

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
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LMW, LLC, :
t/a Little Miss Whiskey's : Protest
Golden Dollar : Hearing
1104 H Street NE :
Retailer CT :
License No. 79090 :
Case No. 14-PRO-00003 :
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OCTOBER 1, 2014

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

PRESENT:

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member

JAMES SHORT, Member

ALSO PRESENT:

MARK BRASHEARS, ABRA Investigator

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P R O C E E D I N G S

(03:03:45 p.m.)

CHAIR MILLER: I am going to call the case. We have a couple of other Board members will be joining us very shortly. This is the Little Miss Whiskey's Golden Dollar case. It is a protest hearing Case No. 14-PRO-00003, 1104, H Street NE, License No. 79090 and ANC 6A. Good afternoon and why don't we start with introductions.

MR. LAFANDE: Good afternoon Madam Chair, Matthew LaFande member of the District of Columbia bar for and on behalf of LMW LLC a District of Columbia Limited Liability Company which owns the establishment in question. Present and seated at the table to my left is Mark Thorp a principle of that Company.

CHAIR MILLER: Okay.

MR. WILLIAMS: Good afternoon Madam Chair my name is Jay Williams and I am here on behalf of ANC 6A.

1 CHAIR MILLER: Okay great. All
2 right so let's just start with a few
3 preliminary issues. I believe that the ANC
4 filed Protest Information Form, Exhibit
5 Lists, I don't have the Exhibits but did you
6 make copies?

7 MR. WILLIAMS: I have seven I
8 have actually nine copies of every Exhibit.

9 CHAIR MILLER: Great.

10 MR. WILLIAMS: I don't expect to
11 use all of them but I will have them when we
12 do need them.

13 CHAIR MILLER: Okay, perfect. Did
14 Little Miss Whiskey file?

15 MR. LAFANDE: We don't have any
16 Exhibits.

17 CHAIR MILLER: You don't have any
18 Exhibits?

19 MR. LAFANDE: We filed a PIF.

20 CHAIR MILLER: You did, that's
21 good.

22 MR. LAFANDE: Identifying Mr.

1 Thorp as the only witness. We don't have
2 any other witnesses or exhibits to offer.

3 MR. WILLIAMS: Can I just make one
4 quick point on the PIF question. We are
5 willing to move forward and we are prepared
6 to do a protest hearing but I just wanted to
7 point out that the PIF filed by Little Miss
8 Whiskey's is deficient on its face. The
9 Summary Description and the nature of the
10 protest is completely blank and I mean that
11 is the place where they are supposed to
12 explain what the protest, what evidence they
13 are going to be put on and what arguments
14 they are going to make because they are
15 requesting Termination of a Settlement
16 Agreement and there is nothing in the box.
17 You know, like I said we are willing to move
18 forward I'm fine with going forward with a
19 protest but pretty prepared for whatever
20 they are going to raise but just want to
21 make a note of that especially considering
22 that he is represented by counsel who's been

1 in front of this Board multiple times and to
2 file a completely deficient Protest
3 Information Form.

4 MR. LAFANDE: So in response to
5 that--

6 CHAIR MILLER: It doesn't matter
7 that I don't see my copy because there is
8 nothing on it, right?

9 MR. WILLIAMS: That's pretty much
10 the case.

11 MR. LAFANDE: As I have argued
12 before this board on multiple occasions, I
13 assert that once the licensee has made a
14 proper application and the Protestant is the
15 proponent of the protest proceeding it's the
16 Protestant who then the burden shifts to as
17 to why an otherwise lawful establishment is
18 not entitled to avail itself of a particular
19 provision of the law.

20 We are quite at a disadvantage as
21 to why it is that they are interfering with
22 this termination and it's certainly going to

1 be the protestants case to make herein and
2 again as is reflected in our lack of
3 exhibits and our lack of witnesses we are
4 simply here to rebut what is presented and
5 highlight its deficiencies and say that the
6 licensee is entitled to this provision of
7 law as a matter of law and it is not our
8 burden to prove that we aren't not our
9 burden to prove a negative.

10 CHAIR MILLER: Okay I just want
11 to get clear the issues here because this is
12 Termination you are moving to terminate a
13 Settlement Agreement and the statute
14 basically as I read it sets forth the
15 standards and a particular one is this is
16 under 25-446 4 B & C. B: The need for an
17 amendment is either caused by circumstances
18 beyond the control of the applicant or is
19 due to a change in the neighborhood where
20 the applicants establishment is located and
21 C: The amendment or termination will not
22 have adverse impact on the neighborhood

1 where the establishment is located as
2 determined under 25-313 or 25-314 and so my
3 question is are you going to be addressing
4 those matters?

5 MR. LAFANDE: Again, as C very,
6 very clearly points out and I believe that
7 is the point of contention here is that the
8 Termination of the voluntary agreement will
9 not have an adverse effect, again it's to
10 try to prove its negative --

11 CHAIR MILLER: Okay.

12 MR. LAFANDE: Which has been
13 repeatedly addressed by the Court of Appeals
14 in what the burden of proof is for the
15 licensee it is a very strange proposition to
16 say that it doesn't affect something it's
17 now the Protestant who says it somehow does
18 somehow do that and we would like to hear
19 what they have to say and we would like to
20 address that and beyond that we are not here
21 to somehow prove this negative.

22 CHAIR MILLER: Okay.

1 MR. WILLIAMS: I disagree with the
2 statement that we are only focused on C I
3 think B is just as important a requirement.
4 It's an and clause and obviously the ANC is
5 not going to up as Mr. LaFande talking about
6 proving a negative, it specifically says C
7 is either caused by circumstances beyond the
8 control of the applicant or is due to a
9 change in neighborhood. They are the ones
10 moving to terminate the settlement agreement
11 this is not something that they
12 automatically given the right to have by
13 law, they actually have to prove by sworn
14 testimony, by sworn statements or sworn
15 testimony that these provisions are met and
16 that's not the ANC's job to prove that they
17 can't make it they have to prove that they
18 have met that burden before we even need to
19 talk about what the ANC's stance is and
20 obviously I am prepared to address these
21 provisions but I don't really see a point in
22 being the one having to meet a burden that

1 is actually the burden on the movant who is
2 requesting termination.

3 CHAIR MILLER: Okay, I mean I tend
4 to agree with Mr. Williams but we will see
5 how this plays out and if you want to bring
6 to our attention any Court of Appeals
7 decisions that we might not be aware of feel
8 free though I am familiar with some of those
9 Burden of Proof decisions in the Court of
10 Appeals that address protests. Okay, how
11 many witnesses do you have?

12 MR. WILLIAMS: It will be just one
13 or two.

14 CHAIR MILLER: Okay and you will
15 have maybe one?

16 MR. LAFANDE: We may have Mr.
17 Thorp as a rebuttal witness on some point.

18 CHAIR MILLER: What?

19 MR. LAFANDE: We may have Mr.
20 Thorp on some rebuttal at some point.

21 CHAIR MILLER: Right, okay. All
22 right the other thing is generally we give

1 each side an hour and a half we hope that
2 they don't take up that much time really but
3 that sets the boundaries and I think you
4 have all been here before based on your
5 witnesses testimony and when you are
6 crossing someone not on your opening and
7 closing and not when your witness is being
8 crossed. Okay we are ready to go, opening
9 statement. MR. LaFande, do you have any
10 opening statement?

11 MR. LAFANDE: The entirety of the
12 extant voluntary agreement with the ANC
13 speaks to two points. First is the subject
14 matter which was specifically germane to the
15 build out and configuration of the
16 establishment. This was to say how the
17 establishment would install its balcony
18 outside, what features would be included and
19 then what kind of sound proofing would be
20 made and all of those things were absolutely
21 satisfied at the time that the Agreement was
22 executed and the license was granted.

1 The second part of the
2 establishments' voluntary agreement speaks
3 entirely to the superfluous concept that the
4 establishment must obey the law and as we go
5 through each and every element of this
6 Voluntary Agreement we will see that the
7 requirements that are placed within this
8 Voluntary Agreement speak solely to things
9 that are already established by statute and
10 by the District of Columbia Municipal
11 Regulations. The time having passed for what
12 was required of them at the time that they
13 did the build out and they configured the
14 establishment and that the entirety of the
15 other elements of this Voluntary Agreement
16 speaks solely to the concept that the
17 establishment shall abide by the law
18 rendering disagreement of no purpose going
19 forward if we believe that once the
20 Protestant has made its presentation that
21 will be evident.

22 CHAIR MILLER: Thank you, okay.

1 Mr. Williams.

2 MR. WILLIAMS: Good afternoon.

3 This is a pretty straight forward case. Mr.
4 LaFande just gave a very broad overview of
5 what the Settlement Agreement is. You will
6 see the provisions of the Settlement
7 Agreement you will see the specifications
8 that are set out in there, this is not
9 simply here's how you are going to build
10 your establishment and you are going to
11 abide by the law. There is much more to it
12 than that. There is much more nuance and I
13 would also point out that the requirements
14 for how the establishment should be built
15 and what features should be, I think the
16 main issue is on their summer garden, those
17 are still germanes for today.

18 I understand that they
19 incorporated those and put them in and that
20 they are there currently but they're still
21 important to the neighborhood they are
22 important for sound litigation purposes and

1 simply saying well we did it you know we
2 don't need this requirement any more is
3 complete misrepresentation of how settlement
4 agreements work particularly given the fact
5 that a license could transfer, the building
6 could be completely redone to a different
7 establishment. They could decide to tear
8 down half the things that they have put up
9 to mitigate noise. Beyond that this is an
10 agreement that contains reasonable
11 restrictions that reflect the reality of a
12 bar located immediately adjacent to
13 residences.

14 That's what this Settlement
15 Agreement was reached for, that is the goal
16 that we have when we are working with
17 establishments in ANC 6A. As you are going
18 to hear today Little Miss Whiskey's has not
19 and cannot meet the requirements for
20 unilateral termination of its Settlement
21 Agreement. Not only that but they cannot
22 even present a coherent argument for why

1 this agreement should be terminated. As such
2 we are respectfully requesting that the
3 Board deny Little Miss Whiskey's request to
4 terminate its Settlement.

5 CHAIR MILLER: Okay, thank you.

6 MR. LAFANDE: Madam Chair as a
7 point of preliminary matter.

8 MR. WILLIAMS: Are we doing
9 rebuttals of openings?

10 CHAIR MILLER: No we are not doing
11 rebuttals of opening statements.

12 MR. LAFANDE: I have a
13 preliminary matter I believe we have a
14 member of this ANC on the Board, I thought I
15 was expecting that that person was going to
16 recuse themselves but I guess I am going to
17 have to make an inquiry as to whether we
18 have a member of this particular--

19 CHAIR MILLER: We have a member
20 yes we do.

21 MR. LAFANDE: Is that person going
22 to make a Motion to indicate they are

1 recuing themselves or would you like to make
2 that motion for me.

3 CHAIR MILLER: Mr. Alberti do
4 you, Mr. Alberti is the member, I believe he
5 isn't choosing to recuse himself or he would
6 have done so.

7 MR. ALBERTI: I am not choosing to
8 recuse myself.

9 MR. LAFANDE: Okay then I do move
10 to recuse Mr. Alberti as he does sit on this
11 particular ANC and I do ask that the vote be
12 taken to the Board as to whether his
13 propriety of him proceeding in this matter
14 as both in party and a wayside adjudicator
15 to this matter at the same time. I do
16 believe Mr. Williams is proceeding in the
17 name of the same organization upon which Mr.
18 Alberti sits.

19 CHAIR MILLER: Okay, Mr.
20 Silverstein.

21 MR. SILVERSTEIN: Recusal in my
22 understanding is a personal matter. The

1 Board cannot recuse a member.

2 CHAIR MILLER: No, I don't think
3 that's true.

4 MR. SILVERSTEIN: The Board does
5 not have the power to disqualify a member.

6 CHAIR MILLER: I don't think that
7 is true. I don't think that's true.

8 MR. SILVERSTEIN: Mr. Alberti's
9 choice is his to make not the Boards.

10 CHAIR MILLER: Okay, I know we
11 have been told that by some people but I
12 don't know that that is true. My
13 understanding is there is an Attorney
14 General's opinion that says if a Board
15 member does not participate at the ANC level
16 in any way and leaves the room and has
17 nothing do to with any of the discussion
18 then he or she may sit on the Board and hear
19 the matter and adjudicate the matter. That
20 is my understanding but I think Mr. Alberti
21 is that what you have done in this case or
22 do you want to address that.

1 MR. ALBERTI: Before I address
2 that, I think Mr. LaFande having heard your
3 remarks I'd like to hear from Mr. LaFande
4 his explanation of why he feels I should
5 recuse myself, again using Mr. LaFandes'
6 words it's hard to refute the negative or
7 prove the negative so I really need to
8 understand what Mr. LaFandes' objections
9 are.

10 MR. LAFANDE: The question arises
11 with these sorts of proceedings at a
12 judicial level where there becomes a
13 question as to whether there is a conflict
14 of interest. The question arises that if you
15 are a party to a proceeding in which Mr.
16 Williams is advocating a particular position
17 is it appropriate for you then to make what
18 is supposed to be in this quasi judicial
19 proceeding as an Administrative Agency, are
20 you capable of making an impartial decision
21 when in fact you are an elected
22 representative who is supposed to be

1 advocating on behalf of this organization.

2 It seems that there exists an
3 irreconcilable conflict of interest in this
4 particular instance where you act as both an
5 advocate for your constituency to which you
6 are elected and you are now holding court as
7 it may over an adversarial proceeding
8 between that organization and a business
9 owner here and I would certainly posit to
10 you that that has all the flags of a
11 conflict of interest that would require your
12 recusal.

13 MR. ALBERTI: First of all the
14 statement that I am charged with advocating
15 for my constituents is not quite accurate.
16 I took an oath as an ANC Commissioner to act
17 in the best interest of the District of
18 Columbia and that is certainly what I am
19 doing as an ABC Board Member. I took a
20 similar oath as an ABC Board Member. I
21 participate in no discussions of this matter
22 I wasn't present when the vote was made to

1 terminate and I feel that I can remain
2 completely unbiased in this matter and so I
3 will not recuse myself.

4 MR. LAFANDE: Again since the
5 issue has been raised somewhat by the
6 Chairwoman and by Mr. Silverstein making a
7 distinction perhaps without a difference, I
8 guess then I move to disqualify Mr. Alberti
9 as not having a conflict of interest upon
10 which the rest of the Board should vote for
11 him not to participate.

12 CHAIR MILLER: Okay, any other
13 comments by Board members? Sorry, Mr.
14 Williams there has been a motion for the
15 Board basically to disqualify or recuse Mr.
16 Alberti.

17 MR. WILLIAMS: I think it is
18 probably in my best interest not to take a
19 position on this motion I will echo Mr.
20 Albertis' comments and say that we have had
21 no conversations regarding this Settlement
22 Agreement and he did not participate in the

1 vote to oppose termination of the Settlement
2 Agreement.

3 MR. ALBERTI: Madam Chair, I am
4 reconsidering this matter and it's only out
5 of, how do I say this, out of my concerns
6 for this Board as a body. To avoid
7 unnecessary and frivolous appeals based on
8 some nebulous discomfort with my being here
9 and for the pure efficiency of getting this
10 matter settled so it doesn't prolong in the
11 court of appeals because I suspect that Mr.
12 LaFande would appeal my presence, yes I see
13 a head shaking there so it looks like, it
14 looks like my speculations on that are true
15 and so out of deference to my fellow Board
16 members and for no other reason I will
17 recuse myself.

18 MR. LAFANDE: Thank you.

19 CHAIR MILLER: Okay so I think we
20 can now move to our--

21 MR. LAFANDE: Let me make it
22 clear, I'm not asking Mr. Alberti--

1 MR. ALBERTI: Mr. LaFande, Mr.
2 LaFande, please I have made my statement I
3 believe that is the end of it, just let it
4 rest, I hope the Chair will rule in my favor
5 here of not allowing you to comment on that.

6 CHAIR MILLER: Okay, let's move
7 on. I think we are ready for our Board
8 witness, our investigator.

9 CHAIR MILLER: Do you swear to
10 tell the truth, the whole truth and nothing
11 but the truth?

12 MR. BRASHEARS: I do.

13 CHAIR MILLER: Okay thank you. I
14 think everyone has your report so feel free
15 to highlight major points or however you
16 want to proceed.

17 MR. BRASHEARS: Yes Ma'am, thank
18 you. My name is Mark Brashears; I am an
19 investigator here at ABRA. I conducted a
20 protest investigation of LMW LLC trading as
21 Little Miss Whiskey's Golden Dollar which is
22 located at 1104 H Street NE, Washington, DC.

1 Little Miss Whiskey's Golden Dollar is a
2 medium sized establishment located at 1104 H
3 Street NE Little Miss Whiskey's Golden
4 Dollar is bounded by 12th Street NE to the
5 East, 11th Street NE to the West, 1st Street
6 NE to the North and H Street NE to the
7 South. The request to terminate Little Miss
8 Whiskey's Golden Dollar Settlement Agreement
9 is being protested by the Advisory
10 Neighborhood Commission ANC6A, ANC6A
11 represented by Commissioner Jay Williams.
12 According to the District of Columbia
13 Geographic Information System, GIS, there
14 are 23 licensed ABC establishments operating
15 within 1,200 feet of Little Miss Whiskey's
16 Golden Dollar. According to the District of
17 Columbia GIS there are no schools or public
18 libraries within 400 feet of the
19 establishment.

20 The protest issues put forth were
21 adverse impact on peace, order and quiet and
22 the dissolution of the Settlement Agreement.

1 I have received a letter from Mr. Mark Thorp
2 the owner of Little Miss Whiskey's Golden
3 Dollar dated September 3, 2013. The letter
4 states the desire to terminate the
5 Settlement Agreement for Little Miss
6 Whiskey's Golden Dollar stem from violations
7 of the Settlement Agreement by ANC 6A. Mr.
8 Thorp wrote that the VA clearly states that
9 this Cooperative Agreement shall be
10 presented to all CT applicants within the
11 boundaries of the ANC 6A.

12 The community and merchants have
13 agreed that it is in all the parties best
14 interest to standardize the requirements for
15 the operation of restaurant, tavern and
16 night club establishments within the
17 boundaries of the ANC 6A. To the greatest
18 extent possible the ANC will not insist upon
19 or allow any significant change to this
20 Cooperative Agreement that would unfairly
21 benefit or conversely cause competitive
22 disadvantage to any individual applicant or

1 establishment within the ANC.

2 He further concluded that the ANC
3 6A has violated the Agreement whereas the VA
4 requires the LMW LLC to close its patio at
5 11:00 p.m. on weeknights and midnight on the
6 weekends there are no less than six other
7 alcohol licensed restaurant, tavern and
8 night club establishments within the
9 boundaries of the ANC 6A that are not
10 required to do the same including Biergarten
11 Haus, Red Rocks and Club 12. ANC 6A has
12 given unfair competitive advantage to the
13 other businesses by virtue of its agreements
14 with them and with LMW LLC the circumstances
15 to which are completely beyond the control
16 of LMW LLC other than to terminate the
17 Agreement.

18
19 Furthermore the VA between LMW
20 LLC and ANC 6A is almost entirely redundant
21 with the laws already governing LMW LLC
22 which puts the business in double jeopardy

1 if it violates a law also regulated by the
2 VA. There is no point being fined twice for
3 the same violation which is equally beyond
4 the control of the business.

5 On Thursday, May 8, 2014

6 Investigator Brashears telephonically
7 interviewed Mr. Jay Williams regarding the
8 protest issues. Mr. Williams stated that
9 the ANC 6A was protesting the termination of
10 the Settlement Agreement with Little Miss
11 Whiskey's Golden Dollar on the basis of
12 peace, order and quiet. Mr. Williams stated
13 that Mr. Thorp the owner of Little Miss
14 Whiskey's Golden Dollar must show that the
15 neighborhood has changed over the life of
16 the Settlement Agreement necessitating a
17 change which it has not.

18 Mr. Williams stated that Little
19 Miss Whiskey's Golden Dollar is located near
20 residences and ANC 6A wants to keep the good
21 relations between the neighborhood and
22 Little Miss Whiskey's Golden Dollar and he

1 feels that they are good due to the
2 Settlement Agreement. Mr. Williams stated
3 that ANC 6A feels strongly that the
4 Settlement Agreement should remain in place.
5 Mr. Williams stated that if the Settlement
6 Agreement were terminated for Little Miss
7 Whiskey's Golden Dollar it would be the only
8 establishment in ANC 6A without one.

9 ABRA investigators monitored
10 Little Miss Whiskey's Golden Dollar located
11 at 1104 H street NE, on 13 separate
12 occasions from May 2nd, 2014 through May
13 31st, 2014, during the hours ABRA
14 investigators monitored the establishment no
15 ABRA violations were observed. On
16 Wednesday, May 14 2014 Investigator
17 Brashears conducted a regulatory inspection
18 at Little Miss Whiskey's Golden Dollar. The
19 establishment had one ABRA violation. Little
20 Miss Whiskey's Golden Dollar received a
21 warning citation for not having the Board
22 Approved window lettering posted. The

1 establishment ABC manager was present at the
2 time of the inspection.

3 The DC Office of Unified
4 Communications advised that there were ten
5 calls for service to Little Miss Whiskey's
6 Golden Dollar between November 19, 2013 and
7 May 6, 2014. There were no ABRA incidents
8 among these calls for service. The Noise
9 Task Force comprised of investigators from
10 ABRA, DCRA and MPD did not receive any
11 complaints or monitor Little Miss Whiskey's
12 Golden Dollar during the protest period.

13 CHAIR MILLER: Okay, thank you.
14 Are there Board questions? I have one quick
15 one, they said that the patio hours are
16 limited in the Settlement Agreement I
17 believe.

18 MR. BRASHEARS: Yes Ma'am,
19 basically what I did for the monitoring and
20 the protest report the main concern seemed
21 to be the hours on the summer garden not
22 being the same in the Settlement Agreement

1 for other like establishments.

2 CHAIR MILLER: Right.

3 MR. BRASHEARS: So I compared a
4 total of five other establishments with the
5 CT License Class with a summer garden and a
6 Settlement Agreement similar to Little Miss
7 Whiskey's and basically what I found that of
8 the five establishments let's see, five of
9 the establishments listed have a CT Class
10 ABRA License, summer garden, Settlement
11 Agreement and are part of the ANC 6A. They
12 are Queen Vic, H Street Country Club,
13 Liberty Tree, Vendetta and 12 Restaurant and
14 Lounge. Two of the establishments, Queen
15 Vic and H Street Country Club have the same
16 summer garden hours as Little Miss Whiskey's
17 Golden Dollar in their Settlement Agreement.

18

19 One establishment, Liberty Tree
20 has closing hours for their summer garden
21 prior to that of Little Miss Whiskey's
22 Golden Dollar in their Settlement Agreement.

1 One establishment, 12 Restaurant and Lounge
2 has hours that exceed the summer garden
3 hours of Little Miss Whiskey's Golden Dollar
4 in their Settlement Agreement and one
5 establishment, Vendetta did not have hours
6 stipulated in their Settlement Agreement for
7 their summer garden; however, their hours on
8 their ABRA License were prior to that of
9 what was stipulated in the Settlement
10 Agreement for Little Miss Whiskey.

11 CHAIR MILLER: Great, okay. When
12 you said if they didn't have a Settlement
13 Agreement if it was terminated they would be
14 the only one, was that in 6A?

15 MR. BRASHEARS: Yes ma'am that was
16 my understanding.

17 CHAIR MILLER: Any other
18 questions? Okay. Does the Petitioner have
19 questions?

20 MR. LAFANDE: I'm sorry I didn't
21 hear the investigator introduce himself.
22 Could I get your name for the record?

1 MR. BRASHEARS: Mark Brashears.

2 MR. LAFANDE: Could you spell it
3 for me please?

4 MR. BRASHEARS: B-R-A-S-H-E-A-R-S.

5 MR. LAFANDE: Thank you. How long
6 have you been employed by ABRA?

7 MR. BRASHEARS: A little over a
8 year.

9 MR. LAFANDE: And in this period
10 of time you acted, worked as an investigator
11 exclusively?

12 MR. BRASHEARS: Yes sir.

13 MR. LAFANDE: Are you familiar
14 with the other establishments that you have
15 identified in your testimony?

16 MR. BRASHEARS: Yes sir.

17 MR. LAFANDE: Okay. Are you
18 familiar with violations that have been
19 issued to those establishments?

20 MR. BRASHEARS: Somewhat, yes sir.

21 MR. LAFANDE: Okay, thank you. Are
22 you aware of any, well starting off with

1 Restaurant 12 that establishment is now
2 closed is that correct?

3 MR. BRASHEARS: I'm sorry sir.

4 MR. LAFANDE: What is the current
5 operating status of Restaurant 12?

6 MR. BRASHEARS: Restaurant 12.

7 MR. LAFANDE: Is it now closed, I
8 saw a sign on it the other day.

9 MR. BRASHEARS: Are we referring
10 to 12 Lounge?

11 MR. LAFANDE: Yes.

12 MR. BRASHEARS: It was closed, now
13 I believe it is operating again.

14 MR. LAFANDE: Okay, thank you.
15 With regards to these summer gardens, what
16 has been, with regards to first of all the
17 applicant's establishment? What noise
18 violations have been received by ABRA or
19 that you are otherwise aware of?

20 MR. WILLIAMS: I am going to
21 object to this question, it is irrelevant to
22 the purposes of this protest hearing. We are

1 not here to put Little Miss Whiskey's on
2 trial for what they have or have not
3 violated in terms of issues, that's not what
4 this statute talks about at all.

5 MR. LAFANDE: The question that
6 the proponent of the Protestant proposes is
7 that the establishment will affect the peace
8 order and quiet of the neighborhood if this
9 voluntary agreement or now called Settlement
10 Agreement is removed or the limitations
11 thereof. One of the questions of concern
12 appears to be if the summer garden,
13 limitation of the summer garden hours are
14 lifted that it appears that that would
15 somehow affect the peace, order and quiet.

16 CHAIR MILLER: Okay, I am going
17 to overrule that objection. I agree that
18 one of the standards is that the Amendment
19 of Termination would have an adverse impact
20 so it is relevant as far as the history.

21 MR. LAFANDE: Thank you Madam
22 Chair.

1 CHAIR MILLER: But I also suggest
2 also that you are aware of the investigative
3 history too.

4 MR. LAFANDE: I understand but I
5 have to put it on the record.

6 CHAIR MILLER: Okay.

7 MR. LAFANDE: I also have to
8 advocate my client's position and if I am
9 going to demonstrate a lack of peace, order
10 and quiet we are going to start off with
11 what violations have been documented with
12 amongst this establishment as well as the
13 other establishments so similarly situated.
14 So if Investigator Brashears would so kindly
15 tell us about the noise violations that he
16 is aware of with regards to the summer
17 garden operations first with the applicant
18 and then with the other establishments we
19 may get a feel for what kind of problem may
20 or may not be present.

21 Mr. WILLIAMS: I will object to
22 any questions having to do with other

1 establishments besides Little Miss Whiskey's
2 because that is irrelevant to even the
3 question of peace order and quiet for this
4 establishment.

5 CHAIR MILLER: I think it is only
6 relevant to the extent that he has touched
7 upon it in his report because he's not
8 expected to go beyond that.

9 MR. LAFANDE: Let me restate the
10 question Madam Chair.

11 CHAIR MILLER: Okay.

12 MR. LAFANDE: Thank you.
13 Investigator Brashears again with regards to
14 the Little Miss Whiskey's are you aware of
15 any noise violations that they have received
16 in the time that you have been here?

17 MR. BRASHEARS: No sir, none that
18 I am aware of.

19 MR. LAFANDE: Okay and with
20 regards to one establishment which you said
21 had unlimited hours was Vendetta's was that
22 your testimony?

1 MR. BRASHEARS: No sir.

2 MR. LAFANDE: Which establishment
3 didn't have the hours addressed? I believe
4 Vendetta didn't have hours addressed within
5 their summer garden.

6 MR. BRASHEARS: Vendetta did not
7 have hours addressed in their summer garden
8 they were operating under their ABRA
9 approved license hours.

10 MR. LAFANDE: Okay. Maybe I stated
11 the question poorly but they do not have a
12 limitation within their summer garden hours
13 in their agreement.

14 MR. BRASHEARS: That is correct.

15 MR. LAFANDE: With regards to
16 Vendetta have there been any noise
17 complaints or violations that you are aware
18 of?

19 MR. BRASHEARS: I am unaware of
20 that sir.

21 MR. LAFANDE: Okay, thank you.

22 MR. LAFANDE: With regards to

1 these other establishments you have
2 identified as having summer garden
3 operations in this immediate area can you
4 identify what noise violations you have
5 become aware of in the time that you have
6 worked for ABRA?

7 MR. BRASHEARS: None that I am
8 aware of sir, none.

9 MR. LAFANDE: Have you had any
10 complaints from citizens with regards to the
11 operation of the summer garden hours which
12 did not result in noise violations?

13 MR. BRASHEARS: None that I'm
14 aware of.

15 MR. LAFANDE: Thank you. With
16 regards to your investigation did you have
17 the opportunity to speak to any of the
18 residents in the immediate vicinity of the
19 Little Miss Whiskey's establishment?

20 MR. BRASHEARS: No sir, I didn't.

21 MR. LAFANDE: Okay, thank you. I
22 have no further questions for Investigator

1 Brashears.

2 CHAIR MILLER: Okay.

3 MR. WILLIAMS: Investigator
4 Brashears do you have your investigative
5 report in front of you?

6 MR. BRASHEARS: I do sir.

7 MR. WILLIAMS: Thank you. Can you
8 turn to the actual Settlement Agreement
9 between Little Miss Whiskey's and ANC 6A I
10 think I have it as Exhibit 3 to the report.

11 MR. BRASHEARS: I'm sorry sir I
12 don't have a copy with exhibits.

13 MR. WILLIAMS: Oh I'm sorry. I was
14 going to be relying on the investigative
15 report which I assumed everybody had but I
16 will just introduce Exhibit 1 as the
17 Settlement Agreement between Little Miss
18 Whiskey's and ANC 6A.

19 CHAIR MILLER: That is a part of
20 the investigative record, report right.

21 MR. WILLIAMS: It was part of the
22 version that was sent to me which is why I

1 rely on that.

2 CHAIR MILLER: Right, so that is
3 part of the record.

4 MR. WILLIAMS: So I don't need to
5 indicate, okay thank you. So you don't have
6 a copy.

7 MR. BRASHEARS: I don't have a
8 copy sir.

9 MR. WILLIAMS: Mr. LaFande do you
10 have any objection to me using this version
11 with Mr. Brashears?

12 MR. LAFANDE: Is that what you
13 have provided me?

14 MR. WILLIAMS: Yes it is the same
15 copy.

16 MR. LAFANDE: And this is attached
17 to your PIF?

18 MR. WILLIAMS: Yes and it is also
19 what is attached to the investigative
20 reports.

21 MR. LAFANDE: As the Chair
22 properly pointed out, this is a matter of

1 public record I don't have any stand to
2 object to it appears to be authentic.

3 CHAIR MILLER: Thank you.

4 MR. WILLIAMS: May I approach the
5 witness briefly?

6 CHAIR MILLER: Yes you may.

7 MR. WILLIAMS: Thank you.

8 Investigator Brashears if you will turn to
9 page 3 of the Settlement Agreement, which I
10 believe the top of it, actually it's the
11 bottom of page 2 starts at Section 4, do you
12 see the Section I am talking about?

13 MR. BRASHEARS: Yes sir.

14 MR. WILLIAMS: If you, can you
15 read Section 4(d)?

16 MR. LAFANDE: Objection. As to the
17 witness's foundation and to his testimony
18 regarding this document we haven't
19 established what knowledge this witness has
20 with regards to this matter.

21 MR. WILLIAMS: I think his
22 investigative report and the fact that it

1 includes the Settlement Agreement and refers
2 to it I think it stands on its own but I am
3 more than happy to establish--

4 CHAIR MILLER: Why don't you ask
5 Mr. Brashears what it is?

6 MR. WILLIAMS: Mr. Brashears did
7 you review the Settlement Agreement as part
8 of your investigation?

9 MR. BRASHEARS: Yes sir I did.

10 MR. WILLIAMS: Mr. Brashears can
11 you please report what Section 4(d) states
12 in the Settlement Agreement?

13 MR. LAFANDE: Again, same
14 objection.

15 MR. WILLIAMS: I'm asking him to
16 read what it says that's part of the public
17 record.

18 MR. LAFANDE: Please don't
19 interrupt me until I finish what I have to
20 say. Again, the witness is being here
21 offered as a fact witness he is not a party
22 to this document which predates his

1 employment with this organization by at
2 least five years and we still don't have a
3 foundation as to his knowledge as to what
4 this document states. He is not competent
5 to simply here and recite what the public
6 records state. If Mr. Williams would like
7 to bring a witness forward who would like to
8 establish this or if he would like the Board
9 to take administrative notice of what it
10 says I believe either one of those is
11 appropriate but to have this fact witness
12 who has no independent foundation of
13 knowledge to simply read this into the
14 record I think is inappropriate.

15 CHAIR MILLER: Do you want to just
16 ask him what his knowledge is of this
17 document?

18 MR. WILLIAMS: I thought I did.
19 Investigator Brashears what is your
20 knowledge of the Settlement Agreement
21 between ANC 6A and Little Miss Whiskey's
22 Golden Dollar? Did you review the

1 Settlement Agreement as part of your
2 investigation?

3 MR. BRASHEARS: Yes sir I did.

4 MR. WILLIAMS: Did you compare the
5 Settlement Agreement to other settlement
6 agreements in ANC 6A?

7 MR. BRASHEARS: Yes sir in a
8 limited fashion.

9 MR. WILLIAMS: Understood, thank
10 you. Investigator Brashears when you drafted
11 your report speaking specifically about
12 Little Miss Whiskey's summer garden hours
13 did you rely on the information contained in
14 the Settlement Agreement at least in part to
15 reach those conclusions?

16 MR. BRASHEARS: Yes sir I did.

17 MR. WILLIAMS: Investigator
18 Brashears are you aware that the Settlement
19 Agreement specifically states that Little
20 Miss Whiskey's summer garden hours may
21 revert to later hours if there had been no
22 complaints within three months?

1 MR. BRASHEARS: Yes sir.

2 MR. WILLIAMS: Investigator
3 Brashears are you aware of the fact that
4 Little Miss Whiskey's has actually petitions
5 to extend its summer garden hours to comport
6 with its license hours?

7 MR. BRASHEARS: No sir I was not
8 aware of that.

9 MR. WILLIAMS: Mr. Brashears are
10 you aware that the ANC does not oppose such
11 a motion?

12 MR. BRASHEARS: No sir I was not
13 aware of that.

14 MR. WILLIAMS: Investigator
15 Brashears on page, turning back to your
16 report, I think this is the actual report so
17 we don't have to go into the Exhibits. If
18 you will turn please to page 4 and 5 of your
19 Investigative Report.

20 MR. BRASHEARS: Yes sir.

21 MR. WILLIAMS: I suppose I will
22 set a foundation to hopefully avoid some

1 objections from Mr. LaFande. Mr. Brashears
2 is this the report you drafted?

3 MR. BRASHEARS: Yes sir it is.

4 MR. WILLIAMS: Is the information
5 reflected in this report the result of your
6 investigation?

7 MR. BRASHEARS: Yes sir it is.

8 MR. WILLIAMS: So Investigator
9 Brashears there are a few lines, I will just
10 summarize them briefly lines 2, 9, 16, 18
11 and 22 and 21 as well where you indicate
12 that certain establishments in the area do
13 not have settlement agreements.

14 MR. BRASHEARS: Yes sir.

15 MR. WILLIAMS: Mr. Brashears what
16 efforts did you undertake to identify
17 whether these establishments had settlement
18 agreements?

19 MR. BRASHEARS: I looked through
20 the ABRA data bases that contained these
21 documents relevant to the establishments.

22 MR. WILLIAMS: I don't know if we

1 need to go into much detail and I'll leave
2 it up to everybody. Every one of these
3 establishments that has a no does in fact
4 have a settlement agreement with ANC 6A.

5 MR. LAFANDE: Objection. Is Mr.
6 Williams now testifying or is he advocating
7 I don't think it is appropriate for him to
8 be offering factual allegations from his
9 position as a representative of 6A, if he
10 wishes to call a witness to refute what
11 Investigator Brashear has determined I think
12 that is appropriate but we are going to get
13 into quite a mess here is he begins.

14 MR. WILLIAMS: I have no further
15 questions for Investigator Brashears.

16 CHAIR MILLER: Okay.

17 MR. LAFANDE: Nothing further.

18 CHAIR MILLER: All right thank you
19 very much. Mr. LaFande do you have any
20 witnesses that you want to put on at this
21 time?

22 MR. LAFANDE: Witnesses, no.

1 CHAIR MILLER: Okay then return to
2 Mr. Williams.

3 MR. WILLIAMS: Just to clarify is
4 it your only intent to put on rebuttal
5 witnesses.

6 MR. LAFANDE: We will address the
7 evidence that Mr. Williams puts on, the
8 evidence before the Board already
9 establishes our position very well with
10 regards to Investigator Brashears very
11 diligent and well stated report.

12 CHAIR MILLER: So I think the
13 answer

14 MR. LAFANDE: We have as I said we
15 don't have any witnesses to rebut that
16 because it's establishes our position. So if
17 Mr. Williams now wishes to say something to
18 the contrary he should put his witnesses on
19 but we are in harmony with what the Boards
20 own investigator has determined.

21 CHAIR MILLER: Okay so that's the
22 order of procedure and the applicant can

1 forego putting on a witness so and then he
2 can decide after you go whether he wants put
3 on rebuttal evidence.

4 MR. WILLIAMS: Okay.

5 CHAIR MILLER: Okay so you're up.

6 MR. WILLIAMS: So before we get
7 into any evidence put on by the ANC I offer
8 I guess what essentially amounts to a motion
9 for summary judgment. The movant here who
10 has requested termination of a settlement
11 agreement has the burden to establish
12 through sworn testimony that it specifically
13 states in the Statutes Section 25-446
14 subsection 4 Part(a) we have no objection to
15 that has been, there is no issue there,
16 Part(b)the need for an, the immediate need
17 for an amendment is either caused by
18 circumstances beyond the control of the
19 applicant or is due to change in the
20 neighborhood where the applicants
21 establishment is located and (c)the
22 amendment or termination will not have an

1 adverse impact on the neighborhood where the
2 establishment is located as determined under
3 Section 25-313 or Section 25-314 if
4 applicable.

5 This is the burden of the person
6 request of the establishment requesting
7 termination of the Settlement Agreement.
8 Mr. LaFande just stated that he has no
9 further evidence to put forth in his case.
10 He is not putting up any of his own
11 witnesses to establish this evidence,
12 therefore he has not established the
13 requirements of the statute to terminate his
14 Settlement Agreement and therefore there is
15 no need for the ANC to put forth any type of
16 evidence or testimony because he has not met
17 his burden to; I mean if you take what
18 Investigator Brashears said at face value
19 and you accept it for the truth and even
20 consider it in the light most favorable to
21 the movant here they have still not
22 established the requirement of the Statute

1 and therefore there is no need for us to
2 move further and their request should be
3 dismissed.

4 CHAIR MILLER: What laws are you
5 relying on or rules?

6 MR. WILLIAMS: I am relying on
7 Section 25-446 (d) subsection 4 which
8 specifically sets forth what needs to be
9 established in order to amend or terminate a
10 settlement agreement unilaterally.

11 CHAIR MILLER: What law or rule
12 are you relying on that the Board should
13 rule on a motion for summary judgment at
14 this time?

15 MR. WILLIAMS: What I am relying
16 on is the fact that it says the Board may
17 approve a request by fewer than all the
18 parties to amend or terminate a voluntary
19 agreement for good cause show if it makes
20 each of the following findings based on
21 sworn evidence I am positive that sworn
22 evidence has not been presented to satisfy

1 the subsections.

2 CHAIR MILLER: Where is that?

3 MR. WILLIAMS: I'm sorry that 25-
4 446 subsection(b) subsection(4).

5 CHAIR MILLER: Okay Mr. LaFande do
6 you want to address that?

7 MR. LAFANDE: Yeah I think that
8 with regards to Mr. Williams's position on
9 25-446 I certainly have been in his shoes
10 before where I believe that the applicant
11 has not met their burden. In this instance
12 however I believe the applicant has made a
13 showing that, and has shifted the burden as
14 to the requirement of (c).

15 He is placing a little too much
16 weight on a showing on the entirety of this
17 application from six years ago. I spoke to
18 again the build out and configuration of an
19 establishment that has been in operation for
20 six years without problems and without
21 violations and there is now a request after
22 a period of six years in operation and

1 dramatically different environment and
2 dramatically different circumstances that
3 there has to be showing at this point a
4 detriment to the peace, order and quiet and
5 I believe that is still remains Mr. Williams
6 burden.

7 He wishes to place on the
8 applicant some showing that there is the
9 change to the neighborhood, the change to
10 the circumstances, well that is born out
11 immediately by the fact that we have had six
12 years that have passed by in operation
13 without any violations, without any problems
14 and I think that upon his statement as such
15 in the application absent rebuttal on that
16 particular point to sit here and put on a
17 dog and pony show about how H street or this
18 establishment is somehow something different
19 six years later I think is wholly
20 superfluous and is not at all what is stated
21 so forth in 446, and instead absent once he
22 has made this application absent is showing

1 that there is some need for this requirement
2 to remain in situ. It is the protestant the
3 proponent that he interject himself under
4 these proceedings that has the obligation
5 here and we have too many factual issues
6 with regards to those points still in play
7 that he is not entitled to a finding as a
8 matter of law that the applicant is not so
9 entitled.

10 MR. WILLIAMS: May I briefly
11 address what Mr. LaFande just said?

12 CHAIR MILLER: Yes.

13 MR. WILLIAMS: First off Mr.
14 LaFande is apparently trying to testify on
15 his clients behalf and is offering up
16 certain facts to support how subsection (b)
17 and potentially subsection (c) have been
18 satisfied and that is irrelevant the Statute
19 requires sworn testimony which you have not
20 heard today.

21 He claims that because there have
22 been no violations and that this place has

1 been in operation, this Settlement Agreement
2 has been in operation for six years that on
3 its face gets to satisfying subsection (b).
4 For one we don't have actual sworn testimony
5 on that and for two that is not something
6 that was raised in any type of testimony or
7 argument that has been made in sworn
8 testimony before this Board.

9 Mr. LaFande specifically said he
10 has no witnesses to put on for this then
11 therefore he has failed to meet his burden
12 under subsection (b) and I would also posit
13 that he has failed to meet his burden under
14 subsection (c). It's a pretty straight
15 forward issue. He is not putting on
16 testimony it is his burden to establish that
17 he meets these subsections and the ANC does
18 not need to put on any witnesses or anything
19 to rebut something that has not been
20 rebutted yet or something that has not been
21 established yet.

22 I'm ready to go home so, I have a

1 witness here I am happy to testify if needed
2 but I don't see a need for it because he has
3 not met his burden. It is clear he has not
4 met his burden and it's kind of mind blowing
5 that he is trying to shift it over to us and
6 say you have to prove, that we have to prove
7 that there is no disturbance of peace, order
8 and quiet when he hasn't even established
9 the bare minimum of what he has to establish
10 and he has already told us he is finished
11 with his case.

12 CHAIR MILLER: Okay, we can give
13 you our reactions right now and then we will
14 see where this goes. My reaction right now
15 is that he has a right to go to the end of
16 the hearing and have a rebuttal witness or
17 any evidence. My view right now is he does
18 have a burden of proof and you may disagree
19 I'm being honest with you, that's how I'm
20 looking at it right now we haven't
21 deliberated on this but that you would be
22 able to present anything and you would have

1 a chance to do it in rebuttal. I don't know
2 what others; oh I have had pro request to
3 discuss this in closed session so this is an
4 important issue.

5 MR. LAFANDE: I think it is an
6 important issue.

7 CHAIR MILLER: Okay.

8 MR. LAFANDE: I think it is a
9 matter of law that can be touched upon here.

10 CHAIR MILLER: If you've got the
11 law to give us give it to us now.

12 MR. LAFANDE: I think we may be in
13 a position of first impression here but I
14 have certainly advocated on numerous
15 occasions that it is the Protestant who has
16 a burden to show a detriment to the peace,
17 order and quiet here.

18 MR. SHORT: With all due respect
19 that may be what you advocate and that's
20 fine but I don't know that there has been a
21 precedence established to support what you
22 advocated. In fact, I don't know that it

1 comports with what's written. So help me
2 understand what you have advocated for in
3 the past has any relevance to what we are
4 talking about right now here today.

5 MR. LAFANDE: Well this Board is
6 necessarily controlled by the standing
7 opinions of what the Court of Appeals has
8 stated on these points and the citations go
9 back quite a ways with the other standing
10 cases on this point that it is not the, in
11 that particular case, it is not the
12 applicants burden to show there isn't a
13 problem of parking in Georgetown.

14 MR. SHORT: Are we talking about
15 peace, order and quiet issues or the request
16 to terminate a settlement agreement? I think
17 you are mixing apples and oranges from my
18 limited understanding of the law and the
19 reg's so help me get there.

20 MR. LAFANDE: Sure. Again my point
21 to the Board is that there must be, as there
22 is in the initial application and is there

1 is in the renewal application and is there
2 is stated here in the termination of the
3 settlement agreements there necessarily must
4 be if you are going to encumber the
5 licensee's ability to operate otherwise
6 within the confines of the law and you are
7 going to force them to have this outside of
8 the administrative process this sort of
9 contractual obligation with the ANC.

10 MR. SHORT: With all due respect
11 just do be clear, I don't think that the SA
12 is something that is forced upon the
13 licensee by the Board that is a contract
14 that is freely entered into by the two
15 parties that are signatures to the contract.

16 (Simultaneous speaking)

17 - forces in anyway shape or form
18 a licensee or any other entity to enter into
19 an agreement is false on its face.

20 MR. LAFANDE: I think that it's a
21 disingenuous argument to say that these
22 applicants who are trying to get an

1 establishment open at its onset who are
2 contending with these ANC organizations in
3 the face of heated and burdensome protest
4 proceedings to say that they enter into them
5 freely is a very disingenuous point but I
6 think.

7 MR. SHORT: I think that
8 disingenuous goes on both sides I think you
9 are being superfluous in the statements that
10 you are making regarding what the Board has
11 forced or not forced your client to do. So
12 with all due respect I think we need to
13 stick to the points at hand and stop being
14 superfluous in our discussion that you are
15 presenting to the Board and let's be
16 succinct in what it is you are trying to
17 say. How is it that the burden isn't on you
18 and your client when it comes to the
19 termination of an SA?

20 MR. LAFANDE: Once the applicant
21 has met the basic statutory requirements for
22 licensure it is a proponent of the protest

1 proceedings, in this case ANC 6A, who avails
2 themselves of this particular Rule and under
3 the District of Columbia Administrative
4 Procedure Act the proponent of that rule; in
5 this case the Protestant has the burden of
6 proof and in this instance I pause it to you
7 that their burden is to show that the
8 termination of the Voluntary Agreement is
9 detrimental to the peace, order and quiet of
10 the neighborhood. What we have heard is
11 testimony pretty much to the exact opposite
12 of that from the Agencies own witness and
13 nothing yet from the proponent of the Rule
14 whose injecting himself in this protesting
15 procedure.

16 CHAIR MILLER: Mr. LaFande, this
17 is different from a protest, you are the
18 proponent here because you are seeking to
19 terminate. The ANC didn't bring this
20 action, you did. You are seeking to
21 terminate so if you are the proponent--

22 MR. SHORT: It is very clear Mr.

1 LaFande.

2 CHAIR MILLER: If you are the
3 proponent--

4 MR. LAFANDE: We disagree on that
5 point entirely.

6 CHAIR MILLER: Okay but if you are
7 the proponent then my only question is and I
8 may take back what I just said, my only
9 question really is if you are the proponent
10 can you just not put on any evidence and
11 wait to put on rebuttal?

12 MR. LAFANDE: Once again I assert
13 to you that once the applicant has met their
14 statutory requirements and this ANC
15 interjects itself into this proceeding as a
16 Protestant that it then is in fact their
17 burden and I just, we have reached an
18 impasse here where I steadfastly disagree
19 with your interpretation of the law.

20 MR. SHORT: That is all you have
21 to offer regarding that? I just want to make
22 sure that's clear because I am ready to go

1 back and discuss.

2 CHAIR MILLER: Okay and I am
3 familiar with certain Court of Appeals
4 decisions on burden of proof and protests.
5 If there is anything else you want to bring
6 to our attention say it now and we will
7 consider it otherwise we will go with what
8 we have.

9 MR. WILLIAMS: Just two points, I
10 do believe and it's become pretty clear to
11 the Board that Mr. LaFande is conflating
12 standards for a license protest which we are
13 not here for today and the standards that
14 are specifically set out clear as day in the
15 statute for requesting a termination of a
16 settlement agreement. They are the
17 proponents they have moved to do so ANC is
18 opposing it of course but they are the ones
19 who brought this action, not the ANC. The
20 burden of proof is on them.

21 Secondly, I will also note that
22 the two issues that the investigator raised

1 in terms of why Little Miss Whiskey's is
2 requesting termination of its Settlement
3 Agreement, one the hours that is moot
4 because they have requested and are getting
5 later hours and two that it is wholly
6 duplicative of the requirements of the law.
7 If we need to discuss that that's inaccurate
8 I don't even think we need to get into those
9 details so I just wanted to make those two
10 points.

11 CHAIR MILLER: Okay all right. I
12 am going to then call a vote on considering
13 this question in closed session. As Chair
14 Person of the Alcohol Beverage Control Board
15 for the District of Columbia and in
16 accordance with Section 405 of the Open
17 Meetings Amendment Act of 2010 I move that
18 the ABC Board hold a closed meeting for the
19 purpose of seeking legal advice from our
20 counsel on Case # 14-PRO-00003 Little Miss
21 Whiskey's Golden Dollar for the reasons
22 cited in Section 405 (b)(4) of the Open

1 Amendment Act of 2010 and deliberating upon
2 that issue for the reasons cited in Section
3 405(b)(13) of the Open Meetings Amendment
4 Act of 2010, is there a Second?

5 MR. RODRIGUEZ: Second.

6 CHAIR MILLER: Mr. Rodriguez
7 seconded the Motion I will now take a roll
8 call vote on the Motion now that it has been
9 Seconded.

10 CHAIR MILLER: Mr. Brooks?

11 MEMBER BROOKS: I agree.

12 CHAIR MILLER: Mr. Rodriguez?

13 MR. RODROGUEZ: I agree.

14 CHAIR MILLER: Mr. Silverstein.

15 MR. SILVERSTEIN: I agree.

16 CHAIR MILLER: Mr. Short.

17 MR. SHORT: I agree.

18 CHAIR MILLER: Mr. Jones.

19 MEMBER JONES: I agree.

20 CHAIR MILLER: Okay, we have a
21 vote of 6-0-0. Passing the Motion and so the
22 Board will now recess to consider this issue

1 in closed session. You all can take a
2 break, yes.

3 (Whereupon, the above-entitle
4 matter went off the record at 4:03 p.m. and
5 resumed at 4:26 p.m.)

6 CHAIR MILLER: Okay, we are back
7 on the record, we have before us a Motion
8 for a Summary Judgment put forth by the ANC
9 in this case and the Board had an
10 opportunity to confer with Counsel and
11 deliberate so we are here to deliberate now
12 on the record under Motion and my Motion
13 which we can deliberate under would be to
14 grant he Motion for Summary Judgment based
15 on the fact that the establishment, Little
16 Miss Whiskey who is the movant to terminate
17 the Settlement Agreement and therefore has
18 the burden of proof to make and case and the
19 burden of proof I believe is going forward
20 and has put no evidence in the record at all
21 and we have in the record the testimonies of
22 the investigator and based on that we don't

1 have any evidence showing that I say that
2 the Settlement Agreement should be
3 terminated and that based on the law set
4 forth in 25-446. I would find that the
5 Application to Terminate should be denied.

6 Do we have a Second?

7 MR. SHORT: Second.

8 CHAIR MILLER: The Motion to Grant
9 Summary Judgment has been seconded by Mr.
10 Short. Are there any other comments? Mr.
11 Silverstein.

12 MEMBER SILVERSTEIN: Madam Chair
13 we have had a previous case that was thrown
14 back at us by the Court of Appeals and that
15 was Mallof et al, the Hank's Oyster Bar case
16 in which the Judge, in which the Court said
17 that voluntary agreements were intended to
18 be permanent rather than easy to amend or
19 terminate and it spoke of the process that
20 we must follow and it spoke of the
21 multipronged test that in this case was not
22 proven and the evidence is not there then we

1 dismiss.

2 MEMBER RODRIGUEZ: Madam Chair, I
3 concur with Member Silverstein on this
4 matter.

5 CHAIR MILLER: Okay, any other
6 comments? So there is a Motion that's been
7 seconded to grant the Motion for Summary
8 Judgment. All those in favor say aye.

9 (Chorus of ayes)

10 CHAIR MILLER: All those opposed.
11 We are abstaining Motion passes 5-0-0. Six,
12 6-0-0 just wasn't counting myself. 6-0-0.
13 All right, so then I gather that concludes
14 this hearing, thank you very much.

15 (Whereupon, the hearing was
16 concluded at 4:30 p.m.)

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A				
ABC 18:19,20 22:14 27:1 62:18	18:1,14 45:6	amendment 6:17 6:21 32:18 47:17 47:22 62:17 63:1 63:3	35:9	behalf 2:13,22 18:1 52:15
abide 11:17 12:11	affect 7:16 32:7,15	amounts 47:8	area 36:3 44:12	believe 3:3 7:6 11:19 14:13 15:4 15:16 21:3 27:17 31:13 35:3 39:10 41:10 50:10,12 51:5 61:10 64:19
ability 57:5	afternoon 2:9,11 2:20 12:2	ANC 2:9,22 3:3 8:4 10:12 13:17 14:14 15:11 16:15 18:16 23:7,11,17,18 24:1,2,9,11,20 25:9,20 26:3,8 28:11 37:9,18 41:21 42:6 43:10 45:4 47:7 48:15 53:17 57:9 58:2 59:1,19 60:14 61:17,19 64:8	argued 5:11	benefit 23:21
able 54:22	Agencies 59:12	ANC's 8:16,19	argument 13:22 53:7 57:21	best 18:17 19:18 23:13
above-entitle 64:3	Agency 17:19	ANC6A 22:10,10	arguments 4:13	Beverage 1:2,12,13 62:14
ABRA 1:22 21:19 26:9,13,15,19 27:7,10 28:10 29:8 30:6 31:18 35:8 36:6 44:20	ago 50:17	answer 46:13	arises 17:10,14	beyond 6:18 7:20 8:7 13:9 24:15 25:3 34:8 47:18
absent 51:15,21,22	agree 9:4 32:17 63:11,13,15,17,19	anyway 57:17	asking 20:22 40:15	Biergarten 24:10
absolutely 10:20	agreed 23:13	apparently 52:14	assert 5:13 60:12	blank 4:10
abstaining 66:11	agreement 4:16 6:13 7:8 8:10 10:12,21 11:2,6,8 11:15 12:5,7 13:10,15,21 14:1 19:22 20:2 22:8 22:22 23:5,7,9,20 24:3,17 25:10,16 26:2,4,6 27:16,22 28:6,11,17,22 29:4,6,10,13 32:9 32:10 35:13 37:8 37:17 39:9 40:1,7 40:12 41:20 42:1 42:5,14,19 45:4 47:11 48:7,14 49:10,19 53:1 56:16 57:19 59:8 61:16 62:3 64:17 65:2	appeal 20:12	assumed 37:15	blowing 54:4
accept 48:19	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	appeal 20:12	attached 38:16,19	board 1:2,12 2:4 5:1,12 14:3,14 15:12 16:1,4,14 16:18 18:19,20 19:10,13,15 20:6 20:15 21:7 26:21 27:14 41:8 46:8 49:12,16 53:8 56:5,21 57:13 58:10,15 61:11 62:14,18 63:22 64:9
accurate 18:15	appears 32:12,14 39:2	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	attention 9:6 61:6	Boards 16:9 46:19
act 18:4,16 59:4 62:17 63:1,4	apples 56:17	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	Attorney 16:13	body 20:6
acted 30:10	applicable 48:4	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	authentic 39:2	born 51:10
action 59:20 61:19	applicant 6:18 8:8 23:22 33:17 46:22 47:19 50:10,12 51:8 52:8 58:20 60:13	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	automatically 8:12	bottom 39:11
actual 37:8 43:16 53:4	applicant's 31:17	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	avail 5:18	boundaries 10:3 23:11,17 24:9
address 7:20 8:20 9:10 16:22 17:1 46:6 50:6 52:11	applicants 6:20 23:10 47:20 56:12 57:22	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	avails 59:1	bounded 22:4
addressed 7:13 35:3,4,7	application 5:14 50:17 51:15,22 56:22 57:1 65:5	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	avoid 20:6 43:22	box 4:16
addressing 7:3	approach 39:4	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	aware 9:7 30:22 31:19 33:2,16 34:14,18 35:17 36:5,8,14 42:18 43:3,8,10,13	Brashear 45:11
adjacent 13:12	appropriate 17:17 41:11 45:7,12	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	aye 66:8	Brashears 1:22 21:12,17,18 25:6 26:17 27:18 28:3 29:15 30:1,1,4,7 30:12,16,20 31:3 31:6,9,12 33:14 34:13,17 35:1,6
adjudicate 16:19	approve 49:17	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14	eyes 66:9	
adjudicator 15:14	approved 26:22	appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
administrative 17:19 41:9 57:8 59:3		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
advantage 24:12		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
adversarial 18:7		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
adverse 6:22 7:9 22:21 32:19 48:1		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
advice 62:19		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
advised 27:4		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
Advisory 22:9		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
advocate 18:5 33:8 55:19		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
advocated 55:14,22 56:2		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		
advocating 17:16		appeals 7:13 9:6,10 20:7,11 56:7 61:3 65:14		

35:14,19 36:7,13 36:20 37:1,4,6,11 38:7,11 39:8,13 40:5,6,9,10 41:19 42:3,7,10,16,18 43:1,3,7,9,12,15 43:20 44:1,3,7,9 44:14,15,19 45:15 46:10 48:18 break 64:2 briefly 39:5 44:10 52:10 bring 9:5 41:7 59:19 61:5 broad 12:4 Brooks 1:16 63:10 63:11 brought 61:19 build 10:15 11:13 12:9 50:18 building 1:13 13:5 built 12:14 burden 5:16 6:8,9 7:14 8:18,22 9:1,9 47:11 48:5,17 50:11,13 51:6 53:11,13,16 54:3 54:4,18 55:16 56:12 58:17 59:5 59:7 60:17 61:4 61:20 64:18,19 burdensome 58:3 business 18:8 24:22 25:4 businesses 24:13	5:10 6:1 12:3 16:21 48:9 54:11 56:11 59:1,5 62:20 64:9,18 65:13,15,21 cases 56:10 cause 23:21 49:19 caused 6:17 8:7 47:17 certain 44:12 52:16 61:3 certainly 5:22 18:9 18:18 50:9 55:14 Chair 2:3,12,19,21 3:1,9,13,17,20 5:6 6:10 7:11,22 9:3 9:14,18,21 11:22 14:5,6,10,19 15:3 15:19 16:2,6,10 19:12 20:3,19 21:4,6,9,13 27:13 28:2 29:11,17 32:16,22 33:1,6 34:5,10,11 37:2 37:19 38:2,21 39:3,6 40:4 41:15 45:16,18 46:1,12 46:21 47:5 49:4 49:11 50:2,5 52:12 54:12 55:7 55:10 59:16 60:2 60:6 61:2 62:11 62:13 63:6,10,12 63:14,16,18,20 64:6 65:8,12 66:2 66:5,10 Chairperson 1:14 1:16 Chairwoman 19:6 chance 55:1 change 6:19 8:9 23:19 25:17 47:19 51:9,9 changed 25:15 charged 18:14 choice 16:9 choosing 15:5,7	Chorus 66:9 circumstances 6:17 8:7 24:14 47:18 51:2,10 citation 26:21 citations 56:8 cited 62:22 63:2 citizens 36:10 claims 52:21 clarify 46:3 Class 28:5,9 clause 8:4 clear 6:11 20:22 54:3 57:11 59:22 60:22 61:10,14 clearly 7:6 23:8 client 58:11,18 client's 33:8 clients 52:15 close 24:4 closed 31:2,7,12 55:3 62:13,18 64:1 closing 10:7 28:20 club 23:16 24:8,11 28:12,15 coherent 13:22 Columbia 1:1 2:13 2:14 11:10 18:18 22:12,17 59:3 62:15 comes 58:18 comment 21:5 comments 19:13,20 65:10 66:6 Commission 22:10 Commissioner 18:16 22:11 Communications 27:4 community 23:12 Company 2:15,18 compare 42:4 compared 28:3 competent 41:4 competitive 23:21 24:12	complaints 27:11 35:17 36:10 42:22 complete 13:3 completely 4:10 5:2 13:6 19:2 24:15 comport 43:5 comports 56:1 comprised 27:9 concept 11:3,16 concern 27:20 32:11 concerns 20:5 concluded 24:2 66:16 concludes 66:13 conclusions 42:15 concur 66:3 conducted 21:19 26:17 confer 64:10 configuration 10:15 50:18 configured 11:13 confines 57:6 conflating 61:11 conflict 17:13 18:3 18:11 19:9 consider 48:20 61:7 63:22 considering 4:21 62:12 constituency 18:5 constituents 18:15 contained 42:13 44:20 contains 13:10 contending 58:2 contention 7:7 contract 57:13,15 contractual 57:9 contrary 46:18 control 1:2,12,13 6:18 8:8 24:15 25:4 47:18 62:14 controlled 56:6 conversations 19:21	conversely 23:21 Cooperative 23:9 23:20 copies 3:6,8 copy 5:7 37:12 38:6 38:8,15 correct 31:2 35:14 counsel 4:22 62:20 64:10 counting 66:12 Country 28:12,15 couple 2:4 course 61:18 court 7:13 9:6,9 18:6 20:11 56:7 61:3 65:14,16 crossed 10:8 crossing 10:6 CT 1:8 23:10 28:5 28:9 current 31:4 currently 12:20
C		D		
c 2:1 6:16,21 7:5 8:2,6 50:14 52:17 53:14 c)the 47:21 call 2:3 45:10 62:12 63:8 called 32:9 calls 27:5,8 capable 17:20 case 1:9 2:4,7,7			d 2:1 49:7 D.C 1:14 data 44:20 dated 23:3 day 31:8 61:14 DC 21:22 27:3 DCRA 27:10 decide 13:7 47:2 decision 17:20 decisions 9:7,9 61:4 deference 20:15 deficiencies 6:5 deficient 4:8 5:2 deliberate 64:11,11 64:13 deliberated 54:21 deliberating 63:1 demonstrate 33:9 denied 65:5 deny 14:3 Description 4:9 desire 23:4 detail 45:1	

details 62:9	41:22 62:21	establishes 46:9,16	F	forego 47:1
determined 7:2	DONALD 1:16	establishment 2:16	face 4:8 48:18 53:3	form 3:4 5:3 57:17
45:11 46:20 48:2	double 24:22	5:17 6:20 7:1	57:19 58:3	forth 6:14 22:20
detriment 51:4	drafted 42:10 44:2	10:16,17 11:4,14	fact 13:4 17:21	48:9,15 49:8
55:16	dramatically 51:1	11:17 12:10,14	39:22 40:21 41:11	51:21 64:8 65:4
detrimental 59:9	51:2	13:7 22:2,19 24:1	43:3 45:3 49:16	forward 4:5,18,18
difference 19:7	due 6:19 8:8 26:1	26:8,14,19 27:1	51:11 55:22 60:16	11:19 12:3 41:7
different 13:6 51:1	47:19 55:18 57:10	28:19 29:1,5 31:1	64:15	53:15 64:19
51:2,18 59:17	58:12	31:17 32:7 33:12	facts 52:16	found 28:7
diligent 46:11	duplicative 62:6	34:4,20 35:2	factual 45:8 52:5	foundation 39:17
disadvantage 5:20	E	36:19 47:21 48:2	failed 53:11,13	41:3,12 43:22
23:22	E 2:1,1	48:6 50:19 51:18	false 57:19	free 9:8 21:14
disagree 8:1 54:18	East 22:5	58:1 64:15	familiar 9:8 30:13	freely 57:14 58:5
60:4,18	easy 65:18	establishments	30:18 61:3	frivolous 20:7
disagreement	echo 19:19	11:2 13:17 22:14	far 32:20	front 5:1 37:5
11:18	effect 7:9	23:16 24:8 28:1,4	fashion 42:8	further 24:2 36:22
discomfort 20:8	efficiency 20:9	28:8,9,14 30:14	favor 21:4 66:8	45:14,17 48:9
discuss 55:3 61:1	efforts 44:16	30:19 33:13,18	favorable 48:20	49:2
62:7	either 6:17 8:7	34:1 36:1 44:12	features 10:18	Furthermore 24:19
discussion 16:17	41:10 47:17	44:17,21 45:3	12:15	G
58:14	elected 17:21 18:6	et 65:15	feel 9:7 19:1 21:14	G 2:1
discussions 18:21	element 11:5	everybody 37:15	33:19	garden 12:16 27:21
disingenuous 57:21	elements 11:15	45:2	feels 17:4 26:1,3	28:5,10,16,20
58:5,8	employed 30:6	evidence 4:12 46:7	feet 22:15,18	29:2,7 32:12,13
dismiss 66:1	employment 41:1	46:8 47:3,7 48:9	fellow 20:15	33:17 35:5,7,12
dismissed 49:3	encumber 57:4	48:11,16 49:21,22	fewer 49:17	36:2,11 42:12,20
disqualify 16:5	enter 57:18 58:4	54:17 60:10 64:20	file 3:14 5:2	43:5
19:8,15	entered 57:14	65:1,22	filed 3:4,19 4:7	gardens 31:15
dissolution 22:22	entered 57:14	evident 11:21	find 65:4	gather 66:13
distinction 19:7	entirely 11:3 24:20	exact 59:11	finding 52:7	General's 16:14
District 1:1 2:13,14	60:5	exceed 29:2	findings 49:20	generally 9:22
11:10 18:17 22:12	entirety 10:11	exclusively 30:11	fine 4:18 55:20	Geographic 22:13
22:16 59:3 62:15	11:14 50:16	executed 10:22	fined 25:2	Georgetown 56:13
disturbance 54:7	entitled 5:18 6:6	Exhibit 3:4,8 37:10	finish 40:19	germane 10:14
document 39:18	52:7,9	37:16	finished 54:10	germanes 12:17
40:22 41:4,17	entity 57:18	exhibits 3:5,16,18	first 10:13 18:13	getting 20:9 62:4
documented 33:11	environment 51:1	4:2 6:3 37:12	31:16 33:17 52:13	GIS 22:13,17
documents 44:21	equally 25:3	43:17	55:13	give 9:22 54:12
dog 51:17	especially 4:21	exists 18:2	five 28:4,8,8 41:2	55:11,11
doing 14:8,10	essentially 47:8	expect 3:10	flags 18:10	given 8:12 13:4
18:19	establish 40:3 41:8	expected 34:8	focused 8:2	24:12
Dollar 1:7 2:7	47:11 48:11 53:16	expecting 14:15	follow 65:20	go 10:8 11:4 34:8
21:21 22:1,4,8,16	54:9	explain 4:12	following 49:20	43:17 45:1 47:2
23:3,6 25:11,14	established 11:9	explanation 17:4	force 27:9 57:7	53:22 54:15 56:8
25:19,22 26:7,10	39:19 48:12,22	extant 10:12	forced 57:12 58:11	60:22 61:7
26:18,20 27:6,12	49:9 53:21 54:8	extend 43:5	58:11	goal 13:15
28:17,22 29:3	55:21	extent 23:18 34:6	forces 57:17	

goes 54:14 58:8
going 2:3 4:13,14
 4:18,20 5:22 7:3
 8:5 11:18 12:9,10
 13:17 14:15,16,21
 31:20 32:16 33:9
 33:10 37:14 45:12
 57:4,7 62:12
 64:19

Golden 1:7 2:6
 21:21 22:1,3,8,16
 23:2,6 25:11,14
 25:19,22 26:7,10
 26:18,20 27:6,12
 28:17,22 29:3
 41:22 62:21
good 2:9,11,20 3:21
 12:2 25:20 26:1
 49:19

governing 24:21

grant 64:14 65:8
 66:7

granted 10:22
great 3:1,9 29:11
greatest 23:17
guess 14:16 19:8
 47:8

H

H 1:8 2:8 21:22
 22:2,6 26:11
 28:12,15 51:17
half 10:1 13:8
hand 58:13
Hank's 65:15
happy 40:3 54:1
hard 17:6
harmony 46:19
Haus 24:11
head 20:13
hear 7:18 13:18
 16:18 17:3 29:21
heard 17:2 52:20
 59:10
hearing 1:7,13 2:7
 4:6 31:22 54:16
 66:14,15

heated 58:3
HECTOR 1:18
help 56:1,19
HERMAN 1:17
highlight 6:5 21:15
history 32:20 33:3
hold 62:18
holding 18:6
home 53:22
honest 54:19
hope 10:1 21:4
hopefully 43:22
hour 10:1
hours 26:13 27:15
 27:21 28:16,20
 29:2,3,5,7 32:13
 34:21 35:3,4,7,9
 35:12 36:11 42:12
 42:20,21 43:5,6
 62:3,5

I

identified 30:15
 36:2
identify 36:4 44:16
Identifying 3:22
immediate 36:3,18
 47:16
immediately 13:12
 51:11
impact 6:22 22:21
 32:19 48:1
impartial 17:20
impasse 60:18
important 8:3
 12:21,22 55:4,6
impression 55:13
inaccurate 62:7
inappropriate
 41:14
incidents 27:7
included 10:18
includes 40:1
including 24:10
incorporated 12:19
independent 41:12
indicate 14:22 38:5

44:11
individual 23:22
information 3:4 5:3
 22:13 42:13 44:4
initial 56:22
injecting 59:14
inquiry 14:17
insist 23:18
inspection 26:17
 27:2

install 10:17
instance 18:4 50:11
 59:6
intended 65:17
intent 46:4
interest 17:14 18:3
 18:11,17 19:9,18
 23:14

interfering 5:21
interject 52:3
interjects 60:15
interpretation
 60:19

interrupt 40:19
interviewed 25:7
introduce 29:21
 37:16
introductions 2:10
investigation 21:20
 36:16 40:8 42:2
 44:6

investigative 33:2
 37:4,14,20 38:19
 39:22 43:19
investigator 1:22
 21:8,19 25:6
 26:16 29:21 30:10
 33:14 34:13 36:22
 37:3 39:8 41:19
 42:10,17 43:2,14
 44:8 45:11,15
 46:10,20 48:18
 61:22 64:22

investigators 26:9
 26:14 27:9
irreconcilable 18:3
irrelevant 31:21

34:2 52:18
issue 12:16 19:5
 47:15 53:15 55:4
 55:6 63:2,22
issued 30:19
issues 3:3 6:11
 22:20 25:8 32:3
 52:5 56:15 61:22

J

JAMES 1:19
Jay 2:21 22:11 25:7
jeopardy 24:22
job 8:16
joining 2:5
Jones 1:17 63:18
 63:19
Judge 65:16
judgment 47:9
 49:13 64:8,14
 65:9 66:8
judicial 17:12,18

K

keep 25:20
kind 10:19 33:19
 54:4
kindly 33:14
know 4:17 13:1
 16:10,12 44:22
 55:1,20,22
knowledge 39:19
 41:3,13,16,20

L

lack 6:2,3 33:9
LaFande 2:11,12
 3:15,19,22 5:4,11
 7:5,12 8:5 9:16,19
 10:9,11 12:4 14:6
 14:12,21 15:9
 17:2,3,10 19:4
 20:12,18,21 21:1
 21:2 29:20 30:2,5
 30:9,13,17,21
 31:4,7,11,14 32:5
 32:21 33:4,7 34:9

34:12,19 35:2,10
 35:15,21,22 36:9
 36:15,21 38:9,12
 38:16,21 39:16
 40:13,18 44:1
 45:5,17,19,22
 46:6,14 48:8 50:5
 50:7 52:11,14
 53:9 55:5,8,12
 56:5,20 57:20
 58:20 59:16 60:1
 60:4,12 61:11
LaFandes 17:5,8
law 5:19 6:7,7 8:13
 11:4,17 12:11
 25:1 49:11 52:8
 55:9,11 56:18
 57:6 60:19 62:6
 65:3

lawful 5:17
laws 24:21 49:4
leave 45:1
leaves 16:16
left 2:17
legal 62:19
let's 3:2 21:6 28:8
 58:15
letter 23:1,3
lettering 26:22
level 16:15 17:12
Liability 2:15
Liberty 28:13,19
libraries 22:18
license 1:9 2:8
 10:22 13:5 28:5
 28:10 29:8 35:9
 43:6 61:12
licensed 22:14 24:7
licensee 5:13 6:6
 7:15 57:13,18
licensees 57:5
licensure 58:22
life 25:15
lifted 32:14
light 48:20
limitation 32:13
 35:12

limitations 32:10	manager 27:1	37:19 38:2 39:3,6	22:3,4,5,6,6 26:11	obviously 8:4,20
limited 2:14 27:16	Mark 1:22 2:17	40:4 41:15 45:16	near 25:19	occasions 5:12
42:8 56:18	21:18 23:1 30:1	45:18 46:1,12,21	nebulous 20:8	26:12 55:15
lines 44:9,10	matter 1:5 5:6 6:7	47:5 49:4,11 50:2	necessarily 56:6	OCTOBER 1:11
listed 28:9	10:14 14:7,13	50:5 52:12 54:12	57:3	offer 4:2 47:7 60:21
Lists 3:5	15:13,15,22 16:19	55:7,10 59:16	necessitating 25:16	offered 40:21
litigation 12:22	16:19 18:21 19:2	60:2,6 61:2 62:11	need 3:12 6:16 8:18	offering 45:8 52:15
little 1:7 2:6 3:14	20:4,10 38:22	63:6,10,12,14,16	13:2 17:7 38:4	Office 27:3
4:7 13:18 14:3	39:20 52:8 55:9	63:18,20 64:6	45:1 47:16,16	oh 37:13 55:2
21:21 22:1,3,7,15	64:4 66:4	65:8 66:5,10	48:15 49:1 52:1	okay 2:19 3:1,13
23:2,5 25:10,13	matters 7:4	mind 54:4	53:18 54:2 58:12	6:10 7:11,22 9:3
25:18,22 26:6,10	Matthew 2:12	minimum 54:9	62:7,8	9:10,14,21 10:8
26:18,19 27:5,11	mean 4:10 9:3	misrepresentation	needed 54:1	11:22 14:5 15:9
28:6,16,21 29:3	48:17	13:3	needs 49:8	15:19 16:10 19:12
29:10 30:7 32:1	medium 22:2	mitigate 13:9	negative 6:9 7:10	20:19 21:6,13
34:1,14 36:19	meet 8:22 13:19	mixing 56:17	7:21 8:6 17:6,7	27:13 29:11,18
37:9,17 41:21	53:11,13	monitor 27:11	neighborhood 6:19	30:17,21 31:14
42:12,19 43:4	meeting 1:3 62:18	monitored 26:9,14	6:22 8:9 12:21	32:16 33:6 34:11
50:15 62:1,20	Meetings 62:17	monitoring 27:19	22:10 25:15,21	34:19 35:10,21
64:15	63:3	months 42:22	32:8 47:20 48:1	36:21 37:2 38:5
LLC 1:6 2:14 21:20	meets 53:17	moot 62:3	51:9 59:10	45:16 46:1,21
24:4,14,16,20,21	member 1:16,17,17	motion 14:22 15:2	night 23:16 24:8	47:4,5 50:5 54:12
LMW 1:6 2:14	1:18,19 2:12	19:14,19 43:11	nine 3:8	55:7 60:6 61:2
21:20 24:4,14,16	14:14,18,19 15:4	47:8 49:13 63:7,8	noise 13:9 27:8	62:11 63:20 64:6
24:19,21	16:1,5,15 18:19	63:21 64:7,12,12	31:17 33:15 34:15	66:5
located 6:20 7:1	18:20 63:11,19	64:14 65:8 66:6,7	35:16 36:4,12	once 5:13 11:19
13:12 21:22 22:2	65:12 66:2,3	66:11	North 22:6	51:21 58:20 60:12
25:19 26:10 47:21	members 2:5 19:13	movant 9:1 47:9	note 4:21 61:21	60:13
48:2	20:16	48:21 64:16	notice 41:9	ones 8:9 61:18
long 30:5	merchants 23:12	move 4:5,17 15:9	November 27:6	onset 58:1
looked 44:19	mess 45:13	19:8 20:20 21:6	nuance 12:12	open 58:1 62:16,22
looking 54:20	met 1:12 8:15,18	49:2 62:17	numerous 55:14	63:3
looks 20:13,14	48:16 50:11 54:3	moved 61:17		opening 10:6,8,10
Lounge 28:14 29:1	54:4 58:21 60:13	moving 6:12 8:10	O	14:11
31:10	midnight 24:5	MPD 27:10	O 2:1	openings 14:9
	MIKE 1:17	multiple 5:1,12	oath 18:16,20	operate 57:5
M	Miller 1:14,16 2:3	multipronged	obey 11:4	operating 22:14
ma'am 21:17 27:18	2:19 3:1,9,13,17	65:21	object 31:21 33:21	31:5,13 35:8
29:15	3:20 5:6 6:10	Municipal 11:10	39:2	operation 23:15
Madam 2:11,21	7:11,22 9:3,14,18		objection 32:17	36:11 50:19,22
14:6 20:3 32:21	9:21 11:22 14:5	N	38:10 39:16 40:14	51:12 53:1,2
34:10 65:12 66:2	14:10,19 15:3,19	N 2:1	45:5 47:14	operations 33:17
main 12:16 27:20	16:2,6,10 19:12	N.W 1:13	objections 17:8	36:3
major 21:15	20:19 21:6,9,13	name 2:21 15:17	44:1	opinion 16:14
making 17:20 19:6	27:13 28:2 29:11	21:18 29:22	obligation 52:4	opinions 56:7
58:10	29:17 32:16 33:1	nature 4:9	57:9	opportunity 36:17
Mallof 65:15	33:6 34:5,11 37:2	NE 1:8 2:8 21:22	observed 26:15	64:10

oppose 20:1 43:10
opposed 66:10
opposing 61:18
opposite 59:11
oranges 56:17
order 22:21 25:12
 32:8,15 33:9 34:3
 46:22 49:9 51:4
 54:7 55:17 56:15
 59:9
organization 15:17
 18:1,8 41:1
organizations 58:2
outside 10:18 57:7
overrule 32:17
overview 12:4
owner 18:9 23:2
 25:13
owns 2:15
Oyster 65:15

P

P 2:1
p.m 2:2 24:5 64:4,5
 66:16
page 39:9,11 43:15
 43:18
parking 56:13
part 11:1 28:11
 37:19,21 38:3
 40:7,16 42:1,14
Part(a) 47:14
Part(b)the 47:16
participate 16:15
 18:21 19:11,22
particular 5:18
 6:15 14:18 15:11
 17:16 18:4 51:16
 56:11 59:2
particularly 13:4
parties 23:13 49:18
 57:15
party 15:14 17:15
 40:21
passed 11:11 51:12
passes 66:11
Passing 63:21

patio 24:4 27:15
pause 59:6
peace 22:21 25:12
 32:7,15 33:9 34:3
 51:4 54:7 55:16
 56:15 59:9
people 16:11
perfect 3:13
period 27:12 30:9
 50:22
permanent 65:18
person 14:15,21
 48:5 62:14
personal 15:22
Petitioner 29:18
petitions 43:4
PIF 3:19 4:4,7
 38:17
place 4:11 26:4
 51:7 52:22
placed 11:7
placing 50:15
play 52:6
plays 9:5
please 21:2 30:3
 40:11,18 43:18
point 4:4,7 7:7 8:21
 9:17,20 12:13
 14:7 25:2 51:3,16
 56:10,20 58:5
 60:5
pointed 38:22
points 7:6 10:13
 21:15 52:6 56:8
 58:13 61:9 62:10
pony 51:17
poorly 35:11
posit 18:9 53:12
position 17:16
 19:19 33:8 45:9
 46:9,16 50:8
 55:13
positive 49:21
possible 23:18
posted 26:22
potentially 52:17
power 16:5

precedence 55:21
predates 40:22
preliminary 3:3
 14:7,13
prepared 4:5,19
 8:20
presence 20:12
present 1:15,21
 2:16 13:22 18:22
 27:1 33:20 54:22
presentation 11:20
presented 6:4
 23:10 49:22
presenting 58:15
presiding 1:14
pretty 4:19 5:9
 12:3 53:14 59:11
 61:10
previous 65:13
principle 2:18
prior 28:21 29:8
pro 55:2
probably 19:18
problem 33:19
 56:13
problems 50:20
 51:13
procedure 46:22
 59:4,15
proceed 21:16
proceeding 5:15
 15:13,16 17:15,19
 18:7 60:15
proceedings 17:11
 52:4 58:4 59:1
process 57:8 65:19
prolong 20:10
proof 7:14 9:9
 54:18 59:6 61:4
 61:20 64:18,19
proofing 10:19
proper 5:14
properly 38:22
proponent 5:15
 32:6 52:3 58:22
 59:4,13,18,21
 60:3,7,9

proponents 61:17
proposes 32:6
proposition 7:15
propriety 15:13
protest 1:7 2:7 3:4
 4:6,10,12,19 5:2
 5:15 21:20 22:20
 25:8 27:12,20
 31:22 58:3,22
 59:17 61:12
protestant 5:14,16
 7:17 11:20 32:6
 52:2 55:15 59:5
 60:16
protestants 6:1
protested 22:9
protesting 25:9
 59:14
protests 9:10 61:4
prove 6:8,9 7:10,21
 8:13,16,17 17:7
 54:6,6
proven 65:22
provided 38:13
proving 8:6
provision 5:19 6:6
provisions 8:15,21
 12:6
public 22:17 39:1
 40:16 41:5
pure 20:9
purpose 11:18
 62:19
purposes 12:22
 31:22
put 4:13 12:19 13:8
 22:20 32:1 33:5
 45:20 46:4,18
 47:2,7 48:9,15
 51:16 53:10,18
 60:10,11 64:8,20
puts 24:22 46:7
putting 47:1 48:10
 53:15

Q

quasi 17:18

Queen 28:12,14
question 2:16 4:4
 7:3 17:10,13,14
 31:21 32:5 34:3
 34:10 35:11 60:7
 60:9 62:13
questions 27:14
 29:18,19 32:11
 33:22 36:22 45:15
quick 4:4 27:14
quiet 22:21 25:12
 32:8,15 33:10
 34:3 51:4 54:8
 55:17 56:15 59:9
quite 5:20 18:15
 45:13 56:9

R

R 2:1
raise 4:20
raised 19:5 53:6
 61:22
reach 42:15
reached 13:15
 60:17
reaction 54:14
reactions 54:13
read 6:14 39:15
 40:16 41:13
ready 10:8 21:7
 53:22 60:22
reality 13:11
really 8:21 10:2
 17:7 60:9
reason 20:16
reasonable 13:10
reasons 62:21 63:2
rebut 6:4 46:15
 53:19
rebuttal 9:17,20
 46:4 47:3 51:15
 54:16 55:1 60:11
rebuttals 14:9,11
rebutted 53:20
receive 27:10
received 23:1 26:20
 31:18 34:15

recess 63:22	renewal 57:1	return 46:1	62:19	sign 31:8
recite 41:5	repeatedly 7:13	revert 42:21	sent 37:22	signatures 57:15
reconsidering 20:4	report 21:14 27:20	review 40:7 41:22	separate 26:11	significant 23:19
record 29:22 33:5	34:7 37:5,10,15	right 3:2 5:8 8:12	September 23:3	Silverstein 1:17
37:20 38:3 39:1	37:20 39:22 40:11	9:21,22 28:2	service 27:5,8	15:20,21 16:4,8
40:17 41:14 64:4	42:11 43:16,16,19	37:20 38:2 45:18	session 55:3 62:13	19:6 63:14,15
64:7,12,20,21	44:2,5 46:11	54:13,14,15,17,20	64:1	65:11,12 66:3
records 41:6	reports 38:20	56:4 62:11 66:13	set 12:8 43:22	similar 18:20 28:6
recuing 15:1	representative	Rocks 24:11	61:14 65:3	similarly 33:13
recusal 15:21 18:12	17:22 45:9	Rodriguez 1:18	sets 6:14 10:3 49:8	simply 6:4 12:9
recuse 14:16 15:5,8	represented 4:22	63:5,6,12 66:2	settled 20:10	13:1 41:5,13
15:10 16:1 17:5	22:11	RODROGUEZ	settlement 4:15	Simultaneous
19:3,15 20:17	request 14:3 22:7	63:13	6:13 8:10 12:5,6	57:16
Red 24:11	48:6 49:2,17	roll 63:7	13:3,14,20 14:4	sir 30:12,16,20 31:3
redone 13:6	50:21 55:2 56:15	room 1:13 16:16	19:21 20:1 22:8	34:17 35:1,20
redundant 24:20	requested 47:10	rule 21:4 49:11,13	22:22 23:5,7	36:8,20 37:6,11
Reeves 1:13	62:4	59:2,4,13	25:10,16 26:2,4,5	38:8 39:13 40:9
referring 31:9	requesting 4:15 9:2	rules 49:5	27:16,22 28:6,10	42:3,7,16 43:1,7
refers 40:1	14:2 48:6 61:15	Ruthanne 1:14,16	28:17,22 29:4,6,9	43:12,20 44:3,7
reflect 13:11	62:2		29:12 32:9 37:8	44:14
reflected 6:2 44:5	require 18:11	S	37:17 39:9 40:1,7	sit 15:10 16:18
refute 17:6 45:10	required 11:12	S 2:1	40:12 41:20 42:1	51:16
reg's 56:19	24:10	SA 57:11 58:19	42:5,5,14,18	sits 15:18
regarding 19:21	requirement 8:3	satisfied 10:21	44:13,17 45:4	situ 52:2
25:7 39:18 58:10	13:2 48:22 50:14	52:18	47:10 48:7,14	situated 33:13
60:21	52:1	satisfy 49:22	49:10 53:1 56:16	six 24:6 50:17,20
regards 31:15,16	requirements 11:7	satisfying 53:3	57:3 61:16 62:2	50:22 51:11,19
33:16 34:13,20	12:13 13:19 23:14	saw 31:8	64:17 65:2	53:2 66:11
35:15,22 36:10,16	48:13 58:21 60:14	saying 13:1	seven 3:7	sized 22:2
39:20 46:10 50:8	62:6	says 7:17 8:6 16:14	shaking 20:13	solely 11:8,16
52:6	requires 24:4 52:19	40:16 41:10 49:16	shape 57:17	somewhat 19:5
regulated 25:1	residences 13:13	schools 22:17	shift 54:5	30:20
Regulations 11:11	25:20	seated 2:17	shifted 50:13	sorry 19:13 29:20
regulatory 26:17	residents 36:18	second 11:1 63:4,5	shifts 5:16	31:3 37:11,13
relations 25:21	respect 55:18 57:10	65:6,7	shoes 50:9	50:3
relevance 56:3	58:12	seconded 63:7,9	Short 1:19 55:18	sort 57:8
relevant 32:20 34:6	respectfully 14:2	65:9 66:7	56:14 57:10 58:7	sorts 17:11
44:21	response 5:4	Secondly 61:21	59:22 60:20 63:16	sound 10:19 12:22
rely 38:1 42:13	rest 19:10 21:4	Section 39:11,12,15	63:17 65:7,10	South 22:7
relying 37:14 49:5	restate 34:9	40:11 47:13 48:3	shortly 2:5	speak 11:8 36:17
49:6,12,15	restaurant 23:15	48:3 49:7 62:16	show 25:14 49:19	speaking 42:11
remain 19:1 26:4	24:7 28:13 29:1	62:22 63:2	51:17 55:16 56:12	57:16
52:2	31:1,5,6	see 5:7 8:21 9:4	59:7	speaks 10:13 11:2
remains 51:5	restrictions 13:11	11:6 12:6,7 20:12	showing 50:13,16	11:16
remarks 17:3	result 36:12 44:5	28:8 39:12 54:2	51:3,8,22 65:1	specifically 8:6
removed 32:10	resumed 64:5	54:14	side 10:1	10:14 42:11,19
rendering 11:18	Retailer 1:8	seeking 59:18,20	sides 58:8	47:12 49:8 53:9

61:14 specifications 12:7 speculations 20:14 spell 30:2 spoke 50:17 65:19 65:20 stance 8:19 stand 39:1 standardize 23:14 standards 6:15 32:18 61:12,13 standing 56:6,9 stands 40:2 start 2:10 3:2 33:10 starting 30:22 starts 39:11 state 41:6 stated 25:8,12,18 26:2,5 35:10 46:11 48:8 51:20 56:8 57:2 statement 8:2 10:9 10:10 18:14 21:2 51:14 statements 8:14 14:11 58:9 states 23:4,8 40:11 41:4 42:19 47:13 status 31:5 statute 6:13 11:9 32:4 48:13,22 52:18 61:15 Statutes 47:13 statutory 58:21 60:14 steadfastly 60:18 stem 23:6 stick 58:13 stipulated 29:6,9 stop 58:13 straight 12:3 53:14 strange 7:15 street 1:8,13 2:8 21:22 22:3,4,5,5,6 26:11 28:12,15 51:17 strongly 26:3	subject 10:13 subsection 47:14 49:7 52:16,17 53:3,12,14 subsection(4) 50:4 subsection(b) 50:4 subsections 50:1 53:17 succinct 58:16 suggest 33:1 summarize 44:10 summary 4:9 47:9 49:13 64:8,14 65:9 66:7 summer 12:16 27:21 28:5,10,16 28:20 29:2,7 31:15 32:12,13 33:16 35:5,7,12 36:2,11 42:12,20 43:5 superfluous 11:3 51:20 58:9,14 support 52:16 55:21 suppose 43:21 supposed 4:11 17:18,22 sure 56:20 60:22 suspect 20:11 swear 21:9 sworn 8:13,14,14 47:12 49:21,21 52:19 53:4,7 System 22:13	Task 27:9 tavern 23:15 24:7 tear 13:7 telephonically 25:6 tell 21:10 33:15 ten 27:4 tend 9:3 terminate 6:12 8:10 14:4 19:1 22:7 23:4 24:16 48:13 49:9,18 56:16 59:19,21 64:16 65:5,19 terminated 14:1 26:6 29:13 65:3 termination 4:15 5:22 6:12,21 7:8 9:2 13:20 20:1 25:9 32:19 47:10 47:22 48:7 57:2 58:19 59:8 61:15 62:2 terms 32:3 62:1 test 65:21 testify 52:14 54:1 testifying 45:6 testimonies 64:21 testimony 8:14,15 10:5 30:15 34:22 39:17 47:12 48:16 52:19 53:4,6,8,16 59:11 thank 11:22 14:5 20:18 21:13,17 27:13 30:5,21 31:14 32:21 34:12 35:21 36:15,21 37:7 38:5 39:3,7 42:9 45:18 66:14 thereof 32:11 thing 9:22 things 10:20 11:8 13:8 think 8:3 10:3 12:15 16:2,6,7,20 17:2 19:17 20:19 21:7,14 34:5	37:10 39:21 40:2 41:14 43:16 45:7 45:11 46:12 50:7 51:14,19 55:5,8 55:12 56:16 57:11 57:20 58:6,7,8,12 62:8 Thorp 2:17 4:1 9:17,20 23:1,8 25:13 thought 14:14 41:18 three 42:22 thrown 65:13 Thursday 25:5 time 10:2,21 11:11 11:12 15:15 27:2 30:10 34:16 36:5 45:21 49:14 times 5:1 today 12:17 13:18 52:20 56:4 61:13 told 16:11 54:10 top 39:10 total 28:4 touched 34:6 55:9 trading 21:20 transfer 13:5 Tree 28:13,19 trial 32:2 true 16:3,7,7,12 20:14 truth 21:10,10,11 48:19 try 7:10 trying 52:14 54:5 57:22 58:16 turn 37:8 39:8 43:18 turning 43:15 twice 25:2 two 9:13 10:13 28:14 53:5 57:14 61:9,22 62:5,9 type 48:15 53:6	unaware 35:19 unbiased 19:2 understand 12:18 17:8 33:4 56:2 understanding 15:22 16:13,20 29:16 56:18 Understood 42:9 undertake 44:16 unfair 24:12 unfairly 23:20 Unified 27:3 unilateral 13:20 unilaterally 49:10 unlimited 34:21 unnecessary 20:7 use 3:11
			V	
				VA 23:8 24:3,19 25:2 value 48:18 Vendetta 28:13 29:5 35:4,6,16 Vendetta's 34:21 version 37:22 38:10 Vic 28:12,15 vicinity 36:18 view 54:17 violated 24:3 32:3 violates 25:1 violation 25:3 26:19 violations 23:6 26:15 30:18 31:18 33:11,15 34:15 35:17 36:4,12 50:21 51:13 52:22 virtue 24:13 voluntary 7:8 10:12 11:2,6,8,15 32:9 49:18 59:8 65:17 vote 15:11 18:22 19:10 20:1 62:12 63:8,21
			U	

W			
wait 60:11	43:2,9,14,21 44:4	11th 22:5	5 43:18
want 4:20 6:10 9:5	44:8,15,22 45:6	12 24:11 28:13 29:1	5-0-0 66:11
16:22 21:16 41:15	45:14 46:2,3,7,17	31:1,5,6,10	6
45:20 50:6 60:21	47:4,6 49:6,15	12th 22:4	6 27:7
61:5	50:3 51:5 52:10	13 26:11	6-0-0 63:21 66:12
wanted 4:6 62:9	52:13 61:9	14 26:16	66:12
wants 25:20 47:2	Williams's 50:8	14-PRO-00003 1:9	6A 2:9,22 13:17
warning 26:21	willing 4:5,17	2:8 62:20	23:7,11,17 24:3,9
Washington 1:14	window 26:22	14th 1:13	24:11,20 25:9,20
21:22	wishes 45:10 46:17	16 44:10	26:3,8 28:11
wasn't 18:22 66:12	51:7	18 44:10	29:14 37:9,18
way 16:16	witness 4:1 9:17	19 27:6	41:21 42:6 45:4,9
ways 56:9	10:7 21:8 39:5,19	1st 22:5	59:1
wayside 15:14	40:20,21 41:7,11	2	7
Wednesday 26:16	45:10 47:1 54:1	2 39:11 44:10	79090 1:9 2:9
weekends 24:6	54:16 59:12	2000 1:13	8
weeknights 24:5	witness's 39:17	2010 62:17 63:1,4	8 25:5
weight 50:16	witnesses 4:2 6:3	2013 23:3 27:6	9
went 64:4	9:11 10:5 45:20	2014 1:11 25:5	9 44:10
West 22:5	45:22 46:5,15,18	26:12,13,16 27:7	
Whiskey 3:14	48:11 53:10,18	21 44:11	
29:10 64:16	words 17:6	22 44:11	
Whiskey's 1:7 2:6	work 13:4	23 22:14	
4:8 13:18 14:3	worked 30:10 36:6	25 50:3	
21:21 22:1,3,8,15	working 13:16	25-313 7:2 48:3	
23:2,6 25:11,14	written 56:1	25-314 7:2 48:3	
25:19,22 26:7,10	wrote 23:8	25-446 6:16 47:13	
26:18,20 27:5,11	X	49:7 50:9 65:4	
28:7,16,21 29:3	Y	2nd 26:12	
32:1 34:1,14	Yeah 50:7	3	
36:19 37:9,18	year 30:8	3 23:3 37:10 39:9	
41:21 42:12,20	years 41:2 50:17,20	31st 26:13	
43:4 62:1,21	50:22 51:12,19	4	
wholly 51:19 62:5	53:2	4 6:16 39:11 43:18	
WILIAMS 37:21	Z	47:14 49:7 62:22	
Williams 2:20,21	0	4(d) 39:15 40:11	
3:7,10 4:3 5:9 8:1	03:03:45 2:2	4:03 64:4	
9:4,12 12:1,2 14:8	1	4:26 64:5	
15:16 17:16 19:14	1 1:11 37:16	4:30 66:16	
19:17 22:11 25:7	1,200 22:15	400 22:18	
25:8,12,18 26:2,5	11:00 24:5	405 62:16,22	
31:20 33:21 37:3	1104 1:8 2:8 21:22	405(b)(13) 63:3	
37:7,13 38:4,9,14	22:2 26:11	446 50:4 51:21	
38:18 39:4,7,14		5	
39:21 40:6,10,15			
41:6,18 42:4,9,17			