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P R O C E E D I N G S

12:32 p.m.

MR. STERN: Finally the government will move on to Case No. 14-CMP-00103. In that case, the government's evidence will show that the establishment failed to follow its Settlement Agreement by failing to pick up its trash and keep its area free from trash. I will call Investigator Dantzler.

CHAIR MILLER: Good afternoon.

MS. DANTZLER: Good afternoon.

CHAIR MILLER: Do you swear to tell the truth, the whole truth, nothing but the truth?

MS. DANTZLER: I affirm.

CHAIR MILLER: Okay, thank you.

MR. STERN: Can you give us your name and spell your last name for the court reporter?

MS. DANTZLER: Felicia Dantzler, D like David A-N-T-Z like zebra, L-E-R.

MR. STERN: And are you employed

1 Investigator Dantzler?

2 MS. DANTZLER: I am.

3 MR. STERN: How are you employed?

4 MS. DANTZLER: I'm employed with
5 the Alcoholic Beverage Regulation
6 Administration.

7 MR. STERN: And were you employed
8 as such in February 2014?

9 MS. DANTZLER: Yes.

10 MR. STERN: During that month,
11 did you have an occasion to investigate an
12 establishment by the trade name New York New
13 York Diva?

14 MS. DANTZLER: Yes.

15 MR. STERN: Okay. Can you tell
16 me what was the subject?

17 MS. DANTZLER: Yes, our office
18 received an E Complaint or an email from
19 James Nixon, a citizen and a business owner
20 in the District of Columbia regarding the
21 trash and violation committed by New York
22 New York Diva.

1 MR. STERN: Okay. And pursuant
2 to that complaint, what did you do?

3 MS. DANTZLER: Myself and other
4 ABRA investigators monitored New York New
5 York Diva between February 5, 2014 through
6 February 20th of 2014. In reference to the
7 complaint.

8 MR. STERN: Okay. And when you
9 say monitor, what is it specifically that
10 the investigators and you did?

11 MS. DANTZLER: We went to the
12 rear of the establishment where the trash
13 receptacles are located to see if the
14 establishment was in violation.

15 MR. STERN: Were you familiar at
16 the time you did this with Settlement
17 Agreement?

18 MS. DANTZLER: Yes. I became
19 familiar with it sometime in February 2014.

20 MR. STERN: Okay. And what did
21 you find that made you believe that the
22 establishment had violated the Settlement

1 Agreement?

2 MS. DANTZLER: Sometime in
3 December of 2000 a Settlement Agreement was
4 entered into and the Settlement Agreement,
5 the language that discussed the trash talked
6 about keeping the trash area clean, keeping
7 the lids tightly secured on the trash
8 receptacles and ensure that rodent proof
9 trash receptacles were used.

10 MR. STERN: And what did you
11 find, well, first let me show you what I
12 have marked as Government's Exhibit G-5 and
13 ask if you recognize that document.

14 MS. DANTZLER: Yes, I do.

15 MR. STERN: And what is that
16 document?

17 MS. DANTZLER: This is a case
18 report that I authored and it tells about
19 the observations that were made by myself
20 and ABRA investigators.

21 MR. STERN: Okay. And does that
22 report also include a copy of the Settlement

1 Agreement?

2 MS. DANTZLER: It does.

3 MR. STERN: And is Section 4 of
4 the Section Trash, Trash storage.

5 MS. DANTZLER: Brief indulgent,
6 yes, it does.

7 MR. STERN: And is that the
8 section you were talking about?

9 MS. DANTZLER: That is correct.

10 MR. STERN: And did it also
11 include photographs?

12 MS. DANTZLER: It does.

13 MR. STERN: And what are those
14 photographs of?

15 MS. DANTZLER: The trash area
16 located in the rear of New York New York
17 Diva.

18 MR. STERN: Can you tell me what
19 observations were made by yourself and your
20 other investigators that led you to believe
21 there were violations?

22 MS. DANTZLER: On February 5th,

1 February 12th, February 15th and February 19th
2 of 2014, during each of those site visits,
3 the establishment had trash receptacles that
4 did not have securely closed lids. The area
5 was littered with trash, as well as there
6 was trash overflowing from the trash
7 receptacles.

8 MR. STERN: Okay. Government
9 would move the admission of Government
10 Exhibit G-5.

11 CHAIR MILLER: Admitted.

12 MR. STERN: Thank you. And are
13 those conditions depicted in the photographs
14 that are attached in your report?

15 MS. DANTZLER: Yes.

16 MR. STERN: Thank you. No
17 further questions.

18 CHAIR MILLER: Board questions?
19 I'm not hearing any. Your investigative
20 report and your testimony were quite clear
21 and to the point, thank you.

22 MS. DANTZLER: Okay. Thank you.

1 MR. STERN: The government will
2 rest its case. In closing, the government
3 believes the Court has rightly focused,
4 though there are many violations, as the
5 Board has heard, the testimony of the
6 officer and several investigators, this
7 establishment has a long history of issues
8 that has brought it to its attention. In
9 fact violations, not just issues. That has
10 brought it to the attention of the Board.
11 But the Board has rightly focused on Case
12 No. 14-251-00089, in particular. Because
13 that involves both very serious violations
14 but more importantly a mandatory revocation
15 violation in that the establishment was
16 allowing the use of marijuana, in its
17 controlled substance, that being marijuana
18 in its establishment.

19 There is always an issue when an
20 establishment is charged with allowing
21 something that they have some prior
22 knowledge, or some reason for, being that

1 they're allowing it to continue to, in this
2 case, it's very clear the police have
3 testified that there has been a, the police
4 and the investigators have testified there
5 is a string of marijuana use. That it
6 happens not once but repetitively there. In
7 fact, we have the admission of the
8 establishment's owner who stated that he had
9 smelled the marijuana. That in fact he had
10 smelled it the two weeks prior when he was
11 warned about it by the investigator. That
12 he had smelled it again. His only excuse
13 being that it smelled a little better this
14 time than it did the time previously.

15 We have testimony that there are
16 clouds of smoke inside the establishment.
17 That you can smell it as far as 18th Street
18 coming from the establishment, that it was
19 so heavy that it stuck in the investigator's
20 hair, her jacket, it was just laden in the
21 air. The police testified that this was not
22 just a small amount that was used, but it

1 was pervasive in the establishment. You
2 could smell it again, he testified you could
3 smell it from outside.

4 For all of those reasons, we
5 think mandatory revocation is important
6 here. But also, there are other violations
7 that are also serious. It is clear from the
8 testimony that the establishment allowed the
9 consumption of alcoholic beverages by people
10 under 21. The person at the front door let
11 a 20 year old in, gave her a band so she
12 could drink, charged her \$20.00 and did not
13 check her ID There's evidence again, that
14 supports that the establishment didn't take
15 adequate checks to check. We know the
16 establishment didn't check.

17 There was testimony that on March
18 15th, the establishment was allowing people
19 in and out of the establishment, without
20 checking what their age was. They were
21 handing out bands. The investigator found
22 both that day and on the 2nd of March that

1 there were extra wrist bands just lying on
2 the floor upstairs. There is evidence that
3 supports that the establishment allowed the
4 consumption of alcoholic beverages outside
5 of the establishment. That was established,
6 because when the investigators went there,
7 they saw people carrying alcoholic
8 beverages out of the establishment. There
9 was no one to check.

10 There was virtually no security
11 there. And in fact, we've heard from the
12 investigators in its discussions with the
13 owners, that there is no security plan. For
14 a place that operates as a club, if they do
15 not have a security plan is reckless, to say
16 the least. There was evidence that there
17 was a substantial change for which they did
18 not get approval. Not on one occasion, but
19 on at least three occasions we heard
20 testimony that on at least three occasions,
21 the establishment was over capacity. Over
22 the 196 people that was allowed at the

1 establishment. On one occasion the fire
2 marshal estimated as many as 500 people
3 inside. On another occasion, they counted
4 over 250 people inside.

5 The establishment allowed the use
6 of tobacco products. Again, not just in
7 Case No. 00089, but in 00085 as well. In
8 fact in 00085, when the investigator went
9 inside, she saw one of the managers smoking
10 a cigarette inside. So these excuses that
11 the owner made that there was hookah smoking
12 and maybe that was taking it, first of all,
13 if it was hookah smoking, it still would be
14 illegal, because they didn't have the
15 exemption, which would allow them to use
16 hookah. But even if they were using it, the
17 investigator testified she actually saw a
18 cigarette in the hand of one of the
19 supposedly management.

20 There is also evidence that the
21 establishment transferred the responsibility
22 to security to a third party. The testimony

1 was that the promoter took over the door and
2 was not checking IDs, but allowing people to
3 come in and exit the establishment. There
4 is sufficient evidence that the
5 establishment violated their security
6 agreement, both because of the noise control
7 and because of the trash control, which they
8 were required to do. There was evidence
9 that the establishment allowed their
10 establishment to be used for a disorderly
11 purpose. And that, while it is a
12 complicated charge, I think it was
13 adequately proved today. Not only does this
14 establishment have a history, but as I said,
15 there is no security plan.

16 On the day of this incident,
17 there were four people working three floors
18 of the establishment. It just was
19 inadequate security. And the establishment
20 admitted, the owner himself told the
21 investigator that he had inadequate
22 security. Just didn't do it. That's a

1 direct action of the establishment. And
2 that I believe supports the violation or
3 disorderly purpose. It's also important
4 because the police testified that this
5 establishment virtually every week has
6 something going on there. It's not just
7 this one occasion where it occurred, but
8 they're continually a problem regarding the
9 security and the amount of people they let
10 in. And how they deal with those people.

11 And finally the last charge is
12 00085, which also involves a use of tobacco
13 products. Again proven not just by the
14 cigarette, but by the cigars and the cigar
15 paraphernalia that was found and the use of
16 marijuana when again, it was so thick that
17 the investigator literally had a hoarse
18 throat from breathing in that air. And the
19 owners said they knew that people were
20 smoking in there. They just didn't feel
21 they could do very much about it. Well,
22 that's not how we allow establishments to

1 operate in the District of Colombia.

2 Now fortunately for the city,
3 this establishment is no longer operating in
4 the District of Colombia. However, the
5 government believes that it was important
6 for us to go forward with this case, because
7 revocation is important to this case,
8 because this owner was such a bad actor,
9 that the result of the revocation would be
10 that he could not apply for a license in
11 five more years. This is the type of
12 individual that we have to prevent when
13 Board Member Silverstein speaks about trying
14 to head off future incidents. The
15 government agrees 100 percent that that is
16 important. There should be a way to better
17 head off those incidences. But this is one
18 way we can make sure that this owner, who we
19 know is a bad actor, doesn't get another
20 license and doesn't open up another place,
21 not one year from now, not two years from
22 now, not three years from now, and maybe

1 none of these board members are present, but
2 through the entire five years that the
3 statute provides. And for all of these
4 reasons, we're asking the board to vote.

5 If for any reason the board
6 decides not to revoke its license, we would
7 ask that you provide the maximum fines for
8 each of the violation, because of the long
9 term and number of violations. The officer
10 perhaps said it best. They seem to care
11 nothing about the management of the
12 establishment, except how much money they're
13 making. They were continuing making
14 violations, but continually watching how
15 much money they were making. Well, as I
16 say, I think the best way to prevent that
17 from happening, and prevent this owner from
18 having another establishment where something
19 truly tragic can happen would be through
20 revocation, board revocation. Thank you.

21 CHAIR MILLER: Thank you. So the
22 record is closed in this case. You're going

1 to file the proposed findings of fact and
2 conclusions of law. Mr. Stern?

3 MR. STERN: Sorry?

4 CHAIR MILLER: Would you like to
5 file proposed findings?

6 MR. STERN: No, no, we will
7 waive.

8 CHAIR MILLER: Okay. All right.
9 Then I'm going to call a vote on
10 deliberating these cases in closed session.
11 As Chairperson of the Alcoholic Beverage
12 Regulation Administration for the District
13 of Columbia and in accordance with Section
14 405 of the Open Meetings Amendment Act of
15 2010, I move that the ABC Board hold a
16 closed meeting for the purpose of conferring
17 with counsel on the following cases related
18 to New York New York Diva. No. 14-251-
19 00048; 14-251-00085; 14-251-00089; 14-CMP-
20 00103 and 14-CMP-00110 and deliberate upon
21 these cases for the reasons cited in Section
22 405(B)(13) of the Open Meetings Amendment

1 Act of 2010. Is that a second?

2 MR. SHORT: Second.

3 CHAIR MILLER: Mr. Short has
4 seconded the motion. I will now take a roll
5 call vote on the motion, which has now been
6 seconded. Mr. Brooks?

7 MEMBER BROOKS: I agree.

8 CHAIR MILLER: Mr. Alberti?

9 MEMBER ALBERTI: I agree.

10 CHAIR MILLER: Mr. Rodriguez?

11 MR. RODRIGUEZ: I agree.

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

14 MEMBER SILVERSTEIN: I agree.

15 CHAIR MILLER: And Mr. Short?

16 MEMBER SHORT: I agree.

17 CHAIR MILLER: Okay, it appears
18 that the motion has passed by a 6-0-0 vote
19 and the board will hereby hold a closed
20 meeting and issue a written decision within
21 90 days. Thank you. Okay. So that
22 concludes those five cases.

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MR. STERN: Thank you.

CHAIR MILLER: Yes.

MR. STERN: This is not necessary
on the record. You can close the record.

(Whereupon, the above case was
concluded at 12:50 p.m.)

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