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P R O C E E D I N G S

10:30 a.m.

CHAIR MILLER: Now we'll call the next case, which is Case No. 14-251-00055. Merkato Ethiopian Restaurant, located at 1909 9th Street, Northwest, License No. 89019 in ANC 1B.

MR. RIVERO: Good morning, Board Members, Fernando Rivero for the District of Columbia.

CHAIR MILLER: Good morning. Anybody here from Merkato Ethiopian Restaurant. Not hearing from anyone, it's 10:31. The hearing was called for 10:00. Mr. Rivero, do you have any word whether or not the Respondent is planning on attending this hearing?

MR. RIVERO: My understanding of the last time we were before this Board, we had made arrangements for A) this date, and B) for a translator. Translator arrangements have been made. I would also

1 call the Board's attention to the file. In
2 the file there is a document that shows that
3 service was made upon the licensee, as is he
4 signed for notice indicating that this
5 hearing would take place today. And that
6 notice was delivered by an investigator.
7 The Government is satisfied there's
8 sufficient notice. In fact, I recall that
9 we had a conversation about a translator in
10 the presence of the licensee, because the
11 licensee was here last time.

12 CHAIR MILLER: Okay. Yes, my
13 notes reflect that Notice was served on July
14 2nd, 2014.

15 MR. RIVERO: There's a subsequent
16 --

17 CHAIR MILLER: The subsequent
18 Notice.

19 MR. RIVERO: Indicating a service
20 date of August 13.

21 CHAIR MILLER: Okay. Okay. Are
22 you ready to proceed ex parte?

1 MR. RIVERO: Absolutely.

2 CHAIR MILLER: Okay. Then I think
3 you should proceed.

4 MR. RIVERO: Thank you, good
5 morning, Board Members. We're here on the
6 matter of Merkato Ethiopian Restaurant. As
7 a preliminary matter, the government would
8 move a minor amendment of the Notice to Show
9 Cause. There are two charges in the Notice
10 to Show Cause. The first one is that the
11 establishment is essentially operating after
12 its Board allowed hours. The second charge
13 is that the establishment interfered with an
14 investigation being conducted by MPD. The
15 factual narrative is entirely contained
16 under the first charge.

17 And it contains a statement that
18 the police officers responded to the
19 establishment to investigate after-hours
20 activity, and had to force their way into
21 the front door. The amendment is to change
22 the word front door to back door. It's a

1 typo. The actual fact is that the police,
2 and there will be testimony to this
3 obviously, but I'm making a move to now, to
4 amend the notice to show that that word
5 front should be back.

6 CHAIR MILLER: Board members have
7 any questions about that? Okay. Then I
8 would move to approve the amendment. Do I
9 have a second?

10 MR. SHORT: Second.

11 CHAIR MILLER: It has been
12 seconded by board member Short. All those
13 in favor say aye.

14 (Chorus of ayes)

15 CHAIR MILLER: All those opposed.
16 All those abstaining. Motion passes 5-0-0.
17 Okay. All right.

18 MR. RIVERO: Thank you.

19 CHAIR MILLER: Okay.

20 MR. RIVERO: The Government would
21 prove today, by the testimony of the police
22 officer that on January 18th, 2014, in the

1 early morning hours, the police responded to
2 a complaint about possible activity. Not
3 only was there activity, the establishment
4 was in operation, and that the police
5 actually had to make some effort to get into
6 the establishment, in order to observe a
7 violation. This was admitted to at the time
8 by the licensee. To prove this, the
9 Government would now call Sergeant Heraud of
10 the Metropolitan Police Department to the
11 stand.

12 SGT. HERAUD: Good morning.

13 CHAIR MILLER: Good morning. Do
14 you swear to tell the truth, the whole
15 truth, nothing but the truth?

16 SGT. HERAUD: Yes, I do.

17 CHAIR MILLER: All right. Thank
18 you, very much.

19 SGT. HERAUD: Sure.

20 MR. RIVERO: Good morning.
21 Sergeant, would you please state your name
22 for the record?

1 SGT. HERAUD: Carlos Heraud, H-E-
2 R-A-U-D.

3 MR. RIVERO: Thank you. And your
4 occupation?

5 SGT. HERAUD: Sergeant with the
6 Metropolitan Police Department, Third
7 District.

8 MR. RIVERO: How long have you
9 been assigned to the Third District?

10 SGT. HERAUD: Two years at the
11 Third District.

12 MR. RIVERO: Thank you. Are you
13 familiar with the establishment known as
14 Merkato Ethiopian Restaurant?

15 SGT. HERAUD: Yes.

16 MR. RIVERO: And how are you
17 familiar with them?

18 SGT. HERAUD: Back on January
19 18th, 2014, approximately 4:24 a.m. we
20 received a radio assignment through the
21 Third District dispatcher, that a concerned
22 citizen had called 911 and was reporting

1 that the establishment was operating after
2 hours.

3 MR. RIVERO: Did you respond to
4 that call?

5 SGT. HERAUD: (Inaudible
6 response).

7 CHAIR MILLER: I'm sorry, I
8 didn't hear those.

9 SGT. HERAUD: Yes, I did.

10 CHAIR MILLER: Okay.

11 MR. RIVERO: Around what time did
12 you arrive at the establishment?

13 SGT. HERAUD: I'd say within two
14 to three minutes of receiving the
15 assignment, so probably about 4:26, 4:27
16 a.m.

17 MR. RIVERO: Were you alone?

18 SGT. HERAUD: No, myself and
19 about four to five officers responded.

20 MR. RIVERO: Okay. What happened
21 when you arrived at the location?

22 SGT. HERAUD: We arrived on the

1 front door, which was a secured lock from
2 the inside. Well, from what we could hear,
3 we believe there was individuals inside the
4 establishment. We began to knock on the
5 front door. I'd say for about three to four
6 minutes and no one would open the front door
7 for us. Officer Buckley and Officer Malcolm
8 walked around the block to the rear entrance
9 of the establishment. And as they
10 approached the rear door, they observed
11 several people fleeing out of the rear door.
12

13 When they observed the officers'
14 presence, the people that were still inside
15 of the establishment, slammed the door shut.
16 Officer Buckley and Officer Malcolm
17 approached the rear door. Made several
18 verbal commands and knocked on the door
19 several times, they wouldn't open it. And
20 after several minutes, the door cracked
21 open, as someone was peering out of the
22 door. At that point, Officer Buckley was

1 able to force open the rear door and gain
2 entry into the establishment.

3 MR. RIVERO: Okay. Now where
4 were you when all this was happening?

5 SGT. HERAUD: I was still at the
6 front door, trying to gain entry through the
7 front door.

8 MR. RIVERO: Okay. And so then
9 how were you aware that all of this was
10 happening on the other side?

11 SGT. HERAUD: As it was playing
12 out, Officer Buckley was relaying this
13 information over the Third District radio
14 zone.

15 MR. RIVERO: So you could hear
16 her reports?

17 SGT. HERAUD: Yes.

18 MR. RIVERO: What happened after
19 Officer Buckley and Officer Malcom gained
20 entry into the building?

21 SGT. HERAUD: They came through
22 the establishment and unlocked the front

1 door from the inside, so myself and all the
2 other officers could make it in. Once I was
3 able to get inside the establishment, I
4 observed about 15 to 20 individuals that
5 appeared to be patrons inside of the
6 establishment.

7 MR. RIVERO: How did you know
8 that they appeared to be patrons?

9 SGT. HERAUD: Based on what they
10 were doing and their mannerisms. They were
11 sitting at the tables. They were engaged in
12 conversation. They had cups in front of
13 them. It appeared to me as they were
14 patrons versus employees.

15 MR. RIVERO: Okay. And what
16 happened after you made that observation?

17 SGT. HERAUD: I approached a
18 female that was behind the bar and I asked
19 to speak to either the owner or the manager.
20 And then a second female approached us and
21 identified herself as the owner of the
22 establishment.

1 MR. RIVERO: And what happened
2 when she identified herself as the owner

3 SGT. HERAUD: I explained to her
4 why we were there, that we received a call
5 that they were operating after hours. And
6 based on my observations, it was clear to me
7 that they in fact were. And I asked her for
8 identification. At that time, she produced
9 her identification. And then she
10 immediately began to apologize and explained
11 that she was sorry for what she was doing.
12 And that she had messed up.

13 MR. RIVERO: Okay. And then what
14 happened after that?

15 SGT. HERAUD: I asked her for her
16 ABC license, which was displayed behind the
17 bar.

18 MR. RIVERO: Did she produce it
19 to you?

20 SGT. HERAUD: Yes. Yes.

21 MR. RIVERO: Okay. And you
22 inspected it?

1 SGT. HERAUD: Correct.

2 MR. RIVERO: What did you find?

3 SGT. HERAUD: For her hours of
4 operation were to cease at 3:00 a.m. and at
5 this time it was, you know, about 4:24 when
6 we received the call.

7 MR. RIVERO: Okay. Were you
8 aware, or did you observe the presence of
9 any alcoholic beverages at this particular
10 visit to the establishment?

11 SGT. HERAUD: Yes, several
12 observations were made. There were several
13 smoking devices. They're commonly used to
14 smoke hookah.

15 MR. RIVERO: Mm-hmm.

16 SGT. HERAUD: There was ashtrays
17 that had burned cigarette butts in it.

18 MR. RIVERO: Mm-hmm.

19 SGT. HERAUD: And there were
20 several cups, several containers of unknown
21 liquid and others containing liquid that was
22 recognizable to be alcohol, based on its

1 color and odor.

2 MR. RIVERO: And was that your
3 observation?

4 SGT. HERAUD: Yes.

5 MR. RIVERO: And what kind of
6 alcohol then?

7 SGT. HERAUD: Several of them had
8 beer, so the color and odor was consistent
9 with that of beer.

10 MR. RIVERO: Okay.

11 SGT. HERAUD: Others had color
12 that was consistent with a mixed drink.

13 MR. RIVERO: Okay.

14 SGT. HERAUD: And then there was
15 also a few bottles of beer.

16 MR. RIVERO: Bottles.

17 SGT. HERAUD: That I labeled as
18 being alcohol beverages as well.

19 MR. RIVERO: Okay. So what
20 happened after you noted that the
21 establishment's license said their hours of
22 operation had ended?

1 SGT. HERAUD: I advised the owner
2 that we were going to take a report to the
3 ABC violation and I began to document my
4 observations with photographs.

5 MR. RIVERO: Okay. Now did there
6 remain the 15 to 20 people throughout this
7 time?

8 SGT. HERAUD: My initial contact
9 with the owner they still were there. But I
10 advised her that the rest of the people had
11 to clear out, because she was in fact after
12 hours. That she would not be able to
13 continue to operate. And at that point she
14 directed them to leave. I believe it was
15 her and the person that was identified as
16 the bar tender were the only ones left by
17 the time we left.

18 MR. RIVERO: What do you mean by
19 directed the people to leave?

20 SGT. HERAUD: Scurried them out
21 the door. Told them they had to go.

22 MR. RIVERO: Did these persons in

1 the building in fact leave?

2 SGT. HERAUD: Yes.

3 MR. RIVERO: What happened after
4 that?

5 SGT. HERAUD: We identified her
6 and documented her information. I also
7 documented my observations with photographs
8 and I notified ABRA and took a report of the
9 H2 violation.

10 MR. RIVERO: Thank you. No
11 further questions at this time.

12 CHAIR MILLER: Okay. Thank you.
13 Are there Board questions? Then I'd like to
14 just ask you, you may have addressed this
15 and I missed it. But can you explain again
16 how you got in? You got in through the
17 front door. Did somebody eventually unlock
18 it? And if so, who?

19 SGT. HERAUD: Yes, when Officer
20 Buckley and Officer Malcom approached the
21 rear door, and it was closed, essentially in
22 their face. After several demands of them

1 opening and knocking, someone cracked the
2 door, as if they were peering out, and then
3 Officer Buckley and Officer Malcom forced
4 the rear door open.

5 CHAIR MILLER: I see.

6 SGT. HERAUD: And they in turn
7 walked in the establishment and unlocked the
8 front door, so I could get in.

9 CHAIR MILLER: Okay. Thank you.
10 That's clear now. And also how long were
11 you out in front before you got in?

12 SGT. HERAUD: The front door I
13 was there probably just short of ten
14 minutes. Maybe eight to ten minutes.

15 CHAIR MILLER: Okay. And you
16 identified yourself as police officer and
17 asked them to open the door?

18 SGT. HERAUD: Yes.

19 CHAIR MILLER: Okay. And did they
20 respond?

21 SGT. HERAUD: No.

22 CHAIR MILLER: Okay. Any other

1 questions? Mr. Short.

2 MR. SHORT: Good morning,
3 Officer.

4 SGT. HERAUD: Good morning.

5 MR. SHORT: Thank you, for your
6 service.

7 SGT. HERAUD: Thank you.

8 MR. SHORT: I'd just like to ask,
9 you've been assigned to the Third District
10 how many years again?

11 SGT. HERAUD: The Third District
12 for two years.

13 MR. SHORT: Two years. Do you
14 have any history with this particular
15 licensee or this establishment in those two
16 years?

17 SGT. HERAUD: Yes, I was aware of
18 one prior incident with that establishment.

19 MR. SHORT: What was the nature
20 of that occurrence?

21 SGT. HERAUD: Also operating
22 after hours.

1 MR. SHORT: Same thing as this
2 time?

3 SGT. HERAUD: Correct.

4 MR. SHORT: Thank you. That's
5 all I have Madam Chair.

6 CHAIR MILLER: Just a follow up
7 on that, and I know that's kind of
8 peripheral, but in that case, did you have
9 to force your way in as well, or did they
10 let you in?

11 SGT. HERAUD: To the best of my
12 recollection that case the front door was
13 still unlocked and we were just able to open
14 the door and walk in.

15 MR. RIVERO: I'm going to have to
16 express a concern on the part of the
17 government about inquiries about incidents
18 that are reported and not the subject of
19 this current investigation. I think that we
20 have sufficient evidence to focus on the
21 merits of this case. And to the extent that
22 this Board is going to continue to look at

1 what's outside of the four corners of this
2 case, there's an investigative history that
3 accompanies the official file. Otherwise
4 the Board may be referring to reports by the
5 police department that are not actually in
6 front of the Board in any way, shape or
7 form, including to the official file of the
8 agency.

9 CHAIR MILLER: Okay. I hear you
10 and I don't think the Board will pursue that
11 line of questioning nor I, I hesitated but I
12 was curious. But that will not, you know,
13 affect my decision. It will be based on the
14 evidence related just to this case. Okay.
15 And I think that will be true for all board
16 members. Yes, Mr. Rodriguez.

17 MR. RODRIGUEZ: Yes, Sergeant,
18 what was the disposition of the customers
19 there at that particular point? Were they
20 tranquil? Were they loud, or what did you
21 discover?

22 SGT. HERAUD: To the best of my

1 recollection, they were calm and compliant
2 and tranquil, except for one individual
3 which I recall being a tall male, identified
4 himself as a family member to the owner. I
5 can't recall what the relationship was. And
6 I think he's the one that accepted the
7 responsibility for slamming the door, the
8 rear door when Officer Buckley and officer
9 Malcom were approaching.

10 MR. RODRIGUEZ: Okay, thanks.

11 CHAIR MILLER: Okay, anything
12 else? Any questions based on Board
13 questions?

14 MR. RIVERO: No further
15 questions.

16 CHAIR MILLER: All right. Thank
17 you, very much for taking the time to come
18 down here. Okay. Okay.

19 MR. RIVERO: Thank you. The
20 government has no further witnesses at this
21 time. We believe that the testimony of the
22 officer is sufficient to prove not one, but

1 both of the charges in the Notice to Show
2 Cause. We believe that the officer has
3 shown that unequivocally the establishment
4 was in fact operating after 3:00 a.m. All of
5 the regular indicia of operation were
6 present. Patrons, people who were not
7 employees. The hookah, the cigarettes, the
8 alcohol, was all there. The admission of the
9 licensee is perfectly with evidence. She
10 was aware that she had done wrong and
11 apologized to the officer for it. And
12 finally we have sufficient evidence to
13 establish that there was an effort made by
14 the establishment to not allow the police
15 entry, so that it took eight to ten minutes
16 for the sergeant to enter the establishment.
17 And it wasn't through any action taken on
18 the part of the licensee, but rather that
19 the officers had to force themselves in. We
20 believe that this evidence is sufficient to
21 prove that the establishment operated longer
22 than the allowed hours and also that they

1 interfered with the conduct of an
2 investigation by the Metropolitan Police
3 Department. We would ask that the Board
4 find in the government favor and levy a
5 penalty that is consistent with Title 25 of
6 the D.C. Code and the accompanying
7 regulation. Thank you, very much.

8 CHAIR MILLER: Okay. Thank you,
9 very much.

10 MR. SILVERSTEIN: MR. Rivero, I'm
11 not sure I heard the end of what you said.
12 You asked if you had, regarding specifics of
13 the penalty.

14 MR. RIVERO: Oh, we just, I just
15 stated that we would request that the Board
16 fashion a penalty that is consistent with
17 5025 of the D.C. Code and its accompanying
18 regulations. Particularly Chapter 800 of
19 Title 23 of the D.C. Law.

20 MR. SILVERSTEIN: Thank you.

21 CHAIR MILLER: You want to file a
22 Proposed Findings of Fact and Conclusions of

1 Law?

2 MR. RIVERO: Pardon?

3 CHAIR MILLER: Want to find some
4 Proposed Findings of Fact, okay, so I'm just
5 going to take a vote on deliberating this in
6 closed session. As Chairperson of the
7 Alcoholic Beverage Control Board of the
8 District Columbia and in accordance with
9 Section 405 of the Open Meetings Amendment
10 Act of 2010, I move that the ABC Board hold
11 a closed meeting for the purposes of seeking
12 of legal advice from our counsel on Case No.
13 14-251-00055 Merkato Ethiopian Restaurant.
14 Per Section 405B for the Open Meetings
15 Amendment Act of 2010 and deliberating upon
16 this case, for the reasons cited in Section
17 405(B)13 of the Open Meetings Amendment Act
18 of 2010. Is there a second?

19 MR. SILVERSTEIN: Second.

20 CHAIR MILLER: Mr. Silverstein
21 seconded the motion. All those in favor say
22 aye. Oh, no, I'm taking a roll call. Mr.

1 Brooks?

2 MEMBER BROOKS: I agree.

3 CHAIR MILLER: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

5 CHAIR MILLER: Mr. Rodriguez?

6 MR. RODRIGUEZ: I agree.

7 CHAIR MILLER: Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIR MILLER: Mr. Short.

10 MEMBER SHORT: I agree.

11 CHAIR MILLER: Okay, it appears
12 that the motion has passed by a vote of 6-0-
13 0. I hereby give notice that the ABC Board
14 will hold a closed meeting on this case and
15 issue an order within 90 days. Okay.

16 (Whereupon, the above hearing was
17 concluded at 10:49 a.m.)

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<p style="text-align: center;">A</p> <p>a.m 2:2 7:19 8:16 13:4 22:4 25:17 ABC 12:16 15:3 24:10 25:13 able 10:1 11:3 15:12 19:13 ABRA 16:8 Absolutely 4:1 abstaining 5:16 accepted 21:6 accompanies 20:3 accompanying 23:6,17 Act 24:10,15,17 action 22:17 activity 4:20 6:2,3 actual 5:1 addressed 16:14 admission 22:8 admitted 6:7 advice 24:12 advised 15:1,10 affect 20:13 after-hours 4:19 agency 20:8 agree 25:2,4,6,8,10 Alberti 1:17 25:3,4 alcohol 13:22 14:6 14:18 22:8 alcoholic 1:2,12,13 13:9 24:7 Ali 1:6 allow 22:14 allowed 4:12 22:22 amend 5:4 amendment 4:8,21 5:8 24:9,15,17 ANC 2:7 Anybody 2:12 apologize 12:10 apologized 22:11 appeared 11:5,8,13 appears 25:11 approached 9:10 9:17 11:17,20 16:20</p>	<p>approaching 21:9 approve 5:8 approximately 7:19 arrangements 2:20 2:22 arrive 8:12 arrived 8:21,22 ashtrays 13:16 asked 11:18 12:7 12:15 17:17 23:12 assigned 7:9 18:9 assignment 7:20 8:15 attending 2:16 attention 3:1 August 3:20 aware 10:9 13:8 18:17 22:10 aye 5:13 24:22 eyes 5:14</p> <p style="text-align: center;">B</p> <p>B 2:21 back 4:22 5:5 7:18 bar 11:18 12:17 15:16 based 11:9 12:6 13:22 20:13 21:12 beer 14:8,9,15 began 9:4 12:10 15:3 believe 9:3 15:14 21:21 22:2,20 best 19:11 20:22 Beverage 1:2,12,13 24:7 beverages 13:9 14:18 block 9:8 board 1:2,12 2:8,19 4:5,12 5:6,12 16:13 19:22 20:4 20:6,10,15 21:12 23:3,15 24:7,10 25:13 Board's 3:1</p>	<p>bottles 14:15,16 Brooks 1:16 25:1,2 Buckley 9:7,16,22 10:12,19 16:20 17:3 21:8 building 1:13 10:20 16:1 burned 13:17 butts 13:17</p> <p style="text-align: center;">C</p> <p>C 2:1 call 2:3 3:1 6:9 8:4 12:4 13:6 24:22 called 2:14 7:22 calm 21:1 Carlos 7:1 case 1:9 2:4,4 19:8 19:12,21 20:2,14 24:12,16 25:14 Cause 1:7 4:9,10 22:2 cease 13:4 Chair 2:3,11 3:12 3:17,21 4:2 5:6,11 5:15,19 6:13,17 8:7,10 16:12 17:5 17:9,15,19,22 19:5,6 20:9 21:11 21:16 23:8,21 24:3,20 25:3,5,7,9 25:11 Chairperson 1:14 1:16 24:6 change 4:21 Chapter 23:18 charge 4:12,16 charges 4:9 22:1 Chere 1:6 Chorus 5:14 cigarette 13:17 cigarettes 22:7 cited 24:16 citizen 7:22 clear 12:6 15:11 17:10 closed 16:21 24:6</p>	<p>24:11 25:14 Code 23:6,17 color 14:1,8,11 Columbia 1:1 2:10 24:8 come 21:17 commands 9:18 commonly 13:13 complaint 6:2 compliant 21:1 concern 19:16 concerned 7:21 concluded 25:17 Conclusions 23:22 conduct 23:1 conducted 4:14 consistent 14:8,12 23:5,16 contact 15:8 contained 4:15 containers 13:20 containing 13:21 contains 4:17 continue 15:13 19:22 Control 1:2,12,13 24:7 conversation 3:9 11:12 corners 20:1 Correct 13:1 19:3 counsel 24:12 CR 1:8 cracked 9:20 17:1 cups 11:12 13:20 curious 20:12 current 19:19 customers 20:18</p> <p style="text-align: center;">D</p> <p>D 2:1 D.C 1:14 23:6,17 23:19 date 2:20 3:20 days 25:15 decision 20:13 deliberating 24:5</p>	<p>24:15 delivered 3:6 demands 16:22 department 6:10 7:6 20:5 23:3 devices 13:13 directed 15:14,19 discover 20:21 dispatcher 7:21 displayed 12:16 disposition 20:18 District 1:1 2:9 7:7 7:9,11,21 10:13 18:9,11 24:8 document 3:2 15:3 documented 16:6,7 doing 11:10 12:11 DONALD 1:16 door 4:21,22,22 9:1 9:5,6,10,11,15,17 9:18,20,22 10:1,6 10:7 11:1 15:21 16:17,21 17:2,4,8 17:12,17 19:12,14 21:7,8 drink 14:12</p> <p style="text-align: center;">E</p> <p>E 2:1,1 early 6:1 effort 6:5 22:13 eight 17:14 22:15 either 11:19 employees 11:14 22:7 ended 14:22 engaged 11:11 enter 22:16 entirely 4:15 entrance 9:8 entry 10:2,6,20 22:15 essentially 4:11 16:21 establish 22:13 establishment 4:11 4:13,19 6:3,6 7:13</p>
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