35:9,17
37:8 47:21 48:20	48:17	22:20 24:4	48:12,13	35:20 37:17,22
48:21	agreement 1:11	available 16:12,14	brought 15:6,8	38:3,7,10,14,18
able 13:15 14:1	6:15,17,19 7:12	16:22	Building 1:17	38:21 39:3,8,13
16:21 42:18	8:14 11:20 12:1	B	burden 4:18	39:16,21 40:4,7
above-entitled 49:9	14:17 15:1,4,15	B 1:8	business 8:13 34:15	40:11,18 41:1,5,9
ABRA 1:25 11:16	15:17,21 16:2	back 6:17 13:2	35:12 37:19 40:13	41:13 42:3,6,10
12:18 38:16 42:17	17:14,21 18:8,10	20:18 39:10 49:7	41:3,16,17	44:10,16 45:16
accurate 15:5	19:7 23:10 27:12	based 31:15	buy 8:12 14:20	46:6,17,20 47:17
25:20 31:11	27:16 28:14 29:12	basic 6:13	17:19 37:19	48:9,14,18 49:5
accurately 22:19	30:2,8,13 31:21	basically 4:19	B-R-I-A-N 10:13	chance 8:20 19:6
Act 47:20 48:3,6	31:22 32:9 37:2	36:20 46:9,11	C	20:4 24:5 34:1
49:1	38:5 39:22 40:13	47:8	call 9:16 26:20	35:21
action 42:18	43:2,17	beer 1:6,6 2:6 7:4	48:11	charge 42:20
Adams 1:25 2:11	agreements 27:16	11:11,18 19:20	called 9:22 33:15	charged 6:14
2:12 3:4 4:16 6:8	43:6	48:2	capacity 7:1,9	checking 40:16
6:9,11 9:11,14,17	agrees 48:15	believe 18:15 29:8	carry 40:9	cited 48:5
10:7,10,14,19	ahead 8:10	42:11	case 1:9 2:5,5 4:19	claiming 19:19
11:1,5,9,13 12:2	aisle 16:15,16 25:8	beverage 1:2,15,16	6:13 8:2 22:6,9	clarification 28:13
12:10,14 13:15,22	alcohol 13:21	10:15 13:20 47:18	26:18,19 29:12	clarifying 28:18
14:8,21 15:7 16:7	alcoholic 1:2,15,16	beverages 42:22	30:16 33:5 34:1	clear 16:17
16:10,20 17:3	10:15 13:19 47:17	binding 32:9	43:13 44:1,13	close 45:17
19:21 20:2,16,22	allowed 16:5	bit 28:9	45:18 48:1,4	closed 47:3,15,21
21:3,7,10,12,18	Amendment 47:20	Board 1:2,16 2:12	Cause 1:6 3:2 49:8	48:21
22:2,8,14,17,22	48:3,6 49:1	4:6 5:10 6:17	certain 15:5	closes 33:4
23:4,8,11,17,22	ANC-6A 1:8 2:8	7:13 29:21 31:14	Chair 2:12 6:11	closing 5:18 42:11
24:10,15,20 25:1	answer 29:2 31:20	37:17 41:10 43:4	Chairman 3:5	44:18
25:5,11,19 26:2	anyway 26:18	43:12 45:18 46:11	42:13	Columbia 1:1 2:13
28:12,17 29:14	appears 48:18	47:2,13,15,18,21	Chairperson 1:18	47:19
31:15,18 32:3,7	applicable 30:3	48:20,21 49:6	1:21 2:3,16,19 3:1	come 4:7 35:2,6
32:14,22 33:1,3	applicant 32:10	Board's 20:16	3:6,9,12,15,18,20	40:22 49:7
35:20,22 36:2,5,9	applicants 32:12	31:16	4:1,4,11,16,21	comparison 14:13
36:11,13,18,20	applies 30:9 31:19	bottle 14:14 16:19	5:14,21 6:3,7,10	complain 38:11
37:7,12,15 41:11	31:19	24:6,7	7:14 8:5,7,10,15	complaint 11:18,21
42:12,13 44:13	apply 43:6	bottles 12:6 13:5,7	8:19 9:7,10,12,15	12:3,5 15:3,5
46:3,8,14 49:4	appreciate 6:2	13:8,9,12,14 14:2	9:19 10:4 17:5,8	completed 31:6
added 25:22	approach 21:12	14:4,12,17 16:6,8	18:20 19:1,5,11	concluded 49:9
address 26:15	approved 6:17	24:18 25:9,17,18	19:22 20:3,6,11	conclusions 46:1,5
27:17 29:22	argue 27:22	36:7 42:16	20:14,21 21:1,5,9	46:22
Administration	arguing 28:3	bottom 14:4 43:15	21:11,15,19 26:6	conducted 23:16
10:16	arrived 12:15	bought 19:14,17	26:14,17 27:3,6,9	conducting 12:20
admits 42:15	asked 18:19	34:16 41:3	27:21 28:2,5,8,21	12:22
admitted 26:21	asking 19:2 44:8,11	Brian 1:25 9:21	29:1,11,16,20	conference 48:22
advice 47:22	45:1	10:13	30:15,19 31:3,7	confirmed 14:11
afternoon 2:4,5,11	assumed 10:2	brief 6:12	31:12 32:16,19	confused 15:16
10:7,9	33:16			consider 45:18

47:2 considered 43:3 container 6:22 7:1 containers 1:12 7:8 38:12 39:9 content 22:15,18 contest 4:9 contested 4:9 continue 32:10 Control 1:2,15,16 47:18 conversation 15:11 cooler 13:1,4 16:8 16:10 25:8,16 coolers 7:6 cooperative 32:9 copy 15:6,8 16:4 18:10 21:16 23:10 23:15 26:7 39:22 correct 10:16,18 11:4 16:8,9 23:2 29:13 counsel 7:16 9:22 48:1 counter 12:19 couple 13:11 CROSS-EXAMI... 17:12 36:1 customer 16:14 customers 16:11,12	different 35:5 37:9 37:10 45:1,2 difficulty 16:21 direct 10:6 20:18 34:13 District 1:1 2:13 9:17 20:17,19 27:4 33:3 44:2,7,8 44:11 46:3 47:18 District's 21:13 26:4 42:19 44:15 document 18:3,5 20:20 21:21 22:3 26:22 34:20 40:15 40:16 41:8 documents 5:3 33:2,4 42:7 doing 19:12 36:2 45:11 DONALD 1:22 drinks 13:17 duly 10:1 33:16 duty 11:6 D.C 1:17	Exhibit 21:14,22 23:4,5,9,12,13,14 23:22 24:1,1,2,12 24:13 25:5,6,7 26:4,20 27:1 29:15,16 45:20 exhibits 23:2 25:22 explain 17:13 explains 24:11 expose 6:21 7:6 extend 17:22	general 5:22 9:2 35:10 generally 34:8 44:20 give 5:22 6:21 29:5 39:20 40:2 48:20 glass 14:5 go 4:13,18 8:10 11:21 20:18 35:21 goes 6:4 45:14 going 4:12,18 5:1 8:20 9:1,3 12:11 21:7 22:13 30:1 45:8,17 47:14 good 2:3,11 3:1 8:7 10:7,8 35:11,15 Government 4:17 10:1 21:22 27:1 45:20 Government's 7:19 26:20 Grocer 2:15 Grocery's 2:6 7:4 11:11 Grocer's 1:6,6 11:18 22:7 30:11 48:2 guess 25:13 31:21 35:8 guide 28:9 guy 40:21 guys 45:9	idea 5:22 identification 22:1 26:4 identified 12:17 imprint 14:5,6 incident 22:6 38:8 indicating 25:2 indication 24:17 individual 1:11 6:22 indulgence 20:17 informed 14:15 15:14 informs 43:9 initially 15:15 inspection 12:21 13:1 23:15,18 interaction 15:9 introduce 2:9 20:20 investigate 11:21 investigation 22:12 22:20 31:9 investigative 25:21 37:1,2 investigator 1:25 9:18,21 10:8,12 10:14,17,21 11:2 11:3,4,6,8,12,15 11:17,17 12:4,13 12:16,17 13:18 14:3,10 15:2,13 16:9,13 17:2,4,17 18:1,5,9,14 21:4 22:2,5,10,16,21 23:3,6,9,14,19 24:2,13,16,22 25:3,7,15 26:1 27:5,15 29:3,8 30:5,17,18,21 31:2,4,5,10 32:2,5 32:6,8,21 Investigators 12:18 36:21 38:16 42:17 Irish 13:3,13,16 24:18 25:9 issue 29:22 47:3
<hr/> D <hr/>	<hr/> E <hr/>	<hr/> F <hr/>	<hr/> H <hr/>	
date 36:22 41:8 day 4:8 35:3 36:15 36:16 39:2 45:4,5 days 47:4 49:2 December 29:9 defense 34:10 deliberating 48:4 deliberation 47:10 deliberations 47:16 deliver 6:21 describe 15:10 22:19 described 25:6 determine 14:1 difference 24:11	earlier 30:22 either 18:15 employed 10:15,20 11:2 essentially 42:19 establishment 6:14 6:20 7:4,7,11 11:10 12:12,15 15:20 18:16 24:4 42:21 43:12,22 establishment's 43:5 44:4 evidence 7:3 20:20 26:3,9 27:2 33:12 42:14 exactly 29:5 EXAMINATION 10:6 21:2 31:17 34:13 examined 10:2 33:17	fact 11:22 43:3,18 45:22 46:4,22 fair 25:20 35:13,14 fairly 22:19 familiar 22:9 featured 25:14 file 45:22 46:4,21 Finally 45:21 find 7:13 findings 45:22 46:4 46:22 fine 19:12 44:7,9 44:15 finished 5:5,9,11 first 2:5 4:18 9:16 10:1 13:16 18:19 33:16 35:21 38:14 38:20 44:4 flip 29:4 flipping 23:7 follow 35:8 45:3 followed 11:20 follows 10:3 33:18 force 32:10 form 44:5 fortified 6:22 7:7 12:6 13:19 found 30:22 frankly 31:19 front 22:3 32:1 further 17:4 27:4 32:15 33:4 37:16 42:2	half 37:21 41:18,21 happen 30:10 happened 12:15 19:7 45:7 happy 45:10 hard 14:14 25:4 hearing 1:7,17 3:2 4:5 49:6,8 Hi 9:19 hidden 16:11 hold 8:16 47:21 48:21	<hr/> I <hr/>
		<hr/> G <hr/>		

36:18 37:7,15,17 38:3,10,21 39:3,9 39:13,21,21 40:7 40:11,18 41:1,9 42:3,5,10 44:10 44:16,16 45:16 46:13,20 47:2,12 49:3,5 old 27:19 once 12:14 14:10 15:13 30:22 39:4 open 16:19,21 47:20 48:3,6,22 opening 4:22 5:16 6:12 7:17,18,22 operating 32:12 opinion 16:22 opportunity 43:15 45:22 option 7:18 optional 5:2 order 47:4,6,10,11 49:2 outfit 39:19 outside 13:6 overall 9:1 owned 41:16 owner 2:15,17 3:21 12:19 14:15 15:10 15:12,14 17:19 18:18 19:8 23:20 27:13,19 28:14,20 30:3,4,7,9 34:22 40:21 43:10,11 owners 4:2 30:12	46:21 partner 18:12 36:15 37:1 39:9 40:15 party 7:15 passed 48:19 patrons 14:19 pay 45:10 penalty 44:3 people 17:20 35:12 46:17 percent 13:21 photo 24:3,6 25:4,8 photograph 25:14 photographed 14:12,12 pick 35:3 place 14:19 17:19 19:14 45:1 please 2:10 10:10 point 14:9 pointed 15:22 position 10:20 possibly 13:3 posted 15:19 preliminary 3:3,5 4:19 8:2 11:10 presiding 1:18 previous 17:19 18:16,18 19:7 27:13,19 28:19 30:3 34:22 40:21 prior 43:10,11 probably 4:22 procedures 20:7 process 47:5 products 7:8 16:17 prohibited 12:7 42:18 pronounce 3:16 proof 4:18 proposed 45:22 46:22 prove 5:1 proven 42:14,20 pull 16:21	purpose 47:22 purposes 26:4,19 pursuant 48:22 put 5:2 22:13 34:1 42:7 P-R-O-C-E-E-D-... 2:1 p.m 2:2 49:6,10	<hr/> Q <hr/> question 20:2 27:12 28:13,15,18 30:1 31:15,20 36:13 questions 4:13 5:4 5:7,10 17:4,6,10 19:3,9 20:8,12 27:4,7 28:10 29:17,21 31:13,14 31:14,16 32:15,17 35:18 37:16 41:10 42:2 quickly 36:6	<hr/> R <hr/> raised 14:6 read 32:7 readily 16:22 ready 7:21 42:11 42:12 really 16:20 26:10 27:22 29:18 40:14 reasons 16:1 48:5 receive 34:21 received 11:18 27:1 recess 49:7 recognize 22:3 recollection 24:20 25:12 31:8 recommendation 44:3,15 reconsideration 47:7 record 2:4,10 10:11 26:18 42:8 45:17 REDIRECT 21:2 Reeves 1:17 Regulation 10:16	regulatory 12:20 13:1 23:15,18 remarks 44:18 remember 12:11 remove 14:18 renewals 32:11 report 22:6,9,15,18 23:1,1,5 25:21,22 26:8,19 28:7 29:12 30:16 representation 25:20 represented 7:15 41:2 representing 2:13 represents 4:17 31:8 requirement 43:21 reserve 8:1 respect 46:8 responsible 43:21 45:13 rest 32:22 rests 33:5 result 7:10,13 43:19,22 44:6 Retailer 1:8 review 22:14 30:20 reviewed 30:21 reviewing 22:18 RE-RECROSS-... 27:10 RE-REDIRECT 31:17 rider 43:18 right 3:2 7:19 8:1,4 8:16 9:11 10:19 11:5,5 12:10,14 13:22 14:7 17:3 17:16,22 18:22 19:8 20:7 22:17 22:22 23:11 24:10 24:11 25:19 26:2 26:13 27:3 28:12 29:7 31:13 32:3 32:14,20 34:8,21 35:22 36:11 37:12	37:15 40:3,20 41:8,10 44:17 45:17 46:2,4,14 46:21 49:4 roll 48:11 room 1:17 48:22 Rose 13:3,14,16 24:19 25:9 roughly 13:20 rules 35:8 43:6 45:3 Ruthanne 1:18,21
<hr/> P <hr/> page 31:22 pages 23:12 paper 18:3 Parker 11:17 12:17 22:11 25:21 30:18 31:2,4 part 23:1,5 29:12 30:8,14 participated 4:5 parties 2:9 45:21				<hr/> S <hr/> sale 6:21 7:6 17:1 24:4 25:10 42:22 saw 13:1 saying 46:15 says 14:6 44:20 seat 33:20 second 8:16 13:10 29:6 48:7,8 secondary 44:5 seconded 48:10 Section 47:19 48:2 48:5 see 6:4 8:19 11:21 13:5 14:14,19 16:17 18:11 22:12 24:5 25:4 29:4 31:3,6 32:4,4,6 34:20,20 37:10 40:16 seeking 47:22 sell 6:20 16:5 18:8 18:18 26:12 35:2 35:4,5,6,7 37:11 38:15 39:5,19 40:8 42:15,20,21 45:2,3,7 selling 12:5,8 14:17 19:17,18 26:12 36:6 37:9 38:12 session 47:3 Settlement 1:10 seven 37:21,22 41:19		

<p>sheet 2:20</p> <p>shelf 13:8,10,13 25:13,16,18 37:14 45:6</p> <p>shelves 25:13 39:6</p> <p>show 1:6 3:2 7:3 9:2,3 21:8 24:7,17 27:14 36:22,22,22 49:8</p> <p>showed 16:4 40:20</p> <p>showing 21:6</p> <p>side 5:18 34:1</p> <p>sign 2:20 8:13 17:22 18:21 19:14</p> <p>signature 18:12,12 23:18,19,20 31:21</p> <p>signed 2:22 18:4,15 28:14 29:5,9 30:3 40:14</p> <p>signing 28:20</p> <p>signs 30:6</p> <p>sign-in 2:20</p> <p>Silverstein 1:22 41:12,14,15,20 42:1 48:16,17</p> <p>simple 43:18</p> <p>simply 7:10</p> <p>sir 10:10 17:13 19:22 20:1,3 28:16 36:3 41:22 46:7</p> <p>situation 43:9,10</p> <p>six 37:21 41:18,20</p> <p>size 12:8 13:5 14:1 14:11,14,18 24:8 24:17 42:22</p> <p>sizes 13:12 24:3 25:1 39:19</p> <p>small 13:7</p> <p>smaller 13:9 24:6</p> <p>Sold 1:11</p> <p>soon 31:4</p> <p>sorry 18:1 19:21 28:4</p> <p>sounds 8:20</p> <p>speak 34:7</p> <p>specific 20:7</p>	<p>specifically 6:16 17:15</p> <p>spell 3:13 10:11</p> <p>stand 10:2 33:7,17</p> <p>start 4:22</p> <p>started 29:22</p> <p>starts 32:4</p> <p>state 10:11</p> <p>stated 12:5 15:9 16:7 25:12</p> <p>statement 4:22 5:16,18 6:12 7:17 7:18,22</p> <p>stay 27:17 47:13</p> <p>store 6:19 13:2 16:15 19:16 25:9 38:18 39:17</p> <p>Street 1:8,17 2:7</p> <p>subsequent 32:11 32:12</p> <p>suggest 7:16</p> <p>Suite 1:17</p> <p>supposed 40:12</p> <p>sure 4:15 6:6 8:18 19:2 21:7 23:8 33:9,21 35:12,19 36:21 37:3</p> <p>surprised 40:19</p> <p>swear 33:11</p> <p>sworn 10:1 33:16</p> <p>system 34:18</p> <p>S&T 27:20 28:14</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 16:19 19:18 33:7 35:7 37:13 39:15 45:6 47:14 48:10</p> <p>taxpayers 35:13</p> <p>tell 4:8,12 13:6 35:2 40:12 41:6 44:22 45:2,9</p> <p>telling 34:16</p> <p>terms 6:18 15:8 31:18 43:1</p> <p>testified 10:3 33:17</p> <p>testifies 5:8</p>	<p>testify 5:15 8:20 19:6 20:4,9 33:8 34:2</p> <p>testifying 5:6 8:21 31:1</p> <p>testimony 9:5 20:8 26:15 33:11 46:10</p> <p>thank 6:1 9:12 10:4 30:15 32:20,21 35:16 42:1,3,5 47:12 49:3</p> <p>thing 8:12 20:18 27:11 34:14,20 35:5,11 37:9 46:12</p> <p>things 13:4 15:17 37:10 45:11 47:7</p> <p>think 13:20 14:20 16:14 28:17 29:14 29:22 35:11 42:14</p> <p>tier 44:5</p> <p>time 9:5 11:16 14:16 23:21 26:12 35:1 38:20 49:7</p> <p>today 4:10 30:22 45:19 48:22</p> <p>told 12:20 14:18 39:4 42:17 45:5</p> <p>top 13:8,12 25:16</p> <p>training 11:16</p> <p>transferred 34:18</p> <p>transfers 30:6,10</p> <p>try 18:18</p> <p>turn 5:7</p> <p>two 4:3,4 24:3</p> <p>type 19:18</p> <p>t/a 1:6</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>understand 6:5 46:7</p> <p>unobstructed 16:18</p> <p>Usually 7:15</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>VA 12:7</p> <p>vacation 39:2</p>	<p>versus 24:8 43:2</p> <p>Vincent 11:17 22:10</p> <p>violating 11:19,22 14:16</p> <p>violation 1:10 6:15 7:12 14:22 15:14 44:4,6</p> <p>voluntary 6:15,16 7:12 8:13 11:19 11:22 14:17,22 15:4,15,17,20 16:2 17:14,21 18:7,10 23:10 27:12,16,16 29:11 30:2,7,13 31:21 31:22 37:2 38:4 39:22 40:13 43:1 43:6,17</p> <p>vote 47:15 48:11,19</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 8:15,16 9:8,9 18:20</p> <p>waive 46:1,21</p> <p>waives 46:3</p> <p>walked 12:16 16:16</p> <p>Walter 1:25 2:12</p> <p>want 3:7 4:8,12 5:16 8:12 9:2,4,7 9:16 19:2 27:11 28:8,10 33:7 34:3 34:10,15 42:7 44:17 46:10,15,18 47:14</p> <p>wanted 5:22</p> <p>wants 20:18</p> <p>Washington 1:17</p> <p>wasn't 16:18</p> <p>way 36:10 45:13</p> <p>went 15:4</p> <p>weren't 36:14 37:4 38:22</p> <p>Wild 13:3,13,16 24:18 25:9</p> <p>wine 1:6,7 2:6 6:22 6:22 7:4,7,8 11:11</p>	<p>11:19 12:5,6 13:19 36:6 48:2</p> <p>witness 5:5,5 9:16 9:18,22 10:2 21:10,13 33:15,17</p> <p>witnesses 5:2,12 33:2,4</p> <p>works 31:2</p> <p>write 30:16 46:9,10</p> <p>writing 46:12</p> <p>written 47:4,11 49:2</p> <p>wrote 22:11 31:4</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 36:6 42:16</p> <p>years 37:21,22 41:19,21</p> <p>yesterday 30:22 40:17</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p 1:4,12</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$500 44:7,8,15</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 21:14,22 23:4,5,9 26:5,20 27:1 29:15,16 45:20</p> <p>1:34 2:2</p> <p>11 10:22</p> <p>12-CMP-00392 1:9 2:6 48:1</p> <p>13 13:20</p> <p>14th 1:17</p> <p>15th 1:8 2:7</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 23:12,13,14</p> <p>2:08 49:10</p> <p>2:30 49:6</p> <p>20/20 13:3,13 18:8 24:3,18 25:10 40:9</p> <p>2000 1:17</p> <p>20009 1:18</p>
---	--	--	---	---

2004 29:10
2005 6:18
201 1:8 2:7
2010 47:20 48:3,6
 49:1
2012 7:6 11:7 22:20
2013 1:14

3

3 23:22 24:1,1,2
3-0-0 48:19
375 12:6 13:14 14:6
 14:11 16:6 24:8
 25:3,17 36:7
 42:15

4

4 24:12,13,15,16
400S 1:17
405 47:19
405(b)(13) 48:5
405(b)(4) 48:2

5

5 1:14 24:15,16

6

6 25:5,6,8

7

7 29:10
750 7:2,9 12:8 24:8
 40:9
77390 1:9 2:8

8

8 7:5 11:7 22:20
8th 24:4

9

90 47:4 49:2