

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

2 9:53 a.m.

3 CHAIRPERSON ANDERSON: All right. The
4 next case on our calendar is Case No. 18-251-
5 00032, Aqua Restaurant, License No. 60477.

6 Would the parties, please, approach
7 and identify themselves for the record, please?

8 MR. LUMUKANDA: Good morning. D'Maz
9 Lumukanda on behalf of the licensee, Aqua
10 Restaurant.

11 MR. SOUSA: Christopher Sousa for the
12 District of Columbia.

13 CHAIRPERSON ANDERSON: Good morning,
14 Mr. Sousa, good morning, Mr. Lumukanda.

15 All right. Are there any preliminary
16 matters in this case?

17 MR. SOUSA: Yes, there is --

18 MR. LUMUKANDA: No.

19 MR. SOUSA: It's my understanding that
20 there is an OIC.

21 MR. LUMUKANDA: That is correct, that
22 is correct.

1 MR. SOUSA: Okay. There is an OIC to
2 present to the Board.

3 CHAIRPERSON ANDERSON: What is that,
4 sir?

5 MR. SOUSA: So it's a creative one.
6 Charge 1 is smoking inside of the establishment.
7 The OIC is a written warning for the charge as
8 relates to Section 823(a)(1). Amending that
9 charge to delete the reference to 823(a)(2), the
10 organization, the licensee will submit an updated
11 security plan within 30 days that contains the
12 current number of cameras and an updated diagram
13 with the location of the establishment's cameras.

14 And the security camera coverage of
15 the establishment, of the spot where an assault
16 occurred at the establishment will be maintained
17 within seven days of this order -- of this OIC
18 being accepted.

19 So it's a little creative one, but
20 that's what the folks have agreed to.

21 CHAIRPERSON ANDERSON: All right. I
22 was not expecting that, so I --

1 MR. SOUSA: Sure. I can run through
2 the terms again.

3 CHAIRPERSON ANDERSON: So, yes,
4 please, go ahead.

5 MR. SOUSA: Sure. Okay. So what has
6 been agreed to was with regards to the only
7 charge, there is a Charge 1, smoking inside the
8 establishment, a written warning as to Section
9 823(a)(1), and then amending that charge to
10 delete the reference to Section 823(a)(2).

11 The establishment will submit an
12 updated security plan within 30 days that
13 contains the current number of security cameras
14 and an updated diagram of the location of the
15 establishment's cameras. And that also there was
16 a specific spot that is outlined in the notice
17 where an assault occurred and the establishment
18 will ensure coverage by security camera of that
19 spot within seven days.

20 CHAIRPERSON ANDERSON: My note-taking
21 skills are not as well as they should be and so
22 in this particular case, we will be issuing a

1 Board Order.

2 So what I would also ask that you do,
3 Mr. Sousa, is that you provide both you and Mr.
4 Lumu --

5 MR. LUMUKANDA: Lumukanda.

6 CHAIRPERSON ANDERSON: -- Lumukanda
7 that you agree on the terms provided to us so it
8 will be in the order.

9 MR. LUMUKANDA: Get the exact wording
10 and submit.

11 CHAIRPERSON ANDERSON: Right, to the
12 Board Order. But Mr. Lumukanda, it's my
13 understanding that there is an Offer in
14 Compromise. And Mr. Sousa had stated what the
15 Offer in Compromise and the gist of it is that
16 there is a written warning for Charge 1 in
17 respect to smoking within the establishment. And
18 that the charge will be amended to delete a
19 certain portion.

20 The other portion of the agreement is
21 that an updated security agreement will be
22 provided, that you will provide the camera

1 location. And that it appears that there was an
2 incident occurred and that the camera location
3 will be updated and provided to the Board within
4 the next seven days.

5 Is this your understanding? And as I
6 said before, we are going to do a Board Order
7 that will specifically provide the terms, but is
8 this your understanding of the OIC that was
9 provided/presented on the record by Mr. Sousa?

10 MR. LUMUKANDA: Yes, sir.

11 CHAIRPERSON ANDERSON: All right. Are
12 you aware that by accepting an Offer in
13 Compromise, that you are giving up your right to
14 a hearing?

15 MR. LUMUKANDA: Yes, sir.

16 CHAIRPERSON ANDERSON: And are you
17 also aware that by accepting an Offer in
18 Compromise, you are giving up your right to
19 appeal this matter?

20 MR. LUMUKANDA: Yes, sir.

21 CHAIRPERSON ANDERSON: The only -- we
22 are going to issue a Board Order and the Board

1 Order will -- I'm not quite sure exactly when the
2 Board Order will be written/will be issued, but
3 there is a provision -- what needs to be done
4 within the next seven days, Mr. Sousa?

5 MR. SOUSA: Ensure security camera
6 coverage of the specific spot that is articulated
7 in the notice within seven days.

8 CHAIRPERSON ANDERSON: Are you aware
9 that although the Board Order will not be issued,
10 I'm not sure the Board Order will be issued, but
11 you are agreeing that within seven days -- so
12 it's seven days from today or from the Board
13 Order?

14 MR. SOUSA: It would be my
15 understanding when the OIC is accepted and from--
16 my instinct is that that would be seven days
17 after the Board Order.

18 CHAIRPERSON ANDERSON: Okay. All
19 right. So well, within seven days after the
20 Board Order is issued, then you have that period
21 of time to comply with that provision of the OIC.

22 MR. LUMUKANDA: You know, actually,

1 I've gone to the facility myself and I have had
2 the audio/video, audio visual individual adjust
3 the camera angle, so I have in one of my emails
4 that I have with me today the pictures of the
5 camera angle that was in question.

6 (Simultaneous speaking)

7 MR. LUMUKANDA: And I also have a 5
8 minute video that I could email to the Board as
9 well as --

10 MR. SOUSA: Why don't you just
11 correspond with other --

12 MR. LUMUKANDA: -- the District of
13 Columbia Government. Sure. We have made all the
14 records available.

15 MR. SOUSA: -- I'll talk with my
16 colleague, Louise Phillips, about that.

17 MR. LUMUKANDA: Sure.

18 MR. SOUSA: Yes.

19 MR. LUMUKANDA: We've made all the
20 corrections, I believe.

21 MR. SOUSA: So correspond with us and
22 we'll work with you.

1 MR. LUMUKANDA: We will talk to her.

2 CHAIRPERSON ANDERSON: Yes, Mr. Short,
3 what --

4 MEMBER SHORT: I would like to
5 recommend that we also have an Investigator go
6 out and take a look at those camera --

7 MR. LUMUKANDA: Absolutely.

8 MEMBER SHORT: -- angles, because the
9 email doesn't --

10 MR. LUMUKANDA: Absolutely.

11 MEMBER SHORT: -- it wouldn't satisfy
12 my individual Board Member.

13 MR. LUMUKANDA: Find.

14 MEMBER SHORT: So if one of our
15 Investigators were to go out and look at the
16 camera and camera angles and give a report back
17 to the Board, I would appreciate that.

18 CHAIRPERSON ANDERSON: I mean, that's
19 fine. I think that once the Board Order is
20 issued with the specific terms of the OIC, then
21 in order for the Board to know that the OIC has
22 been complied with, an Investigator has to go out

1 to confirm that it has been done. All right.

2 MEMBER SHORT: Thank you.

3 CHAIRPERSON ANDERSON: So that's fine.

4 All right. Any other questions by any other
5 Board Members?

6 Hearing none, then I do make a motion
7 that the Offer in Compromise for Charge 1, a
8 written warning, be accepted. We will provide
9 the other specific terms of the OIC in the sense
10 of an updated security agreement will be done,
11 adjustments of the camera angles, so that will be
12 done.

13 Is there a second?

14 MEMBER SHORT: Second.

15 CHAIRPERSON ANDERSON: Mr. Short has
16 seconded the motion.

17 All those in favor say aye.

18 ALL: Aye.

19 CHAIRPERSON ANDERSON: Those opposed?
20 Okay. The matter passes 5-0-0.

21 So again, I'll ask Mr. Sousa to -- we
22 will issue a Board Order, but the exact language

1 will be provided to the Board so we can issue a
2 Board Order that covers the specific terms.

3 MR. SOUSA: And I'll make sure that
4 counsel for the licensee is copied on that
5 message so that everyone is in agreement.

6 CHAIRPERSON ANDERSON: Thank you. All
7 right.

8 MR. LUMUKANDA: Appreciate it.

9 MR. SOUSA: Thank you.

10 CHAIRPERSON ANDERSON: Normally, I
11 repeat the OIC exactly as issued, but this is a
12 little bit more complicated and I was not given
13 something in writing prior to repeat. All right.
14 Thank you.

15 (Whereupon, the Show Cause (Status)
16 Hearing was concluded at 10:01 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Aqua NYA, LLC

Before: Alcoholic Beverage Control Board

Date: 09-12-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

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