

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

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IN THE MATTER OF: :
 :
Bread and Chocolate, Inc.,:
t/a Bread and Chocolate :
2301 M Street NW :
Retailer DR - ANC 2A :
License No. 94780 :
Case #21-CMP-00031 :
 :
(No ABC Manager on Duty) :
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Wednesday
March 16, 2022

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

PRESENT:

DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
EDWARD S. GRANDIS, Member
JENI HANSEN, Member
JAMES SHORT, JR., Member

ALSO PRESENT:

SARAH FASHBAUGH, DC ABRA Staff
COLLIN CENCI, DC OAG
MIHAILINA DAMIAN, Applicant
INVESTIGATOR GEORGE GARCIA

C O N T E N T S

	Page
Government Opening Statement10
Government Closing Statement35
Licensee Closing Statement40

W-I-T-N-E-S-S-E-S

Name	Direct	Cross	Redirect	Recross
George Garcia	14	24	26	
Mihailina Damian	28	29		

E-X-H-I-B-I-T-S

No.	Description	Mark Rec'd
1	Case Report dated July 7, 2021	21
2	Regulatory Inspection	21
3	ABC License for Bread and Chocolate	22
11	ABC Manager's License for Atsou Amegee	23

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

2 1:52 p.m.

3 CHAIRPERSON ANDERSON: The next case
4 on our calendar is Case Number 21-CMP-00031,
5 Bread and Chocolate, License Number 94780.

6 Ms. Fashbaugh, can you please elevate
7 the rights of the parties in this case?

8 MS. FASHBAUGH: Please standby.

9 CHAIRPERSON ANDERSON: Thank you.

10 MS. FASHBAUGH: I do not see the
11 Licensee on the line. Collin Cenci, your rights
12 have been elevated. George Garcia, your rights
13 have been elevated. And Lamont Mahone, your
14 rights have been elevated.

15 That is all Mr. Chair.

16 CHAIRPERSON ANDERSON: Thank you. Mr.
17 Cenci, can you please state and spell your name
18 for the record, please?

19 MR. CENCI: Yes, good afternoon, Mr.
20 Anderson. This is Collin Cenci, C-O-L-L-I-N C-
21 E-N-C-I, appearing on behalf of the District of
22 Columbia.

23 CHAIRPERSON ANDERSON: And who is here
24 with you this afternoon sir, if this matter goes
25 to a show cause hearing?

1 MR. CENCI: We do have Investigator
2 George Garcia. I do not believe that Mr. Mahone
3 is necessary for today's hearing.

4 CHAIRPERSON ANDERSON: All right.
5 Thank you. All right, Mr. Garcia, can you please
6 state and spell your name for the record, please?

7 (No response)

8 CHAIRPERSON ANDERSON: Mr. Garcia?
9 Well, let's move on until later on. Mr. Garcia,
10 can you please state and spell your name for the
11 record, please?

12 (No response)

13 CHAIRPERSON ANDERSON: I cannot hear
14 you, sir.

15 (No response)

16 CHAIRPERSON ANDERSON: All right, well
17 we'll come back to you, Mr. Garcia. All right.
18 Mr. Cenci, have you -- I see that the Licensee is
19 not here. Have you been in contact with the
20 Licensee?

21 Do you know, were they expected today?

22 MR. CENCI: We have been in contact
23 with the Licensee, and I was expecting them to be
24 present today.

25 It should be, I believe Mihailina

1 Damian, if she is on the line.

2 CHAIRPERSON ANDERSON: Ms. Fashbaugh,
3 can you see if -- if that person is either on the
4 line or on the phone line? It seems that that
5 individual is trying to appear before this -- oh,
6 yes, this person, the Licensee is here.

7 Ms. Damian? Hello?

8 MS. DAMIAN: Yes, good afternoon.

9 CHAIRPERSON ANDERSON: Good afternoon.
10 Can you -- can you spell and state your name for
11 the record, please?

12 MS. DAMIAN: Okay. (Inaudible)

13 CHAIRPERSON ANDERSON: Hello ma'am?

14 MS. DAMIAN: Can you hear me?

15 CHAIRPERSON ANDERSON: I can hear you
16 now, ma'am.

17 MS. DAMIAN: Yes. My name is
18 Mihailina Damian. And that's -- (inaudible)

19 CHAIRPERSON ANDERSON: You're breaking
20 up, ma'am. I can't hear you now. I don't know
21 what -- I don't know what location you're in.
22 But, you are -- you're -- I cannot hear you.

23 MS. DAMIAN: We can talk about the
24 place where I'm on the phone.

25 CHAIRPERSON ANDERSON: I cannot hear

1 you, ma'am. When you say you want to call in, do
2 you want to call in instead on the phone?

3 MS. DAMIAN: Yes.

4 CHAIRPERSON ANDERSON: Then you can do
5 that, ma'am. And when, we will look for you. Do
6 you have the call in number?

7 MS. DAMIAN: No, I don't.

8 CHAIRPERSON ANDERSON: Ms. Fashbaugh,
9 can you please provide Ms. Damian with the call
10 in number?

11 And do you have a pen and paper,
12 ma'am, so you can write this information down?

13 MS. DAMIAN: Yes.

14 MS. FASHBAUGH: Good afternoon. The
15 call in number is 1-650-479-3208. The access
16 code is 23031368587. That is all.

17 CHAIRPERSON ANDERSON: Thank you.

18 MS. DAMIAN: Can you repeat that
19 number?

20 CHAIRPERSON ANDERSON: I'm sorry, what
21 did you say, ma'am?

22 MS. DAMIAN: Can you repeat it one
23 more time?

24 CHAIRPERSON ANDERSON: Ms. Fashbaugh,
25 could you?

1 MS. FASHBAUGH: Yes. The call in
2 number is 650-479-3208. The access code is
3 23031368587. Thank you.

4 CHAIRPERSON ANDERSON: Thank you. Did
5 you receive that, ma'am?

6 MS. DAMIAN: Yes, I did.

7 CHAIRPERSON ANDERSON: We'll wait for
8 you to call in then. Ms. Damian, are you on the
9 -- I see that you're also here on the line.

10 Have you called in, ma'am?

11 MS. DAMIAN: Yes.

12 CHAIRPERSON ANDERSON: All right. Can
13 you -- all right, can you spell and state your
14 name again for the record, ma'am?

15 MS. DAMIAN: M-I-H-A-I-L-I-N-A D-A-M-
16 I-A-N.

17 CHAIRPERSON ANDERSON: And what is
18 your relationship to this establishment, ma'am?

19 MS. DAMIAN: I am the owner of the
20 Bread and Chocolate.

21 CHAIRPERSON ANDERSON: All right.
22 Thank you. Mr. Cenci, this is a -- or Mr.
23 Mahone, it's my understanding based on Mr. Cenci
24 that you are not needed for this hearing, sir.

25 So, unless you want to be here, it's

1 not -- it's my -- based on the representation
2 made by counsel, he stated that he's not calling
3 you as a witness, sir.

4 (No response)

5 CHAIRPERSON ANDERSON: I can't hear
6 you, sir. So, --

7 MR. MAHONE: Can you hear me now?

8 CHAIRPERSON ANDERSON: Yes, sir. I
9 can hear you.

10 MR. MAHONE: Okay. I'll sign out.

11 CHAIRPERSON ANDERSON: All right.

12 Thank you. Mr. Garcia, can you please spell and
13 state your name for the record, please?

14 INVESTIGATOR GARCIA: George Garcia,
15 G-E-O-R-G-E G-A-R-C-I-A.

16 CHAIRPERSON ANDERSON: And what's your
17 -- what is your job title, sir?

18 INVESTIGATOR GARCIA: Investigator.

19 CHAIRPERSON ANDERSON: For what
20 agency, sir?

21 INVESTIGATOR GARCIA: For the
22 Alcoholic Beverage Regulation Administration.

23 CHAIRPERSON ANDERSON: Thank you, sir.
24 All right, Mr. Cenci, this is a -- I'm sorry, oh,
25 okay. Yes, this is a show cause hearing, sir.

1 Are there preliminary matters in this
2 case?

3 MR. CENCI: There are no preliminary
4 matters for the District.

5 CHAIRPERSON ANDERSON: All right,
6 fine. All right. And ma'am, have you been to a
7 -- have you been to a show cause hearing before?
8 Ms. Damian?

9 MS. DAMIAN: No, I haven't.

10 CHAIRPERSON ANDERSON: All right.
11 Well, it's going to be somewhat -- all right, so
12 basically how this case operates, ma'am, how a
13 show cause hearing operates is that the
14 Government will make an opening statement.

15 You are then -- you can then make an
16 opening statement. The Government then will call
17 a witness, its witnesses to -- on the charge.

18 Once the Government has called its
19 witness -- its witness or witnesses, then the
20 Government will rest.

21 Then you will have an opportunity to
22 prove then your case. Do you plan to call any
23 witnesses today, ma'am? Or is it just you,
24 yourself going to testify?

25 MS. DAMIAN: No, it's myself.

1 CHAIRPERSON ANDERSON: All right.
2 Then what I will do, I can't see you, but what
3 I'll do -- do you have -- do you have a camera,
4 ma'am?

5 MS. DAMIAN: Yes.

6 CHAIRPERSON ANDERSON: Are you able to
7 turn your camera on?

8 MS. DAMIAN: Yes.

9 CHAIRPERSON ANDERSON: Yes, I can see
10 you now, ma'am. All right. Okay. So, I've left
11 it here, so once the Government has presented its
12 case, then you will have an opportunity to
13 present your case.

14 I will swear you in. And then once
15 that's done, the Board will take this matter
16 under advisement and make a decision at a later
17 date. All right?

18 All right. So, Mr. Cenci, do you wish
19 to make an opening statement, sir?

20 MR. CENCI: Yes, I do, Chairperson
21 Anderson.

22 CHAIRPERSON ANDERSON: Go ahead, sir.

23 MR. CENCI: Good afternoon Chairperson
24 Anderson and Members of the Board. You are here
25 today in the show cause matter of Bread and

1 Chocolate, Incorporated, traded as Bread and
2 Chocolate, located at 2301 M. Street, Northwest,
3 Washington, D.C. 20037.

4 This is a case about a licensed
5 establishment's failure to keep an ABC manager or
6 owner on duty while alcohol is available for
7 sale, service, and consumption at the
8 establishment.

9 Today you will hear that when an ABRA
10 Investigator visited the establishment to conduct
11 a regulatory inspection, there was no ABC manager
12 or owner present in the establishment.

13 And when someone did finally present
14 themselves as an ABC manager, it turned out that
15 their license had expired months prior to the
16 inspection.

17 The show cause notice issued in this
18 matter concerns the charges that the Licensee
19 failed to have the establishment's owner or an
20 ABC Board approved manager present on the
21 premises during the establishment's hours of sale
22 in violation of D.C. Code Sections 25-
23 701(a)(1)(I), and 23 DCMR, Section 707.1.

24 As the Petitioner today, we bear the
25 burden of proof. We must show that either

1 Respondent did fail to have an ABC manager or
2 owner present during the licensed hours of sale
3 for the establishment by a substantial evidence
4 in the record.

5 We accept that burden, and we will be
6 able to meet it through the testimony of our
7 witness, ABRA Investigator George Garcia.
8 Investigator Garcia --

9 CHAIRPERSON ANDERSON: Yeah, I'm
10 sorry. You're not -- is that -- is that your
11 opening statement, sir?

12 MR. CENCI: No, I'm not concluded
13 Chairperson Anderson. I thought you were saying
14 --

15 CHAIRPERSON ANDERSON: I apologize.
16 Go ahead, sir. I apologize.

17 MR. CENCI: Investigator Garcia will
18 testify that on Wednesday, July 7, 2021 he, an
19 Alcoholic Beverage Regulation Administration
20 Investigator, went to the establishment to
21 conduct a regulatory inspection.

22 He will tell you that at approximately
23 1:27 p.m., he entered the establishment and asked
24 to speak with an owner or ABC manager. You'll
25 learn that an employee of the establishment

1 informed him that no owner or ABC manager was
2 present.

3 He reviewed the hours of sale for the
4 establishment, which he will tell you were 9:00
5 a.m. to 7:00 p.m. on Wednesdays. He will also
6 testify that as he was leaving the establishment,
7 he was approached by an individual who said that
8 he was the ABC manager for the establishment and
9 was just returning from somewhere else.

10 But, when Investigator Garcia checked
11 this individual's ABC manager's license, he saw
12 that the license had expired on November 20,
13 2020, more than seven months prior to the
14 inspection date.

15 At the end of this hearing, it will be
16 clear that the Licensee failed to keep an ABC
17 manager or owner present during the licensed
18 hours of sale, in clear violation of D.C. Code
19 Section 25-701(a)(1)(I), and 23 DCMR, Section
20 707.1.

21 The willful failure to uphold their
22 responsibilities must come with consequences.
23 That is why at the end of today's hearing, I will
24 ask that you find in favor of the District of
25 Columbia, and apply a penalty consistent with

1 D.C. Code Section 25-830. Thank you.

2 CHAIRPERSON ANDERSON: Thank you.

3 Ma'am, do you wish to make an opening statement
4 at this juncture?

5 Or do you wish to make an opening
6 statement when you present your case? It's your
7 option.

8 MS. DAMIAN: Yes.

9 CHAIRPERSON ANDERSON: I can't hear
10 you, ma'am. When do you -- I can't hear you.

11 MS. DAMIAN: So, this is a statement
12 at the end.

13 CHAIRPERSON ANDERSON: Okay. All
14 right, fine. Thank you. All right, sir, your
15 case. Call -- you have a witness you wish to
16 call?

17 MR. CENCI: Yes. At this time the
18 District of Columbia calls ABRA Investigator
19 George Garcia.

20 CHAIRPERSON ANDERSON: Mr. Garcia, can
21 you raise your right hand, please?

22 Do you swear or affirm to tell the
23 truth and nothing but the truth?

24 INVESTIGATOR GARCIA: I do.

25 CHAIRPERSON ANDERSON: All right,

1 thank you. Your witness, sir.

2 WHEREUPON,

3 GEORGE GARCIA

4 was called for examination by Counsel for the
5 Government, having been first duly sworn, assumed
6 the witness stand, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. CENCI:

10 Q Good afternoon Investigator, could you
11 please state and spell your first and last name
12 for the record?

13 A George G-E-O-R-G-E, Garcia G-A-R-C-I-
14 A.

15 Q Where are you currently employed?

16 A At the Alcoholic Beverage Regulation
17 Administration.

18 Q What's your position with ABRA?

19 A I'm an investigator.

20 Q How long have you been an
21 investigator?

22 A Three years.

23 Q What are some of your duties and
24 responsibilities as an investigator for ABRA?

25 A We conduct inspections and

1 investigations of ABC licensed establishments
2 within the District of Columbia.

3 Q Investigator, are you familiar with
4 the establishment located at 2301 M Street,
5 Northwest, Washington, D.C. 20037, Bread and
6 Chocolate?

7 A I am.

8 Q How are you familiar with this
9 establishment?

10 A I visited the establishment to conduct
11 a regulatory inspection.

12 Q Did you inspect this establishment on
13 July 7, 2021?

14 A I did.

15 Q When did you arrive at the
16 establishment for the inspection?

17 A At approximately 1:27 p.m.

18 Q How did the inspection begin?

19 A I identified myself as an ABRA
20 investigator to a male employee. And advised
21 them that I needed to speak to an ABC manager or
22 owner of the establishment.

23 Q After you told the employee that you
24 needed to speak to an owner or an ABC manager,
25 what did that employee of the establishment tell

1 you?

2 A He advised me that the ABC manager had
3 stepped out for a moment and should be returning
4 shortly.

5 Q What did it mean to you when you
6 learned that the ABC manager had stepped out of
7 the establishment?

8 A Automatically it would be a red flag,
9 just letting me note that the establishment is
10 either selling, consuming, or having alcohol
11 while an ABC manager is not present.

12 Q Did the employee tell you that an
13 owner was present in the establishment instead of
14 an ABC manager?

15 A He did not.

16 Q So, what did you do after you learned
17 that there was no owner or ABC manager present in
18 Bread and Chocolate that day?

19 A I continued to conduct the regulatory
20 inspections to see if there were any other
21 violations at the establishment.

22 Q After you concluded your
23 investigation, before you left the establishment
24 that day, did you encounter anyone who claimed to
25 be an ABC manager for the establishment?

1 A I concluded my regulatory inspection.
2 And after maybe about five minutes after getting
3 to my vehicle, I was approached by an employee
4 while I was in my vehicle, claiming to be the ABC
5 manager of the establishment.

6 Q Did you review any sort of
7 documentation to confirm their claim that they
8 were the ABC manager?

9 A Yes, I did. I reviewed his ABC
10 manager license he provided to me, and observed
11 that the ABC manager's license expired in 2020,
12 of November.

13 Q What did it mean to you when you saw
14 that this person's ABC manager's license had
15 expired?

16 A That the establishment was still not
17 in compliance.

18 Q Given that this person's ABC manager's
19 license had expired in November 2020, would it
20 have affected your -- would it have affected your
21 investigation if that person were present when
22 you had arrived at the establishment?

23 A No. Because technically, the person
24 was still not an ABC manager due to their ABC
25 manager's license being expired.

1 Q And I just want to be clear for the
2 record, Investigator Garcia, who was this
3 individual who presented himself as an ABC
4 manager?

5 A His name was Atsou Amegee.

6 CHAIRPERSON ANDERSON: How do you
7 spell that name, sir? Can you just spell that
8 for the record and pronounce that?

9 INVESTIGATOR GARCIA: Atsou A-T-S-O-U,
10 Amegee A-M-E-G-E-E.

11 MR. CENCI: Investigator Garcia, after
12 you completed your inspection of Break and
13 Chocolate on July 7, 2021, did you complete a
14 case report?

15 INVESTIGATOR GARCIA: I did.

16 MR. CENCI: And would you recognize a
17 copy of that report if I were to show it to you
18 today?

19 INVESTIGATOR GARCIA: I would.

20 MR. CENCI: All right, Chairperson
21 Anderson, I would like to request that I be
22 permitted to share my screen so that I can share
23 the case report for this investigation.

24 CHAIRPERSON ANDERSON: Thank you. Ms.
25 Fashbaugh, can you please allow him to share his

1 screen, please?

2 MS. FASHBAUGH: This has been
3 accomplished.

4 CHAIRPERSON ANDERSON: Thank you. Go
5 ahead, sir.

6 MR. CENCI: I don't believe that I can
7 share my screen still. My button is still dark.

8 INVESTIGATOR GARCIA: I can.

9 MR. CENCI: Oh, I can see it now. All
10 right. Investigator Garcia, can you see what I
11 am sharing on my screen?

12 INVESTIGATOR GARCIA: Yes.

13 BY MR. CENCI:

14 Q Do I need to zoom in or zoom out at
15 all for you to be able to read it?

16 A No.

17 Q All right. I'm going to just scroll
18 through the entirety of the document to make sure
19 that it's complete. Will you please review it as
20 I scroll through.

21 Now I'm returning to the top.

22 A Um-hum.

23 Q All right, Investigator Garcia, do you
24 recognize this document?

25 A Yes.

1 Q What is it?

2 A It's the Investigative Case Report
3 that I completed.

4 Q Is it part of your job as an
5 investigator to draft case reports like this one?

6 A Yes.

7 MR. CENCI: Mr. Chairperson, the
8 District would like to confirm for the record,
9 that Government Exhibit 1, the July 7, 2021 Case
10 Report for Bread and Chocolate, is already in
11 evidence pursuant to 23 DCMR, Section 1713.10.

12 (Whereupon, the above-
13 referred to document was
14 marked as Government Exhibit
15 No. 1 for identification.)

16 CHAIRPERSON ANDERSON: Yes, it is.
17 Thank you.

18 MR. CENCI: All right. Thank you
19 Chairperson Anderson.

20 Investigator Garcia, I would like to
21 direct your attention to what's been marked in
22 this report as Exhibit 2. Do you see what I have
23 presented on the screen?

24 INVESTIGATOR GARCIA: Yes.

25 (Whereupon, the above-

1 referred to document was
2 marked as Government Exhibit
3 No. 2 for identification.)

4 MR. CENCI: What is this document?

5 INVESTIGATOR GARCIA: It's a
6 Regulatory Inspection.

7 BY MR. CENCI:

8 Q Does this document list the hours of
9 sale for alcohol for this establishment?

10 A It does.

11 Q What were the hours of sales for
12 Wednesday, the day that you conducted the
13 inspection of Bread and Chocolate?

14 A For Wednesday, the hours were 7:00
15 a.m. to 9:00 p.m.

16 MR. CENCI: Thank you, Investigator.
17 I'm now going to direct your attention towards
18 what's been previously marked as Exhibit 3 of
19 this document.

20 What is this document?

21 (Whereupon, the above-
22 referred to document was
23 marked as Government Exhibit
24 No. 3 for identification.)

25 INVESTIGATOR GARCIA: That's the

1 establishment's ABC license.

2 BY MR. CENCI:

3 Q Does this document also list the hours
4 of sale for alcohol for the establishment?

5 A It does.

6 Q What were the hours of sale for
7 Wednesday, the day that you conducted your
8 inspection?

9 A Again, 7:00 a.m. to 9:00 p.m.

10 MR. CENCI: Thank you, Investigator.
11 I'm now going to direct your attention to what's
12 been previously marked as Exhibit 11 in the case
13 report.

14 What is this document Investigator?

15 (Whereupon, the above-
16 referred to document was
17 marked as Government Exhibit
18 No. 11 for identification.)

19 INVESTIGATOR GARCIA: That's the ABC
20 manager's license of the employee that he
21 presented to me.

22 BY MR. CENCI:

23 Q Investigator, what day did this ABC
24 manager's license expire?

25 A November 20, 2020.

1 Q To your knowledge, was this ABC
2 manager's license current on the day you
3 conducted your inspection?

4 A It was not.

5 Q All right. Thank you. I will stop
6 sharing my screen now.

7 Investigator Garcia, throughout your
8 whole inspection of Break and Chocolate on July
9 7, 2021, did you ever encounter an owner of the
10 establishment?

11 A I did not.

12 Q And throughout your whole inspection
13 of Bread and Chocolate on July 7, 2021 did you
14 ever encounter an active ABC manager of the
15 establishment?

16 A I did not.

17 MR. CENCI: Thank you Investigator, I
18 have no further questions at this time.

19 CHAIRPERSON ANDERSON: Ms. Damian, do
20 you have any questions of the Investigator? I
21 can't hear you, ma'am.

22 CROSS EXAMINATION

23 MS. DAMIAN: No, I don't.

24 CHAIRPERSON ANDERSON: Okay. Thank
25 you. Do any of the Board Members have any

1 questions of the Investigator?

2 (No response)

3 CHAIRPERSON ANDERSON: Mr. Garcia,
4 just a quick question.

5 INVESTIGATOR GARCIA: Okay.

6 CHAIRPERSON ANDERSON: What type of
7 establishment is Bread and Chocolate?

8 INVESTIGATOR GARCIA: It is a
9 restaurant.

10 CHAIRPERSON ANDERSON: Do you know
11 whether or not --

12 (Simultaneous speaking)

13 INVESTIGATOR GARCIA: A D restaurant.

14 CHAIRPERSON ANDERSON: I'm sorry, a --

15 INVESTIGATOR GARCIA: A D as in -- I'm
16 sorry?

17 CHAIRPERSON ANDERSON: Excuse me, sir.
18 Go ahead.

19 INVESTIGATOR GARCIA: It's a D
20 restaurant.

21 CHAIRPERSON ANDERSON: What does that
22 mean, sir?

23 INVESTIGATOR GARCIA: It means that
24 the establishment can only sell beer and wine.

25 CHAIRPERSON ANDERSON: So, did the --

1 during the time of your visit, was there anyone
2 consuming alcohol in the establishment?

3 INVESTIGATOR GARCIA: I do not recall.

4 CHAIRPERSON ANDERSON: Do you know
5 whether or not alcohol was visible? Do you
6 recall if the space has a bar?

7 INVESTIGATOR GARCIA: I do not recall.
8 But, I do not believe that the establishment has
9 a bar.

10 CHAIRPERSON ANDERSON: Was there any
11 visible alcohol within the area -- within the
12 restaurant during the time of your visit?

13 INVESTIGATOR GARCIA: I don't recall.

14 CHAIRPERSON ANDERSON: Okay. Ms.
15 Damian, do you have any questions off of the --
16 off the -- I'm sorry, do any other Board Members
17 have any other questions?

18 (No response)

19 CHAIRPERSON ANDERSON: All right. Ms.
20 Damian, do you have any questions of the witness
21 based on the questions that I asked?

22 MS. DAMIAN: On that day, with
23 yourself come, I call --

24 CHAIRPERSON ANDERSON: Ma'am. Ma'am,
25 I'm asking you if you have, not a statement, but

1 a question for him?

2 MS. DAMIAN: No. I don't.

3 CHAIRPERSON ANDERSON: All right.

4 Thank you. Mr. Cenci, do you have a question --
5 do you have a -- any redirect of the witness?

6 REDIRECT EXAMINATION

7 MR. CENCI: Yes, I do Chairperson
8 Anderson.

9 CHAIRPERSON ANDERSON: Go ahead.

10 MR. CENCI: Investigator Garcia, you
11 were able to conduct an inspection of Break and
12 Chocolate on July 7, 2021, were you not?

13 INVESTIGATOR GARCIA: Yes.

14 BY MR. CENCI:

15 Q While you were at the establishment,
16 do you recall seeing any member of staff refusing
17 to sell alcohol to a patron?

18 A No.

19 Q Do you recall any signage posted in
20 the establishment that indicated that alcohol was
21 not being served?

22 A No.

23 Q Do you recall seeing any staff locking
24 up or storing alcohol?

25 A No.

1 MR. CENCI: Thank you Investigator, I
2 have no further questions.

3 CHAIRPERSON ANDERSON: Thank you. Do
4 you have another witness, sir?

5 MR. CENCI: The District has no
6 additional witnesses and at this time rests its
7 case in chief.

8 CHAIRPERSON ANDERSON: Well, that's
9 fine. Thank you. Ms. Damian, do you -- do you
10 have any witnesses that you plan to call?

11 Or is it just you yourself? Are you
12 going to make a statement the venue was
13 justified, is that your position?

14 MS. DAMIAN: Sir, I will make a
15 statement.

16 CHAIRPERSON ANDERSON: Can you raise
17 your right hand please, ma'am?

18 Do you swear or affirm that the --
19 ma'am, I need you to raise your right hand. Do
20 you swear or affirm to tell the truth and nothing
21 but the truth?

22 MS. DAMIAN: Yes.

23 CHAIRPERSON ANDERSON: Thank you. Go
24 ahead, ma'am.

25 WHEREUPON

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MIHAILINA DAMIAN

was called for examination by Respondent, having been first duly sworn, assumed the witness stand, was examined and testified as follows:

DIRECT EXAMINATION

MS. DAMIAN: My first, you know, I'm new in this. So, we had an employer that was the manager, but he left a couple of days ago.

And our other manager's license was expired. But, because of the COVID situation, all the expire -- all the license was postdated.

So, I guess this is the -- the reason he didn't renew his license. And also, for ABRA it's -- we don't have a manager in two weeks, then we -- we don't have the right to sell the alcohol.

So, for that day, we didn't sell no alcohol. And I give the -- send the report to the -- to the board on that day. We didn't sell no alcohol.

CHAIRPERSON ANDERSON: Do you have any other -- do you have anything else you wanted to say, ma'am?

MS. DAMIAN: Say that again?

CHAIRPERSON ANDERSON: Is that the

1 extent of your statement?

2 MS. DAMIAN: Yes. Yes.

3 CHAIRPERSON ANDERSON: Mr. Cenci, do
4 you have any questions of her?

5 CROSS EXAMINATION

6 MR. CENCI: Yes, I do, briefly,
7 Chairperson Anderson.

8 Ms. Damian, you are an owner of Bread
9 and Chocolate, right?

10 MS. DAMIAN: Correct.

11 BY MR. CENCI:

12 Q You're aware of the responsibilities
13 that come with owning a business that serves
14 alcohol?

15 A Yes. Um-hum.

16 Q You assert that your establishment
17 didn't sell alcohol on July 7, 2021. Is that
18 right?

19 A (No response)

20 Q Is that right?

21 A Right.

22 Q So, you weren't present at the
23 establishment on July 7, 2021, were you?

24 A No, I was not present.

25 Q So, you did not see if the staff had

1 locked up the alcohol that day?

2 A No.

3 Q You did not hear any member of staff
4 refuse to sell alcohol to any patrons?

5 A I did not.

6 Q You don't know if any signage was
7 posted to indicate that alcohol was not being
8 serviced?

9 A No.

10 Q You don't know if the staff took any
11 steps to ensure that alcohol wasn't being served
12 to patrons?

13 A (no response)

14 CHAIRPERSON ANDERSON: I can't hear
15 you, ma'am.

16 MS. DAMIAN: Correct.

17 MR. CENCI: You don't know if the
18 staff took any steps to ensure that alcohol
19 wasn't being consumed in the establishment?

20 MS. DAMIAN: Correct. But, our
21 manager and during this now was -- and sell no --
22 (inaudible)

23 BY MR. CENCI:

24 Q Ms. Damian, I want to bring you back
25 to my question. I'm not asking about what the

1 manager was supposed to do.

2 I'm asking what you know. And you
3 don't know if the staff took any steps to ensure
4 that alcohol was not being consumed in the
5 establishment that day?

6 A Correct.

7 Q And you don't know if the staff took
8 any steps to ensure that alcohol wasn't being
9 sold.

10 A No. No.

11 MR. CENCI: All right. Thank you, Ms.
12 Damian. I have no further questions.

13 CHAIRPERSON ANDERSON: Any questions
14 by the Board Members?

15 (No response)

16 CHAIRPERSON ANDERSON: Ms. Damian, you
17 said that you sent a statement to ABRA. What do
18 you mean, you said -- what statement and when did
19 you send a statement to ABRA that no lack of a --
20 no alcohol was being sold that day?

21 MS. DAMIAN: So, I sent the
22 (inaudible) --

23 CHAIRPERSON ANDERSON: I can't hear
24 you ma'am. You're breaking up. I don't know --
25 you're breaking up.

1 MS. DAMIAN: I send it to Mr. Collin
2 as well. That the -- the report for the day, end
3 of the day report that the -- we haven't sell any
4 alcohol.

5 CHAIRPERSON ANDERSON: Well, did you
6 disclose this -- you know that when you have a
7 hearing you can disclose documents and witnesses.

8 Did you disclose this document to the
9 Government and to us seven days before the
10 hearing? Did you do that ma'am?

11 MS. DAMIAN: No, I have not.

12 CHAIRPERSON ANDERSON: So, how -- so
13 how do we know that -- that the document exists?

14 MS. DAMIAN: I just sent it yesterday.
15 So, I don't --

16 CHAIRPERSON ANDERSON: Now ma'am,
17 you're saying that because of COVID, that the
18 licenses were extended. Is that what -- what --
19 where does that come from?

20 If -- you're aware that the manager's
21 license had expired in November of the -- I think
22 it says it had expired November 2020.

23 (Simultaneous speaking)

24 MS. DAMIAN: Well the --

25 CHAIRPERSON ANDERSON: And this was

1 July 7, 2021. Where are you saying that all of
2 the licenses were ex -- were extended?

3 Who told you that?

4 MS. DAMIAN: Let me share with the
5 other license. So, they -- they say that they
6 signed because of COVID. So, we rely on that.

7 But, I guess it was our mistake.

8 CHAIRPERSON ANDERSON: So, you never -
9 - you never tried to -- is it correct to state
10 that you didn't try to renew the license prior to
11 the expiration. Is that correct?

12 MS. DAMIAN: No. We tried. But, the
13 manager had COVID and then other things came.
14 So.

15 CHAIRPERSON ANDERSON: So, do you know
16 when this license was renewed?

17 MS. DAMIAN: I believe immediately
18 after that, he renewed it right after.

19 CHAIRPERSON ANDERSON: So, does this
20 manager whose license was expired, is he
21 currently employed with --

22 MS. DAMIAN: Yes, he is.

23 CHAIRPERSON ANDERSON: And does he
24 currently have a license, a valid license?

25 MS. DAMIAN: Yes, he does.

1 CHAIRPERSON ANDERSON: Okay. Any
2 other questions by any other Board Members?

3 (No response)

4 CHAIRPERSON ANDERSON: Mr. Cenci, do
5 you have any questions that you wish to ask Ms.
6 Damian?

7 MR. CENCI: No, Chairperson Anderson.

8 CHAIRPERSON ANDERSON: Yes? Yes or no
9 questions?

10 MR. CENCI: No.

11 CHAIRPERSON ANDERSON: No? Okay.
12 Ma'am, do you -- do you have anything else you
13 want to say? Do you rest?

14 MS. DAMIAN: No, I don't.

15 CHAIRPERSON ANDERSON: Mr. Cenci, do
16 you wish to make a closing statement, sir?

17 MR. CENCI: Yes, Chairperson Anderson.
18 Members of the Board, this case is about the
19 establishment's willful failure to uphold the
20 responsibilities that come with an ABC license.

21 Today the District has proven by a
22 substantial evidence that the Licensee failed to
23 have an owner or ABC manager present during the
24 hours of sale for the establishment when alcohol
25 was accessible to the public for sale, service

1 and consumption.

2 We heard from Investigator Garcia that
3 on Wednesday, July 7, 2021, he went to the
4 establishment to conduct a regulatory inspection.
5 He told you that at about 1:27 p.m., he spoke to
6 an employee of the establishment who told him
7 that there was no owner and no ABC manager
8 present in the establishment.

9 He told you that he checked the hours
10 of sale for the establishment and saw they were
11 7:00 a.m. to 9:00 p.m. on Wednesdays, which
12 certainly encompasses the time that he was
13 present at the establishment, 1:27.

14 He went on to state that an individual
15 did eventually present himself as the ABC manager
16 for the establishment, but his ABC manager
17 license was expired, and had been for seven
18 months.

19 Ms. Damian also testified today, and
20 she claimed that she should not be held
21 responsible for this failure to follow the law,
22 because the establishment did not sell alcohol on
23 the day of the inspection.

24 But we need to follow what the law
25 says, not what Ms. Damian wants it to say. And

1 what D.C. Code, Section 25-701(a)(1)(ii)(c) says,
2 in relation to when an owner or ABC manager is
3 not required to be present at the establishment,
4 it says they are not required when quote,
5 alcoholic beverages are secure and not accessible
6 to the public for sale, service, or consumption,
7 unquote.

8 In 23 DCMR, Section 707.1 reads that
9 in the ab -- quote, in the absence of a licensee,
10 a board approved manager shall be present at the
11 licensed premises during the hours that alcoholic
12 beverages are permitted to be sold, served, or
13 consumed on the licensed premises, unquote.

14 The evidence has been consistent from
15 both sides today that an ABC manager was not
16 present at the establishment when Inspector
17 Garcia arrived.

18 Ms. Damian said herself that she
19 agrees, the license for the ABC manager on duty
20 that day had expired. That they were unable to
21 get it renewed because of COVID-based delays.

22 But, this wasn't simply a license that
23 had expired a week ago, two weeks ago, even one
24 month ago. It was seven months expired.

25 And she wants you to believe that

1 that's okay, because regardless of the status of
2 the alcohol ABC license for the manager, the
3 establishment didn't sell alcohol.

4 But then that doesn't beg the question
5 of, if alcohol was sold, it begs the question
6 that alcohol was available to be sold.

7 And we heard no testimony that the
8 establishment locked up the alcohol in the
9 establishment while the ABC manager was absent.
10 No testimony that employees of the establishment
11 informed patrons that alcohol was not available
12 for sale.

13 No testimony that the establishment
14 posted any sort of indication that alcohol was
15 not being served that day. No testimony at all
16 that credits the Licensees' events.

17 They should not be permitted to skirt
18 the law based on a self-serving assertion that no
19 customers ordered alcohol on the day of the
20 inspection. We have no guarantee that had
21 someone ordered alcohol that they wouldn't have
22 just gone ahead and served it.

23 Now, the District recognizes that it
24 bore the burden of proof today. And what was
25 that proof?

1 According to 23 DCMR, Section 1711.6
2 in this and all other show cause hearings, the
3 District bears the burden of proving by
4 substantial evidence in the record that the
5 Licensee in fact violated the law.

6 Substantial evidence is not a high
7 burden, Members of the Board. It's not beyond a
8 reasonable doubt. It's not even a preponderance
9 of the evidence.

10 Substantial evidence means that the
11 degree of relevant evidence which a reasonable
12 person considering the record as a whole, might
13 accept as adequate to support a conclusion, even
14 though other reasonable persons might disagree.

15 The District has certainly met that
16 burden today through the testimony of
17 Investigator Garcia, the investigative report in
18 evidence, and even further supported of the
19 Licensee on the record.

20 The evidence today has supported one
21 outcome and one outcome alone. The District has
22 met its burden to prove by substantial evidence
23 that the Respondent failed to have an owner or
24 ABC manager present in the establishment when
25 alcohol was accessible for sale, service, and

1 consumption.

2 And thus proving the charge in the
3 notice to show cause. Licensee cannot avoid
4 responsibility by attempting to exploit a
5 technicality that is ultimately not actually in
6 their favor.

7 It is for that reason that we ask you
8 to find in favor of the District of Columbia and
9 apply a penalty consistent with D.C. Code Section
10 25-830. Thank you.

11 CHAIRPERSON ANDERSON: All right.
12 Thank you. Ms. Damian, in closing what is it
13 that you want the Agency to do -- the Board to
14 do, ma'am?

15 MS. DAMIAN: I want the other
16 inspector when they came the second time to drop
17 the paper, they say in case we don't have an ABRA
18 license, then we -- we have the right to just
19 post a note and say we are not selling alcohol.

20 So, we weren't aware of that. But, I
21 guess we didn't do it. So, like I know everyone
22 been through a lot during this COVID.

23 So, it's up to you if you want to
24 waive the penalty or --

25 CHAIRPERSON ANDERSON: That's it

1 ma'am?

2 MS. DAMIAN: Yes.

3 CHAIRPERSON ANDERSON: All right.

4 Thank you. All right, the record is now closed.

5 And so let me read this instruction.

6 As Chairperson of the Alcoholic
7 Beverage Control Board for the District of
8 Columbia in accordance with D.C. Official Code
9 Section 2574(B) of the open meetings act, I move
10 that the ABC Board hold a closed meeting for the
11 purpose of seeking legal advice from our counsel
12 on Case Number 21-CMP-00031, Bread and Chocolate.

13 Pursuant to D.C. Official Code Section
14 2574(B)(4) of the open meetings act, and
15 deliberating upon Case Number 21-CMP-00031, Bread
16 and Chocolate for the reasons cited in D.C.
17 Official Code Section 2574(B)(13) of the open
18 meeting act.

19 Is there a second?

20 MEMBER SHORT: Mr. Short, I second.

21 CHAIRPERSON ANDERSON: Mr. Short has
22 seconded the motion. I will now take a roll call
23 vote on the motion before us now that it has been
24 second.

25 Mr. Short?

1 MEMBER SHORT: Mr. Short, I agree.

2 CHAIRPERSON ANDERSON: Mr. Cato?

3 MEMBER CATO: Bobby Cato, I agree.

4 CHAIRPERSON ANDERSON: Ms. Crockett?

5 MEMBER CROCKETT: Rafi Crockett, I
6 agree.

7 CHAIRPERSON ANDERSON: Ms. Hansen?

8 MEMBER HANSEN: Jeni Hansen, I agree.

9 CHAIRPERSON ANDERSON: And Mr.

10 Anderson, I agree. The matter passes five to
11 zero.

12 As it appears that the motion has
13 passed, I hereby give notice that the ABC Board
14 will recess these proceedings to hold a closed
15 meeting in the ABC Board conference room pursuant
16 to Section 2574(B) of the open meeting act.

17 What we will now -- ma'am, we will
18 issue -- the Board will issue a decision within
19 90 days.

20 Thank you for being here today, you
21 and Mr. Cenci. And have a good day. We'll issue
22 a decision in 90 days. Okay?

23 Hold on a minute. I think we lost
24 her. I just want to make sure that -- Ms.
25 Damian, I just want to make -- I saw that we had

1 lost you for a minute.

2 But for the official record that --
3 well, the case is over. I think you're having
4 some technical difficulty.

5 So, the case is over. The Board will
6 issue a decision in 90 days. Thank you very
7 much. Have a great day.

8 MS. DAMIAN: Thank you.

9 CHAIRPERSON ANDERSON: Uh-huh. The
10 case is over, ma'am. We'll issue a decision in
11 90 days. Thank you very much.

12 You heard me, ma'am?

13 MS. DAMIAN: Yes, I did. Thank you.

14 CHAIRPERSON ANDERSON: Thank you. All
15 right, bye-bye.

16 MS. DAMIAN: Bye.

17 (Whereupon, the above-entitled matter
18 went off the record at 2:33 p.m.)

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A			
A-M-E-G-E-E 19:10	alcoholic 1:2,13 8:22 12:19 15:16 37:5,11 41:6	41:10 42:13,15,18 43:5	checked 13:10 36:9
A-T-S-O-U 19:9	ALIYA 1:17	Bobby 1:17 42:3	chief 28:7
a.m 13:5 22:15 23:9 36:11	allow 19:25	bore 38:24	Chocolate 1:6,6 2:22 3:5 7:20 11:1,2 16:6 17:18 19:13 21:10 22:13 24:8,13 25:7 27:12 30:9 41:12,16
ab 37:9	Amegee 2:24 19:5,10	Bread 1:6,6 2:21 3:5 7:20 10:25 11:1 16:5 17:18 21:10 22:13 24:13 25:7 30:8 41:12 41:15	cited 41:16
ABC 1:9 2:21,23 11:5 11:11,14,20 12:1,24 13:1,8,11,16 16:1,21 16:24 17:2,6,11,14,17 17:25 18:4,8,9,11,14 18:18,24,24 19:3 23:1 23:19,23 24:1,14 35:20,23 36:7,15,16 37:2,15,19 38:2,9 39:24 41:10 42:13,15	ANC 1:7	Break 19:12 24:8 27:11	claim 18:7
able 10:6 12:6 20:15 27:11	apologize 12:15,16	breaking 5:19 32:24,25	claimed 17:24 36:20
above- 21:12,25 22:21 23:15	appear 5:5	briefly 30:6	claiming 18:4
above-entitled 43:17	appearing 3:21	bring 31:24	clear 13:16,18 19:1
ABRA 1:21 11:9 12:7 14:18 15:18,24 16:19 29:13 32:17,19 40:17	appears 42:12	burden 11:25 12:5 38:24 39:3,7,16,22	closed 41:4,10 42:14
absence 37:9	Applicant 1:22	business 30:13	closing 2:4,4 35:16 40:12
absent 38:9	apply 13:25 40:9	button 20:7	code 6:16 7:2 11:22 13:18 14:1 37:1 40:9 41:8,13,17
accept 12:5 39:13	approached 13:7 18:3	Bye 43:16	Collin 1:21 3:11,20 33:1
access 6:15 7:2	approved 11:20 37:10	bye-bye 43:15	Columbia 1:1 3:22 13:25 14:18 16:2 40:8 41:8
accessible 35:25 37:5 39:25	approximately 12:22 16:17		come 4:17 13:22 26:23 30:13 33:19 35:20
accomplished 20:3	area 26:11	C	complete 19:13 20:19
act 41:9,14,18 42:16	arrive 16:15	C 2:1	completed 19:12 21:3
active 24:14	arrived 18:22 37:17	C-3 20	compliance 18:17
additional 28:6	asked 12:23 26:21	C-O-L-L-I-N 3:20	concerns 11:18
adequate 39:13	asking 26:25 31:25 32:2	calendar 3:4	concluded 12:12 17:22 18:1
Administration 8:22 12:19 15:17	assert 30:16	call 6:1,2,6,9,15 7:1,8 9:16,22 14:15,16 26:23 28:10 41:22	conclusion 39:13
advice 41:11	assertion 38:18	called 7:10 9:18 15:4 29:2	conduct 11:10 12:21 15:25 16:10 17:19 27:11 36:4
advised 16:20 17:2	assumed 15:5 29:3	calling 8:2	conducted 22:12 23:7 24:3
advisement 10:16	Atsou 2:24 19:5,9	calls 14:18	conference 42:15
affirm 14:22 28:18,20	attempting 40:4	camera 10:3,7	confirm 18:7 21:8
afternoon 3:19,24 5:8,9 6:14 10:23 15:10	attention 21:21 22:17 23:11	case 1:8 2:19 3:3,4,7 9:2,12,22 10:12,13 11:4 14:6,15 19:14,23 21:2,5,9 23:12 28:7 35:18 40:17 41:12,15 43:3,5,10	consequences 13:22
agency 8:20 40:13	Automatically 17:8	Cato 1:17 42:2,3,3	considering 39:12
ago 29:8 37:23,23,24	available 11:6 38:6,11	cause 3:25 8:25 9:7,13 10:25 11:17 39:2 40:3	consistent 13:25 37:14 40:9
agree 42:1,3,6,8,10	avoid 40:3	Cenci 1:21 3:11,17,19 3:20 4:1,18,22 7:22 7:23 8:24 9:3 10:18 10:20,23 12:12,17 14:17 15:9 19:11,16 19:20 20:6,9,13 21:7 21:18 22:4,7,16 23:2 23:10,22 24:17 27:4,7 27:10,14 28:1,5 30:3 30:6,11 31:17,23 32:11 35:4,7,10,15,17 42:21	consumed 31:19 32:4 37:13
agrees 37:19	aware 30:12 33:20 40:20	charge 9:17 40:2	consuming 17:10 26:2
ahead 10:22 12:16 20:5 25:18 27:9 28:24 38:22		charges 11:18	consumption 11:7 36:1 37:6 40:1
alcohol 11:6 17:10 22:9 23:4 26:2,5,11 27:17 27:20,24 29:16,18,20 30:14,17 31:1,4,7,11 31:18 32:4,8,20 33:4 35:24 36:22 38:2,3,5 38:6,8,11,14,19,21 39:25 40:19	B		contact 4:19,22
	back 4:17 31:24		continued 17:19
	bar 26:6,9		Control 1:2,13 41:7
	based 7:23 8:1 26:21 38:18		copy 19:17
	basically 9:12		correct 30:10 31:16,20 32:6 34:9,11
	bear 11:24		counsel 8:2 15:4 41:11
	bears 39:3		couple 29:8
	beer 25:24		COVID 29:10 33:17 34:6,13 40:22
	beg 38:4		COVID-based 37:21
	begs 38:5		
	behalf 3:21		
	believe 4:2,25 20:6 26:8 34:17 37:25		
	Beverage 1:2,13 8:22 12:19 15:16 41:7		
	beverages 37:5,12		
	beyond 39:7		
	board 1:2,13 10:15,24 11:20 24:25 26:16 29:19 32:14 35:2,18 37:10 39:7 40:13 41:7		

credits 38:16
Crockett 1:17 42:4,5,5
Cross 2:8 24:22 30:5
current 24:2
currently 15:15 34:21
 34:24
customers 38:19

D

D 25:13,15,19
D-A-M- 7:15
D.C 11:3,22 13:18 14:1
 16:5 37:1 40:9 41:8
 41:13,16
Damian 1:22 2:11 5:1,7
 5:8,12,14,17,18,23
 6:3,7,9,13,18,22 7:6,8
 7:11,15,19 9:8,9,25
 10:5,8 14:8,11 24:19
 24:23 26:15,20,22
 27:2 28:9,14,22 29:1
 29:6,24 30:2,8,10
 31:16,20,24 32:12,16
 32:21 33:1,11,14,24
 34:4,12,17,22,25 35:6
 35:14 36:19,25 37:18
 40:12,15 41:2 42:25
 43:8,13,16
dark 20:7
date 10:17 13:14
dated 2:19
day 17:18,24 22:12 23:7
 23:23 24:2 26:22
 29:17,19 31:1 32:5,20
 33:2,3 36:23 37:20
 38:15,19 42:21 43:7
days 29:8 33:9 42:19,22
 43:6,11
DC 1:21,21
DCMR 11:23 13:19
 21:11 37:8 39:1
decision 10:16 42:18
 42:22 43:6,10
degree 39:11
delays 37:21
deliberating 41:15
Description 2:17
difficulty 43:4
direct 2:8 15:8 21:21
 22:17 23:11 29:5
disagree 39:14
disclose 33:6,7,8
District 1:1 3:21 9:4
 13:24 14:18 16:2 21:8
 28:5 35:21 38:23 39:3
 39:15,21 40:8 41:7
document 20:18,24
 21:13 22:1,4,8,19,20

22:22 23:3,14,16 33:8
 33:13
documentation 18:7
documents 33:7
Donovan 1:14,16
doubt 39:8
DR 1:7
draft 21:5
drop 40:16
due 18:24
duly 15:5 29:3
duties 15:23
duty 1:9 11:6 37:19

E

E 2:1
E-N-C-I 3:21
E-X-H-I-B-I-T-S 2:15
EDWARD 1:18
either 5:3 11:25 17:10
elevate 3:6
elevated 3:12,13,14
employed 15:15 34:21
employee 12:25 16:20
 16:23,25 17:12 18:3
 23:20 36:6
employees 38:10
employer 29:7
encompasses 36:12
encounter 17:24 24:9
 24:14
ensure 31:11,18 32:3,8
entered 12:23
entirety 20:18
establishment 7:18
 11:8,10,12 12:3,20,23
 12:25 13:4,6,8 16:4,9
 16:10,12,16,22,25
 17:7,9,13,21,23,25
 18:5,16,22 22:9 23:4
 24:10,15 25:7,24 26:2
 26:8 27:15,20 30:16
 30:23 31:19 32:5
 35:24 36:4,6,8,10,13
 36:16,22 37:3,16 38:3
 38:8,9,10,13 39:24
establishment's 11:5
 11:19,21 23:1 35:19
establishments 16:1
events 38:16
eventually 36:15
evidence 12:3 21:11
 35:22 37:14 39:4,6,9
 39:10,11,18,20,22
ex 34:2
examination 15:4,8
 24:22 27:6 29:2,5
 30:5

examined 15:6 29:4
Excuse 25:17
Exhibit 21:9,14,22 22:2
 22:18,23 23:12,17
exists 33:13
expected 4:21
expecting 4:23
expiration 34:11
expire 23:24 29:11
expired 11:15 13:12
 18:11,15,19,25 29:10
 33:21,22 34:20 36:17
 37:20,23,24
exploit 40:4
extended 33:18 34:2
extent 30:1

F

fact 39:5
fail 12:1
failed 11:19 13:16
 35:22 39:23
failure 11:5 13:21 35:19
 36:21
familiar 16:3,8
Fashbaugh 1:21 3:6,8
 3:10 5:2 6:8,14,24 7:1
 19:25 20:2
favor 13:24 40:6,8
finally 11:13
find 13:24 40:8
fine 9:6 14:14 28:9
first 15:5,11 29:3,6
five 18:2 42:10
flag 17:8
follow 36:21,24
follows 15:7 29:4
further 24:18 28:2
 32:12 39:18

G

G-A-R-C-I- 15:13
G-A-R-C-I-A 8:15
G-E-O-R-G-E 8:15
 15:13
Garcia 1:23 2:10 3:12
 4:2,5,8,9,17 8:12,14
 8:14,18,21 12:7,8,17
 13:10 14:19,20,24
 15:3,13 19:2,9,11,15
 19:19 20:8,10,12,23
 21:20,24 22:5,25
 23:19 24:7 25:3,5,8
 25:13,15,19,23 26:3,7
 26:13 27:10,13 36:2
 37:17 39:17
George 1:23 2:10 3:12
 4:2 8:14 12:7 14:19

15:3,13
getting 18:2
give 29:18 42:13
Given 18:18
Government 2:3,4 9:14
 9:16,18,20 10:11 15:5
 21:9,14 22:2,23 23:17
 33:9
GRANDIS 1:18
guarantee 38:20
guess 29:12 34:7 40:21

H

hand 14:21 28:17,19
Hansen 1:18 42:7,8,8
hear 4:13 5:14,15,20,22
 5:25 8:5,7,9 11:9 14:9
 14:10 24:21 31:3,14
 32:23
heard 36:2 38:7 43:12
hearing 3:25 4:3 7:24
 8:25 9:7,13 13:15,23
 33:7,10
hearings 39:2
held 36:20
Hello 5:7,13
high 39:6
hold 41:10 42:14,23
hours 11:21 12:2 13:3
 13:18 22:8,11,14 23:3
 23:6 35:24 36:9 37:11

I

I-A-N 7:16
identification 21:15
 22:3,24 23:18
identified 16:19
immediately 34:17
Incorporated 11:1
indicate 31:7
indication 38:14
indicted 27:20
individual 5:5 13:7 19:3
 36:14
individual's 13:11
information 6:12
informed 13:1 38:11
inspect 16:12
inspection 2:20 11:11
 11:16 12:21 13:14
 16:11,16,18 18:1
 19:12 22:6,13 23:8
 24:3,8,12 27:11 36:4
 36:23 38:20
inspections 15:25
 17:20
inspector 37:16 40:16
instruction 41:5

investigation 17:23
18:21 19:23
investigations 16:1
investigative 21:2
39:17
investigator 1:23 4:1
8:14,18,18,21 11:10
12:7,8,17,20 13:10
14:18,24 15:10,19,21
15:24 16:3,20 19:2,9
19:11,15,19 20:8,10
20:12,23 21:5,20,24
22:5,16,25 23:10,14
23:19,23 24:7,17,20
25:1,5,8,13,15,19,23
26:3,7,13 27:10,13
28:1 36:2 39:17
issue 42:18,18,21 43:6
43:10
issued 11:17

J

JAMES 1:19
Jeni 1:18 42:8
job 8:17 21:4
JR 1:17,19
July 2:19 12:18 16:13
19:13 21:9 24:8,13
27:12 30:17,23 34:1
36:3
junction 14:4
justified 28:13

K

keep 11:5 13:16
knowledge 24:1

L

lack 32:19
Lamont 3:13
law 36:21,24 38:18 39:5
learn 12:25
learned 17:6,16
leaving 13:6
left 10:10 17:23 29:8
legal 41:11
let's 4:9
letting 17:9
license 1:8 2:21,23 3:5
11:15 13:11,12 18:10
18:11,14,19,25 23:1
23:20,24 24:2 29:9,11
29:13 33:21 34:5,10
34:16,20,24,24 35:20
36:17 37:19,22 38:2
40:18
licensed 11:4 12:2
13:17 16:1 37:11,13

licensee 2:4 3:11 4:18
4:20,23 5:6 11:18
13:16 35:22 37:9 39:5
39:19 40:3
Licensees' 38:16
licenses 33:18 34:2
line 3:11 5:1,4,4 7:9
list 22:8 23:3
located 11:2 16:4
location 5:21
locked 31:1 38:8
locking 27:23
long 15:20
look 6:5
lost 42:23 43:1
lot 40:22

M

M 1:7 11:2 16:4
M-I-H-A-I-L-I-N-A 7:15
ma'am 5:13,16,20 6:1,5
6:12,21 7:5,10,14,18
9:6,12,23 10:4,10
14:3,10 24:21 26:24
26:24 28:17,19,24
29:23 31:15 32:24
33:10,16 35:12 40:14
41:1 42:17 43:10,12
Mahone 3:13 4:2 7:23
8:7,10
male 16:20
manager 1:9 11:5,11,14
11:20 12:1,24 13:1,8
13:17 16:21,24 17:2,6
17:11,14,17,25 18:5,8
18:10,24 19:4 24:14
29:8,14 31:21 32:1
34:13,20 35:23 36:7
36:15,16 37:2,10,15
37:19 38:2,9 39:24
manager's 2:23 13:11
18:11,14,18,25 23:20
23:24 24:2 29:9 33:20
March 1:11
Mark 2:17
marked 21:14,21 22:2
22:18,23 23:12,17
matter 1:5 3:24 10:15
10:25 11:18 42:10
43:17
matters 9:1,4
mean 17:5 18:13 25:22
32:18
means 25:23 39:10
meet 12:6
meeting 1:3 41:10,18
42:15,16
meetings 41:9,14

member 1:17,17,18,18
1:19 27:16 31:3 41:20
42:1,3,5,8
Members 10:24 24:25
26:16 32:14 35:2,18
39:7
met 1:13 39:15,22
Mihailina 1:22 2:11
4:25 5:18 29:1
minute 42:23 43:1
minutes 18:2
mistake 34:7
moment 17:3
month 37:24
months 11:15 13:13
36:18 37:24
motion 41:22,23 42:12
move 4:9 41:9

N

N 2:1,1
name 2:8 3:17 4:6,10
5:10,17 7:14 8:13
15:11 19:5,7
necessary 4:3
need 20:14 28:19 36:24
needed 7:24 16:21,24
never 34:8,9
new 29:7
Northwest 11:2 16:5
note 17:9 40:19
notice 11:17 40:3 42:13
November 13:12 18:12
18:19 23:25 33:21,22
number 3:4,5 6:6,10,15
6:19 7:2 41:12,15
NW 1:7

O

O 2:1
OAG 1:21
observed 18:10
official 41:8,13,17 43:2
once 9:18 10:11,14
open 41:9,14,17 42:16
opening 2:3 9:14,16
10:19 12:11 14:3,5
operates 9:12,13
opportunity 9:21 10:12
option 14:7
ordered 38:19,21
outcome 39:21,21
owner 7:19 11:6,12,19
12:2,24 13:1,17 16:22
16:24 17:13,17 24:9
30:8 35:23 36:7 37:2
39:23
owning 30:13

P

P-R-O-C-E-E-D-I-N-G-S
3:1
p.m 3:2 12:23 13:5
16:17 22:15 23:9 36:5
36:11 43:18
Page 2:2
paper 6:11 40:17
part 21:4
parties 3:7
passed 42:13
passes 42:10
patron 27:17
patrons 31:4,12 38:11
pen 6:11
penalty 13:25 40:9,24
permitted 19:22 37:12
38:17
person 5:3,6 18:21,23
39:12
person's 18:14,18
persons 39:14
Petitioner 11:24
phone 5:4,24 6:2
place 5:24
plan 9:22 28:10
please 3:6,8,17,18 4:5,6
4:10,11 5:11 6:9 8:12
8:13 14:21 15:11
19:25 20:1,19 28:17
position 15:18 28:13
post 40:19
postdated 29:11
posted 27:19 31:7
38:14
preliminary 9:1,3
premises 11:21 37:11
37:13
preponderance 39:8
present 1:15,20 4:24
10:13 11:12,13,20
12:2 13:2,17 14:6
17:11,13,17 18:21
30:22,24 35:23 36:8
36:13,15 37:3,10,16
39:24
presented 10:11 19:3
21:23 23:21
presiding 1:14
previously 22:18 23:12
prior 11:15 13:13 34:10
proceedings 42:14
pronounce 19:8
proof 11:25 38:24,25
prove 9:22 39:22
proven 35:21
provide 6:9
provided 18:10

proving 39:3 40:2
public 35:25 37:6
purpose 41:11
pursuant 21:11 41:13
 42:15

Q

question 25:4 27:1,4
 31:25 38:4,5
questions 24:18,20
 25:1 26:15,17,20,21
 28:2 30:4 32:12,13
 35:2,5,9
quick 25:4
quote 37:4,9

R

Rafi 1:17 42:5
raise 14:21 28:16,19
read 20:15 41:5
reads 37:8
reason 29:12 40:7
reasonable 39:8,11,14
reasons 41:16
Rec'd 2:17
recall 26:3,6,7,13 27:16
 27:19,23
receive 7:5
recess 42:14
recognize 19:16 20:24
recognizes 38:23
record 3:18 4:6,11 5:11
 7:14 8:13 12:4 15:12
 19:2,8 21:8 39:4,12
 39:19 41:4 43:2,18
Recross 2:8
red 17:8
redirect 2:8 27:5,6
referred 21:13 22:1,22
 23:16
refuse 31:4
refusing 27:16
regardless 38:1
Regulation 8:22 12:19
 15:16
regulatory 2:20 11:11
 12:21 16:11 17:19
 18:1 22:6 36:4
relation 37:2
relationship 7:18
relevant 39:11
rely 34:6
renew 29:13 34:10
renewed 34:16,18
 37:21
repeat 6:18,22
report 2:19 19:14,17,23
 21:2,10,22 23:13

29:18 33:2,3 39:17
reports 21:5
representation 8:1
request 19:21
required 37:3,4
Respondent 12:1 29:2
 39:23
response 4:7,12,15 8:4
 25:2 26:18 30:19
 31:13 32:15 35:3
responsibilities 13:22
 15:24 30:12 35:20
responsibility 40:4
responsible 36:21
rest 9:20 35:13
restaurant 25:9,13,20
 26:12
rests 28:6
Retailer 1:7
returning 13:9 17:3
 20:21
review 18:6 20:19
reviewed 13:3 18:9
rights 3:7,11,12,14
roll 41:22
room 42:15

S

S 1:18 2:1
sale 11:7,21 12:2 13:3
 13:18 22:9 23:4,6
 35:24,25 36:10 37:6
 38:12 39:25
sales 22:11
SARAH 1:21
saw 13:11 18:13 36:10
 42:25
saying 12:13 33:17
 34:1
says 33:22 36:25 37:1,4
screen 19:22 20:1,7,11
 21:23 24:6
scroll 20:17,20
second 40:16 41:19,20
 41:24
seconded 41:22
Section 11:23 13:19,19
 14:1 21:11 37:1,8
 39:1 40:9 41:9,13,17
 42:16
Sections 11:22
secure 37:5
seeing 27:16,23
seeking 41:11
self-serving 38:18
sell 25:24 27:17 29:15
 29:17,19 30:17 31:4
 31:21 33:3 36:22 38:3

selling 17:10 40:19
send 29:18 32:19 33:1
sent 32:17,21 33:14
served 27:21 31:11
 37:12 38:15,22
serves 30:13
service 11:7 35:25 37:6
 39:25
serviced 31:8
seven 13:13 33:9 36:17
 37:24
share 19:22,22,25 20:7
 34:4
sharing 20:11 24:6
Short 1:19 41:20,20,21
 41:25 42:1,1
shortly 17:4
show 3:25 8:25 9:7,13
 10:25 11:17,25 19:17
 39:2 40:3
sides 37:15
sign 8:10
signage 27:19 31:6
signed 34:6
simply 37:22
Simultaneous 25:12
 33:23
sir 3:24 4:14 7:24 8:3,6
 8:8,17,20,23,25 10:19
 10:22 12:11,16 14:14
 15:1 19:7 20:5 25:17
 25:22 28:4,14 35:16
situation 29:10
skirt 38:17
sold 32:9,20 37:12 38:5
 38:6
somewhat 9:11
sorry 6:20 8:24 12:10
 25:14,16 26:16
sort 18:6 38:14
space 26:6
speak 12:24 16:21,24
speaking 25:12 33:23
spell 3:17 4:6,10 5:10
 7:13 8:12 15:11 19:7
 19:7
spoke 36:5
staff 1:21 27:16,23
 30:25 31:3,10,18 32:3
 32:7
stand 15:6 29:3
standby 3:8
state 3:17 4:6,10 5:10
 7:13 8:13 15:11 34:9
 36:14
stated 8:2
statement 2:3,4,4 9:14
 9:16 10:19 12:11 14:3

14:6,11 26:25 28:12
 28:15 30:1 32:17,18
 32:19 35:16
status 38:1
stepped 17:3,6
steps 31:11,18 32:3,8
stop 24:5
storing 27:24
Street 1:7 11:2 16:4
substantial 12:3 35:22
 39:4,6,10,22
support 39:13
supported 39:18,20
supposed 32:1
swear 10:14 14:22
 28:18,20
sworn 15:5 29:3

T

T 2:1,1
t/a 1:6
talk 5:23
technical 43:4
technicality 40:5
technically 18:23
tell 12:22 13:4 14:22
 16:25 17:12 28:20
testified 15:6 29:4
 36:19
testify 9:24 12:18 13:6
testimony 12:6 38:7,10
 38:13,15 39:16
thank 3:9,16 4:5 6:17
 7:3,4,22 8:12,23 14:1
 14:2,14 15:1 19:24
 20:4 21:17,18 22:16
 23:10 24:5,17,24 27:4
 28:1,3,9,23 32:11
 40:10,12 41:4 42:20
 43:6,8,11,13,14
things 34:13
thought 12:13
Three 15:22
title 8:17
today 4:21,24 9:23
 10:25 11:9,24 19:18
 35:21 36:19 37:15
 38:24 39:16,20 42:20
today's 4:3 13:23
told 16:23 34:3 36:5,6,9
top 20:21
traded 11:1
tried 34:9,12
truth 14:23,23 28:20,21
try 34:10
trying 5:5
turn 10:7
turned 11:14

<p>two 29:14 37:23 type 25:6</p>	<p>Y years 15:22 yesterday 33:14</p>	<p>35 2:4 4</p>
<p>U ultimately 40:5 Um-hum 20:22 30:15 unable 37:20 understanding 7:23 unquote 37:7,13 uphold 13:21 35:19</p>	<p>Z zero 42:11 zoom 20:14,14</p>	<p>40 2:4 5 6</p>
<p>V valid 34:24 vehicle 18:3,4 venue 28:12 videoconference 1:13 violated 39:5 violation 11:22 13:18 violations 17:21 visible 26:5,11 visit 26:1,12 visited 11:10 16:10 vote 41:23</p>	<p>0 1 1-650-479-3208 6:15 1:27 12:23 16:17 36:5 36:13 1:52 3:2 10 2:3 11 2:23 23:12,18 14 2:10 16 1:11 1711.6 39:1 1713.10 21:11</p>	<p>650-479-3208 7:2 7 7 2:19 12:18 16:13 19:13 21:9 24:9,13 27:12 30:17,23 34:1 36:3 7:00 13:5 22:14 23:9 36:11 701(a)(1)(I) 11:23 707.1 11:23 13:20 37:8</p>
<p>W W 1:14,16 W-I-T-N-E-S-S-E-S 2:6 wait 7:7 waive 40:24 wanted 29:22 wants 36:25 37:25 Washington 11:3 16:5 wasn't 31:11,19 32:8 37:22 WebEx 1:13 Wednesday 1:11 12:18 22:12,14 23:7 36:3 Wednesdays 13:5 36:11 week 37:23 weeks 29:14 37:23 went 12:20 36:3,14 43:18 weren't 30:22 40:20 willful 13:21 35:19 wine 25:24 wish 10:18 14:3,5,15 35:5,16 witness 8:3 9:17,19,19 12:7 14:15 15:1,6 26:20 27:5 28:4 29:3 witnesses 9:17,19,23 28:6,10 33:7 wouldn't 38:21 write 6:12</p>	<p>2 2 2:20 21:22 22:3 2:33 43:18 20 13:12 23:25 20037 11:3 16:5 2020 13:13 18:11,19 23:25 33:22 2021 2:19 12:18 16:13 19:13 21:9 24:9,13 27:12 30:17,23 34:1 36:3 2022 1:11 21 2:19,20 21-CMP-00031 1:8 3:4 41:12,15 22 2:22 23 2:24 11:23 13:19 21:11 37:8 39:1 2301 1:7 11:2 16:4 23031368587 6:16 7:3 24 2:10 25- 11:22 25-701(a)(1)(I) 13:19 25-701(a)(1)(ii)(c) 37:1 25-830 14:1 40:10 2574(B) 41:9 42:16 2574(B)(13) 41:17 2574(B)(4) 41:14 26 2:10 28 2:11 29 2:11 2A 1:7</p>	<p>8 9 9:00 13:4 22:15 23:9 36:11 90 42:19,22 43:6,11 94780 1:8 3:5</p>
<p>X</p>	<p>3 3 2:21 22:18,24</p>	

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This is to certify that the foregoing transcript

In the matter of: Bread and Chocolate

Before: DCABRA

Date: 03-16-22

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