

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

 IN THE MATTER OF: :
 :
 Melben, Inc., :
 t/a Flavio :
 1069 31st Street NW : Show Cause
 License #8004 : Hearing
 Retailer CR - ANC 2E :
 Case# 20-AUD-00016 :
 :
 (Failed to File :
 Quarterly Statement) :

Wednesday
May 19, 2021

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:

SIMONE ANDREWS, DC ABRA Staff
MONICA CLARK, DC ABRA Compliance Analyst
JESSICA KRUPKE, DC OAG

C O N T E N T S

	Page
Government's Opening Statement	7
Government's Closing Statement20

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

Name	Direct	Cross	Redirect	Recross
 Monica Clark	 8			

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

No.	Description	Mark	Rec'd
 1	 Case Report	 11	 12
2	Fourth Quarter Statement of Flavio	14	15

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

2 1:40 p.m.

3 CHAIRPERSON ANDERSON: Good afternoon
4 everyone. We're back on the record. My name is
5 Donovan Anderson. I'm Chairman of the ABC Board.

6 Joining us this afternoon is Mr. Bobby
7 Cato, Ms. Rafi Crockett, Ms. Jeni Hansen, Mr. Ed
8 -- Edward Grandis.

9 This Board has five members in
10 attendance for the conduct of business this
11 afternoon. So, we -- we do have a quorum.

12 Excuse me, before we get underway with
13 this afternoon's hearing, I need to make a few
14 instructions very clear so that the conduct of
15 this hearing is understood by everyone.

16 We only have one hearing scheduled
17 this afternoon, although there are some other
18 cases on our calendar. But, there's one hearing.

19 And once I call the case, we'll have
20 our IT specialist elevate your rights for you to
21 participate. If at any point you have any
22 problems, please should you have any questions or
23 require technical assistance during the hearing,
24 please submit them using the question and answer
25 feature, request -- or email

1 Simone.Andrews2@DC.gov.

2 And so now we'll -- sorry, the first
3 case on our afternoon schedule is Case Number 20-
4 AUD-00016, Flavio, License Number 8004. And Ms.
5 Andrews, can you please elevate the rights of the
6 parties in this case, please?

7 MS. ANDREWS: Sure. Standby. Ms.
8 Krupke, your rights have been elevated. Ms.
9 Clark, your rights have been elevated.

10 That's all, Mr. Chair.

11 CHAIRPERSON ANDERSON: Thank you. Ms.
12 Krupke, have you had any conversations with the
13 Licensee in this case?

14 MS. KRUPKE: No, I have not. I have
15 reached out both by phone and the email addresses
16 that I had on file, to attempt to negotiate a
17 potential offer in compromise. I haven't had any
18 response.

19 CHAIRPERSON ANDERSON: Do we know
20 whether or not this Licensee is still in
21 business?

22 MS. KRUPKE: I believe they were. I
23 believe I called the establishment in April
24 regarding the OIC. And called the establishment
25 itself, attempting to reach an owner.

1 But, I do believe they are still in
2 business.

3 CHAIRPERSON ANDERSON: And do you have
4 -- I don't have the information in front of me.
5 Do you know when -- or do you have any
6 information when this Licensee was -- their
7 notice for this hearing?

8 MS. KRUPKE: I have that they were
9 served notice on April 9 for one of the hearings.
10 But, I believe that might have been the one that
11 was continued.

12 As you might remember, they were
13 supposed -- this hearing was supposed to be held
14 in April. And then due to concerns regarding the
15 short time between service and the hearing, it
16 was postponed to day's date.

17 And so, I'm not sure that I have
18 received notice of service as for this hearing.

19 CHAIRPERSON ANDERSON: And I don't
20 have -- I don't have that information to -- I
21 don't have that information.

22 And they're -- I just want to make
23 sure that -- I just want to alert the public that
24 Mr. James, Board Member James Short has now
25 joined us. And so, the Board now has six members

1 in attendance to conduct business.

2 I'm just trying to find some
3 information. Sorry. It's my -- it's my
4 understanding that on April 22 that the
5 establishment was served notice for this hearing.

6 And -- let me see something. I want
7 to -- let me have -- can you identify yourself
8 for the record please now. Again, Ms. Krupke?

9 MS. KRUPKE: Yes. Jessica Krupke on
10 behalf of the District of Columbia.

11 CHAIRPERSON ANDERSON: Can you please
12 spell your last name?

13 MS. KRUPKE: It's K-R-U-P-K-E.

14 CHAIRPERSON ANDERSON: Now, is the
15 Government -- is the Government ready and able to
16 move forward?

17 MS. KRUPKE: We are.

18 CHAIRPERSON ANDERSON: Okay. Pursuant
19 to DC -- DC Official Code Section 25-447, the
20 Board has authority to proceed ex parte where the
21 Licensee waives a hearing, or fails to appear
22 unless the hearing is extended for good and
23 sufficient cause.

24 The Board's records reflect that the
25 Licensee was properly serviced on April 22, 2021.

1 And it is my understanding that the Respondent
2 also applied and acknowledged through email to
3 ABRA staff that they were aware of the hearing.

4 They were aware on April 22 because
5 they were served. And it's my understanding that
6 they acknowledged through email with ABRA staff
7 and acknowledge received and -- and received and
8 service.

9 Seeing that Licensee is not here
10 today, and having no good and sufficient cause to
11 extend the hearing, the Board will proceed with
12 the show cause hearing.

13 Does the Government wish to move
14 forward with an opening statement?

15 MS. KRUPKE: Yes, thank you. Good
16 afternoon Members of the Board. The Government
17 brings this case against Melben, Inc, trading as
18 Flavio, and brings one charge at this time.

19 And that's the failure to file the
20 required quarterly statements by the date and in
21 the manner prescribed by the Board. The
22 Government alleges that this is a violation of DC
23 Code 25-113, Subsection (e)(2)(a).

24 The Government will prove by a
25 preponderance of the evidence that the

1 establishment failed to file the required
2 quarterly statement filing for the quarter ending
3 December 31, 2019. And the Government will prove
4 that this filing was due by January 30, 2020.

5 And finally, the Government will prove
6 that the establishment did not meet this filing
7 until March 2, 2020. The Government intends to
8 call one witness, Compliance analyst Monica
9 Clark, and does so now.

10 CHAIRPERSON ANDERSON: All right, Ms.
11 Clark, can you raise your right hand, please?

12 Do you swear or affirm to tell the
13 truth and nothing but the truth?

14 MS. CLARK: I do.

15 CHAIRPERSON ANDERSON: All right.
16 Your witness, ma'am.

17 DIRECT EXAMINATION

18 MS. KRUPKE: Good afternoon. Can you
19 please state your name and spell your name for
20 the record?

21 MS. CLARK: Monica Clark, M-O-N-I-C-A
22 C-L-A-R-K.

23 MS. KRUPKE: Ms. Clark, what do you do
24 for a living?

25 MS. CLARK: I'm a compliance analyst

1 with the Alcohol Beverage Regulation
2 Administration.

3 MS. KRUPKE: What do you do as a
4 compliance analyst?

5 MS. CLARK: I receive and record and
6 analyze the data received from licensed
7 establishments within the District of Columbia
8 for restaurants, hotels, and caterers.

9 MS. KRUPKE: Are you the only
10 individual responsible for this task? Or are
11 there other compliance analysts as well?

12 MS. CLARK: I am the only one that's
13 responsible for the -- for the quarterly
14 statements, yes.

15 MS. KRUPKE: And so the quarterly
16 statements are part of your job duties as you
17 said, is that correct?

18 MS. CLARK: Yes.

19 MS. KRUPKE: What do you do in
20 relation to the quarterly statements?

21 MS. CLARK: Well, when the quarterly
22 statements are submitted, I gather the data from
23 the emailed account where they're received. I go
24 through that data. I enter the data into our
25 database.

1 And then at that point, once I've
2 received all the quarterly statements within a
3 time frame that they should have been submitted,
4 I go through the data. I analyze and find out
5 which establishments have and have not filed
6 their quarterly statement.

7 The establishments that have not filed
8 their quarterly statements I then make a report
9 to the Chief of Enforcement, and submit those
10 establishments to him for further action.

11 MS. KRUPKE: I want to talk about how
12 you receive quarterly statements. Can you walk
13 us through that process?

14 MS. CLARK: Yes. Quarterly statements
15 can be received in a few different ways. You can
16 mail them. And you can submit them online or you
17 can do them as an attachment to an email.

18 You are no longer, as of October 2020,
19 allowed to fax quarterly statements. But, the
20 quarterly statement of -- the quarterly statement
21 most widely used is submitting them online.

22 MS. KRUPKE: And are you familiar with
23 Respondent, Melben, Inc., trading as Flavio?

24 MS. CLARK: Yes, I am.

25 MS. KRUPKE: And did you complete a

1 case report related to Melben, Inc, trading as
2 Flavio?

3 MS. CLARK: Yes, I did.

4 MS. KRUPKE: I'd like to refer to what
5 has been marked for identification purposes as
6 Exhibit 1. This is the case report that
7 Respondent should have received.

8 (Whereupon, the above-
9 referred to document was
10 marked as Government Exhibit
11 No. 1 for identification.)

12 MS. KRUPKE: I'm going to go ahead --
13 oh, I don't believe I have the ability to share
14 the screen. Is that something that --

15 CHAIRPERSON ANDERSON: Ms. Andrews,
16 can you please give Ms. Krupke the ability to
17 share her screen, please?

18 MS. ANDREWS: Sure. Standby. Okay,
19 Ms. Krupke, you can share your screen now.

20 MS. KRUPKE: All right. So, I'm
21 referring to what has been marked as Government's
22 Exhibit 1. Do you recognize this document?

23 MS. CLARK: Yes, I do.

24 MS. KRUPKE: And what do you recognize
25 it as?

1 MS. CLARK: That is a case report that
2 I authored for the establishment Flavio.

3 MS. KRUPKE: Why did you author this
4 report?

5 MS. CLARK: I authored that report
6 because and for 2019, for the fourth quarter,
7 Flavio did not submit a quarterly statement in a
8 timely manner.

9 MS. KRUPKE: Is this a fair and
10 accurate copy of the report that you authored?

11 MS. CLARK: Yes.

12 MS. KRUPKE: At this time the
13 Government tenders Government's Exhibit 1 into
14 evidence.

15 CHAIRPERSON ANDERSON: It's a -- it's
16 a Board document. So the Board takes
17 administrative notice of its own document. Thank
18 you, Ms. Krupke.

19 (Whereupon, the above-
20 referred to document was
21 received into evidence as
22 Exhibit No. 1.)

23 MS. KRUPKE: Ms. Clark, you said that
24 -- I believe you said that Flavio failed to
25 timely file their quarterly statement.

1 When was the statement due?

2 MS. CLARK: The statement was due no
3 later January 30, 2020.

4 MS. KRUPKE: And are you aware of
5 when, if they did at all, file the quarterly
6 statement?

7 MS. CLARK: Yes. Flavio later filed
8 their quarterly statement for that period on
9 March 2, 2020.

10 MS. KRUPKE: How do you know that?

11 MS. CLARK: I -- the quarterly
12 statements when they're received, they come in
13 and they're -- they're given the -- the date and
14 time of which they were submitted.

15 MS. KRUPKE: How did you receive
16 Flavio's quarterly statement for the fourth
17 quarter of 2019?

18 MS. CLARK: The quarterly statement in
19 question was received through our online system.

20 MS. KRUPKE: I'm referring to what has
21 been marked for identification purposes as
22 Government's Exhibit 2. I'm going to go ahead
23 and share that now.

24 All right. Can you see my screen that
25 I'm sharing, Ms. Clark?

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(Whereupon, the above-referred to document was marked as Exhibit No. 2 for identification.)

MS. CLARK: Yes.

MS. KRUPKE: Do you recognize this document?

MS. CLARK: Yes.

MS. KRUPKE: What do you recognize it as?

MS. CLARK: That is a copy of the submission of the quarterly statement for Flavio for the fourth quarter of 2019.

MS. KRUPKE: Is this document maintained by you in a database in ABRA's records?

MS. CLARK: Yes, it is.

MS. KRUPKE: Is it a fair and accurate copy of the fourth quarter statement of 2019 for Flavio?

MS. CLARK: Yes, it is.

MS. KRUPKE: And has it been maintained in the regular course of business?

MS. CLARK: Yes, it has.

1 MS. KRUPKE: Has it been altered in
2 any way?

3 MS. CLARK: No. This is an exact
4 replica.

5 MS. KRUPKE: I tender Government's
6 Exhibit 2 into evidence at this time.

7 CHAIRPERSON ANDERSON: And so moved.
8 Again, it's a part of the -- yes, so moved.

9 (Whereupon, the above-
10 referred to document was
11 received into evidence as
12 Exhibit No. 2.)

13 MS. KRUPKE: Ms. Clark, I just want to
14 talk with you about this Exhibit 2 for a moment.
15 You said that it was received on March 2.

16 Can you tell me how you know that
17 that's the date it was received?

18 MS. CLARK: Well, at the top of the
19 document you'll notice that it gives the -- the
20 date and the time down to the second actually, of
21 when the document was submitted.

22 That's something that appeared at the
23 top. And also, if you look at the bottom of the
24 screen, it also again, states the date and time
25 it was created and received at the bottom of the

1 document.

2 MS. KRUPKE: Ms. Clark, this record
3 appears to look -- it looked like an email that
4 was received by you. Is that correct?

5 MS. CLARK: Yes. The quarterly
6 statements when submitted online, actually feed,
7 they actually come in as an email into a separate
8 box, a separate inbox.

9 MS. KRUPKE: I'm going to stop sharing
10 my screen now. Ms. Clark, how do you know the
11 date that the quarterly statements were due?

12 MS. CLARK: The qua -- the date for
13 the quarterly statements are established dates by
14 -- per DC Regulation.

15 The quarterly statements are due 30
16 days past the -- past the end of the quarter.
17 So, that quartered would have covered the period
18 of October through December.

19 Which means that the quarterly
20 statement would have been due no later the 30th
21 of January of the following year. Which would
22 have been January 30, 2020.

23 MS. KRUPKE: Okay. I don't believe
24 there are any further questions at this time.

25 CHAIRPERSON ANDERSON: Thank you. Any

1 questions by any Board Members?

2 MEMBER GRANDIS: Mr. Chairman, yes.

3 CHAIRPERSON ANDERSON: Yes, Mr.

4 Grandis?

5 MEMBER GRANDIS: Ms. Clark, it's a
6 pleasure to see you today. Thank you for your
7 participation and your good work for the agency.

8 If I -- if I'm following the
9 chronology correctly, there have been four, at
10 least four quarters since the one that they were
11 late on for 2020. Is that -- would that be
12 correct?

13 MS. CLARK: Yes. There would have
14 been four quarters due in 2020, yes.

15 MEMBER GRANDIS: Okay. And do we know
16 if they were filed timely?

17 MS. CLARK: I cannot recall off the
18 top of my head. But, I am able to go into the
19 system to check that data.

20 MEMBER GRANDIS: And there would be
21 one for 2021, I believe, that would also be due.
22 Because that would have been due at the end of
23 April?

24 MS. CLARK: Yes. Now, because that
25 docu -- because that one is recently due, I do

1 know the status of that particular -- particular
2 quarterly statement.

3 And as of this point, it has not been
4 filed.

5 MEMBER GRANDIS: Thank you. Thank
6 you, Mr. Chairman.

7 CHAIRPERSON ANDERSON: All right. So,
8 Ms. Clark, is this establishment current on its
9 quarterly statements?

10 Do you know to the best of your --
11 your abil -- your knowledge?

12 MS. CLARK: I believe that the
13 quarterly statements for 2020 were submitted. I
14 can't promise to whether or not they were timely
15 at this, at this moment.

16 However, as I just stated, the
17 quarterly statement for -- for the first quarter
18 of 2021 has not yet been submitted as of this
19 morning.

20 CHAIRPERSON ANDERSON: Is that
21 overdue? Or is it --

22 MS. CLARK: Yes. Yes, it would be
23 overdue at this point.

24 CHAIRPERSON ANDERSON: Okay. I don't
25 have -- I don't have any other questions. And

1 does any other Board Member have any other
2 questions?

3 (No response)

4 CHAIRPERSON ANDERSON: All right. Ms.
5 Krupke, do you have any follow up questions based
6 on the questions that were asked by the Board?

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

8 CHAIRPERSON ANDERSON: All right.
9 Thank you very much for your testimony, Ms.
10 Clark. You're excused from further participation
11 in this hearing.

12 You're welcome to stay on. But,
13 you're free -- you're -- for further
14 participation.

15 MS. CLARK: All right.

16 CHAIRPERSON ANDERSON: Does the Gov --

17 MS. CLARK: Thank you.

18 CHAIRPERSON ANDERSON: Thank you.

19 Does the Government have any other witnesses?

20 MS. KRUPKE: No, we do not.

21 CHAIRPERSON ANDERSON: Does the
22 Government rest?

23 MS. KRUPKE: Yes. Unless you'd like
24 a brief closing statement.

25 CHAIRPERSON ANDERSON: Right. So, --

1 so, yes. I'm going to ask for if the Government
2 has a closing statement it wishes to put forward?

3 MS. KRUPKE: Yes. But otherwise, the
4 Government rests. Thank you.

5 CHAIRPERSON ANDERSON: Perfect. All
6 right, so you can go ahead and -- you can go
7 ahead with the -- with -- hold on a minute. You
8 can hold on, please.

9 All right. You can go ahead with your
10 closing statement ma'am.

11 MS. KRUPKE: Good afternoon Members of
12 the Board. The Government has established Flavio
13 Trading as Mel -- I'm sorry, Melben trading as
14 Flavio, has failed to file the required quarterly
15 statement in -- by the date and in the manner
16 prescribed by the Board in violation of DC Code
17 25-113, Subsection (b)(2)(a).

18 This part of the code requires that
19 the Licensee shall file with the Board required
20 quarterly statements on the dates and in the
21 manner prescribed by the Board reporting for the
22 proceeding quarter. And that includes the gross
23 receipts for the establishment and receipts for
24 sales, and sale of food, and so on.

25 And so, that quarterly statement, as

1 you've seen, was filed by this establishment.
2 But, it did so on March 2, 2020.

3 The statement was due by January 30,
4 2020 as Ms. Clark has just testified. Thus,
5 making this quarterly statement filing late.

6 And so we do know that the
7 establishment -- therefore we can infer that the
8 establishment did not file in any other manner
9 timely, because they did, in fact, file late on
10 March 2, 2020. And so we do know the actual date
11 of filing.

12 At this time there's no other, you
13 know, considerations related to this particular
14 charge. It's pretty straightforward, if they
15 failed to file timely and in the manner
16 prescribed by the Board, then the Government has
17 proved by a preponderance of the evidence this
18 violation.

19 And asks for a penalty commensurate
20 with the Statute.

21 CHAIRPERSON ANDERSON: Thank you. All
22 right. The record is now closed. Do the parties
23 wish -- do you wish to file proposed findings of
24 fact and conclusions of law? Or waive the right
25 to do so?

1 MS. KRUPKE: The Government waives the
2 right to do so.

3 CHAIRPERSON ANDERSON: All right.
4 Thank you. The Board will issue a decision
5 within 90 days. And hold on, please.

6 As Chairperson of the Alcoholic
7 Beverage Control Board for the District of
8 Columbia and in accordance with the DC Official
9 Code Section 25-75 -- I'm sorry, 25-74(b) of the
10 Open Meetings Act, I move that ABC Board hold a
11 closed meeting for the purpose of seeking legal
12 advice from our counsel on Case Number 20-AUD-
13 00016, Flavio.

14 Pursuant to DC Official Code Section
15 25-74(b)(4) of the Open Meetings Act, and
16 deliberating upon Case Number 20-AUD-00016 Flavio
17 for the reasons cited in DC Official Code Section
18 25-74(b)(13) of the Open Meetings Act. Is there
19 a second?

20 MEMBER CROCKETT: Ms. Crockett
21 seconds.

22 CHAIRPERSON ANDERSON: Ms. Crockett
23 has seconded the motion. I will now take a roll
24 call vote to the motion that's been properly
25 seconded by Ms. Crockett.

1 Mr. Short?

2 MEMBER SHORT: Mr. Short, I agree.

3 CHAIRPERSON ANDERSON: Mr. Cato?

4 MEMBER CATO: Bobby Cato, I agree.

5 CHAIRPERSON ANDERSON: Ms. Crockett?

6 MEMBER CROCKETT: Rafi Crockett, I

7 agree.

8 CHAIRPERSON ANDERSON: Ms. Hansen?

9 MEMBER HANSEN: Jeni Hansen, I agree.

10 CHAIRPERSON ANDERSON: Mr. Grandis?

11 MEMBER GRANDIS: Edward Grandis, I

12 agree.

13 CHAIRPERSON ANDERSON: And Mr.

14 Anderson, I agree. The matter passes. As it
15 appears the motion has passed six, zero, zero, I
16 hereby give notice that the ABC Board will recess
17 this proceeding to hold a closed meeting in the
18 ABC Board conference room pursuant to Section 25-
19 74(b) of the Open Meetings Act.

20 Thank you very much for your
21 participation today. And the Board will issue a
22 decision in due course. Thank you.

23 MS. KRUPKE: Thank you.

24 (Whereupon, the above-entitled matter
25 went off the record at 2:03 p.m.)

1

A

ABC 3:5 22:10 23:16,18
abil 18:11
ability 11:13,16
able 6:15 17:18
above- 11:8 12:19 14:2 15:9
above-entitled 23:24
ABRA 1:21,22 7:3,6
ABRA's 14:16
account 9:23
accurate 12:10 14:19
acknowledge 7:7
acknowledged 7:2,6
Act 22:10,15,18 23:19
action 10:10
actual 21:10
addresses 4:15
Administration 9:2
administrative 12:17
advice 22:12
affirm 8:12
afternoon 3:3,6,11,17 4:3 7:16 8:18 20:11
afternoon's 3:13
agency 17:7
agree 23:2,4,7,9,12,14
ahead 11:12 13:22 20:6 20:7,9
Alcohol 9:1
Alcoholic 1:2,13 22:6
alert 5:23
ALIYA 1:18
alleges 7:22
allowed 10:19
altered 15:1
analyst 1:22 8:8,25 9:4
analysts 9:11
analyze 9:6 10:4
ANC 1:8
Anderson 1:14,17 3:3,5 4:11,19 5:3,19 6:11 6:14,18 8:10,15 11:15 12:15 15:7 16:25 17:3 18:7,20,24 19:4,8,16 19:18,21,25 20:5 21:21 22:3,22 23:3,5 23:8,10,13,14
Andrews 1:21 4:5,7 11:15,18
answer 3:24
appear 6:21
appeared 15:22
appears 16:3 23:15
applied 7:2
April 4:23 5:9,14 6:4,25 7:4 17:23
asked 19:6

asks 21:19
assistance 3:23
attachment 10:17
attempt 4:16
attempting 4:25
attendance 3:10 6:1
AUD-00016 4:4
author 12:3
authored 12:2,5,10
authority 6:20
aware 7:3,4 13:4

B

b 20:17
back 3:4
based 19:5
behalf 6:10
believe 4:22,23 5:1,10 11:13 12:24 16:23 17:21 18:12
best 18:10
Beverage 1:2,13 9:1 22:7
Board 1:2,13 3:5,9 5:24 5:25 6:20 7:11,16,21 12:16,16 17:1 19:1,6 20:12,16,19,21 21:16 22:4,7,10 23:16,18,21
Board's 6:24
Bobby 1:17 3:6 23:4
bottom 15:23,25
box 16:8
brief 19:24
brings 7:17,18
business 3:10 4:21 5:2 6:1 14:24

C

C 2:1
C-L-A-R-K 8:22
calendar 3:18
call 3:19 8:8 22:24
called 4:23,24
case 1:8 2:17 3:19 4:3,3 4:6,13 7:17 11:1,6 12:1 22:12,16
cases 3:18
caterers 9:8
Cato 1:17 3:7 23:3,4,4
cause 1:7 6:23 7:10,12
Chair 4:10
Chairman 3:5 17:2 18:6
Chairperson 1:14,17 3:3 4:11,19 5:3,19 6:11,14,18 8:10,15 11:15 12:15 15:7 16:25 17:3 18:7,20,24 19:4,8,16,18,21,25

20:5 21:21 22:3,6,22 23:3,5,8,10,13
charge 7:18 21:14
check 17:19
Chief 10:9
chronology 17:9
cited 22:17
Clark 1:22 2:10 4:9 8:9 8:11,14,21,21,23,25 9:5,12,18,21 10:14,24 11:3,23 12:1,5,11,23 13:2,7,11,18,25 14:6 14:9,12,18,22,25 15:3 15:13,18 16:2,5,10,12 17:5,13,17,24 18:8,12 18:22 19:10,15,17 21:4
clear 3:14
closed 21:22 22:11 23:17
closing 2:4 19:24 20:2 20:10
code 6:19 7:23 20:16 20:18 22:9,14,17
Columbia 1:1 6:10 9:7 22:8
come 13:12 16:7
commensurate 21:19
complete 10:25
compliance 1:22 8:8,25 9:4,11
compromise 4:17
concerns 5:14
conclusions 21:24
conduct 3:10,14 6:1
conference 23:18
considerations 21:13
continued 5:11
Control 1:2,13 22:7
conversations 4:12
copy 12:10 14:12,20
correct 9:17 16:4 17:12
correctly 17:9
counsel 22:12
course 14:24 23:22
covered 16:17
CR 1:8
created 15:25
Crockett 1:18 3:7 22:20 22:20,22,25 23:5,6,6
Cross 2:8
current 18:8

D

data 9:6,22,24,24 10:4 17:19
database 9:25 14:16
date 5:16 7:20 13:13

15:17,20,24 16:11,12 20:15 21:10
dates 16:13 20:20
day's 5:16
days 16:16 22:5
DC 1:21,22,23 6:19,19 7:22 16:14 20:16 22:8 22:14,17
December 8:3 16:18
decision 22:4 23:22
deliberating 22:16
Description 2:15
different 10:15
Direct 2:8 8:17
District 1:1 6:10 9:7 22:7
docu 17:25
document 11:9,22 12:16,17,20 14:3,8,15 15:10,19,21 16:1
Donovan 1:14,17 3:5
due 5:14 8:4 13:1,2 16:11,15,20 17:14,21 17:22,25 21:3 23:22
duties 9:16

E

e 2:1 7:23
E-X-H-I-B-I-T-S 2:13
Ed 3:7
Edward 1:18 3:8 23:11
elevate 3:20 4:5
elevated 4:8,9
email 3:25 4:15 7:2,6 10:17 16:3,7
emailed 9:23
Enforcement 10:9
enter 9:24
established 16:13 20:12
establishment 4:23,24 6:5 8:1,6 12:2 18:8 20:23 21:1,7,8
establishments 9:7 10:5,7,10
evidence 7:25 12:14,21 15:6,11 21:17
ex 6:20
exact 15:3
EXAMINATION 8:17
Excuse 3:12
excused 19:10
Exhibit 11:6,10,22 12:13,22 13:22 14:4 15:6,12,14
extend 7:11
extended 6:22

F	H		
fact 21:9,24	hand 8:11	late 17:11 21:5,9	12:17 15:19 23:16
failed 1:9 8:1 12:24 20:14 21:15	Hansen 1:19 3:7 23:8,9 23:9	law 21:24	Number 4:3,4 22:12,16
fails 6:21	head 17:18	legal 22:11	NW 1:7
failure 7:19	hearing 1:7 3:13,15,16 3:18,23 5:7,13,15,18 6:5,21,22 7:3,11,12 19:11	License 1:7 4:4	<hr/> O <hr/>
fair 12:9 14:19	hearings 5:9	licensed 9:6	O 2:1
familiar 10:22	held 5:13	Licensee 4:13,20 5:6 6:21,25 7:9 20:19	OAG 1:23
fax 10:19	hold 20:7,8 22:5,10 23:17	living 8:24	October 10:18 16:18
feature 3:25	hotels 9:8	longer 10:18	offer 4:17
feed 16:6		look 15:23 16:3	Official 6:19 22:8,14,17
file 1:9 4:16 7:19 8:1 12:25 13:5 20:14,19 21:8,9,15,23		looked 16:3	OIC 4:24
filed 10:5,7 13:7 17:16 18:4 21:1		<hr/> M <hr/>	once 3:19 10:1
filing 8:2,4,6 21:5,11	<hr/> I <hr/>	M-O-N-I-C-A 8:21	online 10:16,21 13:19 16:6
finally 8:5	identification 11:5,11 13:21 14:5	ma'am 8:16 20:10	Open 22:10,15,18 23:19
find 6:2 10:4	identify 6:7	mail 10:16	opening 2:3 7:14
findings 21:23	information 1:4,10	maintained 14:16,24	overdue 18:21,23
first 4:2 18:17	inbox 16:8	making 21:5	owner 4:25
five 3:9	includes 20:22	manner 7:21 12:8 20:15 20:21 21:8,15	<hr/> P <hr/>
Flavio 1:6 2:19 4:4 7:18 10:23 11:2 12:2,7,24 13:7 14:13,21 20:12 20:14 22:13,16	individual 9:10	March 8:7 13:9 15:15 21:2,10	P-R-O-C-E-E-D-I-N-G-S 3:1
Flavio's 13:16	infer 21:7	Mark 2:15	p.m 3:2 23:25
follow 19:5	information 5:4,6,20,21 6:3	marked 11:5,10,21 13:21 14:4	Page 2:2
following 16:21 17:8	instructions 3:14	matter 1:5 23:14,24	part 9:16 15:8 20:18
food 20:24	intends 8:7	means 16:19	parte 6:20
forward 6:16 7:14 20:2	issue 22:4 23:21	meet 8:6	participate 3:21
four 17:9,10,14	<hr/> J <hr/>	meeting 1:3 22:11 23:17	participation 17:7 19:10,14 23:21
fourth 2:18 12:6 13:16 14:14,20	James 1:19 5:24,24	Meetings 22:10,15,18 23:19	particular 18:1,1 21:13
frame 10:3	January 8:4 13:3 16:21 16:22 21:3	Mel 20:13	parties 4:6 21:22
free 19:13	Jeni 1:19 3:7 23:9	Melben 1:6 7:17 10:23 11:1 20:13	passed 23:15
front 5:4	Jessica 1:23 6:9	Member 1:17,18,18,19 1:19 5:24 17:2,5,15 17:20 18:5 19:1 22:20 23:2,4,6,9,11	passes 23:14
further 10:10 16:24 19:10,13	job 9:16	members 3:9 5:25 7:16 17:1 20:11	penalty 21:19
	joined 5:25	met 1:14	Perfect 20:5
	Joining 3:6	minute 20:7	period 13:8 16:17
	JR 1:17,19	moment 15:14 18:15	phone 4:15
		Monica 1:22 2:10 8:8 8:21	please 3:22,24 4:5,6 6:8 6:11 8:11,19 11:16,17 20:8 22:5
<hr/> G <hr/>	<hr/> K <hr/>	morning 18:19	pleasure 17:6
gather 9:22	K-R-U-P-K-E 6:13	motion 22:23,24 23:15	point 3:21 10:1 18:3,23
give 11:16 23:16	knowledge 18:11	move 6:16 7:13 22:10	postponed 5:16
given 13:13	Krupke 1:23 4:8,12,14 4:22 5:8 6:8,9,9,13,17 7:15 8:18,23 9:3,9,15 9:19 10:11,22,25 11:4 11:12,16,19,20,24 12:3,9,12,18,23 13:4 13:10,15,20 14:7,10 14:15,19,23 15:1,5,13 16:2,9,23 19:5,7,20 19:23 20:3,11 22:1 23:23	moved 15:7,8	potential 4:17
gives 15:19		<hr/> N <hr/>	preponderance 7:25 21:17
Gov 19:16		N 2:1,1	prescribed 7:21 20:16 20:21 21:16
Government 6:15,15 7:13,16,22,24 8:3,5,7 11:10 12:13 19:19,22 20:1,4,12 21:16 22:1		name 2:8 3:4 6:12 8:19 8:19	PRESENT 1:16,20
Government's 2:3,4 11:21 12:13 13:22 15:5		need 3:13	presiding 1:14
Grandis 1:18 3:8 17:2,4 17:5,15,20 18:5 23:10 23:11,11		negotiate 4:16	pretty 21:14
gross 20:22		notice 5:7,9,18 6:5	problems 3:22
	<hr/> L <hr/>		proceed 6:20 7:11
			proceeding 20:22 23:17
			process 10:13
			promise 18:14
			properly 6:25 22:24

proposed 21:23
prove 7:24 8:3,5
proved 21:17
public 5:23
purpose 22:11
purposes 11:5 13:21
pursuant 6:18 22:14
 23:18
put 20:2

Q

qua 16:12
quarter 2:18 8:2 12:6
 13:17 14:14,20 16:16
 18:17 20:22
quartered 16:17
quarterly 1:10 7:20 8:2
 9:13,15,20,21 10:2,6
 10:8,12,14,19,20,20
 12:7,25 13:5,8,11,16
 13:18 14:13 16:5,11
 16:13,15,19 18:2,9,13
 18:17 20:14,20,25
 21:5
quarters 17:10,14
question 3:24 13:19
questions 3:22 16:24
 17:1 18:25 19:2,5,6
quorum 3:11

R

Rafi 1:18 3:7 23:6
raise 8:11
reach 4:25
reached 4:15
ready 6:15
reasons 22:17
Rec'd 2:15
recall 17:17
receipts 20:23,23
receive 9:5 10:12 13:15
received 5:18 7:7,7 9:6
 9:23 10:2,15 11:7
 12:21 13:12,19 15:11
 15:15,17,25 16:4
recess 23:16
recognize 11:22,24
 14:7,10
record 3:4 6:8 8:20 9:5
 16:2 21:22 23:25
records 6:24 14:17
Recross 2:8
Redirect 2:8
refer 11:4
referred 11:9 12:20
 14:3 15:10
referring 11:21 13:20
reflect 6:24

regarding 4:24 5:14
regular 14:24
Regulation 9:1 16:14
related 11:1 21:13
relation 9:20
remember 5:12
replica 15:4
report 2:17 10:8 11:1,6
 12:1,4,5,10
reporting 20:21
request 3:25
require 3:23
required 7:20 8:1 20:14
 20:19
requires 20:18
Respondent 7:1 10:23
 11:7
response 4:18 19:3
responsible 9:10,13
rest 19:22
restaurants 9:8
rests 20:4
Retailer 1:8
rights 3:20 4:5,8,9
roll 22:23
room 23:18

S

S 1:18 2:1
sale 20:24
sales 20:24
schedule 4:3
scheduled 3:16
screen 11:14,17,19
 13:24 15:24 16:10
second 15:20 22:19
seconded 22:23,25
seconds 22:21
Section 6:19 22:9,14,17
 23:18
Seeing 7:9
seeking 22:11
seen 21:1
separate 16:7,8
served 5:9 6:5 7:5
service 5:15,18 7:8
serviced 6:25
share 11:13,17,19
 13:23
sharing 13:25 16:9
short 1:19 5:15,24 23:1
 23:2,2
show 1:7 7:12
SIMONE 1:21
Simone.Andrews2@...
 4:1
six 5:25 23:15
sorry 4:2 6:3 20:13 22:9

specialist 3:20
spell 6:12 8:19
staff 1:21 7:3,6
Standby 4:7 11:18
state 8:19
stated 18:16
statement 1:10 2:3,4,18
 7:14 8:2 10:6,20,20
 12:7,25 13:1,2,6,8,16
 13:18 14:13,20 16:20
 18:2,17 19:24 20:2,10
 20:15,25 21:3,5
statements 7:20 9:14
 9:16,20,22 10:2,8,12
 10:14,19 13:12 16:6
 16:11,13,15 18:9,13
 20:20
states 15:24
status 18:1
Statute 21:20
stay 19:12
stop 16:9
straightforward 21:14
Street 1:7
submission 14:13
submit 3:24 10:9,16
 12:7
submitted 9:22 10:3
 13:14 15:21 16:6
 18:13,18
submitting 10:21
Subsection 7:23 20:17
sufficient 6:23 7:10
supposed 5:13,13
swear 8:12
system 13:19 17:19

T

T 2:1,1
t/a 1:6
takes 12:16
talk 10:11 15:14
task 9:10
technical 3:23
tell 8:12 15:16
tender 15:5
tenders 12:13
testified 21:4
testimony 19:9
thank 4:11 7:15 12:17
 16:25 17:6 18:5,5
 19:9,17,18 20:4 21:21
 22:4 23:20,22,23
timely 12:8,25 17:16
 18:14 21:9,15
today 7:10 17:6 23:21
top 15:18,23 17:18
trading 7:17 10:23 11:1

20:13,13
truth 8:13,13
trying 6:2

U

understanding 6:4 7:1
 7:5
understood 3:15
underway 3:12

V

videoconference 1:14
violation 7:22 20:16
 21:18
vote 22:24

W

W 1:14,17
W-I-T-N-E-S-S-E-S 2:6
waive 21:24
waives 6:21 22:1
walk 10:12
way 15:2
ways 10:15
WebEx 1:14
Wednesday 1:11
welcome 19:12
went 23:25
widely 10:21
wish 7:13 21:23,23
wishes 20:2
witness 8:8,16
witnesses 19:19
work 17:7

X

Y

year 16:21

Z

zero 23:15,15

0

00016 22:13

1

1:40 3:2
1069 1:7
11 2:17
12 2:17
14 2:19
15 2:19
19 1:12

2

2 2:18 7:23 8:7 13:9,22
 14:4 15:6,12,14,15

20:17 21:2,10
2:03 23:25
20 2:4
20- 4:3
20-AUD- 22:12
20-AUD-00016 1:8
 22:16
2019 8:3 12:6 13:17
 14:14,20
2020 8:4,7 10:18 13:3,9
 16:22 17:11,14 18:13
 21:2,4,10
2021 1:12 6:25 17:21
 18:18
22 6:4,25 7:4
25- 23:18
25-113 7:23 20:17
25-447 6:19
25-74(b) 22:9
25-74(b)(13) 22:18
25-74(b)(4) 22:15
25-75 22:9
2E 1:8

3

30 8:4 13:3 16:15,22
 21:3
30th 16:20
31 8:3
31st 1:7

4

5

6

7

7 2:3
74(b) 23:19

8

8 2:10
8004 1:7 4:4

9

9 5:9
90 22:5

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Flavio

Before: DC ABRA

Date: 05-19-21

Place: teleconference

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

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