

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE AND CANNABIS BOARD
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MEETING

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IN THE MATTER OF:
GF, Inc.,
t/a Il Canale
1063-1065 31st Street NW
Retailer CR - ANC 2E : Protest Hearing
License #83707
Case #22-PRO-00054
(Application to Renew
the License)
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Wednesday
January 10, 2023

The Alcoholic Beverage and Cannabis Board met via WebEx videoconference, Chairperson Donovan W. Anderson presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
SILAS GRANT, JR., Member
JAMES SHORT, JR., Member

ALSO PRESENT:

GIUSEPPE FARRUGGIO, Applicant
MANALLE MAHMOUD, Counsel for Applicant
MIKEA NELSON, DC ABCA Investigator
STEPHEN J. O'BRIEN, Counsel for Applicant
JOSE ORELLANA, DC ABCA Staff
JOHN UHAR, Protestant

T A B L E O F C O N T E N T S

Witness	Direct	Cross	Redirect	Recross
Giuseppe Farruggio	17	87	88	
Mikea Nelson	91	111	106	
John Uhar	118	120	135	

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

2 1:34 p.m.

3 CHAIRPERSON ANDERSON: All right. So
4 the next case, the case at hand now that we have
5 is Case No. 22-PRO-00054, Il Canale, License No.
6 83707. Good afternoon, Mr. Orellana. Can you
7 please elevate the rights of the licensees, the
8 attorney and the Protestant in this case?

9 MR. ORELLANA: Sure. John Uhar, your
10 access has been elevated. Stephen O'Brien, your
11 access has been elevated. Investigator Mikea
12 Nelson, your access has been elevated, and I have
13 a Manalle Mahmoud.

14 CHAIRPERSON ANDERSON: Yes. She's
15 with Mr. O'Brien's office.

16 MR. ORELLANA: Okay, perfect. That is
17 all we have.

18 CHAIRPERSON ANDERSON: All right,
19 thank you. Mr. Uhar, okay thank you. So let me
20 have the parties identify themselves by the -- I
21 would like the parties to spell and state their
22 names for the record, starting with the licensee
23 and its representative. Mr. O'Brien, I cannot
24 hear you sir.

25 MR. O'BRIEN: How about now?

1 CHAIRPERSON ANDERSON: I can hear, but
2 I think you need to turn your volume up a little
3 bit more sir. All right.

4 MR. O'BRIEN: How about now, Mr.
5 Chair?

6 CHAIRPERSON ANDERSON: That's perfect,
7 thank you. Go ahead sir.

8 MR. O'BRIEN: Mr. Chair, a
9 housekeeping matter. I believe that the case
10 number for this afternoon starts with 19 as
11 opposed to 22.

12 CHAIRPERSON ANDERSON: I appreciate
13 that, and I see the calendar. I have a statement
14 to make, and so therefore when I read -- I think,
15 yeah. I believe that this case is going to be
16 19-PRO-00033. I think that's it, yeah. That's
17 you're correct, so but I have an opening
18 statement to make, and so I have the correct
19 case.

20 So we'll, I'll make sure that the
21 calendar is, the calendar is correct. So this
22 case is 19-PRO-00033. Okay, thanks. Thank you
23 sir, go ahead.

24 MR. O'BRIEN: Okay. Stephen O'Brien,
25 counsel for the licensee. S-T-E-P-H-E-N, O

1 apostrophe, B-R-I-E-N. I'm accompanied by my
2 colleague, Manalle Mahmoud, M-A-N-A-L-L-E, M-A-H-
3 M-O-U-D. Also present on in my office and on the
4 screen are the principals of the licensee,
5 Giuseppe Farruggio, spelled G-I-U-E -- I'm sorry,
6 let me start again, G-I-U-S-E-P-P-E, last name
7 Farruggio, F-A-R-R-U-G-G-I-O and Alessandro
8 Farruggio, A-L-E-S-S-A-N-D-R-O.

9 Mr. Farruggio, could you move close to
10 the table so that you're on the screen there?
11 Thank you.

12 CHAIRPERSON ANDERSON: Thank you, Mr.
13 O'Brien. Mr. Uhar, can you please spell and
14 state your name for the record and your
15 relationship to this case?

16 MR. UHAR: My name is John Uhar, U-H-
17 A-R. I am both an abutting neighbor, which would
18 put me here under a protest, but I'm also a
19 complainant, whose complaints have not been
20 answered by ABRA.

21 CHAIRPERSON ANDERSON: So you're --
22 you are -- this is a protest hearing and you're
23 the protestant in this case. Thank you. Ms.
24 Nelson, can you please identify yourself for the
25 record please? I can't hear you Ms. Nelson.

1 INVESTIGATOR NELSON: There. ABCA
2 Investigator Mikea Nelson.

3 CHAIRPERSON ANDERSON: Good afternoon,
4 ma'am. Okay. All right. So I stand corrected.
5 The Board calls Case No. 19-PRO-00033, related to
6 the renewal application filed by Il Canale, ABRA
7 License No. 083707, located at 1063 to 1065 31st
8 Street, N.W., Washington, D.C.

9 This case is not a full protest
10 hearing, as noted in Board Order No. 2023-441.
11 This case will solely address the remand order
12 issued by the D.C. Court of Appeals on August
13 15th, 2023 in John G. Uhar v. D.C. Alcoholic
14 Beverage Control Board, 20 AA-02 DC 23.

15 According to the Court's order, the
16 present case is limited to further proceedings
17 with respect to Mr. Uhar's claim that Il Canale's
18 owner lacked good character because Il Canale
19 made fraudulent misrepresentations in
20 administrative proceedings. In particular,
21 today's hearing will be limited to following as
22 explained in Board Order No. 2023-598:

23 (1) Allegation 1. The allegation in
24 the PIF alleging that the submission of a
25 sidewalk cafe plan to DCRA was fraudulent. Uhar,

1 this came from Uhar Protestant Information Format
2 1, showing 12 seats at the bar where six are
3 permitted, again in violation of DCMR 25-762.

4 Allegation 2. The allegation in Uhar
5 Complaint No. 1, that the testimony of Mr.
6 Farruggio, F-A-R-R-U-G-G-I-O, Mr. Farruggio on
7 May 8th, 2016 in lines 7 through 19 of the
8 transcript constituted fraud.

9 3, Allegation 3. The allegation in
10 Complaint No. 3 is that the Applicant used the
11 alleged use of a counterfeit occupancy permit
12 since February 15th, 2015 in violation of D.C.
13 Code Section 25-401 and 25-835.

14 Allegation 4. The allegation in
15 Complaint No. 4, the allegation of using four
16 counterfeit fence permits on the rear door of
17 1065 31st Street and the window on the front of
18 1065 31st Street on a date and time that has not
19 been clearly identified in the complaint, in
20 violation of Section 25-401 and 25-835, on the
21 conditions that the date of the offenses be
22 disclosed to the Applicant prior to the hearing.

23 If this occurs, I need -- I need the
24 parties to let us know if this is not occurred.
25 If this is not correct, then we'll -- this

1 allegation will be dismissed under the D.C. APA.
2 The Board further reminds the parties that unless
3 otherwise stated, allegations of fraud will be
4 generally viewed through the Bennett test, which
5 generally requires a finding of fraud to be based
6 on (1) a false representation, (2) in reference
7 to a material fact, (3) made with the knowledge
8 of its falsity, (4) with the intent to deceive an
9 (5) action is taken in reliance upon the
10 representation.

11 With these instructions of mine, the
12 Board will proceed as follows. The Board will
13 hear preliminary matters. The Board will then
14 open the hearing for an opening statement by the
15 Protestant on the issues outlined above, and then
16 the Applicant, as this case picks up with the
17 Protestant's case-in-chief based on the remand,
18 the Board will then hear the Protestant's case-
19 in-chief on the issues outlined above.

20 The Board will then permit rebuttal
21 evidence by the Applicant and the Protestant,
22 unless rebuttal is waived by the Applicant. The
23 Board will then hear closing arguments from the
24 Protestant and the Applicant.

25 The Board is further aware of the new

1 protest report but does not plan to call the
2 Investigator as a witness, because the report
3 provides background information and appears to
4 contain nothing relevant to the specific issues
5 as set forth in the Court's order. The parties
6 may call the Investigator as a witness, as long
7 as it is shown that the Investigator has personal
8 knowledge and relevant testimony to provide
9 related to the specific allegations at issue.

10 And so before we have opening
11 statements, do the parties have any preliminary
12 matters they need to bring to the attention? So
13 we can start with you, Mr. O'Brien?

14 MR. O'BRIEN: No, sir.

15 CHAIRPERSON ANDERSON: Thank you. Mr.
16 Uhar, do you have any preliminary matters you
17 need to bring to the attention of the Board?

18 MR. UHAR: Yes. Again, 48 hour notice
19 was not posted and the case is currently and the
20 Board order is currently under a Court of Appeal
21 decision. So I have no understanding. These are
22 complaints that should be investigated, not
23 protest.

24 CHAIRPERSON ANDERSON: We're here on
25 a protest hearing sir because you protested --

1 this is a 2019 case that it was a renewal of this
2 license in 2019. You protested it. The Board
3 issued a determination. The Board issued a
4 determination to renew the license.

5 You disagreed with the decision of the
6 Board, and then you went to the Court of Appeals.
7 The Court of Appeals affirmed the majority of the
8 Board's determination and remand this case
9 specific on one allegation. And so we're here on
10 the remand that you requested by the agency.

11 So if you're saying that you are --
12 this is not a protest anymore and if you want to
13 drop your protest, then we can conclude this
14 case, renew the license because you have --
15 you're not moving forward with your protest, and
16 if you want to file a complaint with our
17 Enforcement Office, then so be it.

18 But again, this is from 2019. So as
19 I said, you're the one who's driving this case
20 sir. We're here because of your protest. So
21 this is a protest hearing that you filed and
22 we're trying to complete.

23 MR. UHAR: The last time you had the
24 hearing, there were five Board members, and I
25 asked you all to look at the evidence, and now

1 there were only two after that, and then Mr.
2 Grant came in. So I was wondering has anybody
3 yet read the evidence? Have you read the
4 complaints? The last time you said you didn't
5 need to read them. I want to know what has
6 happened since then.

7 CHAIRPERSON ANDERSON: The Board
8 doesn't deal with complaints sir. Complaints are
9 filed with Enforcement. Enforcement looks at the
10 complaints, and if Enforcement -- if the
11 Enforcement branch determines that there is a
12 violation, then a case-in-chief will be brought
13 to the Attorney General's office, and they will
14 determine if we need to have a show cause
15 hearing.

16 But the Board does not respond to
17 complaints. The Enforcement Office of the agency
18 deals with that. Whether or not, sir, there were
19 three, four or five, the regulations require that
20 if we have three members, we have a quorum and we
21 do have a quorum today. We have had Board
22 members whose terms have expired, and so because
23 their terms have expired they're no longer here.

24 But the regulations require that we
25 have -- that a quorum is three and we have a

1 quorum today. We're making a determination based
2 on the remand, per your request. So as a -- yes,
3 sir.

4 MR. UHAR: Actually, DCMR whatever the
5 clause is states that there shall be seven
6 members on the Liquor Board, and usually there's
7 an attorney, and I just want to know
8 legislatively how you got from a seven member
9 board to a three member board, and has there ever
10 been a time when three Board members were asked
11 to read evidence and then didn't show up?

12 CHAIRPERSON ANDERSON: Mr. Uhar, the
13 regulations require, it clearly states that three
14 Board members, to have a quorum to have a
15 meeting, we need to have three Board members, and
16 we have three Board members here sir. And so we
17 have a quorum, and we are ready to move forward
18 with the protest hearing based on the specific
19 issue that was remanded by the Court of Appeals.
20 And so --

21 MR. UHAR: I have a question --

22 CHAIRPERSON ANDERSON: You have a
23 what, sir? I can't hear you sir. I cannot hear
24 -- I can't hear you sir.

25 MR. UHAR: Can you hear me now?

1 CHAIRPERSON ANDERSON: Yes, sir, I can
2 hear you.

3 MR. UHAR: Okay. Now I lost my
4 thought. The Board, show me the legislation that
5 says you go from a seven member board to a three
6 member board and I'm fine. But let's keep going
7 because we're here, and I don't want to waste any
8 more money of the government's time or my time or
9 your time. So let's, let us proceed.

10 CHAIRPERSON ANDERSON: Fine. So we're
11 moving forward with the remand to continue the
12 protest hearing from 2019, and based on the --
13 based on the unique facts where the Court of
14 Appeals remanded us from us to move -- us to move
15 on that issue. And so where we are today, if
16 the parties wish to make an opening statement at
17 this juncture, they can do that.

18 There's no requirement, and then we'll
19 have you continue your case, present your case,
20 because the Applicant has already presented their
21 case and you need them to provide evidence to the
22 Board on the remand issues, as was specified in
23 my opening statement.

24 So Mr. O'Brien, do you wish to make an
25 opening statement? Anything you wish to do, sir?

1 MR. O'BRIEN: Very very brief, Mr.
2 Chair. The Board, you Mr. Chair, just have
3 elicited the standard that governs here. The
4 sole, narrow purpose of this proceeding is to
5 allow Mr. Uhar to present evidence of fraudulent
6 misstatements on the part of the licensee's
7 principals or its agents, to gain -- to get
8 permits of approval from other agencies of the
9 District of Columbia government.

10 The Board has recognized the standards
11 required to prove fraud, and mere mistake or
12 inadvertence, whether on the part of the licensee
13 or on the part of another government agency does
14 not, without more, constitute fraud. There must
15 have been an intent to deceive, and material
16 reliance on a misstatement.

17 The licensee denies without
18 qualification any fraudulent conduct on its part.
19 Thank you.

20 CHAIRPERSON ANDERSON: Thank you. Mr.
21 Uhar, do you wish to make an opening statement
22 before you start your presentation sir?

23 MR. UHAR: Yes, I do. First of all,
24 the D.C. ABCA Board seems to show favoritism in
25 looking backwards and narrowly defining a remand

1 for what has been continuing criminal or
2 fraudulent misstatements since the date Canale
3 opened, and before that when Mr. Farruggio opened
4 Canale. So we have an original sin in that
5 there's a claim of title directly --

6 CHAIRPERSON ANDERSON: Mr. Uhar, I
7 can't hear you sir. You are -- I've lost you.

8 MR. UHAR: Somebody keeps calling me,
9 and I don't know how to mute this. But what I
10 was saying was -- I'm going to turn off the
11 ringer. Anyway the remand. Continuing criminal
12 activities have occurred since the protest, most
13 recently in Protest No. 4, and it's unusual that
14 complaints are not responded to. They're formed
15 into protests, and then the protestor denied on
16 legal technicalities.

17 I should not be in this venue and I'm
18 under appeal, but as I said, I have my evidence
19 and I'm ready to proceed based on the original --
20 the original intention of Mr. Farruggio
21 originally, he said he didn't have, you know, he
22 had no connection. Anyway --

23 CHAIRPERSON ANDERSON: All right. Do
24 you wish to call any witnesses, sir, or are you
25 going to be the only witness?

1 MR. UHAR: I'm calling Mr. Farruggio.

2 CHAIRPERSON ANDERSON: Did you -- did
3 you do a PIF?

4 MR. UHAR: Yes, I did.

5 CHAIRPERSON ANDERSON: And you listed
6 him as a witness?

7 MR. UHAR: I did. I listed him as a
8 hostile witness. I listed Meredith Moldenauer
9 (phonetic), attorney for his false summer outdoor
10 cafe. I got Mr. Moore, who can attest to the
11 fact that there was never anything on the second
12 floor, and I had Richard Livingstone, who was
13 with the Executive Office of the Mayor, who
14 declared by fiat that Mr. Farruggio could have an
15 outdoor summer cafe without US CFA approval.

16 CHAIRPERSON ANDERSON: So you're
17 saying that the witness you called was Mr.
18 Farruggio?

19 MR. UHAR: Yes, Mr. Farruggio.

20 CHAIRPERSON ANDERSON: Mr. O'Brien, I
21 thought when I looked at the PIF, was a PIF done
22 and was Mr. Farruggio listed as a witness sir?

23 MR. O'BRIEN: Yes.

24 CHAIRPERSON ANDERSON: All right. So
25 we call Mr. Farruggio. Where is Mr. Farruggio?

1 All right, sir. I'm not hearing you, so I think
2 you need to get closer to the, to the speaker
3 sir.

4 MR. FARRUGGIO: My name is Giuseppe
5 Farruggio, and I'm the --

6 CHAIRPERSON ANDERSON: Can you spell
7 your name for the record please again sir?

8 MR. FARRUGGIO: G-I-U-S-E-P-P-E, F-A-
9 R-R-U-double G-I-O.

10 CHAIRPERSON ANDERSON: Can you raise
11 your right hand sir?

12 WHEREUPON,

13 GIUSEPPE FARRUGGIO
14 was called as a witness and, after having been
15 first duly sworn, was examined and testified as
16 follows:

17 CHAIRPERSON ANDERSON: Mr. Uhar, your
18 witness sir.

19 DIRECT EXAMINATION

20 MR. UHAR: Good morning, Mr.
21 Farruggio. In Exhibit 1 of the PIF, we will see
22 that it is --

23 CHAIRPERSON ANDERSON: Hold on, hold
24 on. Hold on one minute please. Mr. Uhar, I need
25 you to be stationary.

1 MR. UHAR: Okay, I'm stationary now.
2 I was getting the PIF.

3 CHAIRPERSON ANDERSON: All right,
4 thank you. All right, thank you.

5 MR. UHAR: Okay. In Exhibit 1 of the
6 PIF, is an 1,852-page folder for Il Canale and
7 Fratelli La Bufala, and you maintain that you got
8 your permit directly from the Alamo Grill of
9 Georgetown; is that correct?

10 MR. O'BRIEN: Objection, Mr. Chair.
11 If he confronts the witness with a document, he
12 has to exhibit the document and let the witness
13 look at it.

14 MR. UHAR: It is page one in Exhibit
15 2. It's a letter from Candace Fitch, Esquire.

16 MR. O'BRIEN: Give us a chance to
17 locate that among 1,852 pages.

18 MR. UHAR: Oh no, no, you don't have
19 to look at that. It's in my -- it's in my PIF.
20 It's Exhibit 2, page one. Exhibit 1 is the 1,852
21 pages that contains a lot of redundancies that
22 ABCA needs to clean up rather than telling me I'm
23 giving them a garbage dump.

24 MR. O'BRIEN: A letter from Candace
25 Fitch. Is -- you are referring to an April 8th,

1 2009 letter?

2 MR. UHAR: That's correct.

3 MR. O'BRIEN: Okay. I'm showing a
4 copy of it to Mr. Farruggio.

5 MR. UHAR: Mr. Farruggio, you contend
6 that you received your permit directly from --
7 that there was no FLB DC, LLC, yet you were
8 involved. How could you not know?

9 THE WITNESS: Is my name in here? I
10 don't see my name. What is this? I don't --

11 CHAIRPERSON ANDERSON: Mr. Farruggio,
12 you can't look at Mr. O'Brien. You need to
13 respond to the questioning. If you can't answer
14 the question, you state I can't answer the
15 question.

16 So I need you to answer the questions
17 to the best of your ability sir. If you can
18 answer the question, answer it. If you cannot,
19 state you cannot sir.

20 THE WITNESS: Can you repeat the
21 question, John? I don't -- can you repeat the
22 question please?

23 MR. UHAR: Yes. You claim that you
24 received your rights directly from the Alamo
25 Grill of Georgetown to GF, Inc. Where the truth

1 is you had an earlier operation with partners
2 called FLB DC. All of your documents that you
3 have stated since to the ABCA Board since Day 1
4 have claimed -- you mention no reference of your
5 previous operation, which I believe the license
6 was returned.

7 So you didn't get -- you didn't get
8 your license directly, and you made fraudulent
9 misstatements ever since, knowing that you
10 couldn't have gotten it because you got it six
11 months earlier from FLB DC.

12 MR. O'BRIEN: Objection, relevance.
13 This does not address anyone, or items that the
14 Board has identified are at the table, so to
15 speak, here today.

16 MR. UHAR: Well then I'd like to call
17 Mikea Nelson as a witness.

18 CHAIRPERSON ANDERSON: Hold on. Hold
19 on here. I'm confused. So that's why I'm trying
20 to find the relevance of the question you're
21 asking sir. So I'm just trying to get some
22 clarification myself to make a ruling on his, on
23 his motion.

24 MR. UHAR: Well if you had read it --

25 CHAIRPERSON ANDERSON: Mr. Uhar, I

1 need you to respect this forum, sir. I do not
2 want you to make allegations about whether or not
3 I had read something sir. I need you -- you are
4 questioning a witness.

5 MR. UHAR: Okay.

6 CHAIRPERSON ANDERSON: It is your
7 responsibility to ask cogent questions to the
8 witness, sir, and whether or not -- whether or
9 not I've read something or not, it's irrelevant
10 sir. You're asking the questions, and you need
11 to ask questions that the witness you're
12 questioning can answer, okay?

13 So why is this, Mr. O'Brien has stated
14 that he doesn't think that this is relevant. So
15 why is this relevant? So I will make a ruling to
16 say whether or not he needs to answer the
17 question, or whether or not I am going to not
18 allow you to answer the question, to ask the
19 question sir.

20 MR. UHAR: Okay. Well if you look at
21 my Exhibit 4, you will see that there's a whole
22 chain of title that goes back and only says that
23 Il Canale got its license from the Alamo Grill of
24 Georgetown. So the first question would be this
25 April 8th, 2009 letter that went to FLB DC, LLC.

1 Mr. Farruggio, did you -- did you have
2 any ownership interest in FLB DC, LLC at that
3 time?

4 MR. O'BRIEN: Objection, relevance.
5 These aren't issues that are before the Board.

6 CHAIRPERSON ANDERSON: Well, I'm going
7 to give him -- I'm going to give him some leeway,
8 sir. I think the fact that he is talking about
9 fraud, and so I want to give him some leeway.
10 But I am not going to give him a whole lot of
11 leeway, so I'm going to overrule the objection.
12 If the witness can answer the question, he can
13 answer the question.

14 THE WITNESS: Yes, I had ownership of
15 FLB. I was a silent partner.

16 MR. UHAR: Okay. Let's go to Exhibit
17 4.

18 MR. O'BRIEN: And we know what Exhibit
19 4 is?

20 MR. UHAR: Yes. It's the settlement
21 agreements. It's the chain of title in the
22 settlement agreements.

23 CHAIRPERSON ANDERSON: All right. So
24 what about -- what are you asking, sir? I mean
25 what -- all right. So let's see. You're saying

1 a settlement agreement. So okay. Do you have a
2 question that you're asking sir?

3 MR. UHAR: Yes, I do. Yes, I do. I
4 just want everybody to get the paper. So on the
5 settlement agreement on page -- well, let's go.
6 The first settlement agreement was made and
7 you'll see that they all claim -- well that one
8 didn't even claim title through that.

9 Let's go through -- oh, actually it's
10 all the way at the end, and it says whereas
11 Advisory Commission to -- it's from E. David
12 Harrison, 5/31/2009.

13 CHAIRPERSON ANDERSON: What page? Can
14 you direct, direct, show your witness sir to a
15 specific page? I have the document in front of
16 me and I don't know where you are. So can you
17 please direct us, direct the witness to where in
18 the settlement agreement you're -- is there
19 numbers?

20 MR. UHAR: Yeah actually, to tell you
21 the truth. Start at the back. Let's start at
22 the back. We'll start at the back going forward,
23 okay? And we have the last page is whereas
24 Advisory Neighborhood Commission 2E entered into
25 an agreement with Alamo Grill of Georgetown, Inc.

1 on October 30, 2000, and whereas the license was
2 transferred from Alamo and GF, Inc. t/a Il Canale
3 on January 28, 2010.

4 So that's -- he claims, he claims
5 rights that actually went to FLB DC that were
6 extinguished when FLB DC went under. And he --
7 since he was a silent partner, he had to know.
8 So these are all fraudulent documents. Every
9 time they were -- every time they recite whereas
10 the license transferred to Alamo to GF, Inc. t/a
11 Il Canale on January 28th.

12 Wherever that exists in that 1,872
13 pages is fraudulent.

14 CHAIRPERSON ANDERSON: Are you asking
15 a question sir or are you making a statement?

16 MR. UHAR: I'm making a statement,
17 because this -- this evidence speaks for itself.
18 This is not --

19 CHAIRPERSON ANDERSON: Mr. Uhar, you
20 are -- you are questioning the witness, sir. You
21 cannot make statements and question the witness.

22 MR. UHAR: Okay --

23 CHAIRPERSON ANDERSON: In doing your
24 closing -- I'm sorry. In doing your closing, you
25 can make those statements. But currently, you're

1 asking questions of the witness, so you have a
2 document. You ask questions of the witness. The
3 witness will answer and then we move on.

4 At the end of the case when you're
5 doing your closing, then you can -- the statement
6 you just stated, you can make those statements
7 when you're doing your closing, sir. But not
8 while you're cross -- not while you're
9 questioning the witness, sir.

10 MR. UHAR: Thank you. I'm sorry.
11 There's a second amendment to the settlement
12 agreement that Mr. Farruggio signed on 3/5/2014.
13 Mr. Farruggio, it says in the second paragraph
14 whereas the license was transferred from Alamo to
15 GF, Inc., trading as Il Canale on January 28th,
16 2010. Do you testify that this is a true
17 statement?

18 MR. O'BRIEN: Objection Mr. Chair,
19 relevance. It talks about misstatements as the
20 four discrete issues that are identified in the
21 Board's letter and that were identified at the
22 beginning. I get what Mr. Uhar is doing,
23 starting back in 2019. He's attempting to take
24 every single misstatement of fact that Mr.
25 Farruggio may or may not have engaged in, and

1 throwing it up on the wall here to see if it
2 sticks.

3 I've got a continuing objection to any
4 discussion other than such misstatements as Mr.
5 Farruggio may have made with respect to the four
6 issues that are before the Board today.

7 CHAIRPERSON ANDERSON: Mr. Uhar, I did
8 state what this case was about. It's four
9 allegations. The first allegation, the
10 allegation in the PIF alleging that the
11 submission of -- dealing with a sidewalk cafe,
12 the testimony of Mr. Fargama on May 8th, 2016,
13 the allegation in the complaint that the
14 Applicant used the -- the alleged use of a
15 counterfeit occupancy permit since 2/15/2015, and
16 the allegation in complaint number four, the
17 allegation of using four counterfeit permits on
18 the radar.

19 I can give you some leeway, sir. So
20 I'm going to overrule this objection, but I need
21 you to come back to the case-in-chief. This
22 hearing will be focused on the remand and the
23 allegations that were listed in the record. I'll
24 give you some leeway, but we're -- but not in the
25 sense that you're going to back to 2000 to say

1 these misstatements were made. But I give you
2 some leeway, sir.

3 So the witness can answer the
4 question. I'm going to overrule the objection.
5 If the witness can answer the question, I'm going
6 to allow him to answer it. However, I need you
7 to come back, sir, to the purpose of this
8 hearing, okay? So I'm going to overrule the
9 objection. If the witness can answer the
10 question, then he can -- please move, go ahead.

11 MR. O'BRIEN: We ask the question to
12 be restated.

13 CHAIRPERSON ANDERSON: Mr. Uhar, it's
14 been asked that you restate the question sir.

15 BY MR. UHAR:

16 Q Yes, yes. Mr. Farruggio, when you
17 signed the second amendment to the settlement
18 agreement, stating that the license was
19 transferred from Alamo to GF, Inc. trading as Il
20 Canale on January 28th, 2010, is this a true
21 statement?

22 A Yes.

23 Q It is? When you just saw that Exhibit
24 1 said it went through -- he said yes. I don't
25 know. Tell me what to do.

1 CHAIRPERSON ANDERSON: Mister -- the
2 witness answered the question. You asked him a
3 question, he has answered it sir. If you have a
4 follow-up question, you ask a follow-up question.
5 If not, let's move on.

6 BY MR. UHAR:

7 Q Okay. How can that be true when the
8 letter before said that it went to FLB DC, and
9 you were a member of both?

10 A Oh, back to this one again? This 2009
11 went through, from Alamo to FLB. I was not
12 handling this stuff. I was a silent partner. I
13 had the partner that had majority and there was a
14 secretary of the company was handling all this
15 stuff. I was a silent partner. I was just an
16 investor.

17 Q Why wouldn't you state that on your
18 ABCA license?

19 A I was not asked. I did not -- I
20 wasn't part of the license, so the old --
21 everything got transferred from Mr. David
22 Harrison. He handled everything at that time.
23 We hire him and he handled all the transfer, and
24 he told me, you know, this is what we're doing
25 and I signed it, you know. I don't know whether

1 I did, in your analogy, whether I did something
2 that was not right. I mean I think I did the
3 right thing.

4 Q Well you knew about both? I mean how
5 -- why didn't you just say ABCA, I'm the new guy
6 and I'm taking all over, because all your permits
7 run through Alamo Grill, and they stopped when
8 your FLB DC stopped?

9 A I really don't understand your
10 question, where you're trying to get. I had a
11 license from Alamo. It got transferred to, you
12 know, to Fratelli La Bufala, and then Fratelli
13 Bufala failed, and then, you know, the company
14 went down and lost a lot of money.

15 And then I switched the liquor license
16 and the GFN (phonetic), which I was under as an
17 owner. I asked, I asked my lawyer to do that and
18 he did that regretious (phonetic), you know.

19 Q Well, your -- it's an original sin,
20 Mr. Farruggio. You knew it and you should have,
21 you should have been honest and you haven't been
22 honest since then.

23 MR. O'BRIEN: Objection, Mr. Chair.

24 CHAIRPERSON ANDERSON: Sustained. Mr.
25 Uhar --

1 MR. O'BRIEN: That's not a question.

2 MR. UHAR: I agree, I agree.

3 MR. O'BRIEN: That's not a question.

4 MR. UHAR: I agree, I agree.

5 CHAIRPERSON ANDERSON: All right.

6 Let's move on sir.

7 MR. UHAR: Okay. So the other
8 questions were Complaint No. 3. Oh no, no, no.
9 I remember. I'd like to call Mikea Nelson.

10 CHAIRPERSON ANDERSON: Hold on a
11 minute sir. Let me, all right.

12 MR. UHAR: Oh no, no, no. You're
13 right, you're right, you're right, you're right.

14 CHAIRPERSON ANDERSON: No hold on,
15 hold on Mr. Uhar. All right. Are you done
16 asking questions to this witness, because if you,
17 if you want to move on, you cannot come back
18 again and call him.

19 MR. UHAR: I'm sorry.

20 CHAIRPERSON ANDERSON: All right. So
21 all right.

22 MR. UHAR: So what were your -- I'm
23 trying to find your specific questions. Okay.
24 Complaint No. 1. Does everybody have Complaint
25 No. 1?

1 CHAIRPERSON ANDERSON: I think it's
2 Complaint No. 1 or Exhibit No. 1, or is it the
3 same?

4 MR. UHAR: No, they were all -- it was
5 just the Complaint No. 1. You hurried me. Well,
6 never mind. Complaint No. 1.

7 CHAIRPERSON ANDERSON: I don't know
8 what's Complaint No. 1, so I can't -- I'm trying
9 to follow along. But I don't know what Complaint
10 No. 1 is.

11 MR. UHAR: All right. It's exhibit --
12 I think, I believe it's Exhibit 5.

13 CHAIRPERSON ANDERSON: All right, go
14 ahead. Is there a question? Is there a question
15 presented sir?

16 MR. UHAR: Yes, because you want to
17 know -- okay. Mr. Farruggio, on May 23, 2016,
18 you state that Mr. Uhar, Mr. Uhar assumed that
19 I'm applying my license now for the whole
20 building, and my license right now is for the
21 bottom floor and 1063 and 1065 bottom floor, and
22 you know we're dragging this thing. I think that
23 we're wasting time.

24 But later, on 2019, you get an
25 occupancy permit for the 2nd floor. How did you

1 get that?

2 MR. O'BRIEN: Mr. Chair, I want to
3 show Mr. Uhar is reading from a page of a
4 transcript of a hearing. I want to show the page
5 to Mr. Farruggio.

6 CHAIRPERSON ANDERSON: That's fine,
7 sir.

8 THE WITNESS: Yeah.

9 MR. O'BRIEN: Okay.

10 THE WITNESS: Yeah, that's --

11 BY MR. UHAR:

12 Q Mr. Farruggio, was that a true
13 statement at the time?

14 A Yes.

15 Q Okay. Then we go to Exhibit 2. Well,
16 the next page. On 11/6/2019 when this was under
17 complaint, you were able to expand onto the 2nd
18 floor. How is that possible?

19 MR. O'BRIEN: Mr. Chair, I don't
20 understand the question either.

21 MR. UHAR: Okay. Go to the last page
22 on that exhibit. Go to the last page.

23 (Off mic comments.)

24 CHAIRPERSON ANDERSON: I'm sorry. He
25 said go to the last page so --

1 MR. UHAR: No, no, no, no. No, no,
2 no. Actually, go to -- it will say No. 3. It
3 will say Exhibit 3, and it's Mr. Farruggio's
4 permit issued for the first floor of 1065. But
5 then on 11/6/2019, he gets -- he gets the second
6 floor while it's under protest, and I just want
7 to know how that happens.

8 MR. O'BRIEN: Mr. Chair, I still don't
9 understand the question how it happens.

10 CHAIRPERSON ANDERSON: Mr. Uhar, can
11 you rephrase? Can you rephrase your question
12 sir? Mr. Uhar?

13 MR. UHAR: Yes.

14 CHAIRPERSON ANDERSON: You know,
15 because you're not --

16 MR. UHAR: Let's move on. Okay. We
17 can move on.

18 CHAIRPERSON ANDERSON: Okay. Go
19 ahead, sir.

20 MR. UHAR: So what's the next one?
21 What's the next one you want to know, because on
22 your edited version?

23 CHAIRPERSON ANDERSON: Mr. Uhar,
24 you're asking the witness questions sir, so it's
25 your --

1 MR. UHAR: Yeah but Exhibit 3.

2 CHAIRPERSON ANDERSON: Is there a
3 pending question for the witness sir.

4 MR. UHAR: Yes. Let's move on to ABRA
5 -- let's move on to Exhibit 3. I call it ABRA
6 Complaint No. 4. It's a letter, it's a complaint
7 sent to Mr. Moosally that was never acted --

8 (Off mic comments.)

9 MR. UHAR: Okay. We're going to get
10 to -- on that, we're going to move to exhibit --
11 we'll start with exhibit -- we'll start through
12 Exhibits 3, 4, 5, 6, 7, 8 and 9, 11. Let's just
13 start with Exhibit No. 3, and that's stop work
14 order on an illegal shed.

15 CHAIRPERSON ANDERSON: Hold on sir.
16 Are you talking about Exhibit 3 in your PIF?

17 MR. UHAR: No, no. Exhibit 3 in
18 Complaint No. 4, which should be PIF Exhibit No.
19 9. It's ABRA Complaint No. 4.

20 CHAIRPERSON ANDERSON: So you need to
21 direct the witness to the specific -- in order to
22 clarify the record, you need to tell us exactly
23 where you are, what document that is in the
24 record so we'll have a clear record of what we're
25 referencing.

1 MR. UHAR: Okay, sure. I'm
2 referencing ABRA Complaint No. 4, and I'm going
3 to start with Exhibit -- you know it as PIF No.
4 9, because I think I added 5. We're going to go
5 over these. We'll start with Exhibit 1.

6 MR. O'BRIEN: I'm sorry, Exhibit 1?

7 MR. UHAR: On PIF number -- yeah, on
8 the 4. Protest. It's the Complaint No. 4.
9 Yeah, Exhibit 1.

10 MR. O'BRIEN: Okay. If I may, Mr.
11 Chair, just to try to move it along, is this a
12 photograph?

13 MR. UHAR: Yes, sir.

14 MR. O'BRIEN: With the notation
15 construction over public alley written on it?

16 MR. UHAR: Yes.

17 MR. O'BRIEN: Okay.

18 MR. UHAR: All right.

19 MR. O'BRIEN: We know what Mr. Uhar is
20 referring to, Mr. Chair.

21 CHAIRPERSON ANDERSON: All right,
22 fine. Is there a question?

23 BY MR. UHAR:

24 Q Yes. Exhibit 1, Mr. Farruggio, you
25 constructed this. This is a picture of you

1 constructing over the public alley?

2 A No. I never construction of anything
3 at the public alley. I did it in the lot, on the
4 square.

5 Q Now the square's on the other --

6 A I'm aware of -- the alley is not my
7 property.

8 Q So you say that you didn't build this?

9 A In the alley, no. I built it on the
10 lot.

11 Q Okay. Let's move on to No. 2. Let's
12 move on to No. 2. This is -- these are your guys
13 on the public alley in the back, true or not?

14 A They're not in the public alley. They
15 are on top of my property that I lease.

16 Q No.

17 A There's a platform right next to the
18 air conditioner.

19 CHAIRPERSON ANDERSON: Mr. Uhar, you
20 asked him a question. He responds. You can't
21 say yes or no. You just have to move on to
22 another question.

23 MR. UHAR: Okay. Exhibit 3. Mr.
24 Farruggio, you still contend that you didn't
25 build over the alley?

1 THE WITNESS: Yes. I never built over
2 the alley --

3 BY MR. UHAR:

4 Q Mr. Farruggio, if you look on the
5 right, you'll see a stop work order. Do you
6 acknowledge receiving a stop work order?

7 A Yes, I acknowledge receiving many stop
8 orders because you called for it.

9 MR. O'BRIEN: Mr. Chair.

10 CHAIRPERSON ANDERSON: Yes, sir.

11 MR. O'BRIEN: Can we get a proffer as
12 to the relevance of this to any of the four
13 issues before the Board today?

14 CHAIRPERSON ANDERSON: Mr. Uhar, are
15 you able to do that sir?

16 MR. UHAR: Yes. This is fraudulent,
17 illegal activity over a public alley that for a
18 summer garden, absolutely. So let's move on.
19 Exhibit 4. Mr. Farruggio?

20 CHAIRPERSON ANDERSON: All right.
21 What's Exhibit 4?

22 MR. UHAR: Mr. Farruggio?

23 (Simultaneous speaking.)

24 MR. O'BRIEN: It's another photograph,
25 Mr. Chair.

1 CHAIRPERSON ANDERSON: Mister, what
2 exhibit are -- on the PIF are we? Where are we
3 on the PIF? What exhibit on the PIF?

4 BY MR. UHAR:

5 Q We're No. 9, which is Complaint No. 4,
6 and we're on Exhibit 4, which is the picture of
7 the shed that's removed. I was just going to ask
8 Mr. Farruggio if he was made to clean that up by
9 D.C.

10 A What's the question again?

11 Q Did D.C. make you clean up this shed?
12 Did D.C. make you return the lot to how it was?

13 A The lot, there used to be a
14 refrigerator there, Mr. Uhar.

15 Q Please answer --

16 A We never built on that, and after that
17 we took it down the refrigerator. I put a fan
18 around to use it for storage, and then I was told
19 that I needed to get a permit because I was
20 substituting the same space. I then got a
21 permit, and then I was asked to take it down and
22 I took it down.

23 MR. UHAR: Okay. Exhibit 5. Mr.
24 Farruggio, Mr. Farruggio?

25 THE WITNESS: Yes, sir?

1 BY MR. UHAR:

2 Q Okay, Exhibit 5. Is this a new fence
3 you had constructed on 332, 3/30/22?

4 A Yes.

5 Q Did you get a permit for that?

6 A Yes.

7 Q And what lot and square was that
8 permit for?

9 A Lot number --

10 Q Don't worry about it. Let's move on.

11 A I have the lot number, but you said
12 let's move on.

13 Q We'll get to that. I have the lot
14 number too. That's -- it should be for Lot 64
15 you had the permit for, and that's Lot 0842;
16 correct?

17 A I have to look at it, John. I don't
18 remember those numbers in my brain.

19 Q Well Mr. O'Brien can help you.

20 A Yes, he can answer for you.

21 Q Anyway, did you -- this is new fence
22 that you built on 3/30/22, right?

23 A Yeah. I don't remember the date, but
24 yeah that's the right time. That's what the
25 permit says.

1 Q Okay, number -- Exhibit No. 6. This
2 shows you blocking gates and fire exits for me at
3 3075 and 3073 Canal. You caused this, this --
4 you caused this blocking of the gate; correct?

5 A I put a fan when I had the permit,
6 John. I didn't block anybody. I had the right
7 to put the -- I had the permit and I had the --
8 built the fans with the permit that I had
9 approved to.

10 Q Okay. Let's go to the next one. This
11 your interior lot and storage yard, with a tent
12 without occupancy. You never got occupancy
13 permits for this interior lot storage yard, did
14 you?

15 A No, no. I put the tent just to cover
16 my son's equipment that I don't want to get
17 damaged.

18 (Simultaneous speaking.)

19 Q And you're occupying it without a
20 certificate of occupancy?

21 A Was there a question about certificate
22 of occupancy?

23 Q You don't have a certificate of
24 occupancy for this do you?

25 A For what?

1 Q For this lot?

2 A I don't know what's the question. I
3 don't know if it's --

4 Q Do you --

5 A I leased the property. I leased the
6 property. It has 5,000 square foot in this
7 square. I didn't, and there was a walk-in
8 refrigerator there, and I just used it. I do not
9 know that I had to get an occupancy for that.

10 Q Did you recent take -- did you
11 recently take the fence down?

12 A Yes.

13 Q And why was that?

14 A Because I thought, you know, I wanted
15 to make you happy and do whatever I thought it
16 was supposed to be, you know, to -- if that would
17 bother you because I had the permit. But anyway,
18 you know, that's why I took it down. I don't
19 want to continue arguing with you.

20 Q Did you recently -- you know, that lot
21 is now under a tree easement that was from --
22 well, that's not connected to this. Move on.
23 Exhibit 8. This is a picture of your new fence
24 and those are permits that you had on the back,
25 Mr. Farruggio?

1 A Yes. That was the permit for the
2 fence, yes.

3 Q Okay. Now if we go and we look in a
4 little closer, Exhibit 9, these are the two
5 permits; correct Mr. Farruggio?

6 A I'm just verifying, John. Hold on.
7 I can't read it that much, but looks like yes.
8 Looks like, but I can't read it very well in
9 here. But I have the good copy here. That's the
10 copy, yes.

11 Q Exhibit 10. These look like the
12 permits that you posted on your property?

13 A Yeah.

14 Q Okay. Exhibit 11. Do you see -- it's
15 hard to see, but that is Lot 64?

16 A Yeah.

17 Q And if you look at Exhibit 12, that
18 Lot 64 is actually your original location, which
19 was the Alamo Grill of Georgetown; is that
20 correct Mr. Farruggio?

21 A I have to get clear here. Lot 842?
22 This is what we're talking about, 842?

23 Q That's your outdoor summer garden.
24 That was going to be your outdoor summer garden.

25 A That's not my summer garden. This is

1 -- you're talking about the same square?

2 Q Yes, Mr. Farruggio. The fence permit
3 is clearly for Lot 64; correct?

4 A Yes.

5 Q But you built across Lot 842; correct?

6 A No. Well, the permit was for the
7 whole behind 1065 and behind 1063.

8 Q No, it wasn't.

9 A I leased both properties, and then
10 when I would apply for a permit, we used the lot
11 of the addresses that I, you know, my architect.
12 I didn't apply personally. I had architect, a
13 professional, to give me the permit. He bring --
14 and we built a fence.

15 Q Mr. Farruggio, the fence that you
16 built on Lot 0842. Lot 0842 in this exhibit says
17 existing -- well no. Okay. So Lot 64 is what
18 you have the permit for, and you built across --
19 you blocked Lot 0842 -- you fenced in Lot 0842 by
20 blocking the access to the alley to 3073 and
21 3075; is that correct?

22 A No.

23 Q Why not?

24 A Because both the permit was behind
25 both buildings, and was for both buildings.

1 Q Mr. Farruggio, the permit clearly
2 states --

3 CHAIRPERSON ANDERSON: Mr. Uhar, give
4 him an opportunity to answer the question sir,
5 please.

6 BY MR. UHAR:

7 Q Yeah.

8 A In my knowledge, they both are part of
9 my lease, and my architect, you know, went in
10 both address. They're both leased, and he
11 applied for permit for me to wrap up the property
12 that I'm paying rent for, so I could use it for
13 my need. And he got me the permit and, you know,
14 with the Department of Consumer Affairs, and then
15 I was told that it was not right.

16 And I'm still after today, I think I
17 did the right thing, but you know, you're saying
18 it's not and it created a lot of chaos. But I
19 think I'm legally with the permit. I still
20 believe I did it right.

21 Q Okay, I'm sorry for interrupting.
22 Continue.

23 A I'm done.

24 Q Okay. If we go to -- so you say that
25 the fence permit was not for Lot 64; is that

1 correct?

2 A Nope.

3 MR. O'BRIEN: Objection, that's not
4 what he said.

5 BY MR. UHAR:

6 Q Okay. Then let me restate the
7 question. You built the fence on Lot 64;
8 correct?

9 A Yes. I have the two permits for it,
10 yes.

11 Q So you built the property on Lot 64,
12 thank you.

13 A Yes.

14 Q Okay. Now if we look to Exhibit 13,
15 this is Lot 1198-0842. You'll see that there's
16 no building or occupancy permits, but you occupy
17 in violation of D.C. Municipal regulations;
18 correct?

19 MR. O'BRIEN: Mr. Chair.

20 CHAIRPERSON ANDERSON: What's the
21 nature of the objection sir?

22 MR. O'BRIEN: The problem here is that
23 the Board has not seen these exhibits as they're
24 discussed, and in this exhibit, I think there's a
25 predicate that Mr. Uhar has to ask, whether Mr.

1 Farruggio has ever seen this document before. I
2 will represent to the Board it's not a document
3 signed by Mr. Farruggio or generated. It's a
4 DCRA printout.

5 CHAIRPERSON ANDERSON: Okay.

6 MR. UHAR: It's the legal --

7 CHAIRPERSON ANDERSON: All right. So
8 why don't we start at the beginning? So why
9 don't you ask the witness if he knows what this
10 document is, if he recognizes this document? The
11 witness can -- so I --

12 MR. UHAR: No, no, no. I have a
13 better way. I know how to ask it.

14 MR. O'BRIEN: Thank you.

15 CHAIRPERSON ANDERSON: Well, all
16 right. Let me, let me say this to you, Mr. Uhar.
17 Normally, normally what occurs, you have
18 exhibits. You call the exhibit that you're
19 relying on.

20 The attorney looks at it to make sure
21 that we're all looking at the same exhibit, and
22 then you show the exhibit to the witness and then
23 you ask the witness if the witness recognizes
24 this document, so that witness can testify. If
25 the witness says that I don't recognize this

1 document, then he can't testify.

2 So what I need you to do moving
3 forward sir is that when we have you state what
4 witness, what document you are -- you're relying
5 upon. Mr. O'Brien will show the witness the
6 document, and then you can ask a question of the
7 document once the witness has had an opportunity
8 to review the document, sir. Okay?

9 MR. UHAR: Yes, thank you. Okay.
10 Exhibit 13. Mr. O'Brien, 1198-0842.

11 MR. O'BRIEN: The witness has the
12 document in front of him.

13 BY MR. UHAR:

14 Q Okay. Mr. Farruggio, you're occupying
15 Lot 11 -- Lot 0842 and 1198 without an occupancy
16 permit; correct?

17 A No. I have a permit to build the
18 fence on that property. I don't know what this
19 document is really.

20 Q It's just a record of building and
21 occupancy permits, and it says you don't have a
22 building permit or an occupancy permit. But you
23 say you do; correct?

24 A Yes.

25 Q That's your testimony. You testified

1 that --

2 A Lot 64 and 1198, 1198, Lot 64. I have
3 two permits one, you know.

4 Q Mr. Farruggio, I'm asking about Lot
5 0842. It's your testimony here today that you
6 have, you had a building permit for the fence and
7 an occupancy permit for your continuing
8 operations; yes?

9 A Yes.

10 MR. UHAR: Okay. We go now to Exhibit
11 15, which is the permit for the fence from the DC
12 Scout website. Do you see that, Mr. O'Brien?

13 MR. O'BRIEN: I've seen what you've
14 labeled, Mr. Uhar, as Exhibit 15 to the witness.
15 I suggest that predicate question is has the
16 witness ever seen this document.

17 MR. UHAR: No. Have you ever seen
18 this -- well he -- it was in the exhibit before.

19 CHAIRPERSON ANDERSON: All right. But
20 Mr. Uhar, you're asking the witness about a
21 document, and I think you're asking whether or
22 not he is aware of it, has he seen it. So you
23 need to start -- you need to start there first
24 sir, okay?

25 BY MR. UHAR:

1 Q Okay. Mr. Farruggio, have you ever
2 seen this document?

3 A No.

4 Q Okay. It says it removes existing
5 wood stockade fence and install new pressure-
6 treated stockade fence. Was there any existing -
7 -

8 MR. O'BRIEN: Objection.

9 CHAIRPERSON ANDERSON: What's the
10 nature of the objection sir?

11 MR. O'BRIEN: It's -- the witness says
12 he's never seen this document before. I can
13 represent to the Board it purports to be a DCRA
14 printout.

15 MR. UHAR: Yes, it is.

16 MR. O'BRIEN: He hasn't seen it
17 before. He can't comment on it.

18 CHAIRPERSON ANDERSON: Hold on, hold
19 on. Let me -- what's the question? Let him ask
20 the question first, Mr. O'Brien, because maybe --
21 let me see what the question is. I know that he
22 was about to say something and you object. So
23 let me hear the question, then you can raise your
24 objection at that time, sir. Go ahead, Mr. Uhar.

25 BY MR. UHAR:

1 Q Mr. Farruggio, if you look at this
2 document, you'll see that it says Ben and Mel,
3 for Lot 64 in Square 1198, to remove the existing
4 wood stockade fence and install a new pressure-
5 treated stockade fence.

6 Did you remove the existing wood
7 stockade fence and install a new pressure-treated
8 stockade fence on Lot 64 in Square 1198?

9 A Yes.

10 Q That is, that is -- so you're saying
11 that you put -- you replaced the fence that was
12 behind me, and is part of the -- Mister -- the
13 old Alamo Grill? You replaced that fence,
14 because that's Lot 0064. You said you replaced
15 that fence?

16 A No, I didn't say that. I said I put
17 around a fence whatever I had the permit for. I
18 don't know what you're talking about, the way you
19 describe it. I don't picture what side you're
20 talking about.

21 Q The fence permits for Lot 64 and
22 Square 1198?

23 A Yes.

24 Q And I'm asking you did you remove the
25 existing wood stockade fence and install the new

1 pressure-treated stockade fence on the old Alamo
2 Grill space 1063 -- 1063 31st Street, a/k/a 1198-
3 064? Did you build the fence there?

4 A Yes, I have to build it. I didn't
5 build it. I had the fence company that built the
6 fence and following the permits.

7 Q And you did this? You replaced the
8 fence between us from the old Alamo Grill?
9 That's what your -- that's what your permit's for
10 and that's what you, that's what you --

11 A I replaced the fence. I replaced the
12 fence that was behind the Alamo Grill, but it was
13 not next to your property. It was, you know,
14 between Alamo Grill and which is 1063, and Mr.
15 Moore's building, which is 1065. The fence that
16 I removed was between these two properties, which
17 I'm leasing it, not on your property. I didn't
18 touch any fence that had adjacent, that touches
19 your property.

20 Q But you should have? That was the
21 only fence you were permitted for, Mr. Farruggio.
22 You did not have a permit for 0842?

23 MR. O'BRIEN: That's not, that's not
24 a question. That's argument, Mr. Chair.

25 MR. UHAR: Okay.

1 CHAIRPERSON ANDERSON: Mr. Uhar,
2 please ask a question. All right.

3 MR. UHAR: I'll move on. Exhibit 16.
4 (Pause.)

5 CHAIRPERSON ANDERSON: What's your
6 question sir?

7 MR. UHAR: Well, I wanted to see if
8 Mr. Farruggio had seen this.

9 CHAIRPERSON ANDERSON: This is Chapter
10 3 of Administrative Enforcement. So I mean what
11 is it you're asking him about, about this, these
12 -- I don't know what regulations these are. I
13 guess they're the zoning regulations. So what
14 about it that you're asking him sir?

15 MR. UHAR: I'm asking him about zoning
16 requirements.

17 CHAIRPERSON ANDERSON: I'm sorry, sir.

18 MR. UHAR: Yeah. Mr. Farruggio works
19 with -- Mr. Farruggio, you say you worked with
20 attorneys and other people to assist you in all
21 this. How is it that you can occupy 0842 without
22 a building or certificate of occupancy?

23 MR. O'BRIEN: Are we asking about
24 Exhibit 15 now?

25 MR. UHAR: 16.

1 MR. O'BRIEN: 16.

2 THE WITNESS: I really don't know what
3 -- I don't know what this is, building permit.

4 MR. O'BRIEN: Okay. Mr. Chair, do you
5 see that Exhibit 16?

6 CHAIRPERSON ANDERSON: I am -- I am
7 looking at the Exhibit 16. Exhibit 16 is Chapter
8 3, Administrative Enforcement. So I don't know
9 what -- I don't know what's being asked, if
10 that's -- we're looking at the same document. So
11 what's being asked sir?

12 MR. UHAR: Mr. Farruggio, did you get
13 a permit to put the tent over Lot 0842? Did you
14 get a building permit for Lot 0842 for your
15 fenced-in compound?

16 CHAIRPERSON ANDERSON: Mr. Uhar, all
17 right. Exhibit 16 is, at least what I'm looking
18 at, is Chapter 3, Administrative Enforcement.
19 Are you asking the witness whether or not he's
20 familiar with these regulations? We need to
21 start there first because unless I'm looking at
22 the wrong document --

23 BY MR. UHAR:

24 Q Yes, no. No, I hear you, and his
25 attorney, his attorney, Mr. Farruggio claims that

1 his attorneys take care of everything. Well, his
2 attorneys should know that you can't do a
3 building permit or you can't have a certificate -
4 - if you don't have a building permit or a
5 certificate of occupancy, you can't occupy a
6 property. So knowing this, how does he occupy
7 Lot 0842?

8 A Is that a question to me?

9 Q Yes.

10 MR. O'BRIEN: He was explaining to
11 somebody, he was explaining. Mr. Chair?

12 CHAIRPERSON ANDERSON: Yes, sir.

13 MR. O'BRIEN: His occupancy or not of
14 0842 is not one of the four issues before the
15 Board today.

16 CHAIRPERSON ANDERSON: I'm looking at
17 Allegation 4 and maybe, maybe I'm confused. But
18 I'm looking at Allegation 4. So I'm thinking
19 that the allegation of using for counterfeit
20 fence permits to the rear door of 1065, is that
21 what we're talking about? If that's not what
22 we're talking about, then --

23 MR. UHAR: We're talking -- let's move
24 on to that then.

25 CHAIRPERSON ANDERSON: All right. No,

1 hold on. So therefore then if that's not what
2 we're talking about, then I'm going to sustain
3 the objection to move on, because I heard we've
4 been talking about fences, and so because I know
5 that was one of the allegations. That's one of
6 the reasons I've allowed this to occur, because I
7 thought that this conversation was dealing with
8 the fence and using illegal permits.

9 MR. UHAR: And it is. It was.

10 CHAIRPERSON ANDERSON: But if that's
11 not what it is -- I'm sorry sir. Go ahead, sir.

12 MR. UHAR: Well that's what it is.
13 That was the D.C. Code, and Mr. Farruggio said
14 that he works through his attorneys. But maybe
15 he doesn't listen to them and he builds not where
16 they, where he gets his permits for. And so he
17 claims -- well, that's it. That's pretty much
18 it. So that's why I was asking about the
19 occupancy permit, and that's why I was asking
20 about the building permits.

21 CHAIRPERSON ANDERSON: All right. Do
22 we have another question that you want to ask?

23 MR. UHAR: No. You said you wanted to
24 move on. What was the one that you talked about,
25 Exhibit 4 with the fraudulent permits? Let's

1 move on to that one.

2 CHAIRPERSON ANDERSON: That's one of
3 the allegations that we were supposed to address
4 in this --

5 (Simultaneous speaking.)

6 MR. UHAR: Yeah, let's -- and I'd like
7 to move on.

8 CHAIRPERSON ANDERSON: Yes.

9 MR. UHAR: What is that? That is --
10 what do you know it as sir?

11 CHAIRPERSON ANDERSON: I believe that
12 based on -- based on the remand, this is one of
13 the issues that needs to be addressed here,
14 Allegation 4. The allegation in Complaint 4, the
15 allegation of using four counterfeit fence
16 permits on the rear door of 1065 31st Street and
17 the window on the front of 1065 31st Street on a
18 date and time that hasn't been clearly identified
19 in the complaint, which is -- it says I'm not
20 applying for anything new. I'm applying for the
21 license as it stands.

22 MR. UHAR: Yeah, yes. That's the one.

23 CHAIRPERSON ANDERSON: So what is it
24 that you want to ask about that sir?

25 MR. UHAR: Well, first I have to find

1 it. So I'm going to go online for a second.

2 (Pause.)

3 MR. UHAR: Where is it?

4 (Pause.)

5 MR. UHAR: That's 4, I'm sorry. If
6 you'll wait a second, I'll pull it up on -- I
7 have it right here. So Exhibit 4.

8 (Pause.)

9 MR. UHAR: Okay. That's Complaint No.
10 4, right Chairman?

11 CHAIRPERSON ANDERSON: Yeah. That's
12 the -- yeah. The allegation Complaint No. 4,
13 yes, sir.

14 MR. UHAR: Yes, and okay. So -- no,
15 that's not it. Well hold on, let me see the
16 page. That looks like a lot of what we just went
17 over. Yeah, that was all what we just went over.
18 Those are the fences and the permits and yeah.
19 We've already -- that's what we've been
20 discussing --

21 CHAIRPERSON ANDERSON: All right.

22 MR. UHAR: Yeah, yeah. So what was
23 the next one that you wanted to consider?

24 CHAIRPERSON ANDERSON: I gave you the
25 four allegations sir that should -- that I

1 believe they were in the board order. But the
2 four allegations that needs to be addressed is
3 the allegation in the PIF, alleging that the
4 submission of a sidewalk cafe plan to DCRA was
5 fraudulent.

6 The allegation in your Complaint No.
7 1 that the testimony of Mr. Fargama on May 8th,
8 2016 in line 7 was -- in the transcript was
9 fraudulent. Allegation No. 3, the allegation in
10 Complaint No. 3 that the Applicant used -- the
11 alleged use of a counterfeit occupancy permit
12 since February 15th, 2015 in violation of DC Code
13 Section 25-401 and 25-835, and we have already
14 addressed Allegation No. 4.

15 MR. UHAR: All right. Let's go to
16 Allegation No. 3, because we didn't get number
17 one. Let's go to Complaint No. 3.

18 (Pause.)

19 MR. UHAR: Okay. Have you ever seen
20 this document?

21 CHAIRPERSON ANDERSON: Now where --
22 what document are we're at?

23 MR. UHAR: We're going to go through
24 everything in exhibit number -- ABCA Complaint
25 No. 3, because this is about the false, this is

1 about the false occupancy permits.

2 MR. O'BRIEN: We'll have to find these
3 exhibits here. I have ABRA Complaint No. 3 in
4 front of me, which is a statement by Mr. Uhar.
5 Is he referring to that piece of paper or to the
6 exhibits mentioned in it?

7 MR. UHAR: I'm starting with the whole
8 thing, yes. That's the exhibit.

9 CHAIRPERSON ANDERSON: So I'm sorry.
10 Which exhibit is that, so I can follow along
11 myself? From the PIF, what exhibit is that so I
12 can follow along?

13 MR. UHAR: It's exhibit -- if it's --
14 what is it 3? Then it must be 8, right? It's
15 Exhibit 8 in your PIF, ABRA Complaint No. 3.

16 CHAIRPERSON ANDERSON: That's not No.
17 8, because No. 8 is ABRA Complaint No. 4.

18 MR. UHAR: Yeah. No it's --

19 CHAIRPERSON ANDERSON: It's not number
20 -- it's not, let me see. I just want to make
21 sure that we're all on the same page.

22 MR. UHAR: Yeah. It says ABRA
23 Complaint No. 3. It's to Mr. Moosally. It would
24 have been right before 4.

25 CHAIRPERSON ANDERSON: Okay. Well go

1 ahead. Go ahead, please.

2 MR. UHAR: Okay.

3 CHAIRPERSON ANDERSON: Okay. I have
4 it in front of me. Go ahead.

5 MR. UHAR: All right. I guess we'll
6 go to Exhibit 1. This is the testimony --
7 actually, we can skip Exhibit 1. Let's go to
8 Exhibit 2. Mr. O'Brien.

9 MR. O'BRIEN: Yeah. I'm reviewing it.
10 I'm handing it to the witness. Why don't you
11 look that over and see if you understand what
12 that is?

13 MR. UHAR: Mr. Farruggio.

14 MR. O'BRIEN: Let him please finish
15 reviewing it.

16 THE WITNESS: I've reviewed it now.

17 MR. O'BRIEN: All right. The witness
18 is ready.

19 BY MR. UHAR:

20 Q Okay. Mr. Farruggio, are you familiar
21 with a certificate of occupancy being granted to
22 Fratelli La Bufala?

23 A No. I mean we -- they had to go and
24 get one, but I wasn't part of this. I was a, I
25 wasn't -- at that time I did not deal with this.

1 Q But you see it's for a restaurant and
2 bar and 88 seats, do you not?

3 A Yeah, yeah.

4 Q Do you see -- do you see an outdoor
5 sidewalk cafe endorsement there? Mr. Farruggio?

6 A I'm looking, John.

7 (Pause.)

8 A Basically what I see, I see there is
9 for the restaurant and the bar.

10 Q Yeah. This is 4/2/2009 occupancy
11 permit issued to Fratelli La Bufala?

12 A Yeah. That's what it looks like,
13 yeah.

14 Q Okay. Let's move on to the next,
15 Exhibit No. 3.

16 A And that --

17 MR. O'BRIEN: He hasn't asked a
18 question yet.

19 BY MR. UHAR:

20 Q Okay, Mr. Farruggio. You were -- you
21 were pretty involved. Do you remember this? Do
22 you remember this letter?

23 A No.

24 Q No.

25 A As I say, I was an investor and I did

1 not deal with any of this stuff. They deal with
2 it, you know.

3 Q Okay. But do you see here that it
4 says awning and signs for Fratelli La Bufala,
5 existing permit?

6 A It says existing permit. I see that.

7 Q But do you see note is made that a
8 sidewalk cafe with tables, chairs and umbrellas
9 was installed on public space without review of
10 permit. Do you see that?

11 MR. O'BRIEN: Objection. He stated
12 he's not familiar with the document, Mr. Chair.
13 He's being asked to agree to contents of a
14 document which he did not prepare and he's never
15 seen before.

16 MR. UHAR: He was a member of Fratelli
17 La Bufala as well as Il Canale. He's connected
18 and he doesn't, he's misleading and been
19 fraudulent since Day 1 on this. This is what
20 this is all about.

21 CHAIRPERSON ANDERSON: But all right.
22 Mr. Uhar --

23 MR. UHAR: Okay. Let's move to
24 Exhibit No. 4.

25 CHAIRPERSON ANDERSON: All right.

1 MR. UHAR: Okay.

2 (Pause.)

3 MR. O'BRIEN: The witness has the
4 document in front of him.

5 BY MR. UHAR:

6 Q Okay. Have you ever seen this
7 document, Mr. Farruggio?

8 A Yes. This is -- anything that's got
9 to do with Il Canale, I am -- I was, I'm
10 responsible for.

11 (Simultaneous speaking.)

12 Q Okay, do you see -- Mr. Farruggio. Do
13 you remember the recommendation they gave you,
14 returned without action. Permit application for
15 awning signs and sidewalk cafe for Il Canale was
16 withdrawn at the written request of the
17 applicant. So do you remember withdrawing your
18 sidewalk cafe request?

19 A I remember that one. I remember that
20 I had Mr. David Harrison, and he got me the
21 permit that I needed and, you know, and then we
22 started doing business. I do not question my
23 lawyer. I mean he did a, you know, by the way,
24 God bless his heart, he passed.

25 Q So even though it was your restaurant,

1 and they told you you couldn't have a sidewalk
2 cafe, you kept going with your sidewalk cafe
3 before and after September 18, 2009. Is that
4 your testimony?

5 A Give me the question and I answer yes
6 or no. You're saying a lot of words there that
7 you put in my mouth. Can you tell me what it is
8 that you want to know?

9 I mean I -- at that time I stated that
10 I asked my lawyer, because we have a beautiful
11 sidewalk and I think we need to extend the
12 sidewalk from one building to front of another
13 building, and he did it and that's what I
14 understand, what I remember, and I don't know.

15 Q Mr. Farruggio, would you agree that if
16 the U.S. Commission of Fine Arts says that you
17 withdrew your permit for applications awnings and
18 signs for a sidewalk cafe, do you think that's
19 true or not?

20 A I don't remember doing that. What I
21 know, there was one permit. We extend it and to
22 do it, and then there was two address. There was
23 a lot of confusion, all right. But I do not
24 recall any, anything that I did, you know,
25 because I wanted to do it, just like you stated

1 that I lied.

2 Q Well Mr. Farruggio, you've been
3 operating a sidewalk cafe since 18 September 2009
4 without USCFA approval, yes or no?

5 A No, I have approval.

6 Q You have -- Mr. Farruggio. You're
7 testifying here right now that you have USCFA
8 approval for your outdoor --

9 A I mean USCFA, what that means?

10 Q That's what this letter is about, Mr.
11 Farruggio. Your attorney should explain it to
12 you. Perhaps Mr. O'Brien can tell you.

13 A I'm not -- I operated with a permit to
14 me from the department as required. I don't know
15 what you're talking about.

16 Q Mr. Farruggio, you know that you need
17 USCFA approval, don't you?

18 A Yes, of course I know. I mean whoever
19 they give the permits will have the, you know,
20 the sitting outside. We did, you know, got it
21 from them, yes, from the department.

22 Q So your contention that the United
23 States government, through its agents, the USCFA,
24 granted you an occupancy permit for 1063 and 1065
25 31st Street; correct? That's your testimony?

1 A In 18 of September --

2 Q Mr. Farruggio --

3 CHAIRPERSON ANDERSON: Sir, let him
4 answer the -- let him answer the question.

5 MR. UHAR: Correct, I'm sorry.

6 THE WITNESS: In September 2009, you
7 know, there was a -- the Fratelli La Bufala had
8 closed at that time, and we were -- I was working
9 with my lawyer, Mr. David Harrison, to reopen it
10 and to get me the permit that I needed to have
11 the sitting outside.

12 Yes, he did it through the channel of
13 the U.S. government and the City of Washington,
14 D.C., through the channel they needed to do it to
15 get it, yes. He was a good lawyer.

16 BY MR. UHAR:

17 Q Mr. Farruggio, would you be willing to
18 provide that proof within seven days to the D.C.
19 ABCA and myself?

20 MR. O'BRIEN: Objection. This is --
21 the hearing is today.

22 MR. UHAR: Okay.

23 CHAIRPERSON ANDERSON: Sustained.

24 MR. UHAR: He doesn't have it. Let's
25 move on to Exhibit No. 5.

1 MR. O'BRIEN: Your Honor, the copy of
2 Exhibit No. 5 I have, I'm struggling to find a
3 date on this. Can Mr. Uhar point us to a date?

4 MR. UHAR: Yeah. That was, that was
5 -- that's pretty much how it still is. I went in
6 last night and checked. So that's a -- that's a
7 current, that's a current D.C. Scout report.

8 CHAIRPERSON ANDERSON: What's the
9 question presented?

10 MR. O'BRIEN: Well, I'll show the
11 exhibit to the witness --

12 (Simultaneous speaking.)

13 CHAIRPERSON ANDERSON: I'm sorry.
14 Hold on, Mr. Uhar. He has to show the witness
15 the documents, but I don't know the question
16 that's being asked. So it's -- I see a document.
17 There's no date on it, and I don't know what the
18 document stands for, and I don't know what it is
19 that you're trying to --

20 MR. UHAR: Okay. It will become
21 clear. I'll walk you through.

22 (Pause.)

23 MR. O'BRIEN: The witness is ready.

24 BY MR. UHAR:

25 Q Okay. Mr. Farruggio, I assume you

1 haven't seen this document before?

2 A I don't even know what it is, no.

3 Q Okay.

4 A You're talking about this?

5 MR. O'BRIEN: Yes.

6 BY MR. UHAR:

7 Q Yeah.

8 A Yeah, no.

9 Q Okay. This is from D.C. Scout, and it
10 indicates that there are no public space permits
11 for construction and there are also no, if you --
12 so Mr. Farruggio, where are the public space --

13 MR. O'BRIEN: Objection.

14 CHAIRPERSON ANDERSON: What's the
15 nature of the objection sir?

16 MR. O'BRIEN: The predicate is that
17 Mr. Uhar is testifying.

18 CHAIRPERSON ANDERSON: All right. Mr.
19 Uhar, I need you to ask a question, and I don't
20 know what this document is. It's undated, and
21 I'm not quite sure what it is that you're trying
22 to ask.

23 MR. UHAR: Okay, we can move on. It's
24 public record that there are no building permits.

25 MR. O'BRIEN: That's a statement by

1 Mr. Uhar.

2 MR. UHAR: Okay. Let's just move on
3 to Exhibit 6.

4 (Pause.)

5 MR. O'BRIEN: All right. Just wait
6 until you're asked a question. The witness is
7 ready.

8 BY MR. UHAR:

9 Q Okay, Mr. Farruggio. This is also
10 D.C. Scout for public space permits, and yours
11 isn't on here. Where is your public space
12 permit? Do you have a public space -- is it your
13 testimony, Mr. Farruggio, that you have a public
14 --

15 A I have a permit. We're talking about
16 the same thing, with the open space --

17 Q I'll ask you again. Mr. Farruggio, do
18 you have a public space permit for 1063 31st
19 Street?

20 A And 1063 and 1065.

21 Q Well, no. This is just 1063, sir.
22 This shows up in D.C. Scout. So your contention
23 is you have a -- you testified today, Mr.
24 Farruggio, that you have a public space permit --

25 MR. O'BRIEN: Put the exhibit down.

1 Answer his question.

2 CHAIRPERSON ANDERSON: I'm sorry, hold
3 on a minute please. Remember, we have a court
4 reporter. I can only have one person speaking at
5 a time. All right, so what's -- you have a
6 question, Mr. Uhar?

7 BY MR. UHAR:

8 Q Yes. Mr. Farruggio, it's your
9 contention that you have public space permits for
10 1063 31st Street, N.W.?

11 A Yes.

12 MR. UHAR: Okay. Let's move to
13 Exhibit 7.

14 CHAIRPERSON ANDERSON: Is there a
15 question?

16 MR. UHAR: Well, I want to see if he's
17 --

18 MR. O'BRIEN: The witness is reviewing
19 the document, Mr. Chair.

20 CHAIRPERSON ANDERSON: Okay.

21 (Pause.)

22 MR. O'BRIEN: You don't -- there's not
23 a question yet. Have you had a chance to review
24 it?

25 (Pause.)

1 THE WITNESS: Okay, I review it.

2 MR. O'BRIEN: Okay.

3 BY MR. UHAR:

4 Q Okay. Okay Mr. Farruggio, this is the
5 permit that you're talking about, 128-215, E.
6 David Harrison sent to Alcoholic Beverage Control
7 Administration; is that correct?

8 A I had, had a problem. Can you repeat
9 it again?

10 Q Yes. Mr. Farruggio, this 1/28/2015
11 occupancy permit is for Lot 64 and Square 1198;
12 correct?

13 A Okay. That's NGFA, okay. 2015.

14 Q Yep. Mr. Farruggio, do you know why
15 Mr. Harrison didn't put the actual street
16 address? Why does it just say Washington, D.C.
17 Do you have any idea?

18 A No.

19 Q Okay. Now you come down, Mr.
20 Farruggio, and you can see outlined in red
21 sidewalk cafe adjacent to its premises located at
22 1063 31st Street, N.W. Said unenclosed sidewalk
23 cafe area will be 9 feet in length and 71 feet in
24 width. Do you see that sir?

25 A No, I'm not following you because I

1 don't read English very well. Very, very slow to
2 read it. I assume that what you say is what it
3 is.

4 Q Okay. Well, this permit for Lot 64
5 and Square 1198 states that it's 9 feet in length
6 and 71 feet in width, and that's the permit that
7 Mr. Harrison got for you; correct Mr. Farruggio?

8 A Yes, at the time. Yeah I think, yeah,
9 you're right.

10 MR. UHAR: Okay. Now let's move to
11 Exhibit 8.

12 MR. O'BRIEN: We don't seem to have 8.
13 We skip to 9.

14 CHAIRPERSON ANDERSON: No, I have 8 so
15 --

16 MR. UHAR: Yeah, I have 8. It's a
17 survey.

18 MR. O'BRIEN: Oh, the plat.

19 MR. UHAR: Yeah, the plat.

20 MR. O'BRIEN: Okay. Yeah, we had that
21 one out earlier, that's why it's not in order.
22 Okay. I'm showing this to Mr. Farruggio, Exhibit
23 8.

24 THE WITNESS: Is there a question?

25 BY MR. UHAR:

1 Q No, I just -- did you order this
2 survey? This is your survey, correct sir?

3 A It is my survey, yes. It is a survey
4 of the property that occupied both of them, yes.

5 Q Yeah. These are your lands. So if we
6 look at Lot 64, we see that the width of the
7 property is only 29.58 feet; is that correct?

8 A 29, yes.

9 Q Yeah. So that's -- Lot 64 is 29 feet,
10 and not 71 feet, is that correct Mr. Farruggio?

11 A Definitely yes, it is correct.

12 Q But your permit is for 71 feet, and I
13 want to know how did you get -- how did Mr.
14 Harrison include Lot 819 in that permit
15 application, which is only for Lot 64? Do you
16 know what he did there?

17 A No. I didn't know what he did, but I
18 assume that he corrected. There was a mistake he
19 corrected, but I don't, you know, he extended the
20 permit. He presented and he got the permit. I
21 don't know how it or what.

22 (Simultaneous speaking.)

23 Q But you agree that this 2015 permit is
24 for a sidewalk cafe that's less than 30 feet;
25 correct?

1 MR. O'BRIEN: I'm sorry, could we have
2 -- I'm sorry.

3 BY MR. UHAR:

4 Q The permit Mr. Harrison got is for Lot
5 64, which is 30 feet, correct Mr. Farruggio?

6 A Well that's before, that --

7 (Simultaneous speaking.)

8 A -- permit. Then when we expanded, he
9 expanded the permit to get more seating.

10 Q Now we're talking about 2016 -- we're
11 talking about 2015, and this is for Lot 64 and
12 Square 1198, and you'll agree that Lot 64 and
13 Square 1198 is 29.58 feet; correct?

14 A I agree with that, yes.

15 Q Okay. Now if we turn to Lot 0842, Mr.
16 Farruggio, in the back on that same survey.

17 A 819?

18 Q No, no, 0842. You and your surveyor
19 say that there's an existing one-story brick
20 building; correct?

21 A No, I didn't got this. I didn't ask
22 for the survey. I think it might have been my
23 landlord provide and maybe the architect there
24 got it. I didn't got it.

25 Q So Mr. Farruggio, that statement that

1 there's an existing one story brick building on
2 0842 is false; correct?

3 A For 842?

4 Q Yeah. There's no building there;
5 correct?

6 A There was a freezer there, walk-in
7 freezer --

8 Q We're talking about -- it's an
9 existing --

10 (Simultaneous speaking.)

11 Q So that's a misstatement right there,
12 right Mr. Farruggio?

13 A It says that I think he's going to
14 build a brick building in there. That's the
15 first I heard. I never saw that.

16 Q Okay. Let's move on to Exhibit 9.

17 MR. O'BRIEN: Objection.

18 CHAIRPERSON ANDERSON: Hold on. What
19 is your concern, Mr. O'Brien?

20 MR. O'BRIEN: Mr. Uhar's attempting to
21 portray this plat as generated by Mr. Farruggio,
22 but it belongs to the D.C. Surveyor. It's clear.
23 So if there's a mistake made here about a brick
24 building, it's the Surveyor's mistake.

25 So on those grounds, I would object to

1 the line of questioning as irrelevant, irrelevant
2 to the issue of fraud on -- fraud or not on Mr.
3 Farruggio's part.

4 CHAIRPERSON ANDERSON: That's, I mean
5 he's asking questions, sir. I mean that is --
6 that is for us to make a determination based on
7 the standard, whether or not he has met the
8 standard. So I'm going to -- I'm going to
9 overrule the objection partly, but I mean yeah,
10 that's coming to a legal conclusion.

11 He can ask whatever questions that he
12 wants to ask, but or he can come to his
13 conclusions, but at the end of the day, the trier
14 of fact is going to make the determination
15 whether or not we believe that they have met the
16 standard.

17 MR. O'BRIEN: Mr. Chair I know better
18 than to argue with the Chair, but may I make an
19 observation?

20 CHAIRPERSON ANDERSON: Yes, sir, go
21 ahead.

22 MR. O'BRIEN: A question predicated on
23 a misstatement of fact is objectionable.

24 CHAIRPERSON ANDERSON: Okay.

25 MR. O'BRIEN: It's not -- Mr. Uhar

1 attempted to get Mr. Farruggio to adopt this as
2 his representation, and that's what I object to.
3 It's not his representation. The question itself
4 was predicated on a misstatement of fact.

5 CHAIRPERSON ANDERSON: But I think the
6 witness testified that this is not -- the witness
7 clarified by testifying that this was my attorney
8 or if there was an error, it was corrected. So
9 I, so I believe that the witness has done a
10 sufficient job in answering the question in the
11 contrary.

12 So I'm fine with the answer that was
13 provided, because at least from my perspective
14 the witness has testified this was not, I did not
15 do this. So I'm fine with that, so let's, let's
16 move on. I'm sorry, go ahead Mr. O'Brien.

17 MR. O'BRIEN: I said very well.

18 CHAIRPERSON ANDERSON: All right. Mr.
19 Uhar, I mean one of the things that I want to do,
20 I want to take a break, because this is going to
21 be --

22 (Simultaneous speaking.)

23 MR. UHAR: --could we get to Exhibit
24 9?

25 CHAIRPERSON ANDERSON: No, I'm just --

1 no, I'm not telling you I'm taking a break now
2 sir. I'm just saying to you that it is my goal,
3 I didn't realize this would have gone over two
4 hours, but it's my goal when I do these hearings
5 to take a break every two hours, and so we're
6 getting close to that.

7 So I'm just -- so I'm just pointing it
8 out to you that in about -- in another 10-15
9 minutes, I'm going to take a break. So I need
10 you to -- all right.

11 MR. UHAR: That's good, thank you.
12 Exhibit 9.

13 (Off mic comments.)

14 MR. O'BRIEN: I'm showing it to the
15 witness, so he can examine it.

16 (Pause.)

17 MR. O'BRIEN: Have you finished
18 reviewing it? Okay.

19 THE WITNESS: Yes.

20 MR. O'BRIEN: Now the witness has
21 finished reviewing it.

22 BY MR. UHAR:

23 Q Okay. Mr. Farruggio, this is a July
24 13, 2018 letter email from Richard Livingstone to
25 a lot of us, and I don't think you've seen this,

1 have you?

2 A It was sent July 17.

3 Q July 13th.

4 A July 17th, 2018.

5 MR. O'BRIEN: The question is have you
6 seen this?

7 THE WITNESS: No. You know, I have --
8 like I have a GM now. I don't -- sometimes some
9 of this stuff, you know, goes through without me.
10 No, I don't remember this one. It's a renewal of
11 a permit?

12 CHAIRPERSON ANDERSON: Mr. Uhar --
13 hold on, hold on. Mr. Uhar?

14 MR. UHAR: Yes.

15 CHAIRPERSON ANDERSON: You either
16 recognize this or you don't. Don't ask questions
17 sir. Either recognize it or I don't recognize
18 it, and let's move on from there. So don't ask -
19 -

20 MR. UHAR: No, no, no, no, sir.

21 CHAIRPERSON ANDERSON: No, no. Hold
22 on, Mr. Uhar. No, I'm sorry. Mr. Uhar, I'm
23 telling Mr. Fargama. His job is not to ask you
24 questions, sir. You asked him a question, he
25 answers the question. If he has clarifications

1 and there's an objection after the
2 clarifications, but that's --

3 MR. UHAR: Okay, I have a question.
4 I have to ask.

5 CHAIRPERSON ANDERSON: Yes.

6 BY MR. UHAR:

7 Q Mr. Farruggio, who do you know in the
8 Executive Office of the Mayor that would give you
9 a permit on July 13, when you said you had one
10 back in 2015? What -- do you have any idea
11 what's happening here?

12 A What are you saying, John? Can you
13 repeat the question?

14 Q Yeah. You were claiming that you had
15 a permit in 2015; correct?

16 A Yes.

17 Q That's for occupancy permits, and then
18 Richard Livingstone declares on July 13 that the
19 sidewalk cafe for 1063 and 1065 is now permitted.
20 So when was it permitted? Were you permitted
21 2015 or was this letter from the Mayor 2018?
22 When did you -- when did you get your permit, Mr.
23 Farruggio, for the --

24 A Repeat your question. Can you repeat
25 the question?

1 (Simultaneous speaking.)

2 Q When did you get your outdoor sidewalk
3 cafe permits?

4 A Since the first day I opened, and then
5 I went for a loan. We extend it, then there was
6 the error, then they both was one address, and
7 then we put two address. We progress is we grew,
8 and I assume that was in this time, that was when
9 the permit expire and then there was some
10 adjustment to make to the file. I don't know
11 what you, what you say, but I know somebody in
12 the Mayor's office. You what's can -- can you
13 clear up about that?

14 Q Yes. Do you know John Faltuccio
15 (phonetic)?

16 A No, I don't know him.

17 Q Do you know Mayor Gray?

18 A Vince Gray?

19 Q Yes.

20 A I knew him when he ran for mayor. He
21 came to start his mayor campaign in my
22 restaurant, and there was a beautiful evening,
23 and then he become the mayor. And that's the way
24 we left, you know. I don't -- I was just running
25 my business in Georgetown, and that's all I do,

1 Mr. John.

2 Q Mr. Farruggio, if you -- if you said
3 you got your -- if you got your first permit for
4 the outdoor sidewalk cafe in 2015, how were you
5 operating between 2009 and 2015 sidewalk cafes?

6 A I don't know, John. You tell me,
7 because I had a valid permit, and I pay every
8 year the fees. You told me how to operate. You
9 told me.

10 Q Well, you said you got your first
11 outdoor sidewalk cafe permits in 2015, and
12 they're saying you got it in 2018 by --

13 MR. O'BRIEN: Objection.

14 (Simultaneous speaking.)

15 MR. UHAR: And I want to know how it
16 happened?

17 CHAIRPERSON ANDERSON: All right, hold
18 on. I'm going to sustain the objection, because
19 all this letter says is that the sidewalk cafe
20 for 1063 through 1065 is now permitted. It
21 didn't say when it occurred. So I'm reviewing --
22 hold on, Mr. Uhar. I'm reviewing the previous
23 letter, and I don't see anything in the letter
24 that says that there was no permit.

25 The response is that it's now

1 permitted, so I don't know what that means and I
2 don't know when it was. So I think it's too
3 large of a leap that we're making, and so that we
4 need to move on from here sir.

5 MR. UHAR: Well, it shows that there's
6 some, there's some intercession from on high and,
7 you know, you move on. All right.

8 CHAIRPERSON ANDERSON: I don't see how
9 it shows anything, sir. There is, there is a
10 letter. One was -- yes, a letter was written
11 July 13th, 2008, '18 at 4:20 p.m., and then there
12 was a response the same day at 4:38 p.m. to say
13 that the sidewalk cafe is permitted. I don't
14 know --

15 MR. UHAR: How permitted? You're
16 wondering about the time. The time was, the time
17 was 7/13/2018, now permitted.

18 CHAIRPERSON ANDERSON: Right, but I
19 don't see anything here that says, states that
20 the sidewalk was not permitted. There was no
21 permit in 2015 or 2009 that you've been talking
22 about. I don't see any allegation here, at least
23 in this letter, to say that -- I don't see.

24 If, I don't see an answer at 4:28 to
25 say that there was no permit from 2015. I don't

1 see that.

2 MR. UHAR: Okay.

3 CHAIRPERSON ANDERSON: This doesn't
4 stand for that proposal. All right.

5 MR. UHAR: Well let's just continue to
6 the bottom of the email. Let's finish off the
7 chain, and it says why did Il Canale put the
8 chairs and tables out in front of -- Mr.
9 Farruggio, this is for you.

10 Why did Il Canale put the chairs and
11 tables out in front of 1065 31st again, when the
12 new permit from 2015 gotten when Il Canale was on
13 the CFA watch list, still only applies to 1063
14 31st Street?

15 We were all there when his attorney,
16 his manager, when Inspector McFadden ordered
17 everything in front of 1065 31st removed. What
18 changed? Mr. Farruggio, did you return -- where
19 -- was your sidewalk cafe at 1065 31st Street
20 taken apart before this letter from the governor,
21 from the mayor?

22 CHAIRPERSON ANDERSON: Hold on a
23 minute, Mr. Farruggio. Did you have an objection
24 that you're trying to rise, Mr. O'Brien, or just
25 clarification?

1 MR. O'BRIEN: I don't know what Mr.
2 Uhar was reading from?

3 CHAIRPERSON ANDERSON: He's reading
4 from the bottom of that same email that we were
5 just talking about sir, which is Exhibit 9. He
6 was reading, he was reading the question
7 presented at the bottom of Exhibit 9.

8 MR. O'BRIEN: He's reading from his
9 own words. Mr. Uhar is the author of that bottom
10 and he's reading his own words, and asking Mr.
11 Farruggio to explain it.

12 MR. UHAR: I'm just asking Mr.
13 Farruggio if he remembers the sidewalk tables and
14 chairs getting taken away, and if he doesn't, we
15 can bring in Marvin McFadden who will tell him
16 that he did. However you want to do it. This is
17 supposed to be -- this is a complaint. This
18 should have been investigated before but --

19 CHAIRPERSON ANDERSON: We're not --
20 we're not doing, we don't do complaints at --
21 complaints are not appropriate to be addressed at
22 a protest hearing, sir. Complaints --

23 MR. UHAR: Then why do you have them
24 -- why have you joined them together here?

25 MR. O'BRIEN: Mr. Chair, we haven't

1 joined them together. Mr. Uhar has.

2 CHAIRPERSON ANDERSON: All right.

3 MR. UHAR: Okay.

4 CHAIRPERSON ANDERSON: Go ahead, Mr.
5 Uhar.

6 MR. UHAR: Now let's -- I think we're
7 ready. I'd like to call Mikea Nelson as a
8 witness.

9 CHAIRPERSON ANDERSON: All right.
10 We're going to take a ten minute break.

11 MR. UHAR: Sure.

12 CHAIRPERSON ANDERSON: We're going to
13 take a ten minute break, and then I need you to
14 give us a proffer what is it -- why you believe
15 this witness is relevant to the proceeding. So
16 it's 3:31. We're off the record until 3:41. So
17 just mute your line, turn your camera off and let
18 everyone come back at 3:41, okay? Thank you.

19 (Whereupon, the above-entitled matter
20 went off the record at 3:31 p.m. and resumed at
21 3:41 p.m.)

22 CHAIRPERSON ANDERSON: We're back on
23 the record.

24 (Off mic comment.)

25 CHAIRPERSON ANDERSON: I'm waiting for

1 Mr. Short to come in camera.

2 All right. Mr. O'Brien, do you have
3 any questions of Mr. Fargama?

4 MR. O'BRIEN: Yes.

5 CHAIRPERSON ANDERSON: Go ahead, sir.

6 MR. O'BRIEN: May I proceed?

7 CHAIRPERSON ANDERSON: Yes, go ahead
8 sir.

9 CROSS EXAMINATION

10 BY MR. O'BRIEN:

11 Q Mr. Farruggio, did you personally, you
12 yourself apply for the fence permits that we
13 reviewed?

14 A No.

15 Q Who did it on your behalf?

16 A My architect and Murray. It's in the
17 permit then.

18 Q Okay. Now have you at any time
19 knowingly lied to any District government agency
20 in order to get a permit or an approval?

21 A Never, no.

22 MR. O'BRIEN: Thank you, Mr. Chair.

23 MR. UHAR: Can I ask --

24 CHAIRPERSON ANDERSON: Hold on, Mr.
25 Uhar. Hold on, hold on, hold on. Are there any

1 questions by any Board members?

2 Hearing none, I'll give you limited
3 opportunity to ask questions of the witness, sir.
4 So this is not for you to come up with new areas.
5 So you do have an opportunity to ask limited,
6 some limited questions based on the questions
7 that were asked. So what questions do you have
8 you need to ask sir?

9 MR. UHAR: Could you repeat Mr.
10 O'Brien and Mister -- question and Mr.
11 Farruggio's answer, so I can address?

12 CHAIRPERSON ANDERSON: I can't repeat
13 that sir. I don't, I can't -- I can't repeat it.
14 So do you have a question that you need to ask
15 based on the answer that he provided?

16 REDIRECT EXAMINATION

17 BY MR. UHAR:

18 Q Yes. Mr. Farruggio, are you sure you
19 have never lied to a D.C. or a federal agency?

20 A Yes.

21 Q Okay.

22 CHAIRPERSON ANDERSON: Do you have any
23 other questions sir?

24 MR. UHAR: No.

25 CHAIRPERSON ANDERSON: All right,

1 thank you. Thank you very much, Mr. Farruggio,
2 for your testimony today.

3 All right. You said that you want to
4 call Ms. Nelson. Now the Board did not call the
5 investigator. This investigator basically,
6 because this case took -- is a case from 2009, so
7 I think the report was somewhat refreshed based
8 on because of the period of time.

9 So I'm just trying to find out from
10 you, sir, what is it that you believe that this
11 investigator? What knowledge do you believe that
12 this investigator has that's relevant to these
13 proceeding, because we're talking about something
14 that occurred in 2019? This investigator, to the
15 best of my knowledge, was not working for this
16 agency and I'm not sure if she was working for
17 this agency in 2019.

18 I don't recall reading anything in the
19 case report about these -- the issues that are
20 supposed to be addressed today. So can you tell
21 me what relevance can -- I mean what specific
22 knowledge that's relevant to this proceeding that
23 this investigator can provide today sir?

24 MR. UHAR: Well, Investigator Nelson
25 had requested additional information that I could

1 provide to address some of those questions that
2 were in your PIF, the very limited and backward-
3 looking PIF, when in fact the misdemeanors keep
4 happening.

5 So I communicated with her over the
6 weekend, and then in your testimony, you said
7 that you would allow her to testify or to be a
8 witness if called, provided she had actual
9 knowledge of, you know, investigative issues. I
10 would say not just limited to what's there,
11 because if you find other things while you're
12 investigating one, it's pretty much incumbent
13 upon you, in the best interest of ABCA, to
14 investigate so --

15 CHAIRPERSON ANDERSON: No, but that's
16 not that issue sir. This is a 2019 case. It's a
17 2019 case, and this case has to do with specific
18 allegations that occurred prior to 2019.

19 MR. UHAR: Okay. These do, so these
20 do pertain to prior to 2019.

21 CHAIRPERSON ANDERSON: But how is that
22 -- how would -- how is it that this witness have
23 -- all right. You need to show how the testimony
24 she's going to give is relevant, and so therefore
25 I will -- I'm the Chair, and if Mr. O'Brien

1 doesn't object to certain things, I'm going to
2 object, because I want this to move on.

3 So Ms. Nelson, can you spell and state
4 your name for the record?

5 INVESTIGATOR NELSON: Yes, sir. Mikea
6 Nelson. That is M-I-K-E-A, last name N-E-L-S-O-
7 N.

8 CHAIRPERSON ANDERSON: Ms. Nelson, can
9 you raise your right hand please?

10 INVESTIGATOR NELSON: Absolutely.

11 WHEREUPON,

12 MIKEA NELSON

13 was called as a witness and, after having been
14 first duly sworn, was examined and testified as
15 follows:

16 CHAIRPERSON ANDERSON: All right. Mr.
17 Uhar, as I stated before, she needs -- you need
18 to ask her questions and she needs to testify
19 about issues that's knowledgeable and relevant
20 to the question presented in this case, sir,
21 okay?

22 MR. UHAR: Sure.

23 CHAIRPERSON ANDERSON: All right.

24 DIRECT EXAMINATION

25 BY MR. UHAR:

1 Q Hello, Inspector Nelson. Nice to meet
2 you. We had some conversations last week, and
3 you wanted to interview me and ask about certain
4 questions and things for your report; is that
5 correct?

6 A Yes, sir.

7 Q And do you remember some of those
8 things that you wanted me to address?

9 A I just wanted to clarify your
10 complaints as it regards to ABRA regulation.

11 Q Yes, and we did have a couple of email
12 -- I sent you a couple of emails about some of
13 those issues. Is there any chance that we can
14 get these in front of the Board? But I can read
15 them, but let's go with my first email.

16 Do you remember -- do you remember
17 that was the email that I, that I sent about Mr.
18 Farruggio pulling his permit, pulling his
19 application to the United States Commission on
20 Fine Arts? Do you remember that email? Do you
21 have access to that email?

22 A Can you provide me with the date of
23 your email? I received quite a few.

24 Q Yeah. It was -- well, you received
25 three. This would have been Friday, January 5th.

1 A Is it titled Proof of Fraudulent
2 Statement?

3 Q Yes.

4 A Yes, sir.

5 Q And could you read that email or could
6 you show it to the -- well, I guess you need to
7 show it to folks. You might want to describe it
8 first, I don't know.

9 CHAIRPERSON ANDERSON: What's the
10 nature of the email? I mean I need to figure out
11 if that's relevant to what's -- what's the nature
12 of the email? What's the email?

13 BY MR. UHAR:

14 Q Mikea, what's the email?

15 A I'm sorry Mr. Chair. Are you asking
16 me or are you asking Mr. Uhar what is the nature
17 of this email?

18 CHAIRPERSON ANDERSON: You have the
19 email in front of you. What's the question that
20 he asked you?

21 THE WITNESS: This email states hello
22 Mikea, attached is proof of ABCA requested of
23 continuing Tier 1 violations at two locations for
24 many years and Mr. Farruggio's own 4/7/2015
25 email. Unless Mr. Farruggio plans approved by

1 the USCFA, D.C. ABCA and D.C. DOB approved plans
2 for outdoor sidewalk cafes after 4/7/2015.

3 These operations must be closed down
4 immediately. They can't validly be insured, so
5 I'm copying -- coping, excuse me, the D.C. Office
6 of Risk Management. The same is true with the
7 summer garden at 1063 31st. No valid occupancy
8 permit for operating that way since it opened.
9 It has never been a problem until somebody gets
10 hurt. D.C. government supported by its taxpayers
11 should not have to pay. Signed John Uhar.

12 CHAIRPERSON ANDERSON: So all right.
13 So what's the question, Mr. Uhar?

14 MR. UHAR: Mikea, could you read the
15 email?

16 CHAIRPERSON ANDERSON: She just did,
17 sir.

18 MR. UHAR: I'm sorry.

19 CHAIRPERSON ANDERSON: She just did.
20 So what's the question you're asking?

21 (Simultaneous speaking.)

22 MR. UHAR: There is the attachment.

23 CHAIRPERSON ANDERSON: I'm sorry?

24 MR. UHAR: There is an attachment.

25 That's just my words. Mr. Farruggio, I sent her

1 a copy of an email Mr. Farruggio sent. Can you
2 read that Mikea?

3 CHAIRPERSON ANDERSON: Where are we
4 going with this? Where are we going? Where are
5 we going? I mean I don't --

6 MR. UHAR: Talk to Mikea. She's the
7 investigator.

8 CHAIRPERSON ANDERSON: I know sir.
9 But I'm asking you, I said to you that -- I said
10 to you that she needs to testify that she has
11 specific knowledge about the proceedings today.

12 MR. UHAR: And she does?

13 CHAIRPERSON ANDERSON: How does she
14 have specific knowledge that if you sent her an
15 email, that's what it -- you sent her an email,
16 you're talking about allegations. So what
17 specific knowledge would she have? I don't know.
18 I'm trying to find -- you can tell me what --

19 MR. UHAR: Yeah, what I have. What I
20 sent Mikea was an email from Mr. Farruggio on
21 4/7/2015 to Jose Martinez of the U.S. Commission
22 on Fine Arts, asking Mr. Martinez to put his U.S.
23 CFA application on hold, and that was April 7th,
24 2015. And all the permits that are in ABCA and
25 everybody else's position are from before that

1 time, so they were fraudulent.

2 CHAIRPERSON ANDERSON: You're making
3 a -- you're making a statement, sir. You're
4 making a statement that something was fraudulent.
5 There's a difference. You're making a conclusory
6 statement.

7 MR. UHAR: He pulled his permit. Show
8 me the new permit. That's what I'm asking you.
9 You have investigators. This is a complaint.
10 Why do I have to do your work?

11 CHAIRPERSON ANDERSON: But that's not
12 the purpose of a protest hearing sir.

13 MR. UHAR: This is a complaint here.
14 I mean you're joining them and you know the
15 difference.

16 CHAIRPERSON ANDERSON: You know, we're
17 in an administrative hearing and this is hearsay.
18 You don't know that. We can't prove that.

19 MR. UHAR: This is also, this is also
20 under a Court of Appeals. Why are we doing this
21 now?

22 CHAIRPERSON ANDERSON: We have a Court
23 of -- the matter was remanded, sir, for you to
24 provide us proof. I mean all you're just
25 throwing stuff on the wall and you're hoping --

1 MR. UHAR: Your order, your order is
2 under -- your order under Court of Appeal. Why
3 are we doing this sir? The Court of Appeals
4 agrees with me. Why do we have to go through
5 this all over again?

6 CHAIRPERSON ANDERSON: Mr. Uhar, the
7 Court of Appeals remanded this case to address
8 four allegations, and that's what we're trying to
9 do.

10 MR. UHAR: But Mister --

11 CHAIRPERSON ANDERSON: If you, if you
12 appealed something else sir, the Court of Appeal
13 has not addressed it, and so therefore we need to
14 move on. We need to move on with this hearing,
15 and I don't, I don't see how you -- I don't see
16 how you can state that this witness had direct
17 knowledge. Yes, sir.

18 MR. UHAR: She has the email. I
19 thought you were asking me a question.

20 CHAIRPERSON ANDERSON: That's not her
21 having direct knowledge, sir. Anyone, you're
22 providing her an email. I don't see the email.
23 The email is not in the record, and she's not the
24 one who composed the email.

25 MR. UHAR: It's also in the other

1 complaints that you haven't answered.

2 CHAIRPERSON ANDERSON: But I'm trying
3 to ask you, how does she have direct knowledge?

4 MR. UHAR: Because she --

5 CHAIRPERSON ANDERSON: Because she
6 what, because she got an email? Because you
7 provided her an email, so that's direct knowledge
8 sir?

9 BY MR. UHAR:

10 Q Why don't we ask Inspector Nelson, and
11 we'll -- I'll defer to her. So Inspector Nelson,
12 what do you think this represents?

13 A Mr. Uhar, I am not sure. My protest
14 investigation was submitted on Wednesday, January
15 3rd, 2024. There has been no investigation since
16 that report has been submitted on Wednesday,
17 January 3rd. So I have not and cannot speak to
18 the validity of this email or any of the
19 information in it.

20 Q Inspector Mikea, why did you ask to
21 talk to me and then tell me that you were
22 submitting it on the 3rd? Why didn't you let me
23 know when you had to submit it?

24 A I did speak with you prior. I
25 received the complaints and upon reviewing, I was

1 advised that this was not a protest
2 investigation. It was an investigation of the
3 D.C. Court of Appeals complaint.

4 Q Okay. So you were told to stand down
5 basically?

6 A No, I was not told to stand down. I
7 was told to answer the questions that were
8 submitted from D.C. Court of Appeals. I was not
9 advised to stand down by anyone.

10 Q Okay. Well then at least on that one.
11 How about the second email?

12 A Can you --

13 Q That would be Monday, January 8th.

14 A Okay, and at which time?

15 Q Exhibit 2.

16 A I'm sorry. At which time was the
17 email sent?

18 Q Oh. It was Monday, January 8th at
19 5:21 a.m. I hadn't gotten the report yet.

20 A I'm sorry. I received one at 7:43
21 a.m. and one at 7:24 a.m., one at 9:22 a.m., one
22 at 10:19 a.m. and one at 8:18 a.m.

23 Q Let me go, ABRA Complaint No. 2.

24 A Give me -- yes, sir.

25 Q Okay, and this was about again, we

1 were looking for evidence of fraudulent
2 statements and other things, and page four is --
3 could you, you know, what did we talk about then,
4 the lack of an occupancy permit for the summer
5 garden?

6 A I'm sorry. When you say page four,
7 are you considering Exhibit 4?

8 Q No, Exhibit 2, Exhibit 2.

9 A Yes, sir, I'm here.

10 Q Okay. So you have actual proof or not
11 actual proof, because you haven't investigated,
12 but here I presented you proof that Il Canale has
13 been operating an illegal summer garden. In
14 2020, they tried to apply and they said they had
15 to get an occupancy permit. Does that pretty
16 much state it?

17 A No, sir, I cannot speak to what --

18 Q What does --

19 A -- the D.C. Department of Buildings is
20 try to say.

21 Q Could you read -- could you read the
22 first paragraph of Exhibit 2 please?

23 CHAIRPERSON ANDERSON: I'm sorry.

24 What's the exhibit in the PIF?

25 MR. UHAR: It's not in the PIF. It's

1 in the email to her, because she didn't include
2 it in the protest, like I also didn't get --

3 CHAIRPERSON ANDERSON: Why would an
4 email to her -- I mean we're talking about an
5 email to her. That's not even in the record.

6 MR. UHAR: It is in the record.

7 CHAIRPERSON ANDERSON: But it's not --
8 it's not in the record. Sir, it's not in our
9 case report. It's not in our case report. Is it
10 in the case report Ms. Nelson?

11 MR. UHAR: Yes, it is. Yes.

12 CHAIRPERSON ANDERSON: I did not ask
13 you a question, Mr. Uhar. I'm asking the
14 witness, is this document in your case report
15 ma'am?

16 THE WITNESS: This document is listed
17 under Complaint, ABCA Complaint No. 2 from Mr.
18 Uhar. I can give you the exact --

19 CHAIRPERSON ANDERSON: So it's in your
20 case report; is that correct?

21 THE WITNESS: I believe so, Mr. Chair.

22 CHAIRPERSON ANDERSON: If it's in your
23 case report, we can move on with it. Therefore,
24 it's in the record. I just want to -- all right.
25 I just want to make sure it is in -- it's in the

1 case report. If it's in the case report, then
2 it's in the record.

3 MR. O'BRIEN: Mr. Chair?

4 CHAIRPERSON ANDERSON: Yes, Mr.
5 O'Brien.

6 MR. O'BRIEN: I object to Mr. Uhar
7 reading his own words to the witness and saying
8 then to the witness isn't that proof of fraud.

9 MR. UHAR: I take it back. I take it
10 back.

11 CHAIRPERSON ANDERSON: I agree with
12 your statement, Mr. O'Brien. I mean it's a
13 conclusory statement that's been made by the
14 witness, and that doesn't prove anything. So as
15 I state, these are -- it's a conclusory
16 statement. It's not -- this is not factual, and
17 so that's the -- that is something that I believe
18 can be addressed in closing.

19 But it's someone making a statement,
20 a conclusory statement, that's not law, that's
21 not fact.

22 MR. UHAR: True, and I apologize. Can
23 Mikea read from that for you?

24 CHAIRPERSON ANDERSON: If it's in the
25 record, yes she can.

1 THE WITNESS: Are we speaking of the
2 highlighted portion in the email, Mr. Uhar?

3 BY MR. UHAR:

4 Q Yes. Yes, Ms. Nelson.

5 A Okay. It does not complete the entire
6 statement of comments that was made. It states
7 that after our review, DCRA is withdrawing your
8 application and you will need to file a new
9 application once you have completed building
10 permit required.

11 (1) apply for a building permit to
12 establish the summer garden or the existing
13 restaurants. Apply for a building permit via
14 DCRA's website. Useful guidance regarding
15 permitting may be found here.

16 Q Thank you.

17 A Yes, sir.

18 Q So that shows that there's a reason to
19 investigate, and I guess there's no
20 investigation.

21 A Is there a question I'm supposed to
22 answer, Mr. Chair?

23 Q Yes. Did you -- this has been -- this
24 complaint has been presented to ABCA before;
25 correct?

1 CHAIRPERSON ANDERSON: Is this a
2 question you can answer, Ms. Nelson? If you
3 can't answer, you can't answer.

4 THE WITNESS: No, sir. I cannot speak
5 to what has been submitted to ABRA before my
6 protest hearing.

7 BY MR. UHAR:

8 Q Okay. Did you notice, as an impartial
9 observer, in those five -- in those five
10 complaints, did it seem reasonable to you that
11 the scope was limited to backward-looking, when
12 you were presented with current violations as
13 well?

14 A I'm sorry Mr. Uhar. I don't quite
15 understand the question.

16 CHAIRPERSON ANDERSON: Mr. Uhar, Mr.
17 Uhar. This is a protest hearing from 2019, okay.
18 We can only address issues from 2019 going
19 backwards. It is not appropriate for us to be
20 talking about issues or complaints in 2019 about
21 issues that occurred in the future.

22 MR. UHAR: Okay. But Mr. Chairman
23 Anderson, if these are ongoing violations, why
24 couldn't they have been --

25 (Simultaneous speaking.)

1 CHAIRPERSON ANDERSON: Mr. Uhar, Mr.
2 Uhar. Mr. Uhar, it could not have existed in
3 2019. So therefore we cannot --

4 (Simultaneous speaking.)

5 CHAIRPERSON ANDERSON: The violations,
6 whatever violations -- if a violation occurred in
7 2020, 2021, '22, we're going back to 2000 -- we
8 are going back to 2019 to renew the license. I
9 don't see how we can -- I don't see how we can
10 talk about something that happened in 2022-2023,
11 to say that because something happened in 2022-
12 2023, we cannot renew a license in 2019, sir.

13 You'll have opportunities. I think
14 that -- I think the 2021 renewal is on hold, and
15 then I think in 2024-2025, we're going to have
16 another renewal, where if you want to protest,
17 you'll have those opportunities. But we're
18 talking about incidents that occurred prior to
19 2019 sir, and that's where --

20 MR. UHAR: And these are sir, because
21 he's been operating without a certificate of
22 occupancy for the summer garden since 2009, and
23 they picked it up in 2020, and you need to
24 investigate and enforce. Whether you want to or
25 not is fine.

1 CHAIRPERSON ANDERSON: Do you have
2 another question for the witness sir?

3 MR. UHAR: Sure. Actually, I think
4 I'm done. Thank you Mikea.

5 THE WITNESS: Thank you, Mr. Uhar.

6 CHAIRPERSON ANDERSON: Mr. O'Brien, do
7 you have any questions?

8 CROSS EXAMINATION

9 BY MR. O'BRIEN:

10 Q Investigator Nelson, you stated that
11 you were charged with only what the Court of
12 Appeals had remanded?

13 A Yes, sir.

14 Q Is it fair to say that you have not
15 uncovered yourself, as opposed to hearing
16 allegations from Mr. Uhar, that you have not
17 uncovered yourself any evidence of fraudulent
18 misrepresentations by Mr. Farruggio?

19 A I can't speak to that, simply because
20 most of the claims of fraudulent misstatements
21 have to do with other D.C. government agencies,
22 and I'm not qualified to determine the validity
23 of what another agency submits.

24 Q But you can't -- you didn't determine
25 that Mr. Farruggio lied to anybody did you?

1 A No, sir.

2 MR. O'BRIEN: Okay, thank you.

3 CHAIRPERSON ANDERSON: Any other
4 questions, Mr. O'Brien?

5 MR. O'BRIEN: No, sir.

6 CHAIRPERSON ANDERSON: Ms. Nelson, I
7 just have -- I just have one question for you
8 ma'am. You were asked some questions regarding
9 emails.

10 Did you compose the email or any of
11 the documents, or did you have -- did you compose
12 the email or were you, did you have a part in
13 composing any of the documents that were
14 referenced in the email?

15 THE WITNESS: No, sir.

16 CHAIRPERSON ANDERSON: All right. I
17 don't have any other questions for you. Any
18 other questions by any Board members?

19 Mr. O'Brien, do you have any questions
20 of the witness based on the question that was
21 asked by me?

22 MR. O'BRIEN: No, sir.

23 CHAIRPERSON ANDERSON: Mr. Uhar, do
24 you have any questions, any redirect based on the
25 -- any brief redirect sir?

1 MR. UHAR: Yes.

2 CHAIRPERSON ANDERSON: Brief, not --
3 I don't need you to ask new areas that you
4 didn't cover before sir, okay.

5 REDIRECT EXAMINATION

6 BY MR. UHAR:

7 Q No. So Inspector Nelson, you saw no
8 evidence, not even a reasonable amount of
9 evidence to continue investigations beyond what
10 the scope of the work was based upon what you
11 saw?

12 A I'm sorry?

13 Q If you were -- if you knowing the
14 mandate of ABCA, and what you saw in this
15 investigation, you saw no reason to continue
16 investigating given your five years' experience?

17 A There's always a reason to continue
18 investigating. I'm not sure how to answer that
19 question.

20 Q Well for example, you don't think that
21 that outdoor sidewalk cafe that's picked up as a
22 violation in 2020 needs to be investigated?

23 A I'm sorry, was it picked up as a
24 violation by ABCA?

25 Q Right.

1 A Or ABRA at the time, or who was that
2 picked up by?

3 Q Well, it was presented to you. It was
4 picked up by DOB -- by the Department of
5 Buildings. I mean how does this differ from say
6 Charcoal Town?

7 A I'm not familiar with Charcoal Town.

8 MR. O'BRIEN: Objection, objection Mr.
9 Chair. This is far beyond any reasonable
10 redirect.

11 CHAIRPERSON ANDERSON: Sustained.

12 MR. UHAR: Okay, okay. So it's your
13 testimony here that you saw no evidence that you
14 should refer evidence of misstatements to other
15 agencies? You saw nothing that warranted
16 interdisciplinary coordination to try to stop
17 what could be costing, you know? You saw nothing
18 that was worth investigating? Nothing in this
19 case seemed abnormal to you; correct?

20 THE WITNESS: I believe you're asking
21 if --

22 MR. O'BRIEN: Objection.

23 THE WITNESS: I'm sorry.

24 CHAIRPERSON ANDERSON: I'm sorry.

25 What's the nature of the objection sir?

1 MR. O'BRIEN: Yes. The question that
2 I -- the ultimate question I asked Investigator
3 Nelson was whether apart from allegations of Mr.
4 Uhar, whether she independently determined that
5 Mr. Farruggio lied to anyone? Her answer was no.
6 Now what Mr. Uhar is -- and that's the scope of
7 the cross-examination.

8 Mr. Uhar's gone far beyond it, and
9 basically hectoring Investigator Nelson to say
10 she should go out and pound the pavement more,
11 based on his allegations.

12 CHAIRPERSON ANDERSON: Mr. Uhar, as I
13 stated, this is not a -- this is not an
14 opportunity to ask questions that weren't asked
15 before. So you'll have -- I'll provide you with
16 a brief opportunity to ask, to redirect questions
17 of the witness sir. So do you have any other
18 questions that you need to ask?

19 MR. UHAR: Yes. Inspector Nelson, you
20 see no reason to investigate any of these other
21 complaints, and you see no evidence of any crimes
22 presented in prima facie evidence, presented in
23 documents and blacklines and stuff from the
24 public record. You see nothing?

25 MR. O'BRIEN: I made an objection.

1 THE WITNESS: I'm sorry.

2 CHAIRPERSON ANDERSON: I'll overrule
3 the objection. She'll answer the question if she
4 can.

5 THE WITNESS: Mr. Uhar, just for
6 clarification, are you asking if I conducted an
7 investigation based on the Court of Appeals
8 order, or if I feel as though this warrants a new
9 investigation?

10 MR. UHAR: No. I'm just asking you as
11 an impartial person, if presented with the
12 evidence that I gave you in the five complaints,
13 do you think that the -- do you think that the --
14 that the scope imposed by ABCA was appropriate,
15 given the mandate of ABCA? Just your personal
16 opinion, just your personal opinion.

17 CHAIRPERSON ANDERSON: Mr. Uhar, I
18 cannot --

19 MR. O'BRIEN: Objection to personal
20 opinions Mr. Chair.

21 MR. UHAR: Okay. Your professional
22 opinion.

23 CHAIRPERSON ANDERSON: Ms. Nelson, if
24 you can answer the question to the best of your
25 ability, and let's move on.

1 THE WITNESS: Yes, sir. I cannot give
2 my opinion at all as an ABCA investigator. I can
3 only speak to the facts of my investigation.

4 BY MR. UHAR:

5 Q And the facts didn't point towards
6 further investigation?

7 A I conducted an investigation of the
8 protest report for the Court of Appeals.

9 Q And you saw no evidence of fraud that
10 a reasonable person might see as fraud, that
11 might warrant future investigation?

12 A I can't speak to what warrants a
13 future investigation. However, from my
14 investigation I did conduct one.

15 Q And what did you find?

16 A Upon visiting the --

17 Q No, no, no. Let's talk about the
18 complaints that you reviewed. You saw no -- you
19 saw no evidence of criminal activity or
20 fraudulent activity in the evidence that was
21 presented to you. That's your testimony, yes or
22 no.

23 A I cannot speak to --

24 Q Yes or no.

25 A I can't speak to that sir.

1 Q I need a yes or no.

2 CHAIRPERSON ANDERSON: Mr. Uhar, the
3 witness has testified. Let's move on. She is
4 giving an answer. Let's move on, sir. The
5 witness, she has told you she cannot answer that
6 question, so let's move on.

7 MR. UHAR: If you were running ABCA,
8 would you --

9 CHAIRPERSON ANDERSON: Mr. Uhar, she
10 is not running ABCA. Let's move on, sir.

11 MR. UHAR: No, I'm done.

12 CHAIRPERSON ANDERSON: All right.
13 Thank you, Ms. Nelson. Thank you very much, Ms.
14 Nelson. Mr. Uhar, do you have another witness
15 you wish to call sir?

16 MR. UHAR: Well, I had five of them,
17 but you didn't, you didn't subpoena them.

18 CHAIRPERSON ANDERSON: Sir, I have not
19 seen -- I have not seen a request from you to
20 subpoena a witness.

21 MR. UHAR: It was my PIF.

22 CHAIRPERSON ANDERSON: Sir, I have not
23 seen, I have not --

24 MR. UHAR: Well, that's not my fault
25 sir.

1 CHAIRPERSON ANDERSON: Well --

2 MR. UHAR: You're going to have to
3 subpoena them.

4 CHAIRPERSON ANDERSON: Well sir, you
5 can't put a name in a PIF, which is seven days
6 before the hearing, and expect me to subpoena
7 because I'm supposed to see your PIF when it's
8 filed. That's a process --

9 MR. UHAR: Isn't that what the
10 regulations say?

11 CHAIRPERSON ANDERSON: I don't see
12 that's -- I don't know what the regulations say
13 sir, but I know that if you subpoena a witness,
14 you're not going to -- first and foremost, you're
15 supposed to identify the documental witnesses
16 you're going to rely on seven days before the
17 hearing. So therefore -- yes, sir.

18 MR. UHAR: You have them. You have
19 them. Just look at the PIF. Just please look at
20 the PIF, please.

21 CHAIRPERSON ANDERSON: But you -- not
22 because you put the witnesses on --

23 MR. O'BRIEN: Mr. Chair, may I speak
24 to that?

25 CHAIRPERSON ANDERSON: Yes, Mister --

1 MR. O'BRIEN: Regulation 23, DCMR
2 1704.1, 1704.1 says the Board may upon motion or
3 upon the request of a party, compel witnesses to
4 appear and testify. I'm not aware of any request
5 for subpoenas.

6 Apparently Mr. Uhar is arguing that if
7 he lists a witness on a PIF, that that somehow
8 imposes an obligation on the Board to go out and
9 subpoena those witnesses. That's just plain not
10 the law or practice.

11 MR. UHAR: You know, you're absolutely
12 right, and this is how I got screwed up the last
13 time. You're absolutely right. Goddammit.

14 CHAIRPERSON ANDERSON: Mister, we have
15 a public record, so please watch your -- please
16 watch.

17 MR. UHAR: Well, it's been five years.
18 I know. It's just been five years and I forgot
19 to put them on the subpoena, because they're
20 hostile witnesses. They're on the PIF, I didn't
21 do it, but we'll pick up on the appeal.

22 CHAIRPERSON ANDERSON: And you were
23 given -- and you were given specific -- this is --
24 -- this was addressed, Mr. Uhar, in the Court of
25 Appeals opinion on page three, about subpoenas

1 sir, okay? All right. Do you -- so you have no
2 more witnesses? You have no more witnesses, sir?
3 Do you rest or are you going to testify?

4 MR. UHAR: I'd like to read my PIF.

5 CHAIRPERSON ANDERSON: What do you
6 mean read your PIF sir?

7 MR. UHAR: I'm going to read my PIF
8 into the record, because that's basically my
9 argument.

10 CHAIRPERSON ANDERSON: Well, why don't
11 you do that as a closing statement?

12 MR. UHAR: Oh okay.

13 CHAIRPERSON ANDERSON: Why don't you
14 do that as a closing? Sir, you can do that as a
15 closing, as a closing argument.

16 MR. UHAR: Okay. So I can be my own
17 witness?

18 MR. O'BRIEN: Mr. Chairman, the PIF is
19 in the record.

20 CHAIRPERSON ANDERSON: Right. But I'm
21 trying to figure out what it is that he's trying
22 to do. I mean if you try to give a summation of
23 this case, then he can give a closing statement,
24 or does he want to testify, because if he's going
25 to testify, I need to swear him in. That's why

1 I'm just trying to find clarification.

2 MR. UHAR: Oh, I'm happy to testify.

3 CHAIRPERSON ANDERSON: And so
4 therefore if you're going to testify, I'm going
5 to swear you in, and then Mr. O'Brien is going to
6 have an opportunity to cross-examine, to cross-
7 examine you sir. All right. So if you're going
8 to testify, can you raise your -- and I need to
9 look at you sir, because all of this time --

10 MR. UHAR: Can you see me?

11 CHAIRPERSON ANDERSON: Now I can see
12 you.

13 WHEREUPON,

14 JOHN UHAR

15 was called as a witness and, after having been
16 first duly sworn, was examined and testified as
17 follows:

18 CHAIRPERSON ANDERSON: All right,
19 fine. Go ahead, sir. Mr. Uhar?

20 THE WITNESS: Yes.

21 CHAIRPERSON ANDERSON: I thought you
22 were ready to testify?

23 MR. UHAR: Yes.

24 CHAIRPERSON ANDERSON: So go ahead.
25 I'm waiting for you. I just swore you in, so I'm

1 waiting.

2 DIRECT EXAMINATION

3 THE WITNESS: Okay. Thank you. My
4 name is John Uhar. I grew up in Cheverly,
5 Maryland and I've been an industrial real estate
6 broker since I graduated from the University of
7 Chicago with a degree in History. I've been
8 selling warehouses and industrial properties
9 since 1982, and I started my own company in 1986.

10 I am well aware with the land records
11 and I thought that I had presented prima facie
12 evidence of misdemeanors, and I found through my
13 records numerous instances of fraudulent
14 misstatements that I presented in a series of
15 complaints that were never answered, in violation
16 of DCMR.

17 Now I'm sitting here again with a
18 protest and all I can say is all the evidence
19 I've presented is true and faithful, and the only
20 reason I'm doing it, I don't hate Mr. Farruggio,
21 but nobody is above the law. And he's been
22 abusive to me and my neighbor, Louise Sagalin
23 (phonetic), whose trees and garden he destroyed
24 in violation of the Tree Protection Agency, and
25 he worked with other people to move that tree

1 easement onto 0824, where Mr. Farruggio now keeps
2 his umbrellas.

3 The violations also include, that I
4 presented, are the fact that despite many
5 protests, there has never been any bona fide
6 evidence presented by Mr. Farruggio or his
7 attorneys regarding the getting of an occupancy
8 permit on public space.

9 I believe that this all connects in
10 with the Executive Office of the Mayor, who had
11 Richard Livingstone give permission to run
12 outdoor sidewalk cafes, which are now permitted.
13 The fact, the bigger fact is what was happening
14 before and after these, he got these permits, he
15 was operating illegally from 2009 to 2015. Or
16 was he operating legally from 2009 to 2018? 2015
17 to 2018?

18 You look at the land records. You go
19 to D.C. Scout. You'll see that he's mixed 1063
20 with 1065. He talks about the moving things
21 around, and if you look at the records, you will
22 see that it's fraud based on the original sin of
23 his being connected with Fratelli La Bufala,
24 which he, who he knew and he's lied about and he
25 lied about his occupancy permits for outside, and

1 he never had a sidewalk cafe. So you know,
2 that's all I can say.

3 CHAIRPERSON ANDERSON: All right.
4 Let's, all right. So you're done sir?

5 MR. UHAR: Yes.

6 CHAIRPERSON ANDERSON: Mr. O'Brien, do
7 you have any questions of Mr. Uhar?

8 CROSS EXAMINATION

9 BY MR. O'BRIEN:

10 Q Yes, I do. Mr. Uhar, you have used
11 the word repeatedly counterfeit in the context of
12 permits. What do you mean by counterfeit?

13 A You know, I think of counterfeit as
14 fraudulent. I'm not an attorney. It's just a
15 lie. For example, you know, Meredith Moldenauer
16 says that there's a 15 foot setback when she's
17 trying to get his outdoor sidewalk cafe over a
18 public alley, but there's no, you know, there's
19 no backyard. There's no, there's no -- you don't
20 have it.

21 I mean and the fact of the matter is,
22 when you're talking about land records, of which
23 I know a little bit, I know enough to know it's
24 either 29 feet where it's 71 feet of permits
25 either for 1063 or it's for 1065. You have two

1 properties, two owners, two permits. If I'm a
2 free market here, the government that governs
3 best is a government that governs least, and the
4 best way to govern least is to have strict
5 enforcement.

6 Mr. Farruggio, through his people,
7 have just ruined the land records for those three
8 properties.

9 Q Okay. I'm going to ask you again,
10 what is the meaning in your mind of the word
11 counterfeit?

12 A Made to deceive.

13 Q Are you suggesting --

14 A Something fraudulent passed off as
15 real. That's what counterfeit is, something
16 fraudulent.

17 Q Okay, all right. Are you, are you
18 questioning or suggesting that Mr. Farruggio
19 himself printed out permits that don't
20 legitimately come from the government agencies
21 they purport to come from, that he might have a
22 printing press in his basement?

23 A Well you know, you can't hide behind
24 your attorneys, and you can't hide behind your
25 architects. You know, you can only have one

1 captain of the ship and, you know, this -- I
2 don't know. Is he above the law? You tell me.

3 Q Your allegations regarding the fence
4 permits, I want to sum up the allegation, and I
5 invite you to correct me if I'm wrong. The
6 allegation is that the fence permit is on -- it
7 recites Lot 64, when the fence was actually
8 erected on Lot 842.

9 A Correct.

10 Q Is that an accurate statement?

11 A Yes, correct. But he also blocked
12 another ABCA licensee, Bluefin Tuna and I, who
13 share a common access, through the alley by a
14 settlement agreement originally executed the
15 Alamo Grill of Georgetown.

16 So we've been using the alley. We
17 move our stuff back and forth through the alley.
18 My bicycles are trash, and on the 22nd of March,
19 Mister -- or the 30th of March, Mr. Farruggio
20 erected a fence that blockaded us for over a year
21 until April 12th, when Mr. Farruggio last talked.

22 Q All right. Let me ask again. Is your
23 allegation that the fence permits are
24 counterfeit? Does that allegation arise from the
25 circumstance that the permits say Lot 64, but the

1 fence was erected on Lot 842?

2 A Correct.

3 Q Okay. Now there are two permits, are
4 there not?

5 A No. He just -- he just filed -- he
6 filed two copies on 842. I don't know why. He
7 had four, it appeared to me that they had four of
8 the same permits, two on the front, two on the
9 back, because he likes to mix 1063 with 1065. If
10 you look at the Scout records, they're
11 commingled.

12 Q Okay. I have, I have in front of me
13 two permits.

14 A Okay.

15 Q Both dated, both dated October 29th ,
16 2021 --

17 (Simultaneous speaking.)

18 Q Say again?

19 A How would I know?

20 Q Well, I assume the permits you're
21 saying they're counterfeit.

22 A Oh yeah, okay. Yeah, go with them.
23 Yeah, okay.

24 Q All right. One permit ends in the
25 number 49, and the other permit ends in the

1 number 50. Do you have those?

2 A No, but you can read them to me.
3 They're here somewhere. I've got a pretty good
4 memory.

5 Q Okay. Are you suggesting that the
6 permit, the stated permit dated 10/29/21, which
7 ends in the number 050, and authorizes the
8 erection of the fence on Lot 64, you're alleging
9 that it is counterfeit because it doesn't recite
10 Lot 842?

11 A Yes, and also because it didn't -- no
12 fence was replaced there. There was, there was a
13 new fence that was erected across Lot 0842, and
14 the public access for ABCA licensee Bluefin Tuna,
15 Bluefin Sushi and us at 3075, yes.

16 Q So you're saying that the fraud
17 perpetrated by Mr. Farruggio is getting a permit
18 for Lot 64, when he erected the fence on Lot 842?
19 That's the fraud?

20 A Yes, yes.

21 Q Okay. I'm going to show you -- can we
22 elevate a document, Mr. Chair?

23 CHAIRPERSON ANDERSON: Mr. Orellana,
24 can you please allow Mister -- who is -- who
25 needs to elevate it? You or Ms. Mahmoud?

1 MS. MAHMOUD: I do Mr. Chair, and I
2 believe that I'm permitted to.

3 CHAIRPERSON ANDERSON: Okay, fine. Go
4 ahead, if you have that right. Okay, go ahead.

5 BY MR. O'BRIEN:

6 Q Okay. We'll show you what is D.C.
7 government stamped application for the fence
8 permit, and I'm going to ask you to note that in
9 the red, on the upper red, there's numbers, the
10 number and date typed in, and the permit number
11 is 050. Do you see that? This is the
12 application for the permit. It's 050. Do you
13 see that, Mr. Uhar?

14 A Yeah, I do see that.

15 Q Now do you see at the very top of the
16 document the application is for Square 1198, Lot
17 842?

18 A Yes, sir.

19 Q Do you see that?

20 A Yes, sir.

21 Q So you see the application was filed
22 for 842, but it came out of DCRA as Lot 64.

23 A That's incorrect sir, because if you
24 -- if you were to check the CFA things, Mr.
25 Farruggio went into to try to get a permit to put

1 some containers, and he tried to get a permit to
2 fence, and he needs USCFA approval. That fence
3 permit is probably part of the ongoing fraud that
4 I've found in the various agencies in D.C. So no
5 --

6 Q You just testified in response to my
7 question that the fraud was Mr. Farruggio
8 applying for Lot 64, when in fact he erected the
9 fence on 842, but you've now seen that he applied
10 for 842 with this same permit number?

11 A But he doesn't have --

12 Q 050. Now I ask you --

13 A Okay.

14 Q I ask you how do you maintain now that
15 you've seen this, that there was any fraudulent
16 conduct on Mr. Farruggio's part in respect to
17 application for this supposedly counterfeit
18 permit?

19 A Okay. Two easy answers. One, it has
20 not USCFA approval, which he needs to put a fence
21 on the premises. Two, it wasn't the replacement
22 of the fence, which the permit states. It's a
23 replacement. It's not a new fence. That permit
24 is not for a new fence.

25 Q All right. I'll change the subject.

1 Can we call up the plat again?

2 A And one more thing. The proof is in
3 the pudding. If Mr. Farruggio had a permit, he
4 would have kept it up. He pulled it down because
5 he knows he doesn't have a permit, and other
6 thing is in my exhibits that were presented to
7 everyone, was a stop work order that was up for
8 over 100, over 365 days and that's a Tier 1
9 violation every day.

10 Q All right. Now on the screen is your
11 Exhibit 8, which was discussed before, which is a
12 plat from the surveyor.

13 A Uh-huh.

14 Q Now you pointed out that Lot 64 is
15 only 28.58 in width, but then you referred back
16 to his 2015 public space permit, which shows 71
17 feet.

18 A That's correct, but it's only for one
19 lot.

20 Q Right. Lot 64, Lot 64 --

21 A Is 29 feet.

22 Q Right, and that's 1063; correct?

23 A Yeah, and that's the only one --
24 that's the only one the permit's for. It's not -
25 - the permit that he had --

1 (Simultaneous speaking.)

2 Q For Lot 08 --

3 A No, he doesn't have that. Look, it's
4 Lot 64 on that permit. It's not Lot 64 -- it's
5 not Lot 64 and 0819. It's Lot 64.

6 Q But it says 71 feet; correct, the
7 permit in 2015?

8 A But that's, and that's the fraud, sir.
9 That's the fraud. It's one lot. One permit for
10 one lot. You know that.

11 Q Now can you answer my next question?

12 A Sure.

13 Q It shows Lot 819 at 42.20 feet.

14 A Sure.

15 Q Have you added up the two numbers, or
16 do you want me to do the arithmetic --

17 A No, I get it. The fact of the matter
18 is you get one permit for one lot. He doesn't
19 get two permits for two different owners on one
20 lot. He had to get a new permit for 1065. That
21 would have gotten him to 71. But David Harrison,
22 and what date was that again sir? What date is
23 that permit?

24 Q The fence permit or which permit? Oh,
25 this public space permit?

1 A Yeah, yeah.

2 Q With no street address at all on it.

3 A Yeah, I pointed that out.

4 Q Yeah, is January 28th, 2015.

5 A Okay. So what --

6 Q I'm going to invite your attention now
7 -- I'm going to invite your attention now to what
8 we just put up on the screen, which is a permit
9 dated July 9th, 2018. Do you see that?

10 A Yes.

11 Q And do you see it has the same
12 description in italics of 70 feet?

13 A Yep. That's another example of fraud.

14 Q And can you see that the address for
15 the permit is 1063 and 1065?

16 A Yes, but that's -- that's counterfeit,
17 because if you look up top, it says Lot 64 and
18 Square 1198, and it refers to a Permit No. PA-
19 10160729 that both go back to 1063 31st Street,
20 but was extinguished when, when Fratelli La
21 Bufala kicked out and, you know, the permit
22 lapsed. You had to go all new, so continue.

23 Q Will you concede that this permit
24 actually came from Department of Transportation,
25 that it wasn't printed up by Mr. Farruggio in his

1 basement? Will you concede that it actually came
2 out of Department of Transportation?

3 A Sure, and it probably had -- but it's
4 still fraudulent.

5 Q Okay. Where is it fraudulent?

6 A Because it's Lot 65 in 1198.

7 (Simultaneous speaking.)

8 Q It has the same street, the correct
9 street address and the correct measurement?

10 A No. No, it isn't. It isn't, sir. It
11 isn't, and if you would have let me -- if I could
12 have gone back to Courtney Williams and some of
13 the stuff with Mikea, you'd see. That is not --
14 that is a fraudulent permit. That is a
15 counterfeit permit intended to deceive. So
16 continue.

17 Q Yes, all right. The street address is
18 correct, 63 and 65.

19 A Sir, you get one --

20 (Simultaneous speaking.)

21 Q Please answer my question. Please let
22 me finish my question, Mr. Uhar.

23 CHAIRPERSON ANDERSON: All right, hold
24 on, hold on. We have a court reporter trying to
25 capture the testimony, so I need you to ask a

1 question Mr. O'Brien. Mr. Uhar, you need to
2 listen and then you respond please. I can't have
3 you two talking over each other.

4 MR. UHAR: Sorry.

5 MR. O'BRIEN: All right. I need to
6 call the permit back up.

7 (Off mic comments.)

8 BY MR. O'BRIEN:

9 Q We're told it's lagging on the -- oh
10 there it is, okay. Mr. Uhar, please let me
11 finish my question, okay?

12 A Okay.

13 Q All right. The permit says 1063 and
14 1065. The italics say 71 feet, which you agree
15 is both, both lots. But your objection to it is
16 that it only says Lot 64; is that correct?

17 A Yes, sir, and that is because each lot
18 gets its own occupancy permits when you have
19 different property owners, and Mr. Corricidi
20 (phonetic) owns Lot 1063, and as I pointed out
21 before, it's for Lot -- it's for Lot 064 in
22 Square 1198 and it is -- and that was added
23 later.

24 If you look at the D.C. Scout records,
25 you will see where Mr. Farruggio and his

1 accomplices have consistently been commingling
2 both addresses to obfuscate, confuse and
3 fraudulently engage in activities that do not
4 benefit the city, the taxpayers and the people
5 that play by the rules.

6 Q All right. Still talking about this
7 permit, whose mistake is it?

8 A It's not a mistake. It's a willful,
9 fraudulent act by Mr. Farruggio and his
10 assistants, that's permeating all these different
11 agencies.

12 Q But I understood you to say if the
13 permit also said Lot 819, you would not have an
14 issue. So the fraud --

15 A Sir, sir, sir.

16 Q Please listen, Mr. Uhar.

17 A That's not what I was saying.

18 Q The fraud I hear from you is that it
19 doesn't say Lot 64 and Lot 819? Is that the
20 fraud?

21 A Mr. O'Brien, you can have -- he would
22 have, he would have to have two permits for each
23 owner. He would have the 1063, which is the one
24 that he had, and then he joined 1065
25 fraudulently. That is what I think because --

1 Q I suggest, I suggest to you that with
2 both street addresses, with the combined lot
3 width in the permit, that any mistake in this
4 permit is the mistake of the D.C. government?

5 A No.

6 Q Now if you want to accuse the D.C.
7 government of fraud --

8 A No, I don't. What I'm accusing Mr.
9 Farruggio and his accomplices is burdening D.C.
10 government by, by commingling addresses and then,
11 and then these poor intake specialists have to --
12 they play a game on them, and it's just, it's
13 just how many hours have we spent on this, on
14 this stuff?

15 I mean, you know, you've got to tell
16 the truth on the land records. That's the way
17 this whole system works, and if he had a permit
18 for 1065, it would say 1065 and it would say Lot
19 0819 and it would say Robert E. Moore, and he
20 would have insurance for each of them, and that's
21 not what this says, and it comes in at 2015,
22 which makes me ask you this question.

23 If this is when he got them and he was
24 operating illegally all these years before, how
25 many Tier 1 violations does this add up to?

1 Q You mentioned Courtney Williams?

2 A Yes.

3 Q Now on the screen is an email to you
4 in response to a complaint from Courtney
5 Williams.

6 A Uh-huh.

7 Q And she tells you right in that email
8 that the permit was amended on November 17th,
9 2023 to include both Lot 64 and 819?

10 A Yes.

11 Q Okay. Now so she told you that
12 Courtney Williams of Department of Transportation
13 told you the permit covered both lots, but you're
14 screaming fraud today. How do you justify that?

15 A Hold on, let me get -- let me get my
16 response to her. Because it is fraud. It's
17 fraud pure and simple, for the reasons I just
18 told you.

19 MR. O'BRIEN: Well Mr. Chair, I have
20 no further questions.

21 CHAIRPERSON ANDERSON: Close your
22 screen please.

23 THE WITNESS: I have to, I have to
24 answer his --

25 CHAIRPERSON ANDERSON: No, Mr. Uhar.

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THE WITNESS: Here we go.

CHAIRPERSON ANDERSON: Mr. Uhar.

THE WITNESS: Yes.

CHAIRPERSON ANDERSON: You're being questioned. There's no -- the attorney has --

THE WITNESS: He asked me a question.

CHAIRPERSON ANDERSON: And you answered your question of him. So there's no pending question.

THE WITNESS: No. He asked me a question and I have an answer. He asked me about the question of Williams, and I told him to wait, so I could pick up the email and --

CHAIRPERSON ANDERSON: You answered the question, and then you said you have an email to explain this. Sir, I'll give you an opportunity to explain yourself. Any questions of Mr. Uhar by the Board?

All right, sir. I'll give you a minute if you need to provide any clarification of any questions that Mr. O'Brien just asked you sir.

REDIRECT EXAMINATION

THE WITNESS: Thank you. This was,

1 this was an email sent Monday, January 8th at
2 8:09 to Courtney Williams.

3 CHAIRPERSON ANDERSON: What year?
4 What year sir?

5 THE WITNESS: This year, this year,
6 2024.

7 CHAIRPERSON ANDERSON: Okay.

8 THE WITNESS: To Courtney Williams.
9 This was responding to Courtney and I had Mikea
10 Nelson and Susanna Swarez (phonetic) at EOM and,
11 you know, it is what she says. Il Canale, blah
12 blah blah. I said good morning Ms. Williams; as
13 shown in the evidence submitted to you, Mr.
14 Farruggio of Il Canale asked to have his USCFA
15 approval put on hold on 4/7/2015.

16 So your January 1 approval is not
17 valid because it lacks USCFA approval of plan
18 submitted after 1/21/2015. But it should be
19 4/7/2015. You do understand this is a federal
20 offense. How can DDOT lawfully approve either
21 outdoor sidewalk cafes when the pictures clearly
22 show they're not at grade.

23 Please send over your inspection team
24 for immediate enforcement after speaking with Ms.
25 Edwards. Ms. Edwards is aware of the situation

1 with Il Canale both in front of 1063 and 1065
2 31st. Marvin McFadden of her office closed down
3 the sidewalk cafes. He also ordered the
4 structurally complete summer garden over the
5 public alley be torn down.

6 Mr. Farruggio reopened his illegal
7 sidewalk cafes the next day. Then the Executive
8 Office of the Mayor weighs in, and enforcement
9 backs down all across D.C. government. I've
10 spent a lot of time at DCRA, starting with
11 microfiche and Open William, when those -- on hot
12 days at 614 H N.W.

13 D.C. has come a long way, but it was
14 nice to see the old records were preserved. I
15 appreciate the honest effort most D.C. employees
16 put into their jobs, to see that the law is
17 applied fairly to all. D.C. DDOT, DOB and other
18 agencies have to assume that the information
19 being presented is as truthful as attested to run
20 efficiently and fairly.

21 If it is found to be untruthful,
22 justice must be swift. It's the least we can do
23 to reduce the workload for an overburdened staff
24 and ensure good government. In the interest of
25 good government, the Il Canale case should be

1 investigated thoroughly. I am very interested in
2 learning how Il Canale's summer garden over a
3 public alley advanced at the stage where it was
4 put on the ANC agenda.

5 Mr. Farruggio bragged to me and my
6 brother about his guardian angels in D.C.
7 government. They were and are not good angels
8 and must be rooted out. I consider it my civic
9 duty and I'm happy to help. Please advise.
10 Thank you.

11 I understand the summer garden is on
12 private property. At the request of Ms. Swarez
13 can get with me for that on insured liability.
14 John Uhar. And what I gave her was a statement
15 from Mr. Livingstone that now permitted the
16 sidewalk cafes, because there was a lot of things
17 going around at that time.

18 CHAIRPERSON ANDERSON: All right.
19 Anything else sir?

20 THE WITNESS: Nope.

21 CHAIRPERSON ANDERSON: All right,
22 thank you.

23 Mr. O'Brien, did you wish to call any
24 rebuttal witness or do you waive that right to do
25 so?

1 MR. O'BRIEN: No more witnesses.

2 CHAIRPERSON ANDERSON: All right,
3 thank you. So we're ready for closing. Do you
4 want to take a break or do you want to go
5 straight to closing? I think Mister, let's say -
6 -

7 MR. UHAR: I'd like to take a break.
8 Could we?

9 CHAIRPERSON ANDERSON: All right. So
10 we'll take -- it's 4:46. We're off the record
11 until five o'clock, and then we'll, we'll --
12 we're off the record until five o'clock, and then
13 the parties will, we'll do closing and
14 specifically what it is that the parties are
15 requesting from ABCA.

16 Okay. So we're off the record until
17 five o'clock.

18 (Whereupon, the above-entitled matter
19 went off the record at 4:46 p.m. and resumed at
20 5:00 p.m.)

21 CHAIRPERSON ANDERSON: We're back in
22 the record. Mr. Uhar.

23 MR. UHAR: Yes, sir.

24 CHAIRPERSON ANDERSON: All right. So
25 we're now ready for closing, and the Applicant

1 goes first.

2 MR. O'BRIEN: Mr. Chair, Members of
3 the Board, Mr. Uhar threw around the word
4 counterfeit, describing a couple of permits and
5 approvals. I think our cross-examination
6 established that Mr. Uhar's definition of
7 counterfeit is not the commonplace definition of
8 counterfeit, just like Mr. Uhar use of the word
9 fraud or fraudulent.

10 Not every innocent mistake,
11 inadvertence or discrepancy is proof of fraud,
12 and to illustrate that, I look at what we called
13 Exhibit 8, which was the plat. It lists -- it
14 depicted or described a one-story brick building
15 on Lot 842, but the testimony is unchallenged
16 that there's no structure on 842.

17 But this is -- this document was
18 generated by the Surveyor for the District of
19 Columbia. Did the Surveyor engage in fraud? No,
20 I don't think so. He may have made a mistake.
21 And then we looked at the sidewalk cafe permit
22 dated 2018. The permit listed both street
23 addresses 1063 and 1065. It listed the correct
24 length of the sidewalk cafe as 71 feet, which
25 combines the two lots. It only listed one of the

1 two lot numbers on the permit.

2 Did the Department of Transportation
3 engage in fraud when it issued that permit? I
4 don't think so. I suggest not. So I have to ask
5 the Board to be skeptical any time Mr. Uhar
6 throws about the word fraud, because I don't
7 think Mr. Uhar's definition of fraud comports
8 with any common definition of fraud, and it
9 certainly doesn't comport with the requirements
10 of Bennett v. Kiggins, which is the Court of
11 Appeals' case on the elements of fraud.

12 The bottom line is that given every
13 opportunity on remand, in pleadings and today,
14 Mr. Uhar has not established that Mr. Farruggio
15 or any attorney or architect acting on his behalf
16 knowingly misled any government agency. That's
17 the bottom line.

18 He's had the opportunity to prove
19 fraudulent misstatements on the part of the
20 licensee, and we heard not one syllable of proof
21 that Mr. Farruggio or any agents acting on his
22 behalf ever knowingly misled any government
23 agency. Thank you.

24 CHAIRPERSON ANDERSON: Thank you. Mr.
25 Uhar?

1 MR. UHAR: Yes.

2 CHAIRPERSON ANDERSON: Closing please.

3 MR. UHAR: Yes. I don't -- can you
4 see me?

5 CHAIRPERSON ANDERSON: Nope, but I can
6 hear you.

7 MR. UHAR: Okay. Well, here we are
8 again, five years later, complaints still
9 unanswered, wrapped into protests, derailed by
10 legal language and start all over again. Mr.
11 O'Brien may know ABCA law, but I don't think he's
12 familiar with real estate as me, and when he
13 claims that the D.C. Surveyor signed that paper,
14 I'm pretty sure that the D.C. Surveyor makes
15 somebody go out, Mr. Maiden, go get a survey and
16 present it to him as truthful and they just take
17 it in.

18 So the correct width and address but
19 not having the correct lot and square, no.
20 That's not, that's not DDOT's fraud. That's Il
21 Canale, and I don't know what kind of definition
22 of fraud Mr. O'Brien is talking about. But I
23 think that the prima facie evidence that I
24 presented was never rebutted, and it's more than
25 prima facie. It speaks for itself.

1 I mean where are we going to go when
2 we have people submitting false documents to
3 government agencies, here and there and
4 everywhere, commingling Scout records? I mean
5 I've been an industrial real estate broker for a
6 long time. I've put up with his threats. I've
7 had him spit upon me and, you know, I would have
8 loved to have solved this a long time ago.

9 Who wouldn't want to be a neighbor to
10 a nice restaurant? But he's proven that he can't
11 keep the place clean, and he will not follow the
12 law and it's not just me. Ms. Sagalin, and he's
13 still up to it. And the last -- and he's also --
14 it's, you know. As a guy that's in the land
15 records business, to see them desecrated and
16 commingled and mumble-jumbled up and then these
17 excuses, it's just, it's terrible.

18 So I'd like to just end by reading my
19 Protest Information Form, and so anyway, the
20 action that I was requesting, being requested is
21 the revocation of the liquor license for
22 fraudulent misstatements and documents presented
23 to D.C. administrative agencies, and I think I've
24 presented that.

25 As I said, that's all prima facie. A

1 lot's either 28 feet or it's not. A setback's
2 either 15 feet or it's not. You either have an
3 occupancy permit for the second floor, or you
4 don't. So the action being requested, the issues
5 I will present to the Board for resolution are:

6 Is the Alamo Grill -- no one. The
7 Alamo Grill of Georgetown transferred its ABCA
8 rights to FLB DC, not Il Canale. This means
9 anything issued claiming rights under Il Canale
10 from the Alamo Grill is false.

11 Second, can the Mayor's office grant
12 Il Canale a sidewalk cafe without USCFA approval,
13 and if DCMR requires a seven member ABCA Board,
14 are decisions of a three member Board legal and
15 fair, and four, in this instance is ABCA adhering
16 to its mission statement or being arbitrary and
17 capricious?

18 I'd like to comment that I had to put
19 this all together pretty quickly, because I kept
20 hoping that we would wait to -- until we got the
21 D.C. Court of Appeals on this backward-looking
22 order, when crimes are still being committed.
23 But I was rushed into this, and I have my list
24 and once again, I made a -- I forgot to list the
25 witness' subpoena, so I'd like to list who they

1 were.

2 I wanted to call Giuseppe Farruggio,
3 a hostile witness. ABCA must compel Mr.
4 Farruggio to testify, to rebut evidence of
5 fraudulent statements and documents submitted on
6 his behalf, on his behalf to D.C. administrative
7 agencies and USA.

8 Then I wanted to call Richard
9 Livingstone. He's Mayor Bowser's agent, and my
10 testimony was a hostile witness. ABCA must
11 compel Mr. Livingstone to provide evidence that
12 the Executive Office of the Mayor complied with
13 United States Commission of Fine Arts Historic
14 Georgetown laws.

15 The third witness I wanted to call was
16 Meredith Moldenauer, Esquire, who was Il Canale's
17 zoning attorney. A hostile witness. ABCA must
18 compel Ms. Moldenauer to show the lot setbacks in
19 her D.C. office submittal. I'm still awaiting DC
20 OZFOA and the summer garden over the public alley
21 questions.

22 The fourth I wanted to take was
23 William Maiden, and a hostile witness. ABCA must
24 compel Mr. Maiden to testify on the building
25 plans and documents he submitted to D.C.

1 administrative agencies, and the last was Robert
2 Lee Moore, who is Il Canale's landlord, a hostile
3 witness. ABCA must compel Mr. Moore to testify
4 on the structural changes Mr. Farruggio made to
5 his building and Protestant and neighbors
6 historical alley access.

7 I'd like to mention that this would be
8 no way inclusive, except for the limitations set
9 by D.C. I would also like to call the ANC
10 Commissioners and the CAG, and the Executive
11 Office of the Mayor, but something's going to
12 dump from there.

13 And you know again, I'm painted as a
14 wild man, a crazy man. Well you know, he's sort
15 of made me crazy. If somebody blocks your access
16 to the alley and your fire escape for over a
17 year and you let ABCA know, and you let the Fire
18 Department know and everybody know, and he just
19 sits there blocking your alley.

20 Yep, crazy like a rat in a cage, and
21 spitting on me. I could have lived with it if
22 you guys had, if you guys had reined him in. If
23 you had, if you had -- if you had reined him in,
24 we could have gotten along a lot better. But you
25 created a monster by letting these things go

1 unabated, and I just hope this gets investigated
2 more thoroughly, and I'm going to keep at it,
3 because I've got nothing to lose now.

4 I know my real estate business is
5 ruined. I can't do business with industrial
6 clients because I deal with D.C. government. I'm
7 painted as a crazy man. Thanks a lot Joe.
8 Thanks a lot D.C. ABCA, thanks a lot attorney
9 general. Okay, that's it. Bye.

10 CHAIRPERSON ANDERSON: All right.
11 Thank you, Mr. Uhar. I now feel compelled that I
12 need to put this on the record, because you also
13 -- it's the second time you have brought this up,
14 Mr. Uhar. Section 25-431 of the DCMR, Review
15 Procedures. General Provisions. (a) Except as
16 otherwise provided herein, Board actions and
17 production procedures shall be governed by
18 Chapter 5 of Title II.

19 (b) Except as provided in subsection
20 (c) of this section, the Board may meet in panels
21 of at least three members for the purpose of
22 conducting hearings and taking official action.
23 Three members shall constitute a quorum. All
24 right.

25 MR. UHAR: Wait, wait. Could you read

1 that? Could you read that again, because --

2 CHAIRPERSON ANDERSON: 25 -- Mr. Uhar,
3 I'm not going to address this again. It's 25-
4 431.

5 MR. UHAR: And when was, when was, and
6 when was it issued?

7 CHAIRPERSON ANDERSON: Mr. Uhar, go to
8 25-431. This has been -- it has been that way.
9 Section 25-431. You can go pull up our
10 regulations and you'll have that sir. 25-431,
11 okay?

12 MR. UHAR: How about your attorneys?
13 Don't you usually have two attorneys?

14 CHAIRPERSON ANDERSON: Mr. Uhar, all
15 the regulations require is that we have a member.
16 The Chair should have -- I'm an attorney, and as
17 the chair, the regulations require that the Chair
18 have some basically be a lawyer, and I'm a
19 lawyer, okay? I'll say that to you.

20 MR. UHAR: So this is a -- so this is
21 a new development?

22 CHAIRPERSON ANDERSON: This is not a
23 new development, sir. This has always -- this
24 has been the way it has been, sir, okay?

25 MR. UHAR: Can I ask two quick

1 questions? Can I ask Mr. Grant a question, if
2 he's read the complaints?

3 CHAIRPERSON ANDERSON: No, sir.
4 You're not -- you can't ask anyone any questions,
5 but no, sir. That's not, I'm not going to have
6 you ask a Board member a question, okay?

7 MR. UHAR: So he has no knowledge of
8 the evidence that he's supposed to weigh upon?
9 He's supposed to take your word in a group that
10 doesn't enforce and doesn't inspect; is that
11 correct?

12 CHAIRPERSON ANDERSON: That is
13 incorrect, sir. That's incorrect sir, all right.

14 MR. UHAR: All right.

15 CHAIRPERSON ANDERSON: All right. The
16 record is now closed. Do the parties -- well,
17 it's not necessarily closed. Do the parties wish
18 to do proposed findings of fact and conclusions
19 of law, or do the parties want to do that? Do
20 the parties waive their right to do so?

21 MR. UHAR: No. I'm just going to --
22 I'm going to straight to appeal.

23 MR. O'BRIEN: We'll waive.

24 CHAIRPERSON ANDERSON: All right. So,
25 all right.

1 MR. UHAR: Yeah. I'm just going to go
2 to appeal.

3 CHAIRPERSON ANDERSON: All right, hold
4 on. Hold on a minute please.

5 Mr. Uhar, the Board has not issued a
6 final decision, so don't you have to wait for a
7 final decision by the Board before you can
8 appeal?

9 MR. UHAR: Yeah, your final decision.
10 I've spent enough time on this craziness.

11 CHAIRPERSON ANDERSON: All right, hold
12 on please.

13 MR. UHAR: So don't you have to wait
14 till the Board, till we have this meeting?

15 CHAIRPERSON ANDERSON: I'm sorry sir?

16 MR. UHAR: Didn't we have -- shouldn't
17 we have waited for the Court before we had this
18 meeting?

19 CHAIRPERSON ANDERSON: What meeting
20 are you talking about sir?

21 MR. UHAR: This protest hearing,
22 because your Board order on this protest hearing
23 is still in front of the Court of Appeals. So
24 now we have two?

25 CHAIRPERSON ANDERSON: I don't know

1 what's in front of --I don't know what's in front
2 of the Court of Appeals sir, but all I know was
3 that --

4 MR. UHAR: Well, I told Ms. Jenkins.
5 She knows. Your people know this is in front of
6 the Court of Appeals. Is this customary that you
7 run, that you run these protest hearings while
8 the Court of Appeals is weighing your board
9 order? Is that, is that standard procedure?

10 CHAIRPERSON ANDERSON: We have this --
11 we had this protest hearing today because this
12 matter was remanded by the Court of Appeal on the
13 limited issue, and so therefore we are complying
14 with --

15 MR. UHAR: No, no, no.

16 CHAIRPERSON ANDERSON: Mr. Uhar, let
17 me say this. I'm a lawyer and you have said
18 before you are not a lawyer. So but so I'm going
19 to say to you, I'm an attorney, okay sir?

20 MR. UHAR: Okay.

21 CHAIRPERSON ANDERSON: The Board
22 issued a final decision. After the Board issues
23 a final decision, as your right you went to the
24 Court of Appeals and appealed it, after the Board
25 issued its final decision. The Board, the Court

1 of Appeals remanded it for a limited purpose,
2 which is what we're addressing today.

3 You might have appealed -- you might
4 have appealed something else sir, but we move on
5 until whatever, whatever --

6 (Simultaneous speaking.)

7 CHAIRPERSON ANDERSON: Mr. Uhar,
8 please sir. The decision, we are in compliance
9 with the Court of Appeals. That's what -- this
10 is how we're bringing closure to this action,
11 okay? I don't -- if you have another appeal
12 currently --

13 (Simultaneous speaking.)

14 CHAIRPERSON ANDERSON: Listen to me
15 sir, listen to me sir, please. If you appealed
16 the Board order, this agency has not received any
17 instructions from the Court of Appeals to say
18 that we need to not move forward, sir. So
19 therefore we need to move forward unless we are
20 instructed by the Court of Appeals to move
21 forward.

22 If you want to appeal this decision
23 sir, you have to wait until the Board issues a
24 decision. The Board will not issue a decision in
25 this case for another 90 days. So therefore you

1 cannot appeal this decision because the Board has
2 not issued a decision yet.

3 So if you go to the Court of Appeals
4 to appeal, they're going to say that the agency
5 has not issued a final decision as yet sir. So
6 you have to wait for 90 days for the Board to
7 issue its final decision in this matter, okay.
8 So let me close. Let me do the statement and
9 close the record.

10 Let me do this part sir, let me close
11 this off, and then if you have --

12 MR. UHAR: I just want to mention
13 Charcoal Town, and right down the street --

14 CHAIRPERSON ANDERSON: Mr. Uhar, Mr.
15 Uhar, this case is over. Let me close the record
16 in this case because if I don't close, if I don't
17 do the statement, then I'm going to get in
18 trouble, okay sir? So let me do this part, okay.

19 As Chairperson, and I've given you the
20 leeway to argue your case. I know that Mr.
21 O'Brien probably was not happy with some of the
22 rulings I've made, but I've given you the
23 opportunity to present your case, because I do
24 not want you to go to the Court of Appeals to say
25 I did not give you an opportunity to present your

1 case to the best of your abilities, sir, okay?

2 All right. As Chairperson of the
3 Alcoholic, Beverage and Cannabis Board for the
4 District of Columbia and in accordance with D.C.
5 Official Code Section 2575 of the Open Meetings
6 Act, I move that the ABC Board hold a closed
7 meeting for the purpose of seeking legal advice
8 from our counsel on Case No., I'm sorry.

9 Let me make sure I'm reading the right
10 -- on case number 19PRO-00033, Il Canale,
11 pursuant to D.C. Official Code Section
12 2575(b)(4)(A) of the Open Meetings Act, and
13 deliberating upon Case No. 19PRO-00033, Il
14 Canale, for the reasons cited in D.C. Official
15 Code Section 2575(b)(13) of the Open Meetings
16 Act. Is there a second?

17 MEMBER SHORT: Second.

18 CHAIRPERSON ANDERSON: Mr. Short has
19 seconded the motion. We'll now have a roll call
20 vote. Mr. Short.

21 MEMBER SHORT: I agree.

22 CHAIRPERSON ANDERSON: Mr. Grant.

23 MEMBER GRANT: (Audio interference.)

24 CHAIRPERSON ANDERSON: Mr. Anderson,
25 I agree. As it appears that a motion has passed

1 3-0, I hereby give notice that the ABC Board will
2 recess this proceeding to hold a closed meeting
3 pursuant to Section 2575 of the Open Meetings
4 Act. I want to thank everyone for their
5 presentation today, and this matter is adjourned.

6 All right, so thank you very much, and
7 now let me close the record for the day. As
8 Chairperson of the Alcoholic, Beverage and
9 Cannabis Board for the District of Columbia and
10 in accordance with Title III, Chapter 405, Office
11 of Open Government, I move that the ABC Board
12 hold a closed meeting on January 24th, 2024 for
13 the purpose of discussing and hearing reports
14 concerning ongoing or planned investigations of
15 alleged criminal or civil misconduct or
16 violations of law or regulations and seek legal
17 advice from our legal counsel on the Board's
18 investigative agenda, legal agenda, and licensing
19 agenda for January 24th, 2024, as published in
20 the D.C. Register on January 19th, 2024. Is
21 there a second?

22 MEMBER GRANT: Mr. Grant, I second the
23 motion.

24 CHAIRPERSON ANDERSON: Mr. Grant has
25 seconded the motion. I will now take a roll call

1 vote on the motion before us, now it has been
2 properly seconded. Mr. Short.

3 MEMBER SHORT: Mr. Short, I agree.

4 CHAIRPERSON ANDERSON: Mr. Grant.

5 MEMBER GRANT: Mr. Grant, I agree.

6 CHAIRPERSON ANDERSON: Mr. Anderson.

7 As it appears that a motion has passed 3-0, I
8 hereby give notice that the ABC Board will hold
9 this closed meeting pursuant to the Open Meetings
10 Act. Notice will also be posted on the ABC Board
11 hearing room bulletin board, placed on electronic
12 calendar on ABCA's website, and published in the
13 D.C. Register in as timely a manner as practical.

14 I want to thank again everyone for
15 their presentation today, thank the public, the
16 members of the public who have participated in
17 our hearing, and thank our Board members. We are
18 adjourned for the day. I now ask all Board
19 members to return to executive session for
20 further developments. Thank you very much. Have
21 a great day.

22 (Whereupon, the above-entitled matter
23 went off the record at 5:23 p.m.)
24
25

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In the matter of: Il Canale

Before: DC ABCA

Date: 01-10-24

Place: teleconference

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

Neal R Gross

Court Reporter

NEAL R. GROSS

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