

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

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IN THE MATTER OF:
Mad Hatter CT Ave, LLC
t/a Mad Hatter
1321 Connecticut Ave NW : Show Cause
Retailer CT - ANC 2B : Hearing
License No. 82646
Case #22-CMP-00035
(Increase in Occupancy
Without Board Approval,
No ABC Manager on Duty)
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Wednesday
September 14, 2022

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

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
EDWARD S. GRANDIS, Member
JENI HANSEN, Member
JAMES SHORT, JR., Member
ALSO PRESENT:
MR. ORELLANA, DC ABRA Staff
ERIC HEIDENBERGER, Applicant
ANDREW J. KLINE, Applicant Counsel
KEVIN LUTES, Assistant Attorney General
MARK RUIZ, Witness

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

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WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
MIKE RUIZ	9	22	34	32

EXHIBITS:	IDENTIFIED	RECEIVED
Government		
B Photo	14	16

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

2 1:37 p.m.

3 CHAIRPERSON ANDERSON: Good afternoon,
4 everyone. Welcome to the afternoon session of
5 the ABC Board.

6 My name is Donovan Anderson. I'm
7 Chairman of the Board. Joining me this afternoon
8 are five other Board members. We have with me
9 James Short. We have Mr. Bobby Cato. We have
10 Ms. Rafi Crockett, Ms. Jeni Hansen, and Mr.
11 Edward Grandis.

12 The Board has six members for the
13 attendance. And so therefore, we do have a
14 quorum today.

15 Before we get under way with this
16 afternoon's hearings on the calendar, I need to
17 make a few instructions very clear so that the
18 conduct of these hearings is understood by
19 everyone. There are six cases on our calendar
20 for this afternoon.

21 Once your case is called, I will take
22 a moment for our IT specialist to elevate the
23 rights for each party to allow the camera and
24 microphone. Then and only then will you have the
25 ability to enable your equipment. If your case

1 has not been heard, you will remain muted and
2 your camera will be disabled.

3 At the conclusion of each case, the
4 parties will have the option to leave. If the
5 party chooses to stay, all cameras and
6 microphones for the concluded case will be
7 disabled. Should you have any questions or
8 require assistance during the hearing, please
9 submit them using the question and answer
10 feature.

11 Our first case for this afternoon is
12 Case No. 22-CMP-00035, the Mad Hatter, License
13 No. 82646.

14 Mr. Orellana, can you please elevate
15 the rights of the parties in this case? It
16 should consist of the Government, the Licensee,
17 and whatever witnesses the parties might have.

18 MR. ORELLANA: Eric Heidenberger, your
19 access has been elevated.

20 Kevin Lutes, your access has been
21 elevated.

22 Mark Ruiz, your access has been
23 elevated.

24 Andrew Kline, your access has been
25 elevated.

1 That is all, Chairman.

2 CHAIRPERSON ANDERSON: Thank you.

3 Mr. Kline?

4 (Pause.)

5 MR. KLINE: Can you hear me?

6 CHAIRPERSON ANDERSON: Mr. Kline, are
7 you there, sir?

8 MR. KLINE: Yes, I'm here.

9 CHAIRPERSON ANDERSON: You're not on
10 camera. I'm waiting for you to be on camera, Mr.
11 Kline, so we can start.

12 (Pause.)

13 CHAIRPERSON ANDERSON: Mr. Kline, are
14 you still there?

15 I guess Mr. Kline has gone. Mr.
16 Orellana, can you please look again to see if Mr.
17 Kline is attempting to sign back in?

18 MR. ORELLANA: Andrew Kline, your
19 access has been elevated.

20 MR. KLINE: All right. Sorry about
21 that.

22 CHAIRPERSON ANDERSON: Good afternoon.

23 MR. KLINE: Good afternoon.

24 CHAIRPERSON ANDERSON: Good afternoon,
25 everyone, and thanks for being here today. Let

1 me have the parties identify them for the record.

2 Let's start with the Government,
3 please. You're on mute, Mr. Lutes.

4 MR. LUTES: Good afternoon, Mr.
5 Chairman. This is Assistant Attorney General
6 Kevin Lutes for the District. Additionally, I
7 have Mr. Mark Ruiz as the District's witness.

8 CHAIRPERSON ANDERSON: Thank you, sir.

9 Mr. Kline, can you please spell and
10 state your name for the record, please?

11 MR. KLINE: Yes. Good afternoon.
12 Andrew Kline from the Veritas Law Firm, here on
13 behalf of the respondent.

14 CHAIRPERSON ANDERSON: Is your client
15 here today, sir?

16 MR. KLINE: My client, Eric
17 Heidenberger, is here as one of the principals of
18 the Respondent.

19 CHAIRPERSON ANDERSON: Mr.
20 Heidenberger, can you please spell and state your
21 name for the record?

22 MR. HEIDENBERGER: Good afternoon,
23 everyone. Eric Heidenberger, E-R-I-C, last name
24 H-E-I-D-E-N-B-E-R-G-E-R, and partner for the Mad
25 Hatter.

1 CHAIRPERSON ANDERSON: Good afternoon.
2 All right. Good afternoon, everyone.
3 This matter is scheduled for a show cause
4 hearing.

5 Are there any preliminary matters in
6 this case?

7 MR. KLINE: No preliminary matters.

8 CHAIRPERSON ANDERSON: All right. So
9 this is a show cause hearing. This matter is
10 scheduled for a show cause hearing. So we will
11 start.

12 The process is that each party will
13 give an opening statement. Once the parties give
14 an opening statement, the Government will present
15 its case and call its first witness.

16 Once the Government has presented its
17 case and the Applicant has had an opportunity to
18 cross-examine whatever witness the Government
19 calls, then the Licensee will put his case on.

20 Mr. Lutes, do you wish to make an
21 opening statement?

22 MR. LUTES: Yes, Mr. Chairman. The
23 District is prepared.

24 Good afternoon, Mr. Chairman and
25 members of the Board. This case is about the

1 Licensee, Mad Hatter, exceeding its Board-
2 approved capacity in violation of DC Code 25-762,
3 while also failing to have an ABC manager present
4 during the hours of sale, service, and
5 consumption of alcohol, in violation of DC Code
6 25-701 and 23 DCMR 707.1.

7 The evidence will show that on the
8 early morning of March 6, 2022, Alcoholic
9 Beverage Regulation Administration Investigator
10 Mark Ruiz arrived and entered the establishment,
11 and counted 329 patrons inside the establishment
12 using a clicker, well above the establishment's
13 license capacity of 224 patrons.

14 Next you will hear that Investigator
15 Ruiz tried to notify an ABC manager of the
16 violation, only to be told that no licensed ABC
17 manager was on duty at the time.

18 Additionally, the evidence will show
19 that Investigator Ruiz observed bartenders
20 serving alcohol to patrons during the
21 establishment's Board-approved hours of sale and
22 consumption of alcohol.

23 At this hearing's conclusion, the
24 District will have proven by a preponderance of
25 the evidence that Mad Hatter operated over its

1 capacity and failed to have an owner or Board-
2 approved supervisor present on the premises
3 during the hours of sale, service, and
4 consumption of alcohol.

5 Thank you.

6 CHAIRPERSON ANDERSON: Thank you, Mr.
7 Lutes.

8 Mr. Kline, do you wish to make an
9 opening statement at this juncture or do you want
10 to defer until you present your case?

11 MR. KLINE: I'll reserve.

12 CHAIRPERSON ANDERSON: Thank you.

13 Mr. Lutes, do you have a witness you
14 wish to call?

15 MR. LUTES: Yes, Mr. Chairman. The
16 District would like to call Investigator Ruiz.

17 CHAIRPERSON ANDERSON: Mr. Ruiz, can
18 you raise your right hand please, sir?

19 WHEREUPON,

20 MARK RUIZ

21 was called for examination by Counsel for the
22 District, having been first duly sworn, assumed
23 the witness stand, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. LUTES:

2 Q Mr. Ruiz, can you please spell and
3 state your name for the record?

4 A Yes. First name is Mark, M-A-R-K,
5 last name is Ruiz, R-U-I-Z.

6 Q Where do you work, Mr. Ruiz?

7 A I work for the Alcoholic Beverage
8 Regulation Administration.

9 Q If I use the acronym ABRA, do you
10 understand that that stands for the Alcoholic
11 Beverage Regulation Administration?

12 A Yes.

13 Q And what is your position at ABRA?

14 A I'm an investigator.

15 Q How long have you worked as an
16 investigator?

17 A Three and a half years.

18 Q As an investigator, what duties does
19 that position entail?

20 A It entails conducting various
21 investigations and inspections in licensed ABC
22 establishments throughout the District of
23 Columbia.

24 Q Have you received any training in
25 conducting investigations?

1 A I received training from a trainer
2 during our field training exercises.

3 Q During your investigations, are you
4 familiar with the establishment Mad Hatter?

5 A I am.

6 Q Are you familiar with Mad Hatter?

7 A As an establishment within the city
8 and as a place that I visited on the night -- on
9 this night.

10 Q Can you tell me what nights you
11 visited the establishment?

12 A So it was a Cinco de Mayo holiday, May
13 5th. At the time I arrived at the establishment
14 it was after midnight, so it was May 6th.

15 Q So you arrived at the establishment.
16 What happened next?

17 A I let security at the front door know
18 that I was going to conduct a walkthrough and
19 conduct a count just to ensure they were in
20 compliance with capacity.

21 Q And did you enter the establishment?

22 A I did.

23 Q Did you conduct a count for capacity?

24 A (No audible response.)

25 Q Could you please repeat that?

1 Unfortunately the audio cut out.

2 A Yes, I did.

3 Q How many patrons did you count within
4 the Mad Hatter on that evening?

5 A Three hundred and twenty-nine patrons.

6 CHAIRPERSON ANDERSON: I'm sorry. How
7 many? I'm sorry, I didn't hear.

8 THE WITNESS: Three-twenty-nine.

9 BY MR. LUTES:

10 Q Now turning to actually how you
11 conducted that count, can you please tell the
12 Board how you conducted that count?

13 A Yes. So I started from the front
14 door, started counting, making my way through the
15 right side of the establishment where the main
16 bar is located. And then made my way to the
17 mezzanine area and then down the opposite side,
18 out the exit.

19 Q While counting did you use any tools?

20 A I used a counter, yes.

21 Q Did you take a photo of that counter?

22 A I did.

23 MR. LUTES: Mr. Chairman, the District
24 requests permission to share its screen.

25 CHAIRPERSON ANDERSON: Mr. Orellana,

1 can you please allow Mr. Lutes to share his
2 screen, please?

3 MR. ORELLANA: Your access has been
4 elevated.

5 BY MR. LUTES:

6 Q Mr. Ruiz, you're looking at a document
7 that's been marked as Government Exhibit B. Can
8 you please tell me what this is?

9 A Yes. This is a --

10 CHAIRPERSON ANDERSON: I'm not seeing
11 the document. What I see are rearranged videos
12 instead. So either you need to close that
13 document, Mr. Lutes, because I'm not seeing the
14 document.

15 MR. LUTES: Okay. I'll stop sharing.

16 CHAIRPERSON ANDERSON: Let's start
17 again, please.

18 MR. LUTES: Of course, of course. I'm
19 just going to share the screen instead of the
20 document itself.

21 CHAIRPERSON ANDERSON: I'm seeing the
22 same thing so I'm not sure. There is something
23 asking me to -- what are you seeing on your
24 screen? I'm seeing it says rearranged videos in
25 the stage. You can either close it or --

1 MEMBER CROCKETT: Donovan, you need to
2 click Got It.

3 CHAIRPERSON ANDERSON: That's on my
4 computer?

5 MEMBER CROCKETT: Yes.

6 CHAIRPERSON ANDERSON: Okay. All
7 right. Go ahead, sir.

8 MR. LUTES: Chairperson Donovan, just
9 confirming that you're able to see the exhibit.

10 CHAIRPERSON ANDERSON: Yes. Go ahead.

11 MR. LUTES: Okay.

12 BY MR. LUTES:

13 Q Investigator Ruiz, I'm showing you a
14 document that's been labeled as Government
15 Exhibit B. Can you please tell me what this is?

16 A Yes. This is the photo of the counter
17 with the number I counted after exiting the
18 establishment.

19 MR. LUTES: I would just like to state
20 for the record that we're showing Government
21 Exhibit B.

22 (Whereupon, the above-referred to
23 document was marked as Government
24 Exhibit B for identification.)

25 BY MR. LUTES:

1 Q So Investigator Ruiz, you said that's
2 the clicker you used. Can you please tell me
3 what number is displayed on the clicker?

4 A Three hundred and twenty-nine.

5 Q And is this photo taken at or near the
6 time that you made your count using the clicker?

7 A Yes. It was after I exited and was on
8 the sidewalk in front of the establishment.

9 Q And this is a true and accurate
10 depiction of the clicker at the time when you
11 exited after you made your count?

12 A Yes.

13 MR. LUTES: Mr. Chairman, the District
14 requests that Exhibit B be moved into evidence.

15 CHAIRPERSON ANDERSON: Was this a part
16 of a case report that was done by the
17 investigator?

18 MR. LUTES: Yes, Mr. Chairperson.
19 This photo was part of the case report that is
20 the Government's Exhibit A. However, the photo
21 that was used was scanned into the Government
22 Exhibit A and so the photo quality is not
23 effective.

24 CHAIRPERSON ANDERSON: Mr. Kline, do
25 you have any objection?

1 MR. KLINE: (No audible response.)

2 CHAIRPERSON ANDERSON: All right,
3 without objection.

4 (Whereupon, the above-referred to
5 document was received into evidence as
6 Government Exhibit B.)

7 MR. LUTES: Thank you. I will stop
8 sharing my screen.

9 BY MR. LUTES:

10 Q Now, Investigator Ruiz, what happened
11 after you completed your count?

12 A Yes. So I asked for the ABC manager
13 to come out front to speak with them and discuss
14 with them what I found.

15 Q Turning back a little bit, you exited
16 at the rear of the establishment?

17 A Through the exit, which is also
18 technically in front of the establishment.

19 Q In front of the establishment. And
20 then once you asked for an ABC manager at the
21 front of the establishment, what happened next?

22 A Ms. Olivares -- I think I got that
23 right -- came out and greeted with me, at which
24 time I asked if she was an ABC manager. I asked
25 for her photo ID and her license. I believe she

1 went and got it, and then came back with a
2 temporary ABC manager's license.

3 Q And what can you tell me about that
4 temporary ABC manager license?

5 A The license she presented to me at the
6 time was expired since November of 2021.

7 Q Was any other ABC manager or owner
8 present on the premises at that time during your
9 visit?

10 A During my interview with her, I did
11 ask her if there was anyone else present at the
12 establishment that had an ABC manager's license.
13 She told me there was not.

14 Q Turning back to your count, when you
15 made your count, could you go over the
16 methodology on how you actually counted the
17 individuals in the bar?

18 A So of course I counted patrons,
19 patrons that were stationary or dancing in place,
20 drinking, or conversating. There were
21 individuals that were in transit, moving past me
22 towards the front of the establishment. Those
23 individuals I didn't count as they may have been
24 exiting.

25 Q And while you were making your count,

1 you said you observed patrons drinking alcohol.

2 Did you see any bartenders serving alcohol?

3 A I did see a bartender behind the bar
4 serving, yes.

5 Q And following your visit to the Mad
6 Hatter, did you draft a report near or at the
7 time of the violation?

8 A Yes. I reported it immediately after.

9 MR. LUTES: Mr. Chairman, the District
10 requests permission to share what's marked as
11 Government Exhibit A.

12 CHAIRPERSON ANDERSON: I think you
13 still have the ability to share your screen.

14 MR. LUTES: Board's indulgence to
15 correct the sizing.

16 BY MR. LUTES:

17 Q Mr. Ruiz, I'm going to be scrolling
18 through what's marked as Government Exhibit A.
19 Please take a look at it.

20 (Pause.)

21 BY MR. LUTES:

22 Q Investigator Ruiz, can you please tell
23 me what this is?

24 A Yes. This is the case report that I
25 drafted with the exhibits attached.

1 Q And is this a true and accurate
2 reflection of the events of your visit?

3 A Yes.

4 Q Mr. Chairman, I would like to confirm
5 that Government Exhibit A, the case report, is in
6 evidence.

7 CHAIRPERSON ANDERSON: It's a part of
8 the administrative record for the Agency. So
9 automatically it's in evidence.

10 MR. LUTES: Thank you.

11 MR. LUTES:

12 Q Investigator Ruiz, I'm going to turn
13 to what's marked as Exhibit 1 in Government
14 Exhibit A. Can you please tell me what you see?

15 A Yes. It's --

16 Q Can you tell me what this is,
17 actually?

18 A This is a photo of patrons in the
19 establishment as well as the bar area, in which
20 you also see a female bartender pouring a cup of
21 beer from the tap.

22 Q In what quadrant is that cup of beer
23 being poured?

24 A The lower right-hand corner.

25 Q Did you take this photo?

1 A I did.

2 Q Did you take this photo using a
3 District-issued phone or camera?

4 A Yes.

5 Q Now turning to Exhibit 2. Can you
6 please tell me what this is?

7 A This is another photo of patrons in
8 the establishment from me standing at the front
9 door.

10 Q Now turning to Exhibit 7. Can you
11 please tell me what this is?

12 A This is a photo of the temporary ABC
13 manager's license that Ms. Olivares presented to
14 me.

15 Q And what's the expiration date that's
16 listed on the temporary ABC license?

17 A November 5, 2021.

18 Q Thank you. Now turning to Exhibit 6,
19 can you please tell me what this is?

20 A This is a photo of the posted ABC
21 license in the establishment.

22 Q Did you take this photo of the
23 license?

24 A I did.

25 Q Can you please tell me, on the

1 license, what's the occupancy capacity that's
2 listed on the license?

3 A Two hundred and twenty-four.

4 Q Is the number of 329, the number of
5 patrons you counted, greater than the capacity?

6 A It is.

7 Q And when making your determination
8 that the number of patrons exceeded the capacity
9 of the bar, how did you make that determination?

10 A I'm sorry. Could you repeat that
11 again? It was broken up.

12 Q When making your determination that
13 the establishment exceeded its capacity, did you
14 refer to the capacity that's listed on the ABRA
15 license?

16 A Yes. When I did a capacity check I
17 did refer to the ABRA license that the
18 establishment is licensed for.

19 Q When conducting your investigation, do
20 you refer to any other document other than the
21 Board-approved license regarding the capacity of
22 patrons that the establishment may have?

23 A I just refer to the ABRA license.

24 Q Next, if you would please read me the
25 hours of operations in sales and entertainment

1 that's listed on the license for Mad Hatter.

2 A For that particular day?

3 Q Yes.

4 A That would have been for Thursday.
5 I'm reading off the screen. It's kind of -- it
6 looks to appear to be 11:30 a.m. to 2:00 a.m.
7 And the sale -- for the operation and the sales,
8 it reflects the same, 11:30 to 2:00 a.m.

9 Q And your visit to the establishment
10 was during this time?

11 A Yes.

12 MR. LUTES: Board's indulgence. I
13 will stop sharing my screen.

14 Thank you, Mr. Chairman. No further
15 questions.

16 CHAIRPERSON ANDERSON: Thank you, Mr.
17 Lutes.

18 Mr. Kline?

19 MR. KLINE: Yes. Thank you, Mr.
20 Chair.

21 CROSS-EXAMINATION

22 BY MR. KLINE:

23 Q Good afternoon, Investigator Ruiz.

24 A Good afternoon, Mr. Kline.

25 Q You arrived at the establishment

1 around midnight; is that correct?

2 A Yes, around that time.

3 Q Exhibit B, which you've identified,
4 you're standing in front of the establishment
5 after having done the count, correct?

6 A Correct.

7 Q What time was that?

8 A I'd say roughly somewhere between
9 12:05 and 12:10-ish --

10 Q So it only took you --

11 A -- that I can recall.

12 Q -- five or ten minutes to count 329
13 people or three people or 32 people, depending
14 upon what this exhibit says?

15 A Yes. It's a quick count. I was able
16 to move through the establishment pretty quickly
17 considering.

18 Q The establishment you mentioned has a
19 first floor, correct?

20 A Correct.

21 Q It also has a mezzanine?

22 A Correct.

23 Q So what you're saying is you made it
24 all the way through the first floor and did your
25 count, went up to the mezzanine and did your

1 count, and ended up on the front sidewalk, and
2 that didn't take more than ten minutes?

3 A Yes. I don't recall it taking more
4 than ten minutes.

5 Q During the period that you were doing
6 that count, you don't have any way of knowing who
7 exited the establishment, do you?

8 A No. That's why I wasn't counting
9 anybody that was moving around. I wasn't in
10 there long enough for that many people to be
11 leaving.

12 Q So when you say you weren't counting
13 anybody that was moving around, when we look at
14 Exhibit 1 -- can you pull up Exhibit 1?

15 CHAIRPERSON ANDERSON: Who are you
16 asking to pull up Exhibit 1, Mr. Kline?

17 MR. KLINE: I beg your pardon?

18 CHAIRPERSON ANDERSON: Who are you
19 asking to pull -- Exhibit 1 is the Government's
20 document. So are you asking --

21 MR. KLINE: Well, actually, make it
22 Exhibit 2 of the report.

23 CHAIRPERSON ANDERSON: Hold on. I'm
24 asking a different question, Mr. Kline. Are you
25 asking the Government -- the witness doesn't have

1 any documents. So you either have to ask Mr.
2 Lutes or you have to --

3 MR. KLINE: All right. I'll ask Mr.
4 Lutes and I'll ask the Board if --

5 CHAIRPERSON ANDERSON: We don't have
6 that ability, Mr. Kline. So you either have to
7 have the document or as a courtesy you need to
8 ask the Government.

9 MR. KLINE: I'll ask the Government.
10 It's the Government's exhibit. And presumably,
11 if we were in the court room, I would have been
12 provided a copy and I would be relying on that.

13 CHAIRPERSON ANDERSON: Well, I know,
14 but that's why I'm saying you need to ask the
15 Government to share his screen to raise a
16 document that he previously --

17 MR. KLINE: Fair enough.

18 Mr. Lutes, would you be so kind as to
19 share Exhibit 2 to the Investigator's Report,
20 Government Exhibit A?

21 MR. LUTES: Mr. Chairman and members
22 of the Board, I would like to also highlight that
23 the District has shared the Government exhibit
24 list, exhibits, and witness list with the
25 Licensee prior to this hearing. But the District

1 will share the document with the Board.

2 MR. KLINE: We don't dispute that, Mr.
3 Chair. We're simply talking about logistics at
4 this point.

5 MR. LUTES: Which exhibit?

6 MR. KLINE: Exhibit 2 to Government
7 Exhibit A, which is the Investigator Report, the
8 photograph.

9 MR. LUTES: Okay.

10 BY MR. KLINE:

11 Q All right. Investigator Ruiz, you
12 previously identified this photo, correct?

13 A Correct.

14 Q Is it your testimony that these people
15 are not moving?

16 A They may be dancing in place.

17 Q Okay. So you didn't include those in
18 your count; is that your testimony?

19 A I included the people that were
20 dancing, stationary drinking, and talking.
21 Nobody that was actually in transit, either
22 walking through the establishment like I was.

23 Q So you differentiated between people
24 who were dancing and people who were walking?

25 A Yes. Mostly everybody who is dancing

1 is --

2 Q You've never seen me dance.

3 A I mean, you could tell when someone's
4 walking through the establishment. Yes.

5 Q All right. But when you were on the
6 mezzanine you had no idea who went out the front
7 door, correct?

8 A That's correct.

9 Q And when you were in the back of the
10 establishment you had no idea who went through
11 the front door, correct?

12 A Correct.

13 Q So in terms of the count, the count is
14 not static. It changes depending upon who enters
15 and exits the establishment, correct?

16 A It's possible.

17 Q It's possible or it's likely?

18 A It's likely.

19 Q Okay. So we don't really know
20 precisely how many people were in the
21 establishment when you did your count, do you?

22 A Based off my count, yes. I mean, if
23 people left, maybe it was a couple under. I
24 counted over 100 people over, so I find it
25 unlikely that 100 people left during that time.

1 Q And it's your testimony that you were
2 able to do this count in no more than ten
3 minutes?

4 A Yes.

5 MR. KLINE: Okay. I have no further
6 questions of the witness at this time.

7 CHAIRPERSON ANDERSON: Mr. Lutes, can
8 you temporarily close your screen, please? Thank
9 you.

10 Any questions by the Board members?

11 MR. LUTES: Mr. Chairman, with the
12 Board's indulgence, the District would like to
13 conduct redirect.

14 CHAIRPERSON ANDERSON: You'll get an
15 opportunity, Mr. Lutes.

16 MR. LUTES: Thank you, Mr. Chairman.

17 CHAIRPERSON ANDERSON: It is now the
18 Board's opportunity to ask questions. Once the
19 Board members have asked questions, then I will
20 give Mr. Kline an opportunity to ask questions.

21 I see you, Mr. Short.

22 I will give Mr. Kline an opportunity
23 to have some, if he has any follow-up, as a
24 result of the questions that were asked by the
25 Board. And then you'll have the last opportunity

1 to have redirect.

2 Okay. Go ahead, Mr. Short.

3 MEMBER SHORT: Investigator Ruiz, good
4 afternoon.

5 THE WITNESS: Good afternoon, sir.

6 MEMBER SHORT: First, for the record,
7 I wanted to thank you for a very thorough report
8 and for some very thorough evidence in the case,
9 and making your count using a clicker.

10 Did you ask the establishment -- we
11 know there was no manager there for you to
12 question. Did you ask anyone in the business if
13 they had a counter and could they give you a
14 number of people that they had let into the
15 establishment to serve alcohol to?

16 THE WITNESS: The security up front,
17 the individual that was checking IDs did have two
18 counters for entry and exit. I didn't take a
19 photo at the time but it did not match my
20 counter. It was less than what I had. I don't
21 recall the exact number. I just know it was less
22 at the time.

23 MEMBER SHORT: Thank you. During your
24 training before you became a full-fledged
25 investigator for ABRA, what were you told on why

1 would the government have regulations on the
2 numbers on a license that people could come into
3 a place of public assembly and drink alcohol?

4 THE WITNESS: For capacity, I know it
5 determines our fees, as well as usually with
6 what's on the certificate of occupancy that the
7 establishment can safely have in the
8 establishment.

9 MEMBER SHORT: Okay. You mentioned
10 the word safely in your answer. Thank you for
11 that.

12 So would you consider in your
13 experience as an investigator, when there is over
14 100 people over the licensed number, is that a
15 public safety issue? Is it a hazard to the
16 people that are inside the place?

17 THE WITNESS: I would consider it a
18 hazard, yes.

19 MEMBER SHORT: Okay. Your testimony
20 is that there were 105 people over capacity?

21 THE WITNESS: That's correct.

22 MEMBER SHORT: And when you asked for
23 an ABC manager, what were you told?

24 THE WITNESS: So the security did go
25 and get the ABC manager that they were aware of.

1 However, her license was expired.

2 MEMBER SHORT: And that's a violation;
3 is that correct?

4 THE WITNESS: That's correct. Nobody
5 was there that had an actual ABC manager's
6 license.

7 MEMBER SHORT: Thank you for your
8 testimony today. Your evidence is compelling.
9 Thank you very much, Investigator Ruiz.

10 THE WITNESS: You're welcome, Mr.
11 Short.

12 CHAIRPERSON ANDERSON: Any other
13 questions from any of the Board members? No?
14 All right.

15 Mr. Ruiz, did you mention to the ABC
16 manager that her temporary license had expired?

17 THE WITNESS: I did. She was aware of
18 it.

19 CHAIRPERSON ANDERSON: What was her
20 comment when you told her that it had expired?

21 THE WITNESS: I believe she apologized
22 for that.

23 CHAIRPERSON ANDERSON: I'm sorry. So
24 the license expired in November of 2021. When is
25 it that you went to visit the place?

1 THE WITNESS: It was May 6, 2022.

2 CHAIRPERSON ANDERSON: So
3 approximately six months after the license had
4 expired, you went to visit the establishment; is
5 that correct?

6 THE WITNESS: That's correct.

7 CHAIRPERSON ANDERSON: I don't have
8 any other questions to ask.

9 Any questions by the Board? All
10 right.

11 Mr. Kline, any questions of the
12 witness based on the questions that were asked by
13 the Board?

14 MR. KLINE: Yes.

15 RE CROSS-EXAMINATION

16 BY MR. KLINE:

17 Q Investigator Ruiz, you mentioned that
18 there were two clickers at the establishment?

19 A Yes. One of the security personnel
20 had two clickers, yes.

21 Q And are you familiar with the use of
22 two clickers by an establishment to determine
23 occupancy?

24 A Yes. So one is to count going in and
25 one is to count those going out.

1 Q Okay. And you indicated that the
2 count that was shown or that they had was
3 substantially less than what you had, correct?

4 A I recall it being less. I just don't
5 recall the exact number. It didn't match up.

6 Q And you don't have any reason to
7 believe that they weren't following procedure in
8 terms of using the two-clicker method, do you?

9 A I believe they were using it. The
10 only concern was his back is to the exit door
11 while he's conducting ID checks. So I found it
12 very possible for him to do a miscount. And
13 plus, Mad Hatter is a known busy establishment
14 with a line out front.

15 Q So it's possible, but you don't have
16 any evidence that that's what happened, correct?

17 A That's correct.

18 Q All right. Are you aware of
19 situations where there are certificates of
20 occupancy for licensed establishments that are
21 greater in terms of capacity numbers than is
22 listed on the ABC license?

23 A Yes, correct.

24 Q So in terms of it being a violation of
25 the number, if it is, on the ABC license, that

1 does not necessarily mean that it was in
2 violation of the certificate or occupancy or
3 created an unsafe situation, correct?

4 A Not all the time, no.

5 MR. KLINE: Okay, great. Thank you.
6 That's all I have.

7 CHAIRPERSON ANDERSON: Any questions
8 in redirect, Mr. Lutes?

9 MR. LUTES: Yes.

10 REDIRECT EXAMINATION

11 BY MR. LUTES:

12 Q Investigator Ruiz, regarding the
13 certificate of occupancy and ABRA license, is
14 there a process for -- what was the occupancy
15 limit that was listed on the ABRA license?

16 A Two hundred and twenty-four.

17 MR. LUTES: Court's indulgence.

18 BY MR. LUTES:

19 Q Is the ABRA license how you made that
20 determination?

21 A Yes, going by what they're licensed to
22 have inside the establishment, yes.

23 Q And are you aware of any requests by
24 the Licensee to exceed or alter that capacity
25 limit?

1 A I didn't locate anything with records
2 stating that there was a request to increase.

3 Q Turning back to your count, you've
4 stated there was 329 patrons in the
5 establishment, which exceeded the limit. And you
6 stated that limit was exceeded by 105 patrons.

7 A That's correct.

8 Q Did you see over 105 patrons outside,
9 potential patrons or individuals, outside of Mad
10 Hatter after you left?

11 A I did not.

12 MR. LUTES: Thank you, Your Honor --
13 sorry, my apologies. Thank you, Mr. Chairman.
14 No further questions.

15 CHAIRPERSON ANDERSON: Thank you, Mr.
16 Ruiz.

17 Does the Government have another
18 witness?

19 MR. LUTES: No, Mr. Chairman. The
20 Government does not have another witness.

21 CHAIRPERSON ANDERSON: Does the
22 Government rest?

23 MR. LUTES: The Government rests.

24 CHAIRPERSON ANDERSON: Mr. Kline, do
25 you wish to make an opening statement and then

1 call witnesses?

2 MR. KLINE: No. We rest. We will
3 make a closing statement.

4 CHAIRPERSON ANDERSON: So Mr. Lutes,
5 do you wish to make a closing statement?

6 MR. LUTES: Yes, Mr. Chairman. The
7 District is prepared to make a closing statement.

8 CHAIRPERSON ANDERSON: Go ahead, sir.

9 MR. LUTES: Mr. Chairman and members
10 of the Board, leaders lead by their actions, not
11 by their words. Unfortunately, Mad Hatter did
12 not live up to this principle in this matter.

13 Here we have a veteran DC
14 establishment that's failed to have an ABC
15 manager or owner supervise the sale, service, and
16 consumption of alcohol, has exceeded its ABRA-
17 approved capacity by 105 individuals, and rather
18 than setting an example for many bars in the
19 District, the establishment failed to lead other
20 establishments.

21 It is for that reason we have proven
22 that Mad Hatter failed to receive Board approval
23 for substantially changing the nature of the
24 operational license establishment under DC 25-
25 760(a), and failed to have a Board-approved

1 manager on the premises during the
2 establishment's hours of sale, service, and
3 consumption of alcoholic beverages under DC 25-
4 701.

5 Mad Hatter violated DC 25-762 because
6 they exceeded their Board-approved occupancy.
7 The statute requires that prior to a major change
8 to the nature of the operation of the
9 establishment, the Board must approve the change.

10 The statute continues, specifically
11 enumerating that increasing the occupancy of a
12 licensed establishment is a factor in determining
13 if the changes are substantial.

14 You have heard these irrefutable
15 facts. First, Investigator Ruiz arrived at Mad
16 Hatter during its licensed hours of operations on
17 May 6, 2022.

18 Second, that Investigator Ruiz counted
19 329 patrons in the establishment and determined
20 that the establishment exceeded its ABRA-approved
21 capacity by 105 patrons. Investigator Ruiz also
22 testified that, at the time of the violation, no
23 substantial change application that would permit
24 an increase in the occupancy had been approved.

25 Next, Mad Hatter did not have an ABC

1 manager present, in violation of DC 25-701. And
2 while counting patrons, Investigator Ruiz
3 observed bartenders serving alcohol and patrons
4 drinking alcohol. When he went to notify the
5 Licensee of the violation, he learned that Ms.
6 Olivares, the manager on duty, did not have a
7 valid ABC manager's license and that no other
8 ABC-licensed manager nor owner were on the
9 premises to speak with him.

10 Thus, the Government has proven by a
11 preponderance of the evidence that the Licensee
12 exceed its Board-approved capacity and failed to
13 have an ABC manager present during the hours of
14 sale, service, and consumption of alcohol, in
15 violation of DC Code 25-762, DC 25-701, and 23
16 DCMR 707.1.

17 The Government requests that the Board
18 find in the District's favor and recommends the
19 Board apply the appropriate penalty. Thank you.

20 CHAIRPERSON ANDERSON: Thank you, Mr.
21 Lutes.

22 Mr. Kline?

23 MR. KLINE: Yes. Good afternoon,
24 members of the Board.

25 What we have in this case is a failure

1 of proof, in one case factually and in one case
2 legally. Let's deal with the simpler issue, 25-
3 701. We've heard part of that section recited
4 several times, which is failure to have an ABC
5 license manager on the premises. However, if one
6 reads the entire section, what it says is not
7 having an approved owner or an ABC license
8 manager on the premises.

9 Now, when Investigator Ruiz was asked
10 on direct, he said that he asked whether anyone
11 had an ABC manager's license and the answer was
12 no. But he didn't ask the next question,
13 according to his testimony, which is was there an
14 owner on the premises who had been approved by
15 the ABC Board? Because if there was an owner on
16 the premises approved by the ABC Board, then it
17 would not be necessary under 25-701 to have an
18 ABC license manager on the premises.

19 It's the Government's burden to prove
20 that. And although the Government may have
21 proved that there was no ABC license manager on
22 the premises, there's an absence of proof and an
23 absence of testimony as to whether there was an
24 owner on the premises.

25 Now, with respect to the occupancy

1 issue, factually it's all a little vague. It
2 seems to me that the best evidence of the
3 occupancy would have been the counts that were
4 being made at the front door. However, we don't
5 have any testimony yet to that.

6 The investigator indicated that he
7 didn't have any reason to believe that the front
8 door staff was not following proper protocol with
9 respect to determining occupancy. He said it was
10 possible. But beyond that, there's no testimony
11 that what was recorded there was not correct. He
12 admitted that what was recorded there was
13 less than the number that he found in his walk
14 through the establishment.

15 I would challenge the Board to count
16 to 329, just do it in your head, without looking
17 at people and determining who's there and walking
18 up and down the stairs, and whether you think
19 that that can all be done in ten minutes. It
20 seems pretty unlikely that that could be done
21 that quickly.

22 While it was being done, no matter how
23 long it took, it's clear that when he was at the
24 back of the establishment he could not see who
25 exited the establishment, nor when he was on the

1 second floor could he determine who exited.

2 But more importantly than that, even
3 if you believe the testimony and believe that the
4 preponderance of the evidence shows that this
5 establishment exceeded its Board-approved
6 occupancy, that's not enough because that's not
7 what this establishment is charged with.

8 And perhaps given those facts, perhaps
9 there might be a violation. But I would submit to
10 you it is not a violation of DC Code 25-762.

11 DC Code 25-762 says before a licensee
12 may make a change in the interior or exterior, or
13 a change in format of any licensed establishment
14 which would substantially change the nature of
15 the operation of the licensed establishment as
16 set forth in the initial application, the
17 licensee must obtain Board approval.

18 Now, first of all, there's no
19 testimony that there was any substantial change
20 in the nature of the operation. And let's look
21 at the examples. I mean, 25-762 is very
22 instructive because it gives 18 possible examples
23 as to what might constitute a substantial change.

24 Now, what do they have in common?
25 What they all have in common is that they are in

1 the nature of permanent changes, not a one-day
2 exceeding of the occupancy stated on the ABC
3 license.

4 If you skip 1, B-1, which is the one
5 that we're talking about in this case, we go to
6 B-2. It talk about expanding the operation to
7 allow for permanent use of exterior public or
8 private space, expanding the operation to another
9 floor, make room for a deck, provide for live
10 entertainment, diminish or expand the use by the
11 establishment for service of meals, provide
12 permanent space for dancing, change interior
13 design, on and on it goes.

14 The point is, if you go back to 25-
15 762(a), what we're talking about is a change in
16 the format of the business. Now, as I said,
17 there may be a violation here. But it's not 25-
18 762(b), which is the only thing that's been
19 charged.

20 So we would submit, given that, that
21 the Board would be compelled to dismiss this
22 charge because the burden of proof with respect
23 to this charge hasn't been met. In fact, I would
24 point to the initial notice in this case, which
25 just misstates the law. It says that you

1 exceeded Board-approved occupancy in violation of
2 DC Code Section 25-762(a).

3 Nowhere in 25-762(a) does it say that
4 there's a violation if you exceed your occupancy.
5 It says if you make a substantial change in the
6 nature of your establishment that that's a
7 violation.

8 And then it gives examples of various
9 things that might be considered by the Board to
10 be substantial changes. And if one did one or
11 more of those things, then that would be a
12 substantial change requiring Board approval.
13 Increasing the occupancy would be if you went in
14 and amended your certificate of occupancy and you
15 increased your occupancy.

16 The charge even as stated doesn't say
17 that they increased their occupancy. It says
18 that they exceeded their occupancy. That's a
19 different charge. And some of you may say, well,
20 that's semantics. That's what we're here to do.
21 We're here to apply and interpret the law. And
22 the law as written does not make out a violation.

23 Now, let me talk to you about why
24 we're really here and why this Licensee has
25 chosen to contest this charge. That is, we all

1 know we've come off a pandemic of historic
2 proportions, which we're thankful that this
3 movement and other businesses in the District of
4 Columbia have survived. Many did not.

5 And I'm telling you that to say to you
6 if it is determined that this Licensee is in
7 violation despite the arguments that we've made
8 and despite the failure of the Government to
9 prove the facts, we would ask that the Board
10 simply provide a warning with respect to these
11 charges, which is permissible under 23 DCMR.

12 It is listed as a primary. However,
13 a warning is permissible. And we would
14 respectfully ask that if the Board deems that
15 these charges are substantiated, that there be a
16 warning rather than a penalty, which would
17 financially affect this Licensee.

18 Thank you.

19 CHAIRPERSON ANDERSON: Thank you, Mr.
20 Kline.

21 Mr. Lutes, do you want to have the
22 final word?

23 MR. LUTES: Yes, Mr. Chairman. The
24 District would like rebuttal.

25 Mr. Chairman, this case is not about

1 poor protocol. It is not about whether this
2 self-described historic bar would get a warning.
3 Rather, this case is hard and set facts.

4 First, the charge of overcapacity has
5 been proven beyond a preponderance of the
6 evidence. The charge is whether they made a
7 substantial change to their operations.

8 ABRA has approved this historic
9 licensee establishment for 224 patrons. Going
10 beyond this is a substantial change to that
11 license because they are not licensed to host
12 that many.

13 Specifically, 762(a) has a long
14 precedence on this Board of being enforceable.
15 And to rule otherwise would be inconsistent with
16 this precedence.

17 Additionally, regarding door protocol,
18 this is not about door protocol. This is about
19 an investigator entered the bar, entered the
20 licensed establishment, and counted, clicking the
21 entire way regardless of whether there was
22 protocol at the door. He was able to find over
23 105 patrons that were beyond the establishment's
24 license capacity.

25 Additionally, regarding the charge of

1 no ABC manager/owner on the premises, the
2 Licensee has failed to provide any proof during
3 testimony that such owner was on the premises,

4 Additionally, during Investigator
5 Ruiz's conversation with Ms. Olivares, there was
6 no other ABC manager or licensed individual on
7 the establishment.

8 Lastly -- Board's indulgence --
9 lastly, regarding the capacity issue, the
10 Licensee was well above their ABRA license
11 capacity. And thus the District has proven that
12 charge.

13 Thank you. No further statements.

14 CHAIRPERSON ANDERSON: All right.

15 Thank you, Mr. Lutes.

16 The record is now closed. Do the
17 parties wish to file proposed findings of fact
18 and conclusions of law or waive the right to do
19 that?

20 Mr. Kline?

21 MR. KLINE: The Applicant will waive.

22 CHAIRPERSON ANDERSON: Mr. Lutes?

23 MR. LUTES: We'll waive.

24 CHAIRPERSON ANDERSON: Will you waive?

25 MR. LUTES: Yes.

1 CHAIRPERSON ANDERSON: Okay. The ABC
2 Board will issue a decision in 90 days.

3 As Chairperson of the Alcoholic
4 Beverage Control Board for the District of
5 Columbia and in accordance with DC Official Code
6 Section 2-575 of the Open Meetings Act, I move
7 that ABC Board hold a closed meeting for the
8 purpose of seeking legal advice from our counsel
9 on Case No. 22-CMP-00035, Mad Hatter, pursuant to
10 DC Official Code Section 2-575(b)(4)(a) of the
11 Open Meetings Act, and deliberate upon Case No.
12 22-CMP-00035, Mad Hatter, for the reasons cited
13 in DC Official Code Section 2-575(b)(13) of the
14 Open Meetings Act.

15 Is there a second?

16 MEMBER SHORT: Mr. Short. I second.

17 CHAIRPERSON ANDERSON: Mr. Short has
18 second the motion. I will now take a roll call
19 vote on the motion of the Board now that it has
20 been second.

21 Mr. Short?

22 MEMBER SHORT: Mr. Short. I agree.

23 CHAIRPERSON ANDERSON: Mr. Cato?

24 MEMBER CATO: Bobby Cato. I agree.

25 CHAIRPERSON ANDERSON: Ms. Crockett?

1 MEMBER CROCKETT: Rafi Crockett. I
2 agree.

3 CHAIRPERSON ANDERSON: Ms. Hansen?

4 MEMBER HANSEN: I agree.

5 CHAIRPERSON ANDERSON: Mr. Grandis?

6 MEMBER GRANDIS: Yes, I agree.

7 CHAIRPERSON ANDERSON: Mr. Anderson.
8 I agree.

9 As it appears that the motion has
10 passed, I hereby give notice that ABC Board will
11 recess this proceeding to hold a closed meeting,
12 pursuant to Section 2-575 of the Open Meetings
13 Act.

14 I want to thank both of you, Mr. Kline
15 and Mr. Lutes, for your presentation today. The
16 Board will take this matter under advisement and
17 will issue a decision accordingly.

18 Thank you very much. Have a great
19 day.

20 MR. KLINE: Thank you, Mr. Chairman
21 and members of the Board.

22 CHAIRPERSON ANDERSON: You're welcome.

23 (Whereupon, the above-entitled matter
24 went off the record at 2:38 p.m.)
25

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Before: ABRA

Date: 09-14-22

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