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

2 (1:37 p.m.)

3 CHAIRPERSON ANDERSON: The next case
4 in our calendar is Case No. 20-CMP-00059,
5 Costello, License No. 100259. Ms. Andrews, can
6 you please elevate the rights of the licensee and
7 also of the Government please. Thank you.

8 MS. ANDREWS: Sure, standby. Ms.
9 Krupke, your rights have been elevated.
10 Investigator Miller, your rights have been
11 elevated. Investigator Ruiz, your rights have
12 been elevated. Mr. Amadou Bah, your rights have
13 been elevated. That's all, Mr. Chair.

14 CHAIRPERSON ANDERSON: Thank you. Can
15 everyone please -- please if they have camera,
16 please turn their cameras on please, Mr. Bah, Mr.
17 Miller, Mr. Ruiz. I'm still waiting for Mr. Bah
18 and Mr. Miller if they have a camera.

19 MR. BAH: This is Mr. Bah, I tried to
20 elevate my camera, but it's not coming through.
21 I don't know --

22 CHAIRPERSON ANDERSON: That's fine,
23 Mr. Bah. That's fine. If you don't have a
24 camera, then that's fine.

25 All right, good afternoon, everyone.

1 We have a show-cause hearing. And let me start
2 off with the parties introducing themselves for
3 the record, starting with the Government please.

4 MS. KRUPKE: Good afternoon, Jessica
5 Krupke on behalf of the District of Columbia. My
6 first name is Jessica, J-E-S-S-I-C-A and my last
7 name is Krupke, K-R-U-P-K-E.

8 CHAIRPERSON ANDERSON: All right,
9 thank you. There are some investigators on the -
10 - on the call. I'll start with Mr. Ruiz. Can
11 you please spell and state your name for the
12 record please? I can't hear you, Mr. Ruiz.

13 INVESTIGATOR RUIZ: My name is Mark,
14 M-A-R-K, last name Ruiz, R-U-I-Z.

15 CHAIRPERSON ANDERSON: Good afternoon,
16 Mr. Ruiz. Mr. Miller?

17 INVESTIGATOR MILLER: My name is Jovan
18 Miller, J-O-V-A-N, last name Miller, M-I-L-L-E-R.

19 CHAIRPERSON ANDERSON: And what is
20 your role, sir?

21 INVESTIGATOR MILLER: Investigator.

22 CHAIRPERSON ANDERSON: Good afternoon,
23 sir.

24 CHAIRPERSON ANDERSON: Mr. Bah, can
25 you please spell and state your name for the

1 record please?

2 MR. BAH: Yes, my name is Amadou Bah.
3 That's A-M-A-D-O-U, last name is B-A-H. I am the
4 owner.

5 CHAIRPERSON ANDERSON: Good afternoon,
6 Mr. Bah. All right, Ms. Krupke, this is a show-
7 cause hearing. Are there any preliminary matters
8 in this -- in this case?

9 MS. KRUPKE: No, there are not.

10 CHAIRPERSON ANDERSON: All right. Do
11 you have a preliminary matter you want to bring
12 up -- bring to the attention of us, Mr. Bah?

13 MR. BAH: Actually, I was not there.
14 But what happened, the manager tell me --

15 CHAIRPERSON ANDERSON: Hold up. Hold
16 up. Hold up. Hold up, Mr. Bah. Hold on. I
17 don't necessarily want you to tell me about the
18 case. So when you -- when you present your case,
19 you can tell me your position.

20 MR. BAH: Okay.

21 CHAIRPERSON ANDERSON: I was just
22 stating if there was any other issues that you
23 have. Not about the case itself, but any other
24 preliminary matters that needs to be brought to
25 my attention before we start the hearing.

1 MR. BAH: No, nothing so far.

2 CHAIRPERSON ANDERSON: All right,
3 thank you. So the way this goes, Mr. -- I wish I
4 could see you because since we're actually doing
5 a full hearing, I can't see you. But anyway, the
6 way this operates is that the Government goes
7 first. It appears that the Government might call
8 one or two witnesses. When the Government calls
9 its first witness, you'll have an opportunity to
10 cross examine that witness. And when the -- If
11 the Government decides to call its second
12 witness, then you can also cross examine that
13 witness on the testimony that, that witness just
14 testified to.

15 Once the Government has presented its
16 witnesses, they will rest. Then I will call you
17 in. I will swear you in. And then you can state
18 what your position in and what is it you want the
19 Board to do. Do you understand the procedure
20 that we're going to follow this afternoon, sir?

21 MR. BAH: Yes.

22 CHAIRPERSON ANDERSON: All right. So
23 we'll start with the Government. Does the
24 Government wish to make an opening statement?

25 MS. KRUPKE: Yes, a brief one. Thank

1 you.

2 CHAIRPERSON ANDERSON: Go ahead,
3 ma'am.

4 OPENING STATEMENT - GOVERNMENT

5 MS. KRUPKE: Good afternoon, Board
6 Members. We are here for a show-cause hearing in
7 which the Government alleges that the
8 establishment, Costello Restaurant and Lounge,
9 failed to have an owner or ABC Board-approved
10 manager present on the premises during the
11 establishment's hours of sale, service, and
12 consumption. And the District alleges that this
13 is a violation of DC Code 25-701A11.

14 And the Government will present two
15 witnesses today, both Alcohol Beverage Regulation
16 Administrative investigators. The first one is
17 Mark Ruiz and the second is Mr. Miller -- Mr.
18 Jovan Miller. And the evidence will establish
19 that on Saturday, January 26, 2020 at
20 approximately 11:20 p.m., the investigators
21 visited Costello Restaurant and Lounge in
22 response to a noise complaint. And then when
23 they entered the establishment, the investigators
24 identified themselves and asked to speak with an
25 owner or manager.

1 The facts will establish that there
2 was no ABC owner or manager present and that the
3 establishment therefore is in violation of the
4 statute. And so at the end of the hearing, we'll
5 ask for a verdict in response to the facts that
6 we will establish. Thank you.

7 CHAIRPERSON ANDERSON: All right,
8 thank you. Hold on one minute please. I'm
9 trying to see, Mr. Bah, if I can get you some
10 assistance in how to -- how to turn your camera
11 on. Do you have a camera on your -- on the
12 instrument that you're utilizing?

13 MR. BAH: Yes. Yes.

14 CHAIRPERSON ANDERSON: All right. So
15 I'm trying -- Let me see if we can figure out how
16 you can turn your camera on. Is there anything
17 you can do to assist, Ms. Andrews?

18 MS. ANDREWS: Mr. Bah, do you see a
19 button that says "Start Video"?

20 MR. BAH: Yeah. Yeah, I just -- Yep.

21 MS. ANDREWS: Can you click the button
22 that says "Starts Video"?

23 CHAIRPERSON ANDERSON: Okay, that
24 worked. I can see you, Mr. -- I can see you, Mr.
25 Bah finally.

1 MR. BAH: Okay.

2 CHAIRPERSON ANDERSON: All right.
3 Alright -- Okay, so -- all right, do you have --
4 do you want to make a statement at this -- as Ms.
5 Krupke just made an opening statement, you can
6 make an opening statement now or you can wait
7 until you present your case, then you make an
8 opening statement, and then you can state your
9 position. What do you want to do, sir?

10 MR. BAH: So what I'm saying is the
11 day of -- I have actually the manager who was on
12 duty with me here, but she couldn't because we
13 got this too late. And then there's nobody --
14 the place is closed and we're not getting the
15 letter or anything that's sent to us. So I know
16 you guys sent us a couple of letters we didn't
17 receive. And the email -- what happened in my
18 email was I got a lot of junk email and my email
19 was rejecting some of the emails.

20 So the lady is with me on the phone
21 right now here because she was the manager on
22 duty. And she explained to me what happened.
23 And she said because she was -- she had a
24 customer come over there and ask for something,
25 but they don't have that in the establishment.

1 So she had to go to the other place like up
2 street to us and she was trying to get those to
3 satisfy the customers. And when she got there
4 and the person had the -- supposed to give
5 authorization was busy doing -- serving customer.

6 CHAIRPERSON ANDERSON: Mr. Bah, I
7 don't want to cut you, but the opening -- the
8 opening is just you can see that -- This is what
9 I'm going to do because you're going into the
10 case, once the Government has presented its case,
11 then you can call -- then you can call -- you can
12 make the statement that you want to make. And I
13 will ask the Government if you have a witness to
14 call -- I will ask the Government if they have an
15 objection or will they allow you.

16 The one thing that I told each party
17 to do is that if you're going to call documents
18 or witnesses, you should do that seven days
19 before. But if you have a witness that you want
20 to call, I will ask the Government if they have
21 an objection. If they object, I'm not going to
22 allow the witness in. If they do -- if they say
23 okay, then I'll allow the person to testify. But
24 if not, you will give your position of the case.
25 Okay? So once the Government has presented its

1 case, then I'll have you present your case
2 because you're going too much into facts and
3 that's not what we do during an opening. Okay?

4 MR. BAH: Okay.

5 CHAIRPERSON ANDERSON: But you'll get
6 an opportunity to explain once the Government is
7 done. You will listen to their case and then
8 you'll get an opportunity to explain your
9 position. And if you have a witness, we'll see
10 if you're able to call a witness. Okay?

11 MR. BAH: Okay.

12 CHAIRPERSON ANDERSON: All right, Ms.
13 Krupke, who's the first witness you wish to call?

14 MS. KRUPKE: The Government calls
15 Investigator Mark Ruiz to the stand.

16 CHAIRPERSON ANDERSON: Mr. Ruiz, can
17 you please raise your right hand please? Do you
18 swear or affirm to tell the truth and nothing but
19 the truth?

20 INVESTIGATOR RUIZ: I do.

21 CHAIRPERSON ANDERSON: Your witness,
22 ma'am.

23 MS. KRUPKE: Good afternoon. Can you
24 please state and spell your name for the record?

25 INVESTIGATOR RUIZ: My name is Mark,

1 M-A-R-K, Ruiz, R-U-I-Z.

2 DIRECT EXAMINATION

3 BY MS. KRUPKE:

4 Q Mr. Ruiz, where do you work?

5 A I work for the Alcohol Beverage
6 Regulation Administration.

7 Q While we talk today, is it okay if I
8 refer to the Alcohol Beverage Regulation
9 Administration as ABRA?

10 A Yes.

11 Q And what do you do at ABRA?

12 A I am an investigator.

13 Q What do you do as an investigator?

14 A As in investigator, I inspect and
15 investigate ABC licensed establishments located
16 within the District of Columbia.

17 Q Is one of those establishments
18 Costello Restaurant and Lounge?

19 A Yes.

20 Q How long have you been an investigator
21 with ABRA?

22 A Two years and four months.

23 Q And during those two years and four
24 months, have you visited Costello Restaurant and
25 Lounge?

1 A I have.

2 Q How many times?

3 A Maybe a handful, three to four times
4 that I can remember.

5 Q Do you remember visiting on January
6 25th, 2020?

7 A Yes.

8 Q What happened that day?

9 A We received a noise complaint that was
10 assigned to myself and Investigator Miller. We
11 responded to the establishment. We walked into
12 the establishment located. Live band playing.
13 Also observing patrons sitting and watching the
14 live band. And also appeared to observe what
15 appeared to be bottles of beer on the bar, as
16 well as in a patrons hands. At which time I
17 approached the bar and asked the individual
18 female employee behind the bar if there was an
19 ABC manager or owner available. At which time
20 she stated that this was her first night working,
21 that she was just helping out. And directed me
22 to another individual male subject who then
23 immediately proceeded to enter into the kitchen
24 calling the owner.

25 I then followed the owner -- I mean,

1 the subject through the kitchen to ask him if he
2 was an ABC manager or the owner. He did not
3 answer me right away. He was on the phone
4 talking. I believe he -- recall he stated he was
5 talking with the owner on the phone. I said is
6 there anybody here right now that either has an
7 ABC manager's license or is an owner. And he did
8 not -- I don't recall him answering me at all.

9 Q Approximately what time of the day was
10 this?

11 A It was after 10:00 p.m., I recall, but
12 prior to them closing for the evening.

13 Q And how did you determine what time
14 they closed for the evening?

15 A Their ABC license was reviewed, which
16 states that they close at 12 midnight.

17 Q Did you ever speak with a manager --
18 an ABC manager or owner at the establishment?

19 A Not on this particular evening.

20 Q Did anyone at the establishment say
21 that there was an ABC manager nearby who was not
22 inside the establishment at the time?

23 A I do not recall that.

24 Q Sorry, just to clarify. Do you not
25 recall whether or not anyone said that?

1 A Yes.

2 Q Okay. You said that you observed
3 patrons with alcohol beverages. Is that right?

4 A Yes.

5 Q Do you recall what types of alcoholic
6 beverages you saw?

7 A Appeared to be bottles of beer --
8 green bottles.

9 Q Do you recall what kind of -- what
10 kind of beer they were?

11 A I do not.

12 Q Can you explain how you knew they were
13 beer at the time?

14 A They appeared -- resembled bottles --
15 known bottles of beer brands. It appeared, I
16 mean, alcohol. I didn't observe -- I didn't pick
17 any bottles up to observe closely. It just
18 appeared to be beer.

19 Q Okay. I want to ask if at the time,
20 did you notice that there were beer brands that
21 you recognized and you just don't recall today or
22 did you not actually see any brands at the time?

23 A I noticed brands, but I don't recall
24 them today.

25 MS. KRUPKE: Are you familiar with ABC

1 -- with the ABRA report that was authored in this
2 particular case?

3 (Whereupon, the above-referred to
4 document was marked as Government Exhibit No. 1
5 for identification.)

6 MR. RUIZ: I am. I was able to review
7 it.

8 BY MS. KRUPKE:

9 Q Did you author that report?

10 A I did not.

11 MS. KRUPKE: I am referring to what
12 has been marked for identification purposes as
13 Exhibit 1. The Government provided these
14 exhibits to the establishment by mail within
15 seven days. I believe it was mailed out last
16 Wednesday to the establishment. And I'm going to
17 pull that up right now. Am I able to share
18 content?

19 CHAIRPERSON ANDERSON: Ms. Andrews,
20 can you please allow Ms. Krupke to share her
21 content please?

22 MS. ANDREWS: Sure, stand by. Okay,
23 Ms. Krupke, you can share you screen now.

24 BY MS. KRUPKE:

25 Q Okay. I'm not sure if I'm sharing the

1 correct thing. Can you see -- Can you see the
2 case report?

3 A I can.

4 Q Okay. And what is this document?

5 A This is a case report drafted by
6 Investigator Miller regarding this violation.

7 Q I am going to scroll down to the
8 photograph within this case report. And the
9 Government will offer this case report as
10 evidence. This testimony will just be subject to
11 connection of the lead investigator's testimony.
12 But I do want to ask Investigator Ruiz about this
13 Exhibit 1. Do you recognize this photograph?

14 A I recognize it as a photo taken inside
15 Costello's.

16 Q Is that what Costello Restaurant and
17 Lounge looked like on the day of the violation in
18 this matter?

19 A Yes.

20 Q And did you observe patrons -- is this
21 how the patrons appeared at the time?

22 A Yes.

23 Q Okay. Do you recall if any of the
24 individuals within this photograph were drinking
25 alcohol during the time of the alleged violation?

1 A Looking at the photograph, an
2 individual straight ahead in a yellow and black
3 shirt appears to be holding what looks like a
4 Stella beer.

5 Q At the time you observed the incident
6 in question in this case, did you observe this
7 individual drinking the bottle that he's holding?

8 A I don't remember.

9 Q Did you observe any other individuals
10 drinking alcohol?

11 A I don't recall. I know I walked into
12 immediately look for an ABC manager, but observed
13 the bottled being held. I didn't notice any
14 consumption.

15 Q Okay. And did anyone else in the
16 establishment identify themselves as an owner or
17 manager?

18 A No.

19 MS. KRUPKE: At this time, no further
20 questions for this witness.

21 CHAIRPERSON ANDERSON: Mr. Bah, do you
22 have any questions you want to ask that
23 investigator?

24 MR. BAH: Yeah, what I want to ask is
25 the photograph. When you pulled the photograph,

1 who signed the ticket -- the ticket you -- I mean
2 you had? It was the manager or who else? That's
3 number one. And number two, and I think --

4 CHAIRPERSON ANDERSON: Mr. Bah, let
5 him answer that question first and then you can
6 move on to your next question, sir.

7 MR. BAH: Okay.

8 INVESTIGATOR RUIZ: I'm sorry, I don't
9 understand your question. Can you ask it again
10 please?

11 CROSS EXAMINATION

12 BY MR. BAH:

13 Q I said when you came to the
14 establishment and you see there was a violation
15 and then you issued document. And that document
16 was signed by someone from establish or it was
17 not?

18 A No citation was issued this evening.

19 Q There was no citation. Nothing was
20 signed?

21 A No, not on this evening.

22 Q Okay. That's one. The second thing
23 I want to ask you, you say when they ask you
24 about the drink -- the beer, you say you don't
25 remember. And they ask you if you thought that

1 someone was drinking wasn't a beer and if you
2 know what kind of beer, you don't know and you
3 don't recall.

4 A Correct.

5 MR. BAH: Okay. So those are the two
6 things I wanted to ask him, but I got my answer.

7 CHAIRPERSON ANDERSON: All right,
8 thank you. Any questions of Mr. Ruiz by any
9 board members?

10 MEMBER SHORT: Yes, Mr. Chair. I'd
11 like to ask him a question.

12 CHAIRPERSON ANDERSON: Go ahead, Mr.
13 Short.

14 MEMBER SHORT: Good afternoon, Mr.
15 Ruiz -- Investigator Ruiz.

16 INVESTIGATOR RUIZ: Good afternoon.

17 MEMBER SHORT: On your visit on this
18 particular day when there was no ABC manager
19 according to your testimony, did you do any other
20 ABRA investigation other than the one you cited
21 them for?

22 INVESTIGATOR RUIZ: I observed for
23 other violations, but did not note any -- did not
24 observe any at the time.

25 MEMBER SHORT: You said that they were

1 there because of a noise complaint?

2 INVESTIGATOR RUIZ: Yes.

3 MEMBER SHORT: Do you know, did that
4 come from the neighborhood or where did it come
5 from?

6 INVESTIGATOR RUIZ: I do not know the
7 original origin of the complaint. I believe it
8 was a hotline call.

9 MEMBER SHORT: Okay. You said there
10 was a loud band there. Do they have an
11 entertainment endorsement, an EE for this
12 license?

13 INVESTIGATOR RUIZ: I believe they do.

14 MEMBER SHORT: Okay, thank you. How
15 long did you wait before you realized that there
16 was no manager there and you left?

17 INVESTIGATOR RUIZ: I believe we were
18 there for roughly ten to fifteen minutes.

19 MEMBER SHORT: And no one explained to
20 you that the -- where the ABC licensed person
21 was?

22 INVESTIGATOR RUIZ: No.

23 MEMBER SHORT: Thank you. That's all
24 I have, Mr. Chair. Thank you very much, sir.

25 CHAIRPERSON ANDERSON: All right,

1 thank you. Any other questions by any other
2 board members? Mr. Bah, do you have any
3 questions of Mr. Ruiz based on the questions that
4 Mr. Short just asked?

5 MR. BAH: No.

6 CHAIRPERSON ANDERSON: All right,
7 thank you. Ms. Krupke, do you have any questions
8 of Mr. Ruiz based on the questions that were
9 asked by Mr. Short?

10 MS. KRUPKE: No.

11 CHAIRPERSON ANDERSON: All right,
12 thank you. Thank you, Mr. Ruiz, for your
13 testimony.

14 INVESTIGATOR RUIZ: All right, thank
15 you.

16 CHAIRPERSON ANDERSON: Do you have
17 another witness, ma'am?

18 MS. KRUPKE: Yes. We call
19 Investigator Jovan Miller to the stand.

20 CHAIRPERSON ANDERSON: Mr. Miller, can
21 you raise your right hand please? You need to
22 take -- Do you swear or affirm to tell the truth
23 and nothing but the truth?

24 INVESTIGATOR MILLER: I do.

25 CHAIRPERSON ANDERSON: Thank you.

1 Your witness.

2 MS. KRUPKE: Can you please state your
3 name and spell it for the record?

4 INVESTIGATOR MILLER: My name is Jovan
5 Miller, J-O-V-A-N, last name Miller, M-I-L-L-E-R.

6 DIRECT EXAMINATION

7 BY MS. KRUPKE:

8 Q Where do you work?

9 A I work for the Alcoholic Beverage
10 Regulation Administration.

11 Q What's your job title?

12 A Investigator.

13 Q What do you do as investigator with
14 the Alcoholic Beverage Regulation Administration?

15 A I conduct investigations and
16 inspections of ABC licensed establishments within
17 the District of Columbia.

18 Q How long have you been doing that?

19 A For two years and four months.

20 Q Are you familiar with the
21 establishment in this case, Omar LLC, trading as
22 Costello Restaurant and Lounge?

23 A Yes, ma'am.

24 Q How are you familiar with that
25 restaurant?

1 A I visited their establishment due to
2 a noise complaint.

3 Q How many times have you visited the
4 establishment?

5 A I visited the establishment twice,
6 actually entering the establishment I visited on
7 multiple occasions to try to serve a violation.

8 Q Did you visit the establishment on
9 January 25, 2020?

10 A Yes, ma'am.

11 Q Do you remember why you visited that
12 day?

13 A I believe we got a hotline call and my
14 supervisor asked me and Investigator Ruiz to
15 visit the establishment for a noise complaint.

16 Q Did you actually visit the
17 establishment that day?

18 A Yes, ma'am.

19 Q What time of the day was that?

20 A This was late afternoon, a little
21 after 11:00 p.m. -- evening, sorry.

22 Q Was the establishment -- Was the
23 establishment opened or closed?

24 A The establishment was open.

25 Q What happened when you arrived?

1 A When we arrived, me and Investigator
2 Ruiz walked inside the establishment, noticed
3 there was a live band playing music.
4 Investigator Ruiz continued to walk to the bar
5 where a female employee was serving alcohol and
6 we identified ourselves as ABRA investigators and
7 asked for ABC management or owner.

8 Q What did the female bartender say in
9 response to your request?

10 A She stated that she was not an ABC
11 manager and she directed Investigator Ruiz to
12 another gentleman.

13 Q Did she say anything else?

14 A No, ma'am. Not that I recall.

15 Q Did you speak with any other
16 individuals inside the establishment?

17 A I did not. Investigator Ruiz, once
18 directed to the unidentified male, he spoke with
19 him from there. And I just observed the
20 establishment.

21 Q Okay. And so I'm trying to understand
22 how you could observe a conversation between
23 Investigator Ruiz and a male employee of the
24 establishment without actually hearing it. Can
25 you elaborate on that?

1 A Investigator Ruiz walked into, I
2 believe it was the kitchen. In the hallway,
3 there is a cutout window -- I guess a server
4 window, so you can serve food, which I watched to
5 make sure that Investigator Ruiz was okay.

6 Q But you didn't actually overhear their
7 conversation?

8 A No, ma'am.

9 Q Did anyone else at the establishment
10 identify themselves to you as an owner or ABC
11 manager at the time?

12 A No, ma'am.

13 Q And were you ever able to speak with
14 an owner or ABC manager after you left the
15 establishment?

16 A No, ma'am.

17 Q And how long did you stay inside the
18 establishment at the time?

19 A Roughly about ten to fifteen minutes.

20 Q While you were inside, did you see
21 anyone consuming or purchasing alcohol?

22 A I did.

23 Q What types of alcohol were they
24 consuming or purchasing?

25 A The female bartender was serving

1 patrons at tables. There were Heineken's I
2 believe and there were also -- I seen her pouring
3 some clear alcohol liquid -- I don't remember the
4 brand -- into cups, mixing them and bringing them
5 to the patrons.

6 Q Were you at the establishment during
7 the establishment's hours of sale?

8 A Yes, ma'am.

9 Q How did you determine the hours of
10 sale for Costello Restaurant and Lounge at the
11 time?

12 A Me and Investigator Ruiz reviewed
13 their ABC license they had there.

14 Q I'm drawing your attention to what has
15 been marked for identification purposes as
16 Government Exhibit 1. I'm going to share that in
17 just a moment. I believe this should be -- There
18 we go. Do you recognize this document?

19 A Yes, ma'am.

20 Q What do you recognize it as?

21 A This is the case report I wrote for
22 Costello Restaurant for the violation I observed
23 -- me and Investigator Ruiz observed.

24 Q And is it a fair and accurate copy of
25 the case report that you authored in this case?

1 A Yes, ma'am.

2 Q Okay. I'm going to scroll all the way
3 down so you can make sure that it all appears
4 correct. Is it a fair and accurate copy?

5 A Yes, ma'am.

6 MS. KRUPKE: At this time, the
7 Government tenders Government's Exhibit 1 into
8 evidence.

9 CHAIRPERSON ANDERSON: It's part of
10 the administrative record, so it's not necessary
11 to move it into evidence because it's already
12 into evidence because it's part of our
13 administrative record, but thank you for that.

14 BY MS. KRUPKE:

15 Q I'd like to draw your attention to
16 what has been marked as Exhibit 1 within the case
17 report. So this is actually Page 4 of the
18 report. Do you recognize this photograph?

19 A Yes, ma'am.

20 Q Who took this photograph?

21 A I did.

22 Q Can you explain what the photograph
23 contains?

24 A This is a photograph of patrons
25 opening alcohol and also the band. Unfortunately

1 I didn't get a clear picture because patrons were
2 moving. The band was to the left, which is that
3 black area. And them just enjoying their -- just
4 enjoying the band.

5 Q Did you observe any of the individuals
6 within this photograph drinking alcohol?

7 A Yes, ma'am. There is a -- There's a
8 lady with -- who is standing up next to a lady
9 sitting down. There is a lady behind her who
10 actually was consuming alcohol at that time. And
11 then a gentleman with --

12 (Simultaneous speaking.)

13 A I'm sorry?

14 Q Go ahead.

15 A And then the gentleman with the yellow
16 and black t-shirt on was actually drinking
17 alcohol, but when I took the picture he had the
18 alcohol down.

19 Q And how did you determine that these
20 two individuals were drinking alcohol?

21 A When I was observing earlier when
22 Investigator Ruiz was in the establishment, I
23 walked by and seen the alcohol that they were
24 drinking.

25 Q Scrolling down to what has been marked

1 as Exhibit 2 within the case report. So this is
2 Page 5 of the report itself. What is this
3 exhibit?

4 A This is Costello's Restaurant and
5 Lounge's ABC license.

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

9 BY MS. KRUPKE:

10 Q How did you obtain this copy of the
11 license?

12 A I took that from ABRA's G-drive of
13 Costello's.

14 Q And what does this license establish
15 for the hours of sale for Saturday nights?

16 A Saturday night, I believe is 12 a.m.

17 Q And did you visit the establishment
18 prior to 12:00 a.m. that evening on January 25th,
19 2020?

20 A Yes, ma'am.

21 Q And how do you know that this is a
22 current copy of the ABC license?

23 A On the ABC license to the bottom left
24 corner, there has an expiration date.

25 Q And while you were at Costello

1 Restaurant and Lounge, did anyone inform you that
2 there was an ABC manager or owner nearby, but
3 just not within the establishment?

4 A No, ma'am.

5 MS. KRUPKE: No further questions at
6 this time.

7 CHAIRPERSON ANDERSON: Mr. Bah, do you
8 have any questions you'd like to ask Mr. Miller?

9 MR. BAH: Actually no, I don't have
10 anything to say to Mr. Miller.

11 CHAIRPERSON ANDERSON: Alright, thank
12 you. Mr. Miller, so how long were you in the
13 establishment?

14 INVESTIGATOR MILLER: For about ten to
15 fifteen minutes.

16 CHAIRPERSON ANDERSON: And so about --
17 you're saying for the ten to fifteen minutes that
18 you were at the establishment, you saw the
19 establishment selling and serving alcohol to
20 patrons? Is that your testimony?

21 INVESTIGATOR MILLER: Yes. It is,
22 sir.

23 CHAIRPERSON ANDERSON: Approximately
24 how many -- Approximately how many sales, if any,
25 did you -- Approximately how many sales did you

1 personally experience -- view during that period
2 of time?

3 INVESTIGATOR MILLER: There was I
4 would say about one to two of the bartender
5 actually selling the alcohol. But just patrons
6 having alcohol in general, ten to twelve people.

7 CHAIRPERSON ANDERSON: Alright. And
8 so while that was going on, they were consuming
9 the alcohol. Is that your testimony?

10 INVESTIGATOR MILLER: Yes, sir.

11 CHAIRPERSON ANDERSON: So whatever
12 happened to the investigation regarding the noise
13 complaint?

14 INVESTIGATOR MILLER: We had no ABC
15 manager or owner to get in contact with. I tried
16 on multiple occasions to serve the notice for the
17 violation to the ABC manager or owner. We had no
18 contact in regards about the violation. When we
19 tried to serve the violation, the establishment
20 had been closed. And they opened on odd days
21 where investigators would happen to be driving by
22 and they would be open for a second, but they
23 weren't able to serve it.

24 CHAIRPERSON ANDERSON: No, no. The
25 question I was asking, was the Agency able to

1 sustain that there was a noise violation? I mean
2 you were -- you were called to go there because
3 there was an alleged noise violation. So I was
4 just trying to figure out was the Agency able to
5 sustain that this violation did occur? That's
6 all I was trying to find it.

7 INVESTIGATOR MILLER: Alright,
8 Chairman. Yes, sir.

9 CHAIRPERSON ANDERSON: So yes, you
10 were able to sustain that there was -- that there
11 was a noise violation at the establishment? Is
12 that what you're saying in your testimony?

13 INVESTIGATOR MILLER: Yes, sir. When
14 we arrived at the location, we could hear the
15 band as we pulled up.

16 CHAIRPERSON ANDERSON: What do you
17 mean, you could hear the band? I mean you could
18 hear the band when you were outside the
19 establishment?

20 INVESTIGATOR MILLER: Yes, sir.

21 CHAIRPERSON ANDERSON: Were the doors
22 to the establishment open or were the doors to
23 the establishment closed?

24 INVESTIGATOR MILLER: They were
25 closed.

1 CHAIRPERSON ANDERSON: So the best of
2 your knowledge and recollection, were any windows
3 to the establishment open?

4 INVESTIGATOR MILLER: I do not recall.

5 CHAIRPERSON ANDERSON: What time of
6 year was this again? I'm sorry.

7 INVESTIGATOR MILLER: This was -- I'm
8 sorry, Chair Person, give me one second. It's
9 been some time. This was in January.

10 CHAIRPERSON ANDERSON: January of what
11 year?

12 INVESTIGATOR MILLER: Of 2020.

13 CHAIRPERSON ANDERSON: Alright, thank
14 you. Alright, any questions by any board
15 members? Mr. Bah, any questions of Mr. Miller
16 based on the questions that I asked him, sir?

17 CROSS EXAMINATION

18 BY MR. BAH:

19 Q Yes, sir. My question to Mr. Miller
20 here is when he say did he know exactly what time
21 he get there?

22 A We arrived at 11:25 p.m.

23 Q 11:00 p.m., okay. The establishment
24 is supposed to close at midnight, no?

25 A Yes, sir.

1 Q Okay. So you said when you came in,
2 you hear the music -- the band playing.

3 A Yes, sir. When I'm outside of the
4 establishment, I heard the band playing. Yes,
5 sir.

6 Q Okay. And you was on the yard or in
7 the -- in the property yard or you was in the
8 street when you heard that?

9 A We were parked on the street, sir.

10 Q In the street?

11 A Yes, sir.

12 Q Okay. That was the first time you
13 have been at Costello for noise?

14 A For myself, yes, sir.

15 Q And when you -- you say there was no
16 citation issued on that day -- that particular
17 day?

18 A No, sir. We cannot issue a violation
19 to an establishment if there is no ABC manager or
20 owner. That's when we usually come back to serve
21 the violation.

22 MR. BAH: Okay. Alright.

23 CHAIRPERSON ANDERSON: Alright, thank
24 you. Ms. Krupke, do you have any questions to
25 ask of Mr. Miller based on the questions that

1 I've asked?

2 MS. KRUPKE: No, thank you.

3 CHAIRPERSON ANDERSON: Does the
4 Government rest?

5 MS. KRUPKE: We do.

6 CHAIRPERSON ANDERSON: Alright, thank
7 you. Mr. Bah, do you have any witnesses you want
8 to -- you can now make an -- you can now make an
9 opening statement. And then you can give your
10 side of the story. So what I will do -- So tell
11 me how do you plan to defend your case, sir?

12 OPENING STATEMENT - LICENSEE

13 MR. BAH: I have the manager on the
14 phone with me, which is -- she tell me what
15 happened that particular day. She says she came
16 in -- I mean --

17 CHAIRPERSON ANDERSON: Hold on. Hold
18 on. Hold on. Are you trying for her to testify
19 or are you telling us what is it that she says?
20 Which one is it?

21 MR. BAH: What she said to me. I
22 don't know if --

23 (Simultaneous speaking.)

24 MR. BAH: Are you still on the phone?

25 PARTICIPANT: Yes.

1 MR. BAH: Okay, she's still on the
2 phone here.

3 CHAIRPERSON ANDERSON: So you want --
4 So you want her to testify?

5 MR. BAH: I mean if you're willing to
6 let her tell you her story, that would be, you
7 know, okay for me.

8 CHAIRPERSON ANDERSON: Ms. Krupke, one
9 of the things I made perfectly clear to all
10 parties is that seven days before the hearing,
11 they were supposed to disclose documental
12 witnesses that they're going to call upon. Mr.
13 Bah wants to call a witness, but it's not my
14 understanding that's he's informed us seven days
15 prior to. So I am not inclined to allow the
16 person to testify unless this is something that
17 the Government consents to.

18 MS. KRUPKE: The Government does not
19 consent.

20 CHAIRPERSON ANDERSON: Alright. So
21 Mr. Bah, the person cannot testify. However,
22 what I will do is that I will allow -- Can you
23 raise your right hand please? Do you swear or
24 affirm to tell the truth and nothing but the
25 truth?

1 MR. BAH: Yes, I do.

2 CHAIRPERSON ANDERSON: Go ahead, sir.
3 Tell me whatever you want to tell us. Tell the
4 Board whatever you want to tell the Board.

5 DIRECT TESTIMONY - LICENSEE

6 MR. BAH: Okay. I spoken to the
7 manager and she was -- she stepped out because
8 there was a customer asking for some liquor we
9 don't have in the establishment. And she go next
10 door to borrow some bottle. And before she came
11 out, the ABRA investigator was in the
12 establishment. And they ask her to serve -- she
13 said to show her identification. And then she
14 showed them the identification and that's what
15 she tell me -- that's what happened. And she was
16 there when they was -- until they left the
17 establishment.

18 CHAIRPERSON ANDERSON: Is that all
19 you're going to -- Is that all you have to say?
20 Do you have anything else you want to say, sir?

21 MR. BAH: Yeah, that's -- According to
22 what she tell me, this is exactly what she tell
23 me and that's what I transmit. I wish you had
24 let her explain for herself. You know, it
25 wouldn't be from me. It would be from her. But

1 because they say she cannot, they don't allow her
2 to testify, so that's what she told me.

3 CHAIRPERSON ANDERSON: Alright sir, is
4 there anything else you want to say to defend
5 yourself -- your establishment?

6 MR. BAH: I mean there is nothing else
7 I can say. But about the noise complaint, I can
8 tell you I own not just that place, I have other
9 establishments in DC. The noise complaint is
10 happening. People -- I had a neighbor who don't
11 like us to be there and that's one of the
12 problems. And I been through this before even in
13 our different establishment. One day I remember
14 I had a -- I had ABRA investigator sitting in my
15 place. And I pulled all the documents to them
16 and I gave it to them.

17 They was reviewing the license from
18 the establishment and the occupancy and she --
19 one of the investigators got a call from ABRA and
20 we was sitting at the table. And she tell me Mr.
21 Bah, I've got to take this call. I need to go,
22 you know, because there was a music -- she moved
23 from us. She go a couple of steps down and then
24 she took the call and she was speaking to her
25 boss from ABRA. They say there's a problem in

1 this establishment and she say I'm in that place
2 right now.

3 They told her okay, can you check any
4 other doors -- if there's any other door there
5 that's open? And she asked me -- I was sitting
6 there with another investigator and they she
7 asked me to show her the back door because she
8 want to make sure there's no -- there's no door
9 open or window. And I take her to the back door.
10 We looked at it. She saw the door was closed.
11 She said do you know who called me? And I said
12 no, I don't know. She said this is my boss
13 calling me to say they got a complaint. There's
14 a problem at your establishment. And I said
15 okay, you see what's going on. This is the
16 problem we have.

17 CHAIRPERSON ANDERSON: Do you have
18 anything else you want to say, sir?

19 MR. BAH: No, that's all.

20 CHAIRPERSON ANDERSON: Alright, Ms.
21 Crockett, do you have any questions -- do you
22 have any questions of him?

23 MS. KRUPKE: No, I don't think so.

24 CHAIRPERSON ANDERSON: Mr. Bah, who is
25 this investigator -- who is this person that is

1 the ABC manager?

2 MR. BAH: It's Keisha.

3 CHAIRPERSON ANDERSON: How do you
4 spell that, sir?

5 MR. BAH: It's K-I-S-S-A --

6 (Audio interference.)

7 MR. BAH: I'm sorry?

8 CHAIRPERSON ANDERSON: Mr. Bah? Mr.
9 Bah? Mr. Bah? You're testifying. I don't need
10 her to testify. I don't need her to tell me how
11 to spell her name. You need to spell her name to
12 me to the best of your knowledge and ability,
13 sir. She's your employee.

14 MR. BAH: Okay.

15 ADMIN. JUDGE HEINY: So what's her
16 name?

17 MR. BAH: Keisha.

18 CHAIRPERSON ANDERSON: How do you
19 spell that?

20 MR. BAH: What I know is that -- I
21 write down because I don't have a document with
22 me here. And I just put K-E-S-S-H-A, Keisha.

23 CHAIRPERSON ANDERSON: K-E-S-S-H-A,
24 Keisha. And how long has she been working with
25 you, sir?

1 MR. BAH: She worked for me almost a
2 year.

3 CHAIRPERSON ANDERSON: I'm sorry.
4 This happened on January 25th, 2020. On January
5 25th, 2020, this is when this incident occurred.
6 How long was she working for you prior to that
7 date?

8 MR. BAH: I think for another three
9 months -- two months.

10 CHAIRPERSON ANDERSON: So she was
11 working two to three months prior to January of
12 2020. Is that correct?

13 MR. BAH: I think so.

14 CHAIRPERSON ANDERSON: So you're
15 saying she was an ABC manager?

16 MR. BAH: Yes.

17 CHAIRPERSON ANDERSON: Now where was
18 she? Was she the bartender?? Who was she? Was
19 she the bartender?

20 MR. BAH: She bartended too, but
21 she's the manager.

22 CHAIRPERSON ANDERSON: So how many
23 employees do you have -- do you remember how many
24 employees did you have working that night?

25 MR. BAH: That night, I don't know

1 exactly because I don't make this schedule for
2 that particular day. But usually we have at
3 least four or five people working on the inside.

4 CHAIRPERSON ANDERSON: So how many
5 bartenders did you have that day?

6 MR. BAH: I'm sorry?

7 CHAIRPERSON ANDERSON: How many
8 bartenders did you have that day?

9 MR. BAH: I think maybe two, her and
10 then the other girl.

11 CHAIRPERSON ANDERSON: And the other
12 woman, how long was she working for your
13 establishment at that time?

14 MR. BAH: I think --

15 CHAIRPERSON ANDERSON: Was that her
16 first night?

17 MR. BAH: No. I mean I'm not sure if
18 that was her first day. I can't tell because I'm
19 not one who hired her because I have them to pick
20 for that facility. If you do find good people to
21 hire, they can hire. And they can send me the
22 report.

23 CHAIRPERSON ANDERSON: Right. So you
24 stated that she was there when the investigator
25 wrote the -- when the investigators were there.

1 Explain that. That's what you said. You said
2 she said was there. So explain that to me, sir.

3 MR. BAH: Okay. According to what she
4 tell me, she said she left the establishment
5 because they have a high demand stuff and we was
6 missing something. And she go to next door
7 because of what happened -- when they're short
8 something, they go to next door and they borrow
9 like one or two bottles, whatever they're missing
10 for that particular day. And then we make the
11 order and then we return what they borrow from
12 next door. So she go to the other place next
13 door to us.

14 And she go there and she wait because
15 the person was -- I guess they don't have a lot
16 of people working and he was busy. So it took
17 her time to get it borrowed and to come back to
18 the establishment. But she said when she come
19 back and she was there, she showed the ID --
20 other ID manager license. And then all the
21 document was signed by from Bredlawn (phonetic).
22 She's the one who signed it. She said how can
23 they can me I'm not there and I'm the one who
24 signed the paper?

25 CHAIRPERSON ANDERSON: So the only

1 thing she signed, the paper -- when did she sign
2 the paper, on January 20th or when? When did she
3 sign anything?

4 MR. BAH: I mean I don't exactly -- I
5 just called her now to be on -- tried to put her
6 on the video, but I can't.

7 CHAIRPERSON ANDERSON: But she can't
8 be on the video, sir. You're testifying. It's
9 your business. I'm asking you a question. The
10 question I'm asking you like -- the investigator
11 said -- the investigator said that they came.
12 Both investigators stated that they came to the
13 establishment. They spoke to -- They spoke to
14 the bartender. The bartender said that this was
15 probably her first night and referenced them to a
16 male. One of the investigators went in the
17 kitchen and spoke to the male. The male called
18 somebody. So how can she then -- How is she
19 there? Did she identify herself to any of the
20 investigators as an ABC manager? Because you're
21 saying that she was there and they took her ID.
22 So what night was this?

23 MR. BAH: That's why I'm trying -- I
24 tell you I was going to put her here so she can
25 explain because I don't ask her all these

1 questions. All I ask her, do you remember what
2 happened that day? She said yes. Can you
3 testify if I call you to connect you with the
4 ABRA? She said yes. And that's all -- that's
5 the only thing I know because I was not there
6 myself. But all I can tell you is what she tell
7 me.

8 CHAIRPERSON ANDERSON: Well you're not
9 telling me what she told you, so I'm asking you a
10 basic question about your business. And you're
11 telling me I don't know because she didn't tell
12 me. I didn't ask her. This happened almost a
13 year and a half ago.

14 MR. BAH: Yeah. What she tell me --
15 I'm sorry. What she tell me, she said about --
16 she left the establishment to go and get
17 something. And when she came back, ABRA was
18 there. And then she present -- she present her
19 card. They asked her to show them the manager
20 license. And then she did.

21 CHAIRPERSON ANDERSON: How long was
22 she gone from the establishment for? Did she say
23 how long she was gone for?

24 MR. BAH: She tells me it's an average
25 -- I think she tell me ten minutes. I think she

1 tell me ten minutes.

2 CHAIRPERSON ANDERSON: Alright. Ms.
3 Krupke -- I'm sorry. Any other questions of Mr.
4 Bah by any board members?

5 MEMBER SHORT: Mr. Chair, I'd like to
6 ask a question please.

7 CHAIRPERSON ANDERSON: Yes, Mr. Short.
8 Go ahead.

9 MEMBER SHORT: Good afternoon, sir.
10 Mr. Bah, I would like to ask you are you aware
11 that as an ABC licensee owner that you can't buy
12 alcohol from another retail store? You cannot
13 buy a bottle from another store to sell at your
14 place?

15 MR. BAH: Yeah, actually she -- this
16 has happened sometimes -- we switch. I mean we
17 borrow -- Because that place's establishment had
18 a liquor license too. What happened when we
19 short something, we go ask the manager to give us
20 bottle maybe or two bottle. And then when you
21 make your order, you go back and return them.
22 That's how we (audio interference).

23 MEMBER SHORT: Again, Mr. Bah, do you
24 know that that's illegal? That you cannot do
25 that? How long have you been doing that?

1 MR. BAH: No, no, no. I don't know
2 that before.

3 MEMBER SHORT: Mr. Bah, how long have
4 you had your -- How long have you had this
5 establishment?

6 MR. BAH: That establishment for, I
7 think four years.

8 MEMBER SHORT: Do you remember coming
9 before this Board when you -- when the community
10 protested you? Do you remember that?

11 MR. BAH: Yes, I do.

12 MEMBER SHORT: What was their protest
13 about?

14 MR. BAH: They was protesting about
15 having -- hour -- it was about the hour.

16 MEMBER SHORT: Did anybody bring up to
17 you at that time -- And I was on the Board at
18 that time and I do remember you. You're at the
19 corner of Georgia and Hamilton. Correct?

20 MR. BAH: Yes. Yes, sir.

21 MEMBER SHORT: And on Helman Street
22 right behind your establishment, the neighbors,
23 about five or six of them said they were worried
24 that you were going to have loud noise coming
25 from your business. And what did you say as a

1 result to that Trial Board?

2 MR. BAH: I said to them I'm going to
3 manage -- I'm going to manage. But when it come
4 to the noise, I explained to you, there was a
5 lady there. She's really -- I have a problem
6 with her. And then from that day, she always
7 keep calling, calling for nonsense. You know, we
8 got ABRA came over a couple times. They said we
9 don't hear no noise. And when they leave again,
10 she keep calling and this is happening. And not
11 just for that establishment. This is happening
12 everywhere.

13 MEMBER SHORT: Okay. But let's just
14 keep talking about your establishment for right
15 now. So do you have an entertainment endorsement
16 on your license?

17 MR. BAH: Yes, I do.

18 MEMBER SHORT: Did you ask for one
19 when you got your license?

20 MR. BAH: Yes, I did.

21 MEMBER SHORT: What conditions were
22 put on your license about noise and about the EE
23 or the Entertainment Endorsement?

24 MR. BAH: Just to make sure you don't
25 disturb the neighbors with the noise.

1 MEMBER SHORT: And wasn't it that you
2 shouldn't be able to hear the music outside of
3 your -- outside of your building?

4 MR. BAH: If you opened or a window or
5 you opened the door, you can hear. But the thing
6 is, you can hear when you can hear when you come
7 to the side of the building inside our yard when
8 there's -- somebody opens the door to go outside
9 or somebody coming in, always the music -- the
10 noise come out a little bit.

11 MEMBER SHORT: Okay. I'm just one
12 board member. And again, I was here four years
13 ago when you applied. And the neighbors were
14 worried that you were going to have loud bands.
15 And you have an outside area, but that's not
16 connected to your inside area. So I think your
17 endorsement said you can't play outside. So
18 people could not hear music outside of your
19 establishment. So would you consider that a
20 violation if people can hear the music outside of
21 your establishment?

22 MR. BAH: I mean it's not like the
23 music is going outside. It's happening only
24 maybe when somebody open the door to come in.
25 When they open the door, you can hear a little

1 bit. And then when the door close back and then
2 it go in -- it stay in.

3 MEMBER SHORT: This will be my last
4 question. If you are not there, the
5 superintendent to care of your business at your
6 establishment and your ABC manager has gone down
7 the street to buy alcohol from another
8 establishment --

9 MR. BAH: No, not buying.

10 MEMBER SHORT: Who had she told when
11 she went down the street to get the bottle?

12 MEMBER SHORT: To borrow -- borrow.
13 To go to next door and say okay, let me borrow a
14 bottle from you -- one bottle. And then when I
15 get my deliver, I'll bring it back -- that bottle
16 to give it to you.

17 MEMBER SHORT: I'll repeat my
18 question. When they're gone for ten or fifteen
19 minutes down the street to get two bottles, who
20 is in charge of your establishment when they're
21 gone?

22 MR. BAH: I have another guy there --
23 the security guy -- the security. He's the
24 manager. He's supposed to be taking care of when
25 she's not there. That's what we usually (audio

1 interference).

2 MEMBER SHORT: But does that man --
3 does that security person have an ABC license or
4 a manager's license?

5 MR. BAH: He tell me he had one, but
6 I never saw it. But he tell me he had one.

7 MEMBER SHORT: Okay. So do you check
8 when you're away to make sure that whoever you
9 leave in charge has an ABC license or ABC
10 manager's license?

11 MR. BAH: Yes, I know that she has --
12 the girl, I saw her license. And I saw she had
13 it.

14 MEMBER SHORT: Last question. When
15 she came back in and identified herself to the
16 investigators and they did not give her a ticket
17 to sign because they cannot give to anybody other
18 than an ABC manager or an owner to sign for the -
19 - sign for the violation. So what date is on the
20 violation that you claim she signed the same day
21 that she was there? What date is on that
22 violation receipt?

23 MR. BAH: I don't -- That's what I was
24 seeing if she could testify herself because I
25 don't know exactly the date, but I saw it myself,

1 the text message. They send it to me. There was
2 something that said the violation. And I said I
3 want to know exactly what she said that came over
4 there. But even ABRA, when they left our place,
5 they came to my other establishment. They see
6 me. They say I came to your other place. And I
7 remember this, I came over there. Somebody tell
8 me he was there. And I tell them listen, don't
9 listen to him. He's not the owner. He's the
10 head of security and also he's managing the place
11 for me. But he's not the owner.

12 So when they came and they tell me
13 that. And I call him and I told him, I said
14 listen, when ABRA come over there, don't tell
15 them you're the owner because that's going to
16 make everything messed up -- confused. Because
17 they consider you the owner and then there's a
18 lot things going on with this license. And you
19 cannot them that you are the owner and then
20 you're not the owner. So he tell me, he said
21 okay, he's not going to do it again.

22 MEMBER SHORT: Thank you, Mr. Bah.
23 Mr. Chair, that's all I have at this time.

24 CHAIRPERSON ANDERSON: Thank you, Mr.
25 Short. Any other questions from any other board

1 members? Ms. Krupke, any questions you need to -
2 - you want to ask of Mr. Bah based on the
3 questions that were asked by the Board?

4 MS. KRUPKE: Yes. I'm wondering when
5 did you hire this woman named Keisha?

6 MR. BAH: It's actually been -- It's
7 like before we closed. I know she's been there
8 at least for nine months. You know, like average
9 or maybe eight or nine months with us.

10 CROSS EXAMINATION

11 BY MS. KRUPKE:

12 Q And you're saying that your
13 establishment is closed?

14 A It's closed, yes.

15 Q What is Keisha's last name?

16 A I cannot remember. I'm sorry. I
17 can't remember. I've got too much in my head. I
18 know this -- because the problem I have, I don't
19 know this hearing until yesterday. So I don't
20 prepare myself to get -- you know, to get
21 information, nothing, you know? It just pop up
22 yesterday on my face, say you have to be on the
23 hearing. And I say can we change it? They say
24 no, you cannot change it. So I was not ready
25 for this thing to be honest with you.

1 MS. KRUPKE: All right. Mr. Bah, no
2 further questions. Thank you.

3 CHAIRPERSON ANDERSON: I just have a
4 question. Mr. Bah, do you plan to reopen -- Do
5 you plan to reopen Costello's?

6 MR. BAH: Yes, I have a -- my friend
7 -- because my lease was finished and then I was
8 trying to get it back. I go to them and I say
9 okay, I have too many problems in this place and
10 I'm trying to close it. But the landlord say
11 okay, if you want to close it. At the same time,
12 I got friend of mine came to me say okay, I want
13 to -- if you want to close it, I want to work
14 with you. And I'll take over and then I can
15 reopen the place. And I say okay. And we go to
16 the landlord. We talk about it. And then the
17 landlord say okay, I can still give you that
18 opportunity for a couple of years on lease. And
19 then he signed a lease.

20 He tell me he want to keep -- he want
21 to get the license for me. And I said okay, no.
22 Because I was willing to take the license back to
23 ABRA. He said no, I want to keep the license --
24 keep the license because I want you to give me
25 the license so I can reopen. Right now they're

1 doing some renovations inside, so he still wanted
2 the license.

3 CHAIRPERSON ANDERSON: So are you
4 planning to -- So are you trying to -- Are you
5 planning to transfer the license to him?

6 MR. BAH: Yes.

7 CHAIRPERSON ANDERSON: Can you make
8 sure you talk to ABRA about what it is you plan
9 to do, sir, like tomorrow?

10 MR. BAH: Yes.

11 CHAIRPERSON ANDERSON: Can you call
12 ABRA tomorrow, sir --

13 MR. BAH: Yes.

14 CHAIRPERSON ANDERSON: -- and have a
15 conversation with Licensing and tell them -- Ask
16 for Karen Jackson. Let her know what you're
17 trying to do. And let her walk you through the
18 process, sir.

19 MR. BAH: I talked to her yesterday.
20 By the way, she's the one who called me to tell
21 me about this hearing.

22 CHAIRPERSON ANDERSON: All right. I
23 just wanted to (audio interference). I just
24 wanted to make sure what you just stated, I need
25 you to talk to her about what you plan to do

1 because I want to make sure that you don't get
2 yourself in trouble.

3 MR. BAH: Okay.

4 CHAIRPERSON ANDERSON: I don't want to
5 see you again --

6 MR. BAH: Okay.

7 CHAIRPERSON ANDERSON: -- because you
8 stated something. You sound like you're getting
9 to get yourself in trouble, so I need you to call
10 Karen Jackson back. Tell her what is going on.
11 And she will let you know what is it you need to
12 do. All right?

13 MR. BAH: Okay.

14 CHAIRPERSON ANDERSON: Okay. All
15 right, I apologize for -- I asked a simple
16 question. I didn't realize it's going to get
17 that elongated. In light of what I just said,
18 Ms. Krupke, do you have any questions you want to
19 ask him? I apologize. I just had to ask that
20 question.

21 MS. KRUPKE: I don't have any
22 questions, but when he's finished, I would like
23 to make a representation to the Board based on
24 something that he has said.

25 CHAIRPERSON ANDERSON: All right,

1 that's fine. All right, do you have anything
2 else you want to say Mr. Bah? Is that the extent
3 of your case? What is it -- Is that the extent
4 of your case?

5 MR. BAH: Yeah. I mean my plan
6 basically right now is to transfer the license to
7 him and that's all.

8 CHAIRPERSON ANDERSON: All right. All
9 right, Ms. Krupke, you wanted to -- you said you
10 wanted to -- what is it you want to do?

11 MS. KRUPKE: Yes. So Mr. Bah
12 referenced that he just found out about the
13 hearing yesterday. And so I just want to put on
14 the record that the Government has tried
15 extensively to contact Mr. Bah over the past
16 couple of months. As you may recall, this case
17 actually was set for two separate status hearings
18 to allow for additional attempts at service and
19 to get in contact with Mr. Bah.

20 I personally sent emails to no fewer
21 than three email addresses on file. I actually
22 believe that there were more than that. And
23 called phone numbers, at least four of them and
24 eventually was able to reach his wife through a
25 number that a colleague had for a different

1 establishment. So the Government did make
2 extensive efforts to make him aware of this
3 hearing. And so I just wanted to put that on the
4 record.

5 CHAIRPERSON ANDERSON: All right,
6 thank you for the representation, ma'am. All
7 right, do you wish to make a closing argument --
8 a closing statement, I'm sorry.

9 MS. KRUPKE: Yes, I do. Thank you.

10 CHAIRPERSON ANDERSON: All right then,
11 go ahead.

12 CLOSING STATEMENT - GOVERNMENT

13 MS. KRUPKE: All right. Members of
14 the Board, thank you for your time today. As you
15 heard from Mr. Bah, himself and you heard from
16 the ABRA investigators, at the time of this
17 incident on January 25th, 2020, there was no ABC
18 owner or manager present on the premises as
19 required by the statute. So first, we heard from
20 Investigators Miller and Ruiz that when they
21 visited, they first approached the bartender and
22 asked for an ABC owner or manager and were
23 informed that she was not an ABC owner or
24 manager. Then Investigator Ruiz spoke with the
25 second male employee there. And he also was not

1 an ABC owner or manager.

2 And so the investigators did ask the
3 question of whether there were any other owners
4 or managers present and were told no, there were
5 not. At no time was any representation made to
6 the investigators that there was an ABC manager
7 present nearby. But even if that representation
8 had been made, the manager's presence at a nearby
9 does not meet the requirements of the statute.
10 And so I'll just remind the Board members that
11 the statute, DC Code 25-701A11 requires that an
12 establishment's owner or board-approved manager
13 shall be present on the premises at all times
14 during the establishment's hours of sale,
15 service, and consumption of alcoholic beverages.

16 And here, the testimony actually
17 established all three have been met; that the
18 hours of sale were identified within the
19 Government's Exhibit 1 and were proven that the
20 establishment's hours of sale ended at 12 o'clock
21 midnight that night. And we heard from the
22 investigators that this violation occurred
23 somewhere around 11:00 p.m. or 11:20 p.m. that
24 evening. Additionally, you heard from the
25 investigators that the establishment was in the

1 process of serving alcoholic beverages at the
2 time. And that patrons were observed consuming
3 alcoholic beverages at the time.

4 And finally, I just want to again note
5 that Mr. Bah admitted the violation because even
6 under his own testimony, should the Board credit
7 his testimony, the manager that he alleges was
8 nearby was not actually on the premises at the
9 time. And I would caution the Board against
10 crediting this testimony because we did hear from
11 the investigators that they didn't speak with
12 anyone else. But yet somehow Mr. Bah claims that
13 this manager came back and showed her ID. Yet
14 nowhere in the report is it -- is it referenced
15 that this person was there. The testimony does
16 not show that this person was there. And so the
17 facts simply show that this ABC manager was not
18 there that night. And so the Government asks for
19 a penalty (audio interference) with a statute for
20 this particular violation. Thank you.

21 CHAIRPERSON ANDERSON: All right,
22 thank you. Mr. Bah, this is the closing
23 statement. What is it you want the Board -- What
24 is it you want the Board to do, sir?

25 CLOSING STATEMENT - APPELLANT

1 MR. BAH: This is very hard for me
2 because my witness cannot be on the hearing --
3 you know, I mean to say what happened. So me, I
4 was not there. So the only thing I can think is
5 what they tell me. But there was a manager --
6 One thing I know, I have a manager there. But
7 they said there was no manager there because I
8 know there's a signed copy. They send it to
9 me with citation from ABRA. That's why I don't
10 understand when the citation and she signed it.
11 I saw the copy of that. I saw the copy where she
12 signed -- citation to say no manager on duty. I
13 said okay, if you can say no manager on duty, why
14 did she sign -- they make her sign? So that's
15 one thing I don't understand.

16 But since I don't have anything,
17 there's nothing I can -- Like I said, I was not
18 prepared for this, you know, because I got called
19 from Ms. Jackson yesterday. And she tell me I
20 have to be on the hearing today. So there is
21 nothing else, you know, I can do. So that was
22 it.

23 CHAIRPERSON ANDERSON: All right, sir.
24 The record is not closed. All right, I'm going
25 to officially close the hearing. As Chairperson

1 of the Alcoholic Beverage Control Board for the
 2 District of Columbia in accordance with DC
 3 Official Code, Section 2574B of the Open Meetings
 4 Act, I move that ABC Board (audio interference)
 5 meeting for the purpose of seeking legal advice
 6 from our council on Case No. 20-CMP-00059
 7 Costello pursuant to DC Official Code, Section
 8 2574B4 of the Open Meetings Act. And deliberate
 9 upon Case No. 20-CMP-00059 Costello for the
 10 reasons cited in DC Official Code, Section
 11 2574B13 of the Open Meetings Act. Is there a
 12 second?

13 MEMBER SHORT: Mr. Short, I second.

14 CHAIRPERSON ANDERSON: Mr. Short has
 15 seconded the motion. We'll now have a roll call
 16 vote on the motion. Mr. Short?

17 MEMBER SHORT: Mr. Short, I agree.

18 CHAIRPERSON ANDERSON: Mr. Cato?

19 MEMBER CATO: Bobby Cato, I agree.

20 CHAIRPERSON ANDERSON: Ms. Crockett?

21 MEMBER CROCKETT: Rafi Crockett, I
 22 agree.

23 CHAIRPERSON ANDERSON: Ms. Hansen?

24 MEMBER HANSEN: Jeni Hansen, I agree.

25 CHAIRPERSON ANDERSON: Mr. Grandis?

1 MEMBER GRANDIS: Edward Grandis, I
2 agree.

3 CHAIRPERSON ANDERSON: And Mr.
4 Anderson? I agree. As it appears that the
5 motion has passed 6-0-0, I hereby give notice
6 that the ABC Board will recess this proceeding to
7 hold a closed meeting in the ABC Board Conference
8 Room pursuant to Section 2574B of the Open
9 Meetings Act.

10 I want to thank the parties for their
11 participation here today. And the Board will
12 issue a decision within 90 days. Thank you very
13 much. And once again, I am reminding you, Mr.
14 Bah, that you contract Karen Jackson. You said
15 you have her phone number, but you contact Karen
16 Jackson at -- hold on --

17 MR. BAH: I have it.

18 CHAIRPERSON ANDERSON: Well, I know
19 you said you have it, but I'm making sure. (Audio
20 interference) 42-478-1389. You stated you're
21 going to transfer the license, sir. And I have a
22 hearing this morning on someone else transferred
23 -- who sold their business and transferred the
24 license. And I do not want to have a hearing on
25 you and this potential person you're going to

1 transfer the license to. So I need you to
2 contact Ms. Jackson and speak to her. Let her
3 know what it is that you want to do. And the
4 Agency will instruct you, sir. Our job at this
5 agency is not to write tickets and find you in
6 violation of the law. Our job is to work with
7 you to ensure that you comply with the procedures
8 of the law. And the Agency will walk you through
9 the process. If you don't know what to do, the
10 Agency will help you and show you what you need
11 to do so you do not -- that you comply with the
12 law. Do you hear, sir?

13 MR. BAH: Yes.

14 CHAIRPERSON ANDERSON: All right.
15 Thank you, Mr. Bah. Thank you, Ms. Krupke. Have
16 a great day. Thank you.

17 MR. BAH: Thank you.

18 MS. KRUPKE: Thank you.

19 CHAIRPERSON ANDERSON: All right, bye-
20 bye.

21 (Whereupon, the above-entitled matter
22 went off the record at 2:55 p.m.)
23
24
25

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In the matter of: Costello

Before: DCABRA

Date: 06-16-21

Place: teleconference

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

Neal R Gross

Court Reporter

NEAL R. GROSS

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