

Capital Reporting Company
In the Matter of: Island Cafe, Inc. 07-11-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Island Cafe, Inc. :
t/a Island Cafe :
829 Upshur Street, NW :
Retailer CT : Fact Finding
License No. 60578 : Hearing
ANC 4C :
Case No. 11-251-00384 :
Assault inside of the :
Establishment :
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July 11, 2012

The Alcoholic Beverage Control

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

PRESENT

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

ERIN MATHIESON, ABRA

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<p style="text-align: right;">2</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">11:36 a.m.</p> <p>CHAIRPERSON MILLER: And we can move forward with the next case, which is -- that's adjourned, yeah -- fact finding hearing.</p> <p>MR. BAILEY: Thank you.</p> <p>CHAIRPERSON MILLER: Thank you very much. Case No. 11-251-00384, also Island Cafe, 829 Upshur Street, N.W., Business No. 60578.</p> <p>Okay. Let me see who is here at this -- at this point. Mr. Fonseca, you're here.</p> <p>MR. FONSECA: Oh, and I apologize.</p> <p>CHAIRPERSON MILLER: You did it for the record --</p> <p>MR. FONSECA: Michael Fonseca. Michael Fonseca on behalf of the Licensee. With me is its president and principal, Nevaldo Bailey.</p> <p>CHAIRPERSON MILLER: Okay. Thank you. And over here?</p> <p>MS. MATHIESON: Erin Mathieson, investigator with ABRA.</p> <p>CHAIRPERSON MILLER: Okay.</p>	<p style="text-align: right;">4</p> <p>me that, "No, there is nothing going on here. It's in the alley." We came back. There was nothing going on in the alley. So as I was leaving the 4200 block of 8th, I think it was, yes, I saw a group of people there.</p> <p>So I went to investigate. And I saw the man who got locked up that night punching the female. And we did the investigation. And they said that it actually started inside the Island Cafe. It was an incident where some males were trying to talk to some females and they refused or, you know, they started shoving and pushing each other inside the Island Cafe. And I think they got put out by security.</p> <p>CHAIRPERSON MILLER: Okay. You know, I just want to say also kind of in my case about concern about your schedule that everyone who's participating here, listening, this is a fact finding hearing. So we're not taking evidence per se or testimony under oath. And we're not going to take any specific action about any license or anything.</p> <p>However, it's possible that information that we get might lead us to recommend to OAG that they take</p>
<p style="text-align: right;">3</p> <p>MS. FIGUERO: Officer Figuereo from MPD.</p> <p>MR. SILVERSTEIN: I'm sorry?</p> <p>MS. FIGUERO: Figuereo from MPD, Metropolitan Police Department.</p> <p>CHAIRPERSON MILLER: Okay.</p> <p>MR. SILVERSTEIN: Thank you.</p> <p>CHAIRPERSON MILLER: And is Laquita Nicole Snow (ph) here? Okay. She had been invited to attend. All right. Now, this is a fact finding hearing. And I understand, Ms. Figuereo, you need to get back soon to court?</p> <p>MS. FIGUERO: Yes, ma'am.</p> <p>CHAIRPERSON MILLER: Okay. So if you would like to go first with anything you want to tell us, fine. If you want to hear from the investigator first, it's really up to you. I want to respect your schedule.</p> <p>MS. FIGUERO: I'll go first but I may get --</p> <p>CHAIRPERSON MILLER: Okay. Go ahead.</p> <p>MS. FIGUERO: That night pretty much we got a call for an assault in progress inside the Island Cafe. Once I got there, one of the security people told</p>	<p style="text-align: right;">5</p> <p>a look at the Show cause or something like that. All right. Just so everyone knows the parameters here. Okay. So -- okay. That's your --</p> <p>MS. FIGUERO: Yeah.</p> <p>CHAIRPERSON MILLER: -- statement? Okay. Thank you. Any questions -- can you take a few questions before you run?</p> <p>MS. FIGUERO: Yeah.</p> <p>CHAIRPERSON MILLER: Okay. Mr. Fonseca?</p> <p>MR. FONSECA: If I could through the Board or, I mean, this question --</p> <p>CHAIRPERSON MILLER: No, you can go first.</p> <p>MR. FONSECA: You had a radio run. Was it confirmed that that radio run came from an employee of the -- of Island Cafe that called MPD through the 911 call?</p> <p>MS. FIGUERO: No, sir. I don't know who the 911 caller was. We got -- we got a radio run from the dispatcher.</p> <p>MR. FONSECA: Sure. Did you walk through the alleyway to see where the alleyway ended, aside from just being alongside the building, Island Cafe?</p>

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<p style="text-align: right;">6</p> <p>1 MS. FIGUERO: I don't recall. 2 MR. FONSECA: You don't recall. And is the 3 4200 block of 8th Street -- 4 MS. FIGUERO: Of 8th. 5 MR. FONSECA: -- is that -- is that over near 6 Varnum Street, the block around the corner? 7 MS. FIGUERO: It's between Varnum and 8 Upshur. 9 MR. FONSECA: Okay. So this would be at the 10 end of the block and then down the street? 8th 11 Street's at - - to the east of -- 12 MS. FIGUERO: Yes. 13 MR. FONSECA: -- Island Cafe, right? 14 MS. FIGUERO: Yes. 15 MR. FONSECA: So was it around the corner? 16 MS. FIGUERO: Yes. 17 MR. FONSECA: Okay. I have no further 18 questions. 19 MS. FIGUERO: Thank you. 20 CHAIRPERSON MILLER: Mr. Alberti? 21 MR. ALBERTI: Officer Figueroe, thank you for 22 coming. Quick question, when you arrived, did you</p>	<p style="text-align: right;">8</p> <p>1 MR. FONSECA: No. 2 CHAIRPERSON MILLER: Okay. Thank you very 3 much. 4 MS. FIGUERO: Thank you. 5 CHAIRPERSON MILLER: Okay. I think at this 6 point then why don't we turn to Ms. Mathieson? 7 MS. MATHIESON: Sure. 8 CHAIRPERSON MILLER: Thank you. 9 MS. MATHIESON: The -- this investigation for 10 me was initiated based upon a phone call to the ABRA 11 hotline, approximately 12:36 a.m. on Saturday, December 12 10th. I responded to the location and was met by 13 Officer Figueroe. And when I met the officer, she 14 explained what she just stated, that when she arrived, 15 she was met by security at the door. They told her it 16 was an assault in the alley. 17 She received -- she canvassed the area, 18 didn't see anything, saw commotion on the corner of the 19 4200 block of 8th Street. When she approached, she saw 20 a male suspect punch a female in the face and then take 21 off running. The male was placed under arrest for 22 simple assault. And the victim was okay. She refused</p>
<p style="text-align: right;">7</p> <p>1 enter the establishment? 2 MS. FIGUERO: I think I was met by the door 3 by one of the security people but I don't -- I don't 4 recall exactly when I went in or -- it was just by the 5 door. 6 MR. ALBERTI: Okay. Do you recall if the 7 house lights were out or whether it was dark? 8 MS. FIGUERO: No, it was still on. The 9 lights were still on. 10 MR. ALBERTI: But was it -- did it look like 11 they were in operation still or did it look like they 12 had closed for the evening when you arrived? 13 MS. FIGUERO: I don't -- I -- 14 MR. ALBERTI: Do -- you don't remember? 15 Okay. 16 MS. FIGUERO: Truth be told, I don't 17 remember. 18 MR. ALBERTI: Okay. Thank you. No further 19 questions. Thank you. 20 CHAIRPERSON MILLER: Okay. Any other Board 21 questions? Mr. Fonseca, any follow-up questions before 22 she leaves?</p>	<p style="text-align: right;">9</p> <p>1 an ambulance. So that was the situation when I arrived 2 at the scene. 3 I entered Island Cafe. I asked to speak with 4 the ABC manager or owner. I was met by Darryl Smith, 5 who stated that he was the owner. I then spoke with 6 the bartender, Tamika McPherson, who is also an ABC 7 manager. I asked Ms. McPherson if she observed the 8 incident or any incident that took place inside the 9 establishment. And she stated that there was a mini- 10 argument. Patrons began shoving and throwing chairs. 11 Excuse me, and she stated that as soon as the 12 altercation began, the lights went off at the 13 establishment and they began to close. I asked her if 14 anyone appeared to be injured during the altercation. 15 And she stated, "No." I also interviewed Darryl Smith, 16 who stated he was the owner on the evening of the 17 incident. Mr. Smith advised me that they were using a 18 promoter from LA for the evening called Bubbleistic. 19 Here at the event for that night was a talent 20 search. So Mr. Smith explained there were a great deal 21 of parents with children, I guess, aged -- teenagers, 22 if you will, and that they had been there. The evening</p>

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10	<p>1 had been quiet prior to the altercation. Mr. Smith 2 said that he saw two guys who appeared to be arguing 3 around the bar area. He was over by the soundboard, 4 which is to the left of the bar area. 5 When the altercation began, he went over to 6 handle the situation. Mr. Smith stated that it 7 appeared that the persons were just playing around. So 8 he returned over to the soundboard area, where he 9 originally came from. Once he was there, Mr. Smith 10 said they -- it appeared as though one of the friends 11 of the person who was involved didn't know that it was 12 a joke or didn't realize that it was not serious. 13 So those two individuals began fighting. Mr. 14 Smith stated that he intervened. He assisted security 15 in breaking up the groups. He further stated that he 16 didn't have a chance to separate the groups and take 17 them out separately because everyone started to leave 18 at once. He did state that he believed the aggressors 19 were taken outside first but then everyone else just 20 kind of exited the establishment as they were closing. 21 I requested a copy of the video footage, 22 reviewed the security plan. No violations of the</p>	12
11	<p>1 security plan were found. Although, I did note the 2 information written in the plan was conflicting and it 3 was difficult to determine the exact number of security 4 persons that were supposed to be working due to the 5 wording of the plan. 6 But that -- I think it's since been revised. 7 On the actual 251, it's worthy of noting -- the officer 8 just gave the statement -- but when she arrived, she 9 was advised by staff that there was no assault inside 10 the location, but rather outside in the alley. 11 Witnesses advised her that the incident did start in 12 the Island Cafe. 13 On that night when I was discussing the 14 incident with MPD, as well as the owner -- or, excuse 15 me, Darryl Smith -- he's not actually the owner -- but 16 when I was discussing the incident with him and MPD, 17 MPD expressed their concern to Mr. Smith, you know, 18 that when they arrived, MPD was under the impression 19 that they were essentially lied to by security or, you 20 know, purposely, I guess, led astray to -- led to 21 believe there was no altercation inside. 22 So they expressed concern with that to the --</p>	13

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14	<p>1 MR. FONSECA: And he was the one that told 2 you that he was the owner? 3 MS. MATHIESON: Yes. 4 MR. FONSECA: Okay. It was without any kind 5 of prompting from you? 6 MS. MATHIESON: No. He identified himself as 7 the owner. 8 MR. FONSECA: Did you ask him for his ABC 9 manager's license? 10 MS. MATHIESON: No, because he told me he was 11 the owner. 12 MR. FONSECA: Okay. Could you tell from the 13 video coverage that there -- if any individuals were 14 taken out prior to the lights going on and every -- oh, 15 the lights may have been on, but prior to essentially 16 everyone else starting to go out -- 17 MS. MATHIESON: I don't -- 18 MR. FONSECA: -- if there was a separation of 19 the group? 20 MS. MATHIESON: I don't believe so. What I 21 summarized in the report was the second-by-second 22 breakdown and I don't have that listed in there. I</p>	16	<p>1 like, as I said, when he went over there, he -- it 2 appeared as though it was two groups who were arguing. 3 When he went over to the original situation to handle 4 it, he said that he realized they were playing around. 5 So he went back to -- 6 MR. FONSECA: Right. 7 MS. MATHIESON: -- to the soundboard area. 8 And then once they started actually fighting, he said 9 he intervened and assisted security in breaking up the 10 groups. He said he didn't have a chance to separate 11 the groups and take them out separately because 12 everyone started leaving at once. So because everyone 13 was leaving at the same time, everyone exited together 14 -- was what he told me on the night of the incident. 15 MR. FONSECA: What's the issue? One moment, 16 please. You did in your report, though, state that Mr. 17 Smith stated he -- that he believed that the group -- 18 that the aggressors were taken out first? 19 MS. MATHIESON: Yeah. 20 MR. FONSECA: So you did state that? 21 MS. MATHIESON: He said he believes that. 22 MR. FONSECA: Okay.</p>
15	<p>1 don't recall. It's been, like, seven months since I 2 watched the video. So I don't recall specifically. 3 But breakdown second-by-second was what was in there. 4 So I think if someone had been escorted out, I probably 5 would have put that in there. But I don't recall 6 specifically. 7 MR. FONSECA: Did you get an incident report 8 from Mr. Smith? 9 MS. MATHIESON: Yes, I believe it's attached, 10 exhibit 4. 11 MR. FONSECA: Right. Before he gave you the 12 incident report, did he advise you that he had called 13 911 14 -- 15 MS. MATHIESON: No. 16 MR. FONSECA: -- when he went outside? 17 MS. MATHIESON: No. 18 MR. FONSECA: He did not? 19 MS. MATHIESON: No. 20 MR. FONSECA: Did he advise you that they had 21 separated into groups? 22 MS. MATHIESON: His statement to me was that,</p>	17	<p>1 MS. MATHIESON: But he's told me he did not 2 have a chance to separate them. 3 MR. FONSECA: Okay. 4 MS. MATHIESON: But he believed they were 5 taken out first. 6 MR. FONSECA: Did they advise that that was 7 their normal procedure at all? That come up in -- 8 MS. MATHIESON: To take the aggressors out 9 first? 10 MR. FONSECA: Yeah. 11 MS. MATHIESON: Yes. 12 MR. FONSECA: Okay. 13 MS. MATHIESON: That's in the security plan. 14 MR. FONSECA: Did you have a chance to ever 15 talk to Mr. Bailey here, who's the actual owner? 16 MS. MATHIESON: No. 17 MR. FONSECA: Were you aware that Mr. Bailey 18 was the owner subsequently? 19 MS. MATHIESON: Yes. He was not there on the 20 night of the incident, though, so I didn't think he'd 21 have anything additional to add. 22 MR. FONSECA: Were you -- were you advised at</p>

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18	<p>1 that time that he was at home convalescing? 2 MS. MATHIESON: No. 3 MR. FONSECA: No further questions. 4 CHAIRPERSON MILLER: Okay. Board questions? 5 Go ahead, Mr. Alberti. 6 MR. ALBERTI: Investigator Mathieson -- 7 MS. MATHIESON: Sure. 8 MR. ALBERTI: -- Ms. McPherson stated that 9 she was an ABC manager? 10 MS. MATHIESON: Correct. 11 MR. ALBERTI: Did you verify that? 12 MS. MATHIESON: Yeah. I took down her 13 information. I actually listed her as the ABC manager 14 on duty -- 15 MR. ALBERTI: Okay. Right. 16 MS. MATHIESON: -- that night because I -- 17 after I verified that he was not the owner. So I took 18 down her information. 19 MR. ALBERTI: You did verify that, correct? 20 MS. MATHIESON: Yeah, she's an ABC manager. 21 MR. ALBERTI: Very good. As I look down your 22 synopsis of what occurred on the video --</p>	20	<p>1 And then everyone -- as soon as it died down, everyone 2 kind of just went off camera and to the front of the 3 establishment. 4 MR. ALBERTI: Did you notice anyone being 5 physically restrained as they were being taken off, out 6 of camera view? 7 MS. MATHIESON: I don't recall specifically. 8 It's been, like -- it's been seven months -- 9 MR. ALBERTI: All right. 10 MS. MATHIESON: -- since I've seen it. So I 11 don't recall specifically. I -- 12 MR. ALBERTI: Would you -- 13 MS. MATHIESON: Yeah. 14 MR. ALBERTI: Would you have noted that in -- 15 MS. MATHIESON: Yeah, I would think so. 16 MR. ALBERTI: Okay. 17 MS. MATHIESON: If -- to my recollection, 18 once the -- as I put it, like, the fight is over, 19 parties were leaving. I think once the fight kind of 20 subdued, I think, everyone just voluntarily just 21 started leaving. If I recall correctly, it was chaos 22 and then calm and then everyone walked away.</p>
19	<p>1 MS. MATHIESON: Uh-huh. 2 MR. ALBERTI: -- I don't see any mention of 3 the actions of the establishment security guards. 4 MS. MATHIESON: Yeah. At -- if you look at 5 2907, flashlights are seen in the area. And I believe 6 that was with -- obviously the security. But once the 7 lights came on, it was just a large group. So it was 8 difficult to distinguish who was security and who was 9 the patrons, if you will. 10 MR. ALBERTI: Oh, okay. So you couldn't 11 really 12 -- 13 MS. MATHIESON: Yeah, it was difficult to -- 14 MR. ALBERTI: That's why you haven't -- 15 MS. MATHIESON: -- determine. It was just a 16 large group. Everyone was pushing and shoving. And it 17 was difficult for me -- the quality of the footage 18 wasn't the best either. 19 MR. ALBERTI: Okay. 20 MS. MATHIESON: So it was difficult to kind 21 of distinguish who was who. And as I said, the chairs 22 were being thrown. It was kind of a chaotic scene.</p>	21	<p>1 MR. ALBERTI: Yeah, so you -- from your -- 2 from what I'm seeing here -- again, I mean, I haven't 3 seen the video. 4 MS. MATHIESON: Right. 5 MR. ALBERTI: And you -- and you -- it's been 6 a while. But I'm not -- what I'm not hearing is that 7 there was actively someone -- security guards taking 8 someone away and escorting them out. And so -- 9 MS. MATHIESON: Yes. The duration -- 10 MR. ALBERTI: So -- which is -- which is -- 11 MS. MATHIESON: Yeah, the duration of the 12 altercation was 3 minutes and 17 seconds, which in an 13 altercation is a pretty substantial -- 14 MR. ALBERTI: Right. 15 MS. MATHIESON: -- amount of time. So I was 16 -- I was really surprised. I can't recall specifically 17 the end of the video. I can watch it again. But I 18 know that once the chairs were being thrown, that kind 19 of settled down. And then everyone was just kind of 20 standing there. And I believe they just all started 21 walking off the camera. 22 MR. ALBERTI: Great. Thank you very much.</p>

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<p style="text-align: right;">22</p> <p>1 MS. MATHIESON: Sure.</p> <p>2 CHAIRPERSON MILLER: Others? I have a</p> <p>3 question too.</p> <p>4 MS. MATHIESON: Sure.</p> <p>5 CHAIRPERSON MILLER: I mean, how dark is it</p> <p>6 that flashlights are being used?</p> <p>7 MS. MATHIESON: It was -- the lights were off</p> <p>8 initially. So at the -- I think, like, two minutes in</p> <p>9 the lights were turned on. So it was dark the -- you</p> <p>10 can normally tell on a video -- you'll see, like,</p> <p>11 flashes of light. So you can tell that that's -- that</p> <p>12 those are flashlights on the house.</p> <p>13 CHAIRPERSON MILLER: But why is this -- why</p> <p>14 was it so dark at that time, do you know?</p> <p>15 MS. MATHIESON: I think they had the lights</p> <p>16 off for the -- there was performances at the front of</p> <p>17 the establishment. There was a DJ there too. It was -</p> <p>18 - they were doing, like, a -- I guess it was, like, a</p> <p>19 talent search. It was --</p> <p>20 CHAIRPERSON MILLER: Oh, okay.</p> <p>21 MS. MATHIESON: -- sort of, like, a local</p> <p>22 thing.</p>	<p style="text-align: right;">24</p> <p>1 can tell.</p> <p>2 CHAIRPERSON MILLER: Okay. Could you tell</p> <p>3 about how many people are involved in the fight?</p> <p>4 MS. MATHIESON: If I recall from when the --</p> <p>5 when it escalated to where the chairs started being</p> <p>6 thrown, I would say about maybe ten people were</p> <p>7 involved total.</p> <p>8 CHAIRPERSON MILLER: Okay. And do you know</p> <p>9 if there were any injuries from this fight?</p> <p>10 MS. MATHIESON: When I spoke with the</p> <p>11 bartender, she said that nobody appeared to be injured.</p> <p>12 MPD didn't have anybody injured when they went to the</p> <p>13 location. The only injury that they -- that the</p> <p>14 officer noted was when the female was punched in the</p> <p>15 face down the corner. But nobody appeared to be</p> <p>16 injured. There was no blood or anything.</p> <p>17 CHAIRPERSON MILLER: And did the bartender</p> <p>18 have anything to -- the bartender witness this?</p> <p>19 MS. MATHIESON: Yeah, she said she did. In</p> <p>20 the video I think you actually see her duck down once</p> <p>21 the actual fight breaks out. But she said there was a</p> <p>22 mini- argument. She actually did say people were</p>
<p style="text-align: right;">23</p> <p>1 CHAIRPERSON MILLER: So it was, like, an</p> <p>2 audience, like --</p> <p>3 MS. MATHIESON: Yeah.</p> <p>4 CHAIRPERSON MILLER: -- (inaudible) audience?</p> <p>5 MS. MATHIESON: Yeah, they had the lights</p> <p>6 down.</p> <p>7 CHAIRPERSON MILLER: But there wasn't any --</p> <p>8 at this point, as far as you -- there wasn't any show</p> <p>9 going on at this point, though, or was there, while</p> <p>10 they had this fight?</p> <p>11 MS. MATHIESON: I think when the --</p> <p>12 CHAIRPERSON MILLER: The lights were up?</p> <p>13 MS. MATHIESON: -- altercation initially</p> <p>14 began - - I don't know if it was the performances or if</p> <p>15 it was the DJ. I'm not sure what was going on but the</p> <p>16 lights were down.</p> <p>17 CHAIRPERSON MILLER: Okay.</p> <p>18 MS. MATHIESON: So that's all you can really</p> <p>19 see on the video.</p> <p>20 CHAIRPERSON MILLER: So -- but you can see</p> <p>21 punches and stuff in the dark?</p> <p>22 MS. MATHIESON: Yeah, yeah. On the video you</p>	<p style="text-align: right;">25</p> <p>1 shoving and throwing chairs.</p> <p>2 CHAIRPERSON MILLER: Okay.</p> <p>3 MS. MATHIESON: So she does mention the chair</p> <p>4 throwing.</p> <p>5 CHAIRPERSON MILLER: And are there any -- are</p> <p>6 there any complainants at this point?</p> <p>7 MS. MATHIESON: No. The only complainant was</p> <p>8 the female that was assaulted outside. It was</p> <p>9 unsuccessful in my attempt to contact her.</p> <p>10 CHAIRPERSON MILLER: Okay. Okay. And you</p> <p>11 might have said this at the beginning, but the security</p> <p>12 guards, did anyone -- any of them say what they did to</p> <p>13 break up the fight, like, why it would take three</p> <p>14 minutes or more to break it up? Or is the three</p> <p>15 minutes -- it's not -- three minutes isn't active</p> <p>16 fighting, is it? It's three minutes beginning with</p> <p>17 arguments or something?</p> <p>18 MS. MATHIESON: Yeah, it began with a verbal</p> <p>19 altercation, then shoving, then punches. Then the</p> <p>20 shoving continued, additional fighting. The fight kind</p> <p>21 of slowed down for a brief -- and then it started</p> <p>22 shoving again, at which point, then the lights were</p>

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26	<p>1 turned on. Once the lights were turned on, the fight 2 broke out full scale. And then the chairs were thrown. 3 So security did intervene. 4 I'm assuming that's when -- they were the 5 ones with the flashlights. I don't know why it took so 6 long. Mr. Smith himself said that he originally went 7 over, determined that it was just fights and they were 8 joking, then went -- and went back over to the area 9 where he had been. And then once the fight broke out 10 more, he got security and went over there. 11 CHAIRPERSON MILLER: Okay. So it was -- and 12 it was, like, 35 seconds or something from when the 13 chairs were thrown until the fight was over, like, from 14 00:30:22 15 -- 16 MS. MATHIESON: Yeah. 17 CHAIRPERSON MILLER: -- to 00:30:57? 18 MS. MATHIESON: Yeah, about 44 seconds. 19 Yeah, 40 seconds. I -- 20 CHAIRPERSON MILLER: Okay. Other questions? 21 Okay. Mr. Fonseca? 22 MR. FONSECA: Yeah. Is it fair to say,</p>	28	<p>1 CHAIRPERSON MILLER: Anything else? 2 MR. FONSECA: No. 3 CHAIRPERSON MILLER: Ms. Mathieson, I have a 4 question though. 5 MS. MATHIESON: Sure. 6 CHAIRPERSON MILLER: This -- I think it's a 7 follow up. So at 00:30:06 lights are turned on and 8 then 00:30:13 fight breaks out again? 9 MS. MATHIESON: Uh-huh. 10 CHAIRPERSON MILLER: I mean, normally would 11 lights being turned discourage fighting as opposed to 12 lead to it? 13 MS. MATHIESON: I think, yeah, that was the 14 attempt when Mr. Smith said he turned the lights on. 15 The attempt was to shut everything down. So the 16 attempt was, once the lights were on, rather than to 17 continue to just let the situation escalate, they just 18 ended the night. Because when I arrived the night, 19 there was no one. The -- it was over, which they had 20 closed early, too, because of the fight. 21 So I think the attempt was to stop the -- I 22 guess the rest of the evening but the fight didn't stop</p>
27	<p>1 though, that you're really looking between the third -- 2 your third entry, which is 00:28:39, punches are 3 thrown, and 00:29:07? You have the flashlights are 4 seen in the area of the altercation. 5 MS. MATHIESON: Uh-huh. 6 MR. FONSECA: So you're now down to an 7 intervention by, in all likelihood, security with 8 flashlights in less than 30 seconds? Isn't that fair 9 to say? 10 MS. MATHIESON: Yeah. 11 MR. FONSECA: Okay. And then the lights come 12 on, what appears to be approximately a minute later? 13 MS. MATHIESON: Right. 14 MR. FONSECA: But at that time you even 15 indicated 00:29:51 the flights -- the fight slows down. 16 MS. MATHIESON: Right. 17 MR. FONSECA: Shoving continues so -- 18 MR. MATHIESON: Right. 19 MR. FONSECA: Was it fair -- well, it's a 20 conclusion one can draw that the lights coming on may 21 have been the antiseptic that was probably necessary. 22 I don't have any other questions.</p>	29	<p>1 once the lights were on. 2 CHAIRPERSON MILLER: Is it -- is it your 3 opinion that the security did anything wrong or didn't 4 do anything they should have done? 5 MS. MATHIESON: I don't think so. I mean, 6 the only -- like I said, the only obvious thing was 7 that the duration of the fight and the -- there was 8 confusion -- what's it -- was the confusion with the 9 MPD and the security upon the arrival of them at the 10 location. And that MPD was told nothing happened 11 inside. 12 CHAIRPERSON MILLER: Uh-huh. 13 MS. MATHIESON: And once they got the video 14 footage, it was obvious something did happen inside, 15 which was a little -- I think it was a little -- I was 16 surprised with the video a little bit. 17 CHAIRPERSON MILLER: And could you just 18 refresh my memory? Who -- which individual said 19 nothing happened inside? 20 MS. MATHIESON: I don't have the names of the 21 security persons. 22 CHAIRPERSON MILLER: They were security</p>

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30	<p>1 people?</p> <p>2 MS. MATHIESON: Listen - yeah, but I don't</p> <p>3 think MPD specifically identified which security person</p> <p>4 said nothing happened inside. But they just said, when</p> <p>5 they arrived, they were told that.</p> <p>6 CHAIRPERSON MILLER: Okay.</p> <p>7 MS. MATHIESON: And the owner -- I'm sorry,</p> <p>8 not the owner -- Mr. Smith said that he was not aware</p> <p>9 of that and it was probably a mistake by the staff. So</p> <p>10 he said he would speak with staff. They had that</p> <p>11 conversation with MPD outside on the night of the</p> <p>12 incident.</p> <p>13 CHAIRPERSON MILLER: Okay. Thank you.</p> <p>14 MS. MATHIESON: Sure.</p> <p>15 CHAIRPERSON MILLER: Any other questions for</p> <p>16 Ms. Mathieson? Okay. Mr. Fonseca, do you have anyone</p> <p>17 who wants to make any statements or</p> <p>18 MR. FONSECA: Well, Mr. Bailey would like to.</p> <p>19 And I'd like to then maybe give an overview of where we</p> <p>20 are, both with this, what's coming up, and perhaps the</p> <p>21 plans for the future that we'd ask the Board to take</p> <p>22 into consideration. Because this misrepresentation and</p>	32
31	<p>1 -- by Mr. Smith and dependence on Mr. Smith by Mr.</p> <p>2 Bailey to be the manager of the business and what --</p> <p>3 you know, had everything to do with -- and frankly, not</p> <p>4 ever being told of this incident contemporaneous to it</p> <p>5 occurring.</p> <p>6 But if he could make a statement?</p> <p>7 CHAIRPERSON MILLER: Okay. Go ahead, Mr.</p> <p>8 Bailey.</p> <p>9 MR. FONSECA: Then I could try to summarize a</p> <p>10 couple of things.</p> <p>11 CHAIRPERSON MILLER: Uh-huh.</p> <p>12 MR. BAILEY: My name is Nevaldo Bailey, the</p> <p>13 only owner of Island Cafe, located at 829 Upshur</p> <p>14 Street. The alcohol license of Island Cafe is in</p> <p>15 jeopardy of being suspended or revoked by the Board</p> <p>16 because of the incident that occurred December, 2011,</p> <p>17 March, 2012.</p> <p>18 Under the stewardship of my bar manager,</p> <p>19 while I was recovering from an incident injury</p> <p>20 involving six broken ribs, I was heavily medicated and</p> <p>21 placed on strict bed rest from November 10th through</p> <p>22 the end of March, and was thus unable to operate my</p>	33
30	<p>1 establishment. My pain management regime included</p> <p>2 daily doses of prednisone, naproxen, and other heavy</p> <p>3 medication.</p> <p>4 I trust the management of Island Cafe</p> <p>5 operation to the bar manager, Darryl Smith. And I was</p> <p>6 not present during the event related to the charge</p> <p>7 filed against the Island Cafe in December. Since</p> <p>8 receiving this notice of charges and speaking with</p> <p>9 staff and various patrons, I was made aware of Mr.</p> <p>10 Smith knowingly representing himself to ABRA</p> <p>11 investigator on more than one occasion as owner rather</p> <p>12 than manager of the Island Cafe.</p> <p>13 Mr. Smith has a bar management license, which</p> <p>14 I paid for twice, which is why I employed him to handle</p> <p>15 the operation of the cafe during my recovery. However,</p> <p>16 I was unable -- I was unaware that he failed to renew</p> <p>17 it before it expired. More so, Mr. Smith did not</p> <p>18 inform me after December, 2011 incident and charges</p> <p>19 until additional charge was filed against the cafe in</p> <p>20 March.</p> <p>21 Open notice of the charges from both</p> <p>22 incidents, I learned of Mr. Smith's deceptive actions.</p>	33

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34	<p>1 manager, who was licensed for years from here. 2 MR. FONSECA: If I could -- and I know you 3 may want to ask questions. What we have, it's -- and 4 we're seeking is hope that the -- as to this 5 investigative report, 11-251-00384, that the Board do a 6 no further action on this matter. Because the time 7 frame -- you know, you've got a commencement of 8 activities that started with this incident, then ending 9 with the summary suspension, wherein that incident, you 10 still have Mr. Smith, who was the bar manager then 11 actually absent himself after midnight. 12 So he wasn't even there when the matter that 13 caused MPD to do the closure and the Board to do a 14 summary suspension had occurred. Since then, Mr. 15 Bailey's tried to save the business. There's been a 16 Board decision where we've got a suspension upcoming on 17 July 19th. We've got the hearing on the summary 18 suspension with a Show cause next week. 19 He wants to get past those and not have 20 another action brought and get put into the pipeline. 21 And at this point, he is actively and perhaps soon, if 22 it could occur, the license can be saved, to attempt to</p>	36	<p>1 MR. ALBERTI: Okay. So it was about that 2 time - 3 - 4 MR. BAILEY: Right. 5 MR. ALBERTI: -- that you handed over -- 6 MR. BAILEY: I have to -- 7 MR. ALBERTI: -- the day-to-day operations? 8 MR. BAILEY: I have to get everybody to come 9 to my house and figure it out, how to operate. 10 MR. ALBERTI: And this happened on December 11 10th? 12 MR. BAILEY: A month later. 13 MR. ALBERTI: So -- pardon? 14 MR. BAILEY: A month later. 15 MR. ALBERTI: One month later. Okay. Well, 16 that's what I'm -- I want to ask you about during that 17 month. Did -- do you know during that month if Mr. 18 Smith hired new employees? 19 MR. BAILEY: No. 20 MR. ALBERTI: No? So -- 21 MR. BAILEY: No. 22 MR. ALBERTI: So the security staff that had</p>
35	<p>1 lease the restaurant space and transfer the liquor 2 license to a restaurant operation. You know, I think 3 at this point, not knowing what will ultimately happen 4 next week, there's still that to have to go through, 5 not to have this new matter, which goes back some seven 6 or eight months now be referred over to the Office of 7 the Attorney General for a Show cause. 8 We would hope perhaps, with the changes that 9 have occurred and penalties still to come, that enough 10 perhaps may be enough. But, you know, he's -- at this 11 point, he -- you know, it didn't take much more for him 12 to realize that the business was being run very poorly. 13 CHAIRPERSON MILLER: Any Board questions? 14 Yeah, Mr. Alberti. 15 MR. ALBERTI: Hi. Mr. Bailey? 16 MR. BAILEY: Yes, sir. 17 MR. ALBERTI: When exactly did you sort of 18 hand over -- well, did you at one point hand over day- 19 to-day operations to Mr. Smith? 20 MR. BAILEY: November 10th I fell off my 21 building and broke eight -- six ribs in eight different 22 places. And I could not go back there anymore.</p>	37	<p>1 been there with you earlier was who was there that 2 evening? 3 MR. BAILEY: I'm not totally sure but, yes. 4 I'm not really -- I didn't know how exactly -- what 5 security was. 6 MR. ALBERTI: Okay. Yeah. 7 MR. BAILEY: But after my investigation, yes. 8 MR. ALBERTI: Was this Bubbleistic promotion 9 that was being held, was that the sort of thing that 10 you would have normally held? 11 MR. BAILEY: No, sir. This person is 12 Darryl's friend. 13 MR. ALBERTI: But would you have held 14 something similar to that? Would you have hosted 15 something similar to that? 16 MR. BAILEY: No. Because I cancelled -- they 17 have another party there when I recognized what was 18 going on in March and I cancelled it. 19 MR. ALBERTI: Oh, but I mean before this. I 20 mean, I'm trying to see -- I'm trying to understand, 21 did -- what was different about -- during this month of 22 November into December? How did Mr. Smith, if he did</p>

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38	<p>1 at all, change the nature of your operations? 2 MR. BAILEY: Well, he just got -- I guess the 3 lady was doing talent search. And he got the lady in 4 there. He probably didn't expected what happened to 5 happen. So I was not advised of it. But he had a 6 talent search in there. When I came back in March and 7 the lady tried to keep an event there, I cancelled it. 8 I told her, "No." Then I found out, like, two or three 9 days and I cancelled it. 10 MR. ALBERTI: Prior to November, did you -- 11 did you have promoted events there? 12 MR. BAILEY: Yeah, we have events there. 13 MR. ALBERTI: Okay. 14 MR. BAILEY: We've had events there, like, 15 community -- 16 MR. ALBERTI: How many -- 17 MR. BAILEY: -- events, birthday parties, 18 stuff like that. 19 MR. ALBERTI: At that time how man 20 MR. ALBERTI: But would you have held 21 something similar to that? Would you have hosted 22 something similar to that?</p>	40	<p>1 MR. ALBERTI: How many -- 2 MR. BAILEY: -- events, birthday parties, 3 stuff like that. 4 MR. ALBERTI: At that time how man security 5 people were on your staff? 6 MR. BAILEY: How many security -- 7 MR. ALBERTI: How many security people were 8 on your staff at that time? 9 MR. BAILEY: I have three permanent -- 10 MR. ALBERTI: The -- in -- back in November? 11 MR. BAILEY: We have three permanent security 12 people there. And we have -- what's (inaudible) 13 security company? 14 MR. FONSECA: Okay. I don't know. I can see 15 on the -- 16 MR. BAILEY: It's Yeoman Security (ph) who 17 comes in and we use as security whenever we have an 18 event. So when there is an event, that's the security 19 company we use. 20 MR. ALBERTI: Okay. When you were operating 21 it before November -- 22 MR. BAILEY: Uh-huh.</p>
39	<p>1 MR. BAILEY: No. Because I cancelled -- they 2 have another party there when I recognized what was 3 going on in March and I cancelled it. 4 MR. ALBERTI: Oh, but I mean before this. I 5 mean, I'm trying to see -- I'm trying to understand, 6 did -- what was different about -- during this month of 7 November into December? How did Mr. Smith, if he did 8 at all, change the nature of your operations? 9 MR. BAILEY: Well, he just got -- I guess the 10 lady was doing talent search. And he got the lady in 11 there. He probably didn't expected what happened to 12 happen. So I was not advised of it. But he had a 13 talent search in there. When I came back in March and 14 the lady tried to keep an event there, I cancelled it. 15 I told her, "No." Then I found out, like, two or three 16 days and I cancelled it. 17 MR. ALBERTI: Prior to November, did you -- 18 did you have promoted events there? 19 MR. BAILEY: Yeah, we have events there. 20 MR. ALBERTI: Okay. 21 MR. BAILEY: We've had events there, like, 22 community --</p>	41	<p>1 MR. ALBERTI: -- generally if you had an 2 event of this time, how many -- of this nature, how 3 many security people would you have had? 4 MR. BAILEY: Three or four. 5 MR. ALBERTI: Three or four. 6 MR. BAILEY: And usually I let the security 7 company do the investigation first, check the -- check 8 -- if you're saying that you are Deaver, Incorporated 9 (ph), I give that -- when you give me the contract, I 10 give it to the security company for them to do the pre- 11 check. And then they determine how many securities they 12 need for that night. And that's what the -- that's 13 what they would have to go with. 14 MR. ALBERTI: Okay. 15 MR. BAILEY: Because they will tell me they 16 need a security for this, this, this, this. And I put 17 it together and we talk about that. 18 MR. ALBERTI: Do you know how many security - 19 - the night of this event how many security people 20 there were? 21 MR. BAILEY: It sounds like it's three. 22 MR. ALBERTI: Three. No further questions at</p>

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42	<p>1 this point.</p> <p>2 CHAIRPERSON MILLER: Oh, Mr. Jones?</p> <p>3 MR. JONES: Thank you, Madam Chair. Mr.</p> <p>4 Bailey, I'm just trying to understand the -- would you</p> <p>5 consider the nature of your operations being different</p> <p>6 when you are able to run the establishment versus when</p> <p>7 you weren't?</p> <p>8 MR. BAILEY: Yes.</p> <p>9 MR. JONES: In what way?</p> <p>10 MR. BAILEY: Because if you have an event, I</p> <p>11 would check the event first and I'd arrange for my</p> <p>12 security company. And I would definitely do all my</p> <p>13 checking. And the same reason why I did it -- I cancel</p> <p>14 it in March, when I -- when I give the information to</p> <p>15 them and I checked it, I didn't want to do that.</p> <p>16 MR. JONES: Okay. So the individual that you</p> <p>17 left in charge, he wasn't given the appropriate</p> <p>18 guidance to know to do that? Did you just assume he</p> <p>19 would do that?</p> <p>20 MR. BAILEY: No, he knows that.</p> <p>21 MR. JONES: So he did not follow the guidance</p> <p>22 --</p>	44	<p>1 that's where the bad water vibes started because I</p> <p>2 realized that he's not totally 100 percent with me.</p> <p>3 MR. JONES: Okay. So just so I'm making sure</p> <p>4 I'm understanding -- you're understanding what I'm</p> <p>5 asking, what was the date of the event -- the event in</p> <p>6 question?</p> <p>7 MR. BAILEY: 12/10.</p> <p>8 MR. JONES: 12/10?</p> <p>9 MR. BAILEY: Yes.</p> <p>10 MR. JONES: And you got hurt when?</p> <p>11 MR. BAILEY: 11/10.</p> <p>12 MR. JONES: 11/10?</p> <p>13 MR. BAILEY: Yes.</p> <p>14 MR. JONES: So you were able to come back to</p> <p>15 the facility and be at a facility in --</p> <p>16 MR. BAILEY: No.</p> <p>17 MR. JONES: -- the month of December?</p> <p>18 MR. BAILEY: No.</p> <p>19 MR. JONES: No?</p> <p>20 MR. BAILEY: No.</p> <p>21 MR. JONES: Were you able to come back to the</p> <p>22 facility and be at the facility in the month of</p>
43	<p>1 MR. BAILEY: He knows. He knows.</p> <p>2 MR. JONES: -- that you provide?</p> <p>3 MR. BAILEY: He knows.</p> <p>4 MR. JONES: Okay. Did he -- what was the</p> <p>5 nature of the dynamic -- the nature of the relationship</p> <p>6 between you and him while he was running the</p> <p>7 establishment? You're the owner. Was it on -- was the</p> <p>8 onus on him to check with you on a daily basis, weekly</p> <p>9 basis? How often did he interface with you to get</p> <p>10 confirmation of your comfort level with the activities</p> <p>11 he was engaging in?</p> <p>12 MR. BAILEY: He usually check with me twice a</p> <p>13 week -- two, three times a week or I call him and find</p> <p>14 out what's going on. And I communicate with other</p> <p>15 staff sometimes to find out what's exactly going on.</p> <p>16 Because in December -- it's so funny. I said to him</p> <p>17 that -- I was talking to him and I said, you know, "I</p> <p>18 don't want to do any events until I come back."</p> <p>19 So one night I was there and I was just</p> <p>20 there, like, I think it was December or January. And I</p> <p>21 was just there. And I stayed there until, like, about</p> <p>22 10:00 or so. And there was no event. And when I left,</p>	45	<p>1 January?</p> <p>2 MR. BAILEY: Yes. I mean, I can't come there</p> <p>3 at night. I can't come there at night. If you're</p> <p>4 asking me if I could stop by or get somebody -- because</p> <p>5 that time I had drivers there to take me out of the</p> <p>6 house and drive me there. So, yes, I could go but I</p> <p>7 couldn't stay out. I was out on bed rest.</p> <p>8 MR. JONES: No, understood.</p> <p>9 MR. BAILEY: Okay.</p> <p>10 MR. JONES: At what point were you able to do</p> <p>11 a drive-by, as you call it? So you got hurt on 11/10.</p> <p>12 MR. BAILEY: Uh-huh.</p> <p>13 MR. JONES: You were on bed rest for one</p> <p>14 week, two week, three weeks? At what point were you</p> <p>15 able to do</p> <p>16 --</p> <p>17 MR. BAILEY: Six months, sir.</p> <p>18 MR. JONES: You were -- you were on bed rest</p> <p>19 --</p> <p>20 MR. BAILEY: Six months.</p> <p>21 MR. JONES: -- for six months?</p> <p>22 MR. BAILEY: Yes.</p>

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<p style="text-align: right;">46</p> <p>1 MR. JONES: So how were you able to make a 2 drive-by in the month of January? 3 MR. BAILEY: It's my business so I'm going to 4 get up and find a way to go. I don't stay. I drive. 5 I go. I stand up outside. I stop outside and I talk. 6 I go, you know -- 7 MR. JONES: Okay. So at what point were you 8 able to -- physically able to make that decision as the 9 owner to go and check on your business? Were you able 10 to do -- when was the first time you drove by your 11 establishment after 11/10? Let me ask it that way. 12 MR. BAILEY: I don't know for sure. 13 MR. JONES: You don't know? Do you have any 14 -- do you know if it was in the month of December? 15 MR. BAILEY: I think I went by there in the 16 month of December or January. I think I went back. 17 Because I'm in pain. I take pain medicine. I probably 18 go by. But I can't go in and become functional like I 19 could be because I'm not walking properly and all that 20 kind of -- 21 MR. JONES: Understood. So this young man 22 was supposed to check in with you twice a week? I</p>	<p style="text-align: right;">48</p> <p>1 altercation at the establishment, that you didn't leave 2 the establishment with someone that was capable of 3 handling that responsibility. 4 Would you agree with that statement? 5 MR. BAILEY: Yes, sir. 6 MR. JONES: Okay. 7 MR. BAILEY: And I would also agree that's 8 why he fired. That's why I had to terminate him from 9 the establishment. 10 MR. JONES: Thank you. Thank you, Madam 11 Chair. 12 CHAIRPERSON MILLER: Just as a follow up, 13 when did you realize that he wasn't capable -- your 14 employee - 15 - 16 MR. BAILEY: March. 17 CHAIRPERSON MILLER: -- that you fired? Uh- 18 huh. 19 MR. BAILEY: In March. In March. 20 CHAIRPERSON MILLER: In March? 21 MR. BAILEY: Yes. 22 CHAIRPERSON MILLER: When what happened?</p>
<p style="text-align: right;">47</p> <p>1 think that's what you said? 2 MR. BAILEY: Yeah, yeah. 3 MR. JONES: So at any point did he indicate 4 to you that this event was scheduled? 5 MR. BAILEY: (Shakes head no.) 6 MR. JONES: So you are oblivious? You had no 7 knowledge of the fact that this event was occurring at 8 your establishment? 9 MR. BAILEY: Until the notice came from you. 10 MR. JONES: Until you got notice? 11 MR. BAILEY: Yes. 12 MR. JONES: So you didn't even know that on 13 the night in question there was an event that resulted 14 in police being present, people getting hurt, fights, 15 altercations? 16 MR. BAILEY: (Nods head yes.) 17 MR. JONES: Okay. So it doesn't sound like 18 you left the establishment with an individual that was 19 really qualified to run that establishment, based on 20 what I'm hearing. Because, to me, if he's 21 communicating to you twice a week and he didn't 22 communicate to you the fact that there was an</p>	<p style="text-align: right;">49</p> <p>1 MR. BAILEY: Huh? 2 MR. FONSECA: That was your summary 3 suspension. 4 MR. BAILEY: That was my summary suspension. 5 MR. FONSECA: Right. 6 MR. BAILEY: Yeah, in March. 7 CHAIRPERSON MILLER: Okay. After that event? 8 MR. BAILEY: In March and going towards April 9 because my grandmother died in April. And the whole -- 10 my whole life turned upside down after that, too. So 11 it's March, April, right there. So I have -- from last 12 year, November, so, like, to May was chaotic for me. 13 CHAIRPERSON MILLER: Did -- you know, and I'm 14 sorry. It sounds like you've been through a lot. Did 15 -- were there -- did you have signs that this person 16 wasn't competent or as competent as you would have 17 expected and liked him to be in running the establishment? 18 MR. BAILEY: Signs? 19 CHAIRPERSON MILLER: Signs? 20 MR. FONSECA: Signs? 21 CHAIRPERSON MILLER: Like, did people tell 22 you things were going wrong?</p>

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50	<p>1 MR. BAILEY: Oh, yeah. Tamika did call me. 2 I said she has talk to me but she doesn't drive. And 3 because I didn't drive, I couldn't communicate with 4 her. But once I got in March, I kind of talked to her. 5 But I wasn't provided anything that I could hold on 6 until you guys provide me documentation. 7 CHAIRPERSON MILLER: Okay. And who is she? 8 MR. BAILEY: The bar -- there is a -- she's a 9 bar manager too. 10 CHAIRPERSON MILLER: The bar manager? 11 MR. BAILEY: Yeah. 12 CHAIRPERSON MILLER: Right. Okay. Okay. 13 Another question? Yeah. 14 MR. BROOKS: Thank you, Madam Chair. Mr. 15 Bailey, how long have you been in business? 16 MR. BAILEY: The bar business? 17 MR. BROOKS: Yes. 18 MR. BAILEY: Yes, 2001 or 2000. 19 MR. BROOKS: So that's 11-12 years? 20 MR. BAILEY: Yes. 21 MR. BROOKS: Okay. And how long had Mr. 22 Smith worked for you?</p>	52	<p>1 more than that, three months. Way more than that. 2 MR. BROOKS: Okay. And Mr. Fonseca, you 3 mentioned something about a possible transfer of a 4 license? 5 MR. FONSECA: Well, he's in negotiations to 6 lease the premises because he owns the building. And 7 he would, in essence, lease out the whole premises and 8 then transfer the license. But under our statute and 9 their pending charges, a transfer can't be consummated. 10 So we'd have to clear through this debris, for lack of 11 a better term, and get past this so that he can move 12 on. Perhaps something that would be more acceptable to 13 the community also could come in. 14 But that would require, you know, effectively 15 saving the license. So I'm just not sure how many more 16 dings this license has in it before this Board might 17 revoke. That's part of the fear and part of the 18 concern. And again, with this matter being some -- 19 almost seven months past, if no action were taken on 20 this, we might be at the end with the hearing next 21 month, which really goes to an incident in March, which 22 is, in essence, the summary suspension now coming</p>
51	<p>1 MR. BAILEY: I did this license twice. The 2 license lasts three years. Just two years? 3 MR. FONSECA: Two years, I think. 4 MR. BROOKS: So six years? 5 MR. BAILEY: Oh, it was at least four years. 6 MR. BROOKS: Four years? 7 MR. BAILEY: At least four years. 8 MR. BROOKS: Okay. And do you have any 9 recollection or could you kind of just in your thoughts 10 recall how much money you have been -- that you have 11 paid in fines from ABRA? 12 MR. BAILEY: \$6000 OR \$8000. 13 MR. BROOKS: \$6000 OR \$8000? 14 MR. BAILEY: It's probably more. 15 MR. BROOKS: Yeah, I think it is more. 16 MR. BAILEY: Probably 2012. I just -- I lost 17 money when he left too. 18 MR. BROOKS: You lost that money? 19 MR. BAILEY: You know, it's -- 20 MR. BROOKS: Okay. And what about days 21 suspended? Any idea how many days? 22 MR. BAILEY: Oh, god, at least two months or</p>	53	<p>1 through the Board as a now Show cause proceeding, 2 stating facts. 3 And we have, with the Board's order on the 4 last hearing, which dealt with books and records, a 5 suspension of four days coming up and a fine to be 6 paid. So if we can get all that behind us and this 7 license can be transferred -- and that's the question 8 mark -- then Island Cafe will be -- will no longer be. 9 MR. BROOKS: Thank you, Madam Chair. 10 CHAIRPERSON MILLER: I'm sorry, your voice 11 dropped. Then Island Cafe will no longer -- 12 MR. FONSECA: Will no longer be. I mean -- 13 CHAIRPERSON MILLER: -- be. 14 MR. FONSECA: -- it will go out of business 15 through a transfer to a new operator. 16 CHAIRPERSON MILLER: Okay. Any last 17 question? Okay. 18 MR. FONSECA: So as I understand, this is -- 19 CHAIRPERSON MILLER: I'm sorry. 20 MR. FONSECA: -- this would be -- 21 CHAIRPERSON MILLER: Go ahead. 22 MR. FONSECA: -- a -- someone who is an</p>

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54	<p>1 experienced operator. So it's not a first-time 2 restaurant operator. 3 CHAIRPERSON MILLER: Oh, okay. 4 MR. FONSECA: Yeah. 5 CHAIRPERSON MILLER: There's someone in mind? 6 MR. FONSECA: Yeah, yes. 7 CHAIRPERSON MILLER: Okay. 8 MR. FONSECA: There is someone in mind. Yes, 9 yes. 10 CHAIRPERSON MILLER: Okay. All right. Are 11 there any other questions? 12 (No audible response.) 13 Okay. I'm going to, I guess, suggest that the Board 14 take a quick recess and maybe just think about this so 15 that we can get back to today, I mean, shortly and so 16 you'll know how you're proceeding for next week. It 17 sounds like, for whatever it's worth, I mean, you know, 18 forever -- it influences it all. In any event, I think 19 we'll just a few minutes and do that. You all can take 20 a, you know, five or ten-minute break. 21 I'm going to read the open meeting 22 instructions for this. As chairperson of the Alcoholic</p>	56	<p>1 CHAIRPERSON MILLER: Mr. Jones? 2 MR. JONES: I agree. 3 CHAIRPERSON MILLER: The motion passes, 6-0- 4 0, to hold the closed meeting at the ABC conference 5 room, pursuant to the Open Amendment Act of 2010. 6 Okay. So we'll probably just take about ten minutes or 7 so. 8 (Whereupon, at 12:25 p.m., the hearing went 9 off the record until 12:45 p.m.) 10 CHAIRPERSON MILLER: Okay. We're back on the 11 record after holding a fact finding hearing with 12 respect to the question of whether an assault occurred 13 instead the establishment and whether this should be 14 referred to OAG for a Show cause or whether no further 15 action should be taken. The Board had a few minutes to 16 consider it and we're going to express a couple of 17 different views, I think, on this. 18 I would move that no further action should be 19 taken, based on the facts of this case, in which our 20 investigator testified, as I heard her, that she didn't 21 think that security did anything wrong or didn't take 22 action that they should have with respect to the</p>
55	<p>1 Beverage Control Board of the District of Columbia and, 2 in accordance with Section 405 of the Open Meetings 3 Amendment Act of 2010, I move that the ABC Board hold a 4 closed meeting for the purpose of seeking legal advice 5 from our counsel on case No. 11-251-00384, Island Cafe, 6 per Section 405(b)(4) of the Open Meetings Amendment 7 Act of 2010, in deliberating upon this case for the 8 reason cited in Section 405(b)(13) of the Open Meetings 9 Amendment Act of 2010. 10 Is there a second? 11 MR. NOPHLIN: Second. 12 CHAIRPERSON MILLER: Now that Mr. Nophlin has 13 seconded the motion, I'll call a roll call vote. Mr. 14 Nophlin? 15 MR. NOPHLIN: I agree. 16 CHAIRPERSON MILLER: Mr. Brooks? 17 MR. BROOKS: I agree. 18 CHAIRPERSON MILLER: Mr. Alberti? 19 MR. ALBERTI: I agree. 20 CHAIRPERSON MILLER: Ms. Miller agrees. Mr. 21 Silverstein? 22 MR. SILVERSTEIN: I agree.</p>	57	<p>1 incidents that occurred inside the establishment. They 2 were incidents -- it seems that there was somewhat of 3 an ebb and a flow into a fight that escalated into 4 chairs being thrown. 5 And when it got to that point, the 6 establishment was in a position where they shut the 7 fight down. And there are no complainants from that 8 incident. And the injury that occurred, occurred 9 outside in an alley. And I believe that complainant is 10 not interested in going forward and pursuing the case 11 as well. 12 So based on the fact that I don't see a 13 violation of the security plan per se -- or at least it 14 wasn't testified to or pointed out -- and I don't see 15 any other violations of a law or a volunteer agreement, 16 I think that this is appropriate for no further action. 17 Does someone -- is there a second to this 18 motion? 19 MR. NOPHLIN: Second. 20 CHAIRPERSON MILLER: Okay. Mr. Nophlin has 21 seconded the motion. Does anyone else -- would anyone 22 else like to speak to the motion?</p>

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<p style="text-align: right;">58</p> <p>1 MR. ALBERTI: I will, Madam Chair. 2 CHAIRPERSON MILLER: Okay. Mr. Alberti? 3 MR. ALBERTI: Madam Chair, when I read the 4 synopsis of the video, it's my conclusion that this 5 altercation was not effectively handled by the security 6 staff. It's true, as you point out, that our 7 investigator did not give testimony that the security 8 did anything wrong. She also didn't give testimony 9 that the security did anything correctly. 10 So it is up to us, as we look at the facts of 11 this case, to decide, based on what we have in this 12 report and what's been reported to us, whether or not 13 we think that the security handled this altercation 14 appropriately. And right now, based on what I see, I 15 don't think that they did. 16 CHAIRPERSON MILLER: Okay. Any others? All 17 right. There's been a motion that's been seconded. 18 All those in favor of the motion, say aye. Aye. 19 (No audible response.) 20 CHAIRPERSON MILLER: All those opposed? 21 MR. NOPHLIN: Aye. 22 CHAIRPERSON MILLER: All those opposed?</p>	<p style="text-align: right;">60</p> <p>1 General for possible Show cause action. 2 CHAIRPERSON MILLER: Is there a second? 3 MR. SILVERSTEIN: Second. 4 CHAIRPERSON MILLER: Mr. Silverstein seconds 5 the motion. Any further comments? 6 (No audible response.) 7 CHAIRPERSON MILLER: All those in favor of the 8 motion that's before us, say aye? 9 (Chorus of ayes.) 10 CHAIRPERSON MILLER: All those opposed? 11 Opposed. 12 MR. NOPHLIN: Opposed. 13 CHAIRPERSON MILLER: All those abstaining? 14 (No audible response.) 15 CHAIRPERSON MILLER: Then the motion passes 16 4-2- 0 to send this matter to a show cause. 17 Okay. That concludes this case and this fact 18 finding. And I think that that concludes the Board's 19 calendar for this morning. And we will now go into 20 recess until 1:00, I believe. 21 (WHEREUPON, at 12:49 p.m., the hearing was 22 concluded.)</p>
<p style="text-align: right;">59</p> <p>1 (Chorus of nays.) 2 MR. SILVERSTEIN: Roll call? 3 CHAIRPERSON MILLER: All those abstaining? 4 (No audible response.) 5 CHAIRPERSON MILLER: Roll call? Okay. 6 There's been a request for a roll call. Mr. Nophlin? 7 MR. NOPHLIN: I agree. 8 CHAIRPERSON MILLER: Mr. Brooks? 9 MR. BROOKS: I disagree. 10 CHAIRPERSON MILLER: Mr. Alberti? 11 MR. ALBERTI: I disagree. 12 CHAIRPERSON MILLER: Ms. Miller agrees. Mr. 13 Silverstein? 14 MR. SILVERSTEIN: I disagree. 15 CHAIRPERSON MILLER: And Mr. Jones? 16 MR. JONES: I disagree. 17 CHAIRPERSON MILLER: Okay. Then the motion 18 fails by a vote of 2-4-0. Okay. Does anyone have any 19 other motion? 20 MR. SILVERSTEIN: Mr. Alberti, you have -- 21 MR. ALBERTI: I -- Madam Chair, I move that 22 we forward this matter to the Office of the Attorney</p>	<p style="text-align: right;">61</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 3 I, NATALIA THOMAS, the officer before whom the 4 foregoing hearing was taken, do hereby certify that the 5 testimony appearing in the foregoing transcript was 6 recorded by me and thereafter reduced to typewriting 7 under my direction; that said transcription is a true 8 record of the testimony given by said parties; that I 9 am neither counsel for, related to, nor employed by any 10 of the parties to the action in which this was taken; 11 and, further, that I am not a relative or employee of 12 any counsel or attorney employed by the parties hereto, 13 nor financially or otherwise interested in the outcome 14 of this action. 15 16 17 18 19 _____ 20 NATALIA THOMAS 21 Notary Public in and for 22 DISTRICT OF COLUMBIA</p>

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1 CERTIFICATE OF TRANSCRIPTION

2

3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the following
5 proceeding and that I have typed the transcript of this
6 proceeding using the Court Reporter's notes and
7 recordings. The foregoing/attached transcript is a
8 true, correct and complete transcription of said
9 proceeding.

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