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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

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IN THE MATTER OF: :

HSR, Inc.,
t/a New Dodge Market Case Number 15-CMP-00605
3620 14th Street NW
License Number 99565
Retailer B
ANC 1A
SHOW CAUSE HEARING

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Wednesday, April 6, 2016

Whereupon, the above referenced matter came on for
hearing at the Alcoholic Beverage Control Board, Reeves
Center, 2000 14th Street, N.W., Suite 400S, Washington,
D.C. 20009.

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3 CHAIRPERSON:

4 DONOVAN W. ANDERSON, Presiding

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6 OTHER PERSONS PRESENT:

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8 NICK ALBERTI, BOARD MEMBER

9 RUTHANNE MILLER, BOARD MEMBER

10 JAMES SHORT, BOARD MEMBER

11 MIKE SILVERSTEIN, BOARD MEMBER

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

2 CHAIRPERSON ANDERSON: Ms. Gephardt, is the
3 licensee here for your case? I know we're early. For
4 Dodge Market. I mean we can wait until 10:00.

5 MS. GEPHARDT: If he's available.

6 CHAIRPERSON ANDERSON: Are you ready? It's
7 -- it's early. Are you ready to move forward or -- or
8 do you want to start at 10:00?

9 MS. GEPHARDT: I have a chance to speak to
10 him.

11 CHAIRPERSON ANDERSON: Well, okay. We'll be
12 in recess until 10:00 then.

13 MS. GEPHARDT: Oh, okay.

14 CHAIRPERSON ANDERSON: All right. All
15 right. Thank you.

16 [Off the record at 9:48 a.m.]

17 (Whereupon, the above-entitled matter was
18 recalled.)

19 CHAIRPERSON ANDERSON: All right. The next
20 case on -- we now move to a show cause hearing. Is --
21 let me -- oh, yeah. The Dodge City folks are here,
22 right?

1 MS. GEPHARDT: I'm sorry?

2 CHAIRPERSON ANDERSON: The Dodge City -- the
3 Dodge Market folks are here. No. I thought they were.
4 That's -- that's why I was -- yeah. Okay. That's why I
5 was -- I thought the person was here.

6 (Whereupon, the above-entitled matter was
7 recalled.)

8 All right. Okay. We're going to move back
9 to our morning calender and the next case on our
10 calender is our show cause hearing, Case Number
11 15-CMP-00605 New Dodge City (sic), License Number 99565.
12 Will the parties please approach.

13 MS. GEPHARDT: Chrissy Gephardt on behalf of
14 the District of Columbia.

15 CHAIRPERSON ANDERSON: I do not see the
16 licensee here. Do you know, Ms. Gephardt, whether or
17 not they were given notice for this hearing?

18 MS. GEPHARDT: I -- let's see. They were
19 given -- yes, I do see that they were given notice. It
20 was issued on -- let's see. Well, the notice was issued
21 on January 20th, 2016, and it was received by the
22 licensee on the 21st of January.

1 CHAIRPERSON ANDERSON: All right. All
2 right. Then is -- is the Government ready to move
3 forward?

4 MS. GEPHARDT: Yes, the Government is ready.

5 CHAIRPERSON ANDERSON: All right. Then
6 would the Government have -- wish to have an opening
7 statement?

8 MS. GEPHARDT: Just brief, there is a no
9 manager on duty case. So you will hear testimony from
10 an ABRA investigator who was present when he learned
11 that a -- an ABC manager was not in the establishment at
12 the time that he arrived which was within the hours that
13 the business was supposed to be open. And you will also
14 hear that the establishment failed to post their ABC
15 license in a conspicuous location while he was there.
16 So I'd like to call my first witness.

17 CHAIRPERSON ANDERSON: And who is your first
18 witness?

19 MS. GEPHARDT: Shawn Townsend, ABRA
20 investigator.

21 CHAIRPERSON ANDERSON: All right.
22 Mr. Townsend, do you swear or affirm to tell the truth

1 and nothing but the truth?

2 MR. TOWNSEND: Yes.

3 CHAIRPERSON ANDERSON: Thank you. Have a
4 seat. Your witness.

5 MS. GEPHARDT: All right. Hello,

6 Mr. Townsend.

7 MR. TOWNSEND: Good morning.

8 MS. GEPHARDT: Can you please state your
9 name and spell it for the record.

10 MR. TOWNSEND: Shawn Townsend, S-H-A-W-N,
11 T-O-W-N-S-E-N-D.

12 CHAIRPERSON ANDERSON: And Mr. Townsend,
13 where do you work?

14 MR. TOWNSEND: The Alcoholic Beverage
15 Regulation Administration.

16 MS. GEPHARDT: And what is your title?

17 MR. TOWNSEND: Investigator.

18 MS. GEPHARDT: And briefly what is the role
19 of an investigator?

20 MR. TOWNSEND: We conduct inspections and
21 investigations of licensed ABC establishments in the
22 District of Columbia.

1 MS. GEPHARDT: Okay. And are you familiar
2 with a licensee by the name of New Dodge Market?

3 MR. TOWNSEND: Yes.

4 MS. GEPHARDT: And did you have occasion to
5 visit New Dodge Market on Tuesday, September 8th at
6 approximately 2:30 p.m.?

7 MR. TOWNSEND: Yes.

8 MS. GEPHARDT: And what was the purpose of
9 your visit?

10 MR. TOWNSEND: To conduct a regulatory
11 inspection.

12 MS. GEPHARDT: Okay. And when you entered
13 the establishment, what happened?

14 MR. TOWNSEND: I spoke to a male employee,
15 and he -- he -- his name was Tekeste Abeta and he stated
16 that he was the manager on duty. However, when asked
17 he -- he informed me that he was not an ABC manager and
18 an ABC manager owner wasn't present.

19 MS. GEPHARDT: Okay. Did he indicate
20 whether there -- there was an ABC manager that had been
21 there earlier or that there would be one later, or I
22 mean what was his response to that?

1 MR. TOWNSEND: He stated that the -- that
2 the owner was -- was not present. However, an ABC
3 manager I believe usually comes in in the evening time
4 to the establishment.

5 MS. GEPHARDT: Okay. And did you ask if the
6 establishment has an ABC manager?

7 MR. TOWNSEND: Yes.

8 MS. GEPHARDT: And what was their response?

9 MR. TOWNSEND: That they do have one, but
10 they weren't present at the time.

11 MS. GEPHARDT: Okay. So when -- did you
12 have an occasion to return to the establishment the next
13 day, September 9th, 2015?

14 MR. TOWNSEND: I did. So just to back up,
15 on -- on Tuesday, September 8th I completed the
16 inspection and informed the manager on duty that it was
17 in fact a violation for not having an ABC manager or
18 owner present during the -- the establishment's license
19 hours of sale. So I returned on Wednesday, September
20 9th to -- to issue a violation -- a citation for the no
21 ABC manager charge. And I spoke to the owner Ms. Emebet
22 Habtemariam and informed her of the -- the violation

1 that occurred on Tuesday, September 8th.

2 MS. GEPHARDT: Okay. And what -- what else
3 did you talk about with Ms. Habtemariam.

4 MR. TOWNSEND: So I -- after issuing the
5 citation for \$500 to the owner she informed me that she
6 had some questions about the fine amount which was \$500.
7 And she stated that -- during that conversation she
8 stated that she had just taken over the license in July
9 of 2015 and was not aware of any prior violations. So
10 at that point I came back to ABRA, checked our records,
11 and confirmed that she had in fact taken over the
12 license in July and did not have any prior ABRA
13 violations. So I returned on September 22nd and issued
14 the correct fine amount of \$250 for the violation that
15 occurred on September -- September 8th.

16 MS. GEPHARDT: Okay. So when you were at
17 the establishment on September the 9th did you ask if
18 there was an ABC manager on duty?

19 MR. TOWNSEND: I did not because Ms.
20 Habtemariam was the owner and she was present.

21 MS. GEPHARDT: I see. I see. Okay. And
22 what else did you -- what else were you looking for when

1 you were there and that you might have noticed?

2 MR. TOWNSEND: So during that -- during that
3 visit where I wrote the -- well, when I wrote -- when I
4 conducted the inspection as well as when I returned to
5 issue the citation I -- I noticed that the -- the ABC
6 license that was posted was -- was not the valid license
7 of the -- of this owner, she had the old license still
8 posted. So at that point I realized that she was also
9 in violation of not having the proper license posted --
10 ABC license posted.

11 MS. GEPHARDT: Okay. And did you address
12 that issue with her?

13 MR. TOWNSEND: I did. Yes, I did. And she
14 was issued a warning citation for the correct license
15 not being posted.

16 MS. GEPHARDT: Okay. Thank you. That's all
17 I have for this witness.

18 CHAIRPERSON ANDERSON: Do we have any
19 questions of the witness by the board?

20 MS. MILLER: I have a few.

21 CHAIRPERSON ANDERSON: Yes, Ms. Miller.

22 MS. MILLER: Good morning. Mr. Townsend.

1 MR. TOWNSEND: Good morning.

2 MS. MILLER: When -- when you went to the
3 establishment on September 8th did you see any alcoholic
4 beverages being served?

5 MR. TOWNSEND: I don't recall. I don't
6 recall if I saw any --

7 MS. MILLER: Okay.

8 MR. TOWNSEND: -- any alcohol being sold.

9 MS. MILLER: And when you spoke to the owner
10 did you ask her if she was aware that an ABC manager or
11 owner had to be present during the licensed hours of
12 sale?

13 MR. TOWNSEND: Yes.

14 MS. MILLER: And what was her response?

15 MR. TOWNSEND: She stated that she was aware
16 and she thought that her ABC manager was -- was present
17 on that particular -- on September 8th.

18 MS. MILLER: Okay. So according to her it
19 wasn't just evenings that an ABC manager was to be
20 coming in?

21 MR. TOWNSEND: Correct.

22 MS. MILLER: Okay. Thank you. That's all I

1 have.

2 CHAIRPERSON ANDERSON: Any other questions
3 by any other board members? All right. Hearing none,
4 does the Government -- does the Government have any
5 follow-up questions for this witness based on the
6 questions by Ms. Miller?

7 MS. GEPHARDT: No, I do not.

8 CHAIRPERSON ANDERSON: Does the Government
9 have any other witnesses at the present?

10 MS. GEPHARDT: No, I do not.

11 CHAIRPERSON ANDERSON: Does the Government
12 rest?

13 MS. GEPHARDT: The Government rests.

14 CHAIRPERSON ANDERSON: Prior -- are there
15 any documents -- are there any documents that the
16 Government wish to make a part of the record, move into
17 evidence?

18 MS. GEPHARDT: No documents. Just the
19 testimony of my witness.

20 CHAIRPERSON ANDERSON: Is there -- is there
21 a report, the ABRA report?

22 MS. GEPHARDT: I mean I -- you mean you want

1 me to ask if the Board's -- or the investigative report
2 is entered into evidence?

3 CHAIRPERSON ANDERSON: I think so.

4 MS. GEPHARDT: Okay. I've never done this
5 before. Okay. Yes. So I'd like to ask that the
6 investigative report be entered into evidence in this
7 case.

8 CHAIRPERSON ANDERSON: So moved. It will --
9 it will -- it's a part of the record. I mean I think
10 what we need to do is to clear the process so therefore
11 we know what documents. I don't necessarily want it to
12 be that folks at, you know, ABRA's records. I don't
13 know what's in ABRA's records. So therefore when I --
14 if I'm going to go back and deliberate, I need to know
15 what documents are in evidence that you need me to look
16 at. So if you're -- if you are introducing the -- the
17 case report that was done by the -- by the investigator,
18 then so be it, it's a part of the record for us to
19 consider. So that's a part of the record since -- based
20 on the movement of the document.

21 MS. GEPHARDT: Right. I mean -- yes. I --
22 I ask that the case report be entered into evidence, the

1 actual paper report.

2 CHAIRPERSON ANDERSON: Yes. So it is a part
3 of the --

4 MS. GEPHARDT: As -- but it's Board Exhibit
5 1, right?

6 CHAIRPERSON ANDERSON: Yes.

7 MS. GEPHARDT: Okay.

8 CHAIRPERSON ANDERSON: All right. So -- and
9 so I always want as part of these proceedings for the
10 attorneys to move these in so therefore it's clear to
11 everyone what are the documents that the Government --

12 MS. GEPHARDT: Oh, I see.

13 CHAIRPERSON ANDERSON: Yes.

14 MS. GEPHARDT: Right. What the board relied
15 on when they made their decision. Got you.

16 CHAIRPERSON ANDERSON: All right. Thank
17 you.

18 MS. GEPHARDT: Well, as long as we're doing
19 that then I would also like to enter in Exhibit -- Board
20 Exhibit Number -- well, it says Board Exhibit Number 1
21 which is essentially the -- the regulatory inspection
22 which has the hours of sale.

1 MR. ALBERTI: Are those -- excuse me. Are
2 those part -- I think those are exhibits to the
3 investigative report; is that correct? So you've
4 already --

5 MS. GEPHARDT: Right.

6 MR. ALBERTI: You've already asked that we
7 have the investigative report.

8 MS. GEPHARDT: Okay.

9 MR. ALBERTI: And those are -- those are
10 included as part of that. So --

11 MS. GEPHARDT: Okay. I was just thinking of
12 the actual written report. But yeah. Okay.

13 CHAIRPERSON ANDERSON: Yeah. They're
14 part -- they're part of that one document. So I will --
15 we will put all the case report along with the
16 exhibits --

17 MS. GEPHARDT: Okay.

18 CHAIRPERSON ANDERSON: -- are part of the
19 record.

20 MS. GEPHARDT: Great.

21 CHAIRPERSON ANDERSON: All right. Does the
22 Government wish to make a closing statement?

1 MS. GEPHARDT: Well, on --

2 CHAIRPERSON ANDERSON: I'm sorry.

3 Mr. Townsend, you are -- you're free to go. Thank you.

4 MS. GEPHARDT: Yes. He's free to go. There
5 were two charges in this case; not having a licensed ABC
6 manager on the premises during the hours that alcoholic
7 beverages were permitted to be sold, served, or
8 consumed. In this case when he arrived there was no ABC
9 manager on duty, and his arrival was at 2:30 p.m. which
10 is within the hours of sale -- sale and service. When
11 Mr. -- Mr. Townsend returned the following day and he
12 spoke to the owner of the business and she indicated
13 that she had just acquired the business from the
14 previous owner. But when Mr. Townsend looked on the
15 wall at the ABC license it was an old ABC number. It
16 was still the ABC number from the previous owner so he
17 charged her with a violation for not having an ABC
18 license posted in a conspicuous place, obviously in this
19 case the right one. And so therefore the Government has
20 proved these two charges. And thank you.

21 CHAIRPERSON ANDERSON: What -- what is it
22 that the Government is asking? What -- for the first --

1 for the two charges --

2 MS. GEPHARDT: Right.

3 CHAIRPERSON ANDERSON: -- what is it that
4 the Government is asking ABRA to do?

5 MS. GEPHARDT: Well, for Charge 1 the
6 Government would be asking for a \$350 fine. And let
7 me -- let me think about this for one second.

8 MR. ALBERTI: Ms. Gephardt, I noticed
9 this -- I think you're going there, but I noticed that a
10 warning has already been issued for the second charge.

11 MS. GEPHARDT: Right. Well, that's what I
12 was just about to -- yeah.

13 MR. ALBERTI: Okay. All right.

14 MS. GEPHARDT: So apparently a warning has
15 already been issued for the ABC license. And so I guess
16 the Government will dismiss that charge.

17 CHAIRPERSON ANDERSON: And so basic you're
18 asking the Government -- you're asking The Board to fine
19 the -- the licensee \$350 for Charge 1; is that correct?

20 MS. GEPHARDT: That's correct.

21 CHAIRPERSON ANDERSON: Okay. All right.

22 Thank you.

1 MS. GEPHARDT: Thanks.

2 CHAIRPERSON ANDERSON: As chairperson of the
3 Alcoholic Control Board for the District of Columbia in
4 accordance with Section 405 of the Open Meetings
5 Amendment Act of 2010 I move that the ABC hold a closed
6 meeting for the purpose of seeking legal advise from our
7 counsel on Case Number 15-CMP-00605, New Dodge Market
8 for the reasons cited in Section 45(b)13 of the Open
9 Meetings Amendment Act of 2010. Is there a second?

10 MR. SILVERSTEIN: Second.

11 CHAIRPERSON ANDERSON: Mr. Silverstein has
12 seconded the motion. And well, then I guess I was
13 supposed to say deliberated upon Case Number
14 15-CMP-00605 New Dodge City (sic) for the reasons cited
15 in Section 40513 of the Open Meetings Amendment Act of
16 2010. Now that I'm asking for a second -- I've asked
17 for a second. Mr. Silverstein has seconded the motion.
18 I will now take a roll call vote on the motion before us
19 now -- now that it has been seconded. Ms. Miller.

20 MS. MILLER: Agree.

21 CHAIRPERSON ANDERSON: Mr. Alberti.

22 MR. ALBERTI: I agree.

1 CHAIRPERSON ANDERSON: Mr. Short.

2 MR. SHORT: I agree.

3 CHAIRPERSON ANDERSON: Mr. Silverstein.

4 MR. SILVERSTEIN: I agree.

5 CHAIRPERSON ANDERSON: Mr. Anderson, I
6 agree. It appears that a motion has passed, I hereby
7 give notice that the ABC Board will hold a closed
8 meeting in the ABC conference room pursuant to the Open
9 Meetings Amendment Act of 2010 and issue an order within
10 30 days. Okay. Thank you. All right. What time is
11 it? It's 10:35. Let me get my schedule back.

12 (Whereupon the above-entitled matter was
13 concluded.)

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