

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE AND CANNABIS BOARD
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MEETING

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IN THE MATTER OF: :
 :
Brilliant, LLC :
t/a Flash Catering :
645 Florida Ave NW : Show Cause
Retailer Caterer - ANC 1B: Hearing
License No. 105774 :
Case #22-CMP-00084 :
 :
(Operated beyond the :
scope of its Caterer's :
License, Operated :
without an updated :
Certificate of Occupancy):
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Wednesday
November 1, 2023

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

PRESENT:

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

ALSO PRESENT:

- JOSE ORELLANA, DC ABCA Staff

C-O-N-T-E-N-T-S

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Jeremy Zollarcoffer	24	44		3
Afshin Mottaghi	32	35		

EXHIBIT NO.	MARK RECD
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1 P-R-O-C-E-E-D-I-N-G-S

2 1:41 p.m.

3 CHAIRPERSON ANDERSON: The next case
4 in our calendar, we have another show cause
5 hearing. Case number 22-CMP-00084 Flash
6 Catering, license number 105744. Good afternoon,
7 Mr. Orellana, can you please elevate the rights
8 of the government and the licensee in this case?

9 MR. ORELLANA: Anthony Celso, your
10 access has been elevated. Afshin Mottaghi, your
11 access has been elevated. Andrew Kline, your
12 access has been elevated. Cameron Mixon, your
13 access has been elevated. Investigator Jeremy
14 Zollarcoffer, your access has been elevated. And
15 Nayef, your access has been elevated. That is
16 all, chairman.

17 CHAIRPERSON ANDERSON: Thank you. All
18 right, good afternoon everyone. All right, so
19 let's start to have the parties identify
20 themselves for the record. Let's start with you,
21 Mr. Kline.

22 MR. KLINE: Good afternoon, Chairman
23 Anderson, and members of the Board. Andrew Kline
24 of the Veritas Law Firm on behalf of the
25 licensee.

1 CHAIRPERSON ANDERSON: Good afternoon.
2 So, let's have Mr. Nayef please -- I'm sorry, Mr.
3 Mixon, please identify yourself for the record,
4 please. You're on mute, Mr. Mixon.

5 MR. MIXON: Cameron Mixon with the
6 Veritas law firm, C-A-M-E-R-O-N M-I-X-O-N.

7 CHAIRPERSON ANDERSON: All right,
8 thank you. Mr., all I see on my screen, Nayef,
9 so please spell and state your name for the
10 record, sir.

11 MS. ISSA: My name is Nayef Issa, and
12 spelling is N-A-Y-E-F I-S-S-A.

13 CHAIRPERSON ANDERSON: Is that your
14 full name, sir?

15 MS. ISSA: Yes.

16 CHAIRPERSON ANDERSON: And what's your
17 relationship to this establishment?

18 MS. ISSA: I threw an event their.

19 CHAIRPERSON ANDERSON: Sir, what is
20 your -- I'm sorry, Mr. Kline?

21 MR. KLINE: He'll be a witness for us
22 today.

23 CHAIRPERSON ANDERSON: All right, I
24 apologize, so who is the licensee, Mr. Kline?

25 MR. KLINE: Mr. Mottaghi.

1 CHAIRPERSON ANDERSON: Mr. Mottaghi,
2 can you spell and state your name for the record
3 please?

4 MR. MOTTAGHI: Afshin Mottaghi, first
5 name is A-F-S-H-I-N, last name is M-O-T-T-A-G-H-
6 I, I am the license holder.

7 CHAIRPERSON ANDERSON: All right,
8 thank you. Mr. Celo, can you spell and state
9 your name for the record, please?

10 MR. CELO: Assistant Attorney General
11 Anthony Celo on behalf of the District, A-N-T-H-
12 O-N-Y C-E-L-O.

13 CHAIRPERSON ANDERSON: If this matter
14 goes to a hearing, do you have a witness you wish
15 to call, Mr. Celo?

16 MR. CELO: Yes, if I am required to
17 call a witness, it would be Investigator
18 Zollarcoffer, although I think one of the
19 preliminary matters will absolve that need.

20 CHAIRPERSON ANDERSON: All right,
21 that's fine. All right, so are there -- as I
22 said today before, this is a show cause hearing,
23 are there any preliminary matters in this case,
24 sir?

25 MR. CELO: Yes, Mr. Chair, there are

1 several preliminary matters. First --

2 MR. KLINE: Before we get to that, Mr.
3 Chair, if I may, and I tried to do it --

4 CHAIRPERSON ANDERSON: Yes, Mr. Kline.

5 MR. KLINE: I tried to do it earlier,
6 I didn't want to do it in the middle of the case.
7 But I did want to take the opportunity to thank
8 Mr. Cato, Mr. Grandis, and Ms. Hansen for their
9 Service, and for their engagement, not just their
10 Service. Because as this Board knows, it
11 requires a great level of attention and
12 engagement to participate in these hearings.

13 I've been before you many times,
14 perhaps maybe more than anybody else other than
15 the government. And I appreciate the three of
16 your participation, your willingness to stay
17 until literally all hours of the night without
18 any discernable drop off in attention, that's
19 really appreciated.

20 And look, I'm not going to say I
21 always agree with the decisions that are made by
22 the Board, but I can say that we've always gotten
23 what I thought was a fair hearing, and I, and I
24 know the residents of the District of Columbia,
25 and businesses in the District of Columbia

1 appreciate your Service, and the time that you
2 spent on the Board. So, I didn't want this to
3 pass without taking the opportunity to say that,
4 thank you.

5 CHAIRPERSON ANDERSON: Thank you, Mr.
6 Kline, for that. All right, Mr. Celo, are there
7 any preliminary matters in this case?

8 MR. CELO: Yes. First, the District
9 echoes Mr. Kline's statements wholeheartedly.
10 There are several preliminary matters. First,
11 the District is withdrawing charge two based on
12 newly provided information after the charges were
13 filed. However, we are still proceeding with
14 charge one in this matter. And just for
15 reference, charge two was the certificate of
16 occupancy.

17 Charge one, which we are proceeding
18 on, is the operating beyond the scope of the
19 license.

20 CHAIRPERSON ANDERSON: Thank you, sir.

21 MR. CELO: Second, we do have a
22 stipulation to the facts contained within 22-CMP-
23 00084 investigative report. And I would note
24 that that's already admitted into the record as a
25 matter of law.

1 CHAIRPERSON ANDERSON: That's fine,
2 sir.

3 MR. KLINE: That's agreed.

4 MR. CELO: Third, I request that this
5 Board take judicial notice of, and put on the
6 record the investigative reports, OICs, and
7 orders accepting the OIC for the relevant prior
8 cases, numbers 22-251-00002, and 22-CMP-00018.

9 CHAIRPERSON ANDERSON: So moved.

10 MR. KLINE: Mr. Chairman, I have an
11 objection to that, we haven't agreed to that, and
12 I would question the relevance.

13 CHAIRPERSON ANDERSON: What is -- I
14 thought they were still stipulations, so what is
15 it that you're asking the Board -- what were you
16 asking the Board again to do, Mr. Celso?

17 MR. CELO: Take judicial notice and
18 put onto the records the prior cases involving
19 Flash Catering, and the charge of operating
20 beyond the scope of their caterer's license.
21 There are two recent prior cases, 22-251-00002,
22 and 22-CMP-00018 involving, and specifically the
23 orders accepting the OIC, the OIC, and the
24 investigative reports from those two cases.

25 CHAIRPERSON ANDERSON: Mr. Kline, I

1 mean of course, if they are part of the board's
2 record, they are part of the board's record, is
3 that --

4 MR. KLINE: It doesn't make them
5 relevant, Mr. Chair. I mean, there are many
6 things that are part of the board's records.
7 They're certainly relevant for determination as
8 to if the Board were to find the respondent
9 liable. They're certainly relevant for purposes
10 of determining what the appropriate penalty might
11 be, in terms of how many prior primary tier
12 violations there might have been within a certain
13 period.

14 But other than that I'm not sure for
15 what purpose they're being proffered.

16 CHAIRPERSON ANDERSON: All right, well
17 if the parties do not stipulate to this factual -
18 - then I'm not going to accept it as a
19 stipulation. So, I just want to make sure that
20 I'm clear what it is that the parties are
21 stipulating to.

22 MR. CELO: And I do want to make it
23 clear that I was not suggesting that was a
24 stipulation, I am asking the Board to take
25 judicial notice of its past orders, and the past

1 cases involving Flash Catering and this exact
2 charge.

3 CHAIRPERSON ANDERSON: Okay, so noted.

4 MR. CELO: Mr. Chair, I do have to ask
5 that it was noted, is the Board going to take
6 judicial notice? Otherwise I will have to put on
7 evidence of that to support the record.

8 CHAIRPERSON ANDERSON: I mean, I think
9 -- it's my understanding, at least the proffer
10 that's placed factually, the facts are not being
11 contested. So, it appears that what this Board
12 is asked to do is to determine what penalty, if
13 any, should be assessed to the factual case.

14 MR. KLINE: That's not correct, Mr.
15 Chair, that's not correct at all.

16 CHAIRPERSON ANDERSON: All right, I'm
17 sorry.

18 MR. KLINE: We're not conceding the
19 violation. We're only stipulating that the facts
20 set forth in the report are stipulated to for
21 purposes of dispensing with the need for
22 testimony. But in terms of the violation, and
23 we'll get into this in a minute, I don't even
24 know what it is, to be perfectly honest.

25 CHAIRPERSON ANDERSON: All right, then

1 I stand corrected then.

2

3 MR. KLINE: And with respect to
4 administrative notice, we don't just take
5 administrative notice because it's part of the
6 board's records. It needs to be in some way
7 relevant to this case, and we don't -- we have
8 yet to hear a proffer as to for what purpose the
9 Board is being asked to take administrative
10 notice.

11 As I said, we have no issue if they're
12 being taken administrative notice of for the
13 purpose of determining the appropriate penalty.
14 But if it's beyond that, we would ask that there
15 be a proffer, and probably have an objection.

16 MR. CELO: And I can make that
17 proffer, Mr. Chair, I'm happy to do so.

18 CHAIRPERSON ANDERSON: All right, hold
19 on. Are we having a hearing today? Because I'm
20 confused. I thought that -- I thought
21 preliminarily that the parties had come to some
22 agreement, and that the Board would be asked to
23 make a determination whether or not the licensee
24 is liable or not liable for the infraction based
25 on the arguments made for penalty.

1 Now, if that's not so, then we need to
2 hear factually what the violation is, and for us
3 to make a decision whether or not the Board
4 believes that the licensee committed the
5 violation, and what penalty, if any, should be
6 assessed.

7 MR. CELO: We are going to have a
8 hearing today, yes, Mr. Chair.

9 CHAIRPERSON ANDERSON: All right, so
10 fine, because --

11 MR. KLINE: I didn't understand the
12 difference between the first, and the second,
13 frankly. I mean we have a stipulation on the
14 facts, at least as far as the report goes. So,
15 yeah, I mean the question is do the facts, as set
16 forth in the report, and or even the notice of
17 show cause set forth a violation of the ABC laws
18 or regulations? In our minds that's what the
19 issue here is.

20 MR. CELO: And Mr. Chair, specifically
21 because opposing counsel has raised the concern
22 that they are not even aware of what the previous
23 violation -- or what this violation is, the fact
24 that they have accepted an OIC twice before for
25 the exact behavior on this exact charge disproves

1 that claim. That is why I am asking to take
2 judicial notice of the past cases, the orders
3 that it put into place on those cases.

4 MR. KLINE: Mr. Chair, those are
5 offers in compromise. If it's going to be the
6 position of this Board that when one accepts an
7 offer in compromise, that means not only are they
8 guilty, or not only are they liable, to use the
9 correct term, not only are they liable for that
10 violation, but they're liable for all future
11 violations, that's

12 (Simultaneous speaking.)

13 MR. KLINE: Excuse me, please.
14 Because I certainly won't be recommending, if
15 that's the board's position, I won't be
16 recommending that anyone else accept an offer in
17 compromise. It's an offer in compromise, it's a
18 settlement. And to say that that's somehow
19 evidence of something in this case, that's not
20 supported by law, that can't be.

21 CHAIRPERSON ANDERSON: All right. I
22 think for the Board to make decisions, let's have
23 a hearing, let's call a witness, and the witness
24 can testify, and then the Board will have a full
25 record to make a determination. Because I'm not

1 hearing -- it doesn't appear to me that there is
2 agreement between the parties about where we
3 stand. So, if there's no agreement, then let's
4 move forward with a hearing as we would in all
5 the other cases.

6 If the parties have agreed that the
7 facts in the case report is uncontested, then we
8 can probably have a proffer of what it is that's
9 uncontested, and then we can have testimony on
10 other issues. So, at least we'll have a record
11 of what the facts are. Is that agreeable?

12 MR. CELO: Yes, Mr. Chair.

13 MR. KLINE: Yeah, that's agreeable.
14 As I said, we've stipulated to the report, I
15 don't think there are any facts in dispute as far
16 as the report goes at this point.

17 CHAIRPERSON ANDERSON: All right. Do
18 the parties wish to make an opening statement?

19 MR. CELO: Yes, Mr. Chair.

20 CHAIRPERSON ANDERSON: Go ahead, sir.

21 MR. CELO: May it please the Board,
22 Mr. Chair, ladies and gentlemen of the Board,
23 this case involves a licensee that was in
24 flagrant violation of this board's orders
25 continuously for nearly a year. This licensee

1 was charged for incidents stemming in February on
2 two different occasions. One of those charges in
3 both cases was operating beyond the scope of
4 their caterer's license.

5 What they were doing was operating a
6 nightclub out of a venue in continuous operation,
7 and they stated that their intended plan was to
8 continue this operation through December of 2022,
9 at which time they would be opening a brick and
10 mortar establishment. In the first two cases
11 they pled through an OIC, they were found --

12 MR. KLINE: Mr. Chairman, I hate to
13 object during an opening, but I must vehemently
14 and strongly object, as I've indicated before,
15 what they did in an offer in compromise is
16 completely irrelevant. And if this Board is
17 going to start taking evidence of that, I can
18 tell you there will be no more offers in
19 compromise out of my office, because that's
20 outrageous.

21 CHAIRPERSON ANDERSON: Mr. Kline, the
22 attorney is giving his opening statement. An
23 opening statement is not evidence, you are aware
24 that an opening, a closing is not evidence, sir.
25 These are just statements that are being made by

1 the attorney, and so he's making his opening, and
2 so, we will see whether or not the presentation,
3 what will be presented to the Board for the Board
4 to make a determination.

5 But as opening statements are not, I
6 mean that's not evidence, it's not --

7 MR. KLINE: It's extremely prejudicial
8 though, and it's improper.

9 CHAIRPERSON ANDERSON: Well, I -- what
10 I have as part of this case, I do have the
11 investigative history, and the Board will take
12 the investigative history for what it is, the
13 Board has access to the investigative history of
14 this facility. And of course if the Board
15 determines that the licensee is guilty of the
16 infraction, the Board will have to look at the
17 investigative history to determine what the
18 penalty is going to be.

19 So, I mean he can continue with his
20 opening statement, sir. Again, it's just an
21 opening statement, it's not factual -- I'm sorry,
22 it's his opening, this is not testimony, so go
23 ahead, sir.

24 MR. CELO: As the evidence will show,
25 after the OIC was submitted in both cases on

1 9/14/2022, on October 21st, 2022 Investigators
2 Puente and Zollarcoffer returned to the
3 establishment, and found that they were still
4 continuing their operations of a nightclub using
5 a caterer's license. Again, they were told that
6 this is operating beyond the scope of the
7 caterer's license.

8 And again, a charge was issued. In
9 response, they were told that the establishment
10 had to keep operating in order to keep making
11 money, and had to book talent to stay relevant in
12 the industry. This establishment continued their
13 operation through December 2022 in this manner,
14 despite twice accepting OICs and paying fines for
15 violating this statute for operating beyond the
16 scope of their caterer's license.

17 We are here for a third violation, and
18 as I anticipate opposing counsel is about to say
19 in his opening argument, that they have no idea
20 why these charges have been filed, I would note
21 that the continual daily operation of a nightclub
22 offering six, seven, eight different events per
23 week is a violation, and is operating beyond the
24 scope of a caterer's license.

25 Such operation requires a nightclub

1 license, that's why it exists, and that is what
2 this case will be about. Thank you.

3 CHAIRPERSON ANDERSON: Thank you. Mr.
4 Kline?

5 MR. KLINE: Mr. Chair, at this time I
6 would move to dismiss the charge. There is
7 nothing -- there are no facts that are stated in
8 the opening that would give rise to a violation
9 of 23 DCMR 2000.1. Nor are there any facts set
10 forth in the notice giving the licensee notice of
11 what it is it is in violation of. All we have is
12 that they're operating beyond the scope of the
13 caterer's license.

14 But there are no facts that are
15 presented. The only facts that are presented are
16 well, they pled to it before, so they must be
17 guilty now. That is the sum and substance of
18 what the government has said that they will
19 prove. They haven't referenced any of the
20 provisions of 23 DCMR 2000.1, nor are any
21 referenced in the notice. So, is this about not
22 enough food, I mean we don't know what this is
23 about.

24 I mean this is well they pleaded twice
25 before, so they have to be guilty, that's not

1 enough. Due process requires that one, before
2 the Board, or before any administrative agency or
3 court be given notice as to what it is they're
4 accused of having done or not having done. And
5 simply saying well they know what they did wrong
6 because they accepted responsibility before, that
7 throws the whole notion of an offer in
8 compromise, or a settlement on its head.

9 Because that means rather than a
10 licensee or a private litigant entering into a
11 settlement where they agree to get rid of the
12 charge, they have to worry about someone's going
13 to conclude after the fact that that means that
14 they admit all future violations as well,
15 potential violations, and that's just wrong.

16 But most importantly we haven't been
17 -- there are no facts that have been alleged that
18 would give rise to a violation under 2000.1. So,
19 we would ask that it be dismissed.

20 CHAIRPERSON ANDERSON: Well, I think
21 at this junction, Mr. Kline, your motion would be
22 premature. I don't know what this case is about,
23 I'm waiting for the testimony, for witnesses to
24 testify. And so, I believe that if after the
25 witnesses have testified and the government has

1 rested its case, I believe that if you want to
2 make a motion, that would be the appropriate time
3 to raise the motion, once we have heard
4 testimony.

5 If you believe that based on 23 DCMR
6 2000.1 that the testimony that was presented to
7 the Board doesn't give rise to the charge. So, I
8 --

9 MR. KLINE: On the front end we're
10 entitled to notice as to what it is that's
11 charged, and why it's being charged, and that's
12 before we get to any evidence. We're entitled to
13 have been able to prepare. Which means that we
14 should have been told what it is, what are the
15 facts that gave rise to this alleged violation.

16 And if you look at the notice, there
17 are no facts giving, nor are there any given in
18 counsel's opening statement other than well they
19 pleaded twice before, so they must be guilty.
20 And that's not enough, I don't even know how we
21 defend this case.

22 MR. CELO: And --

23 CHAIRPERSON ANDERSON: Hold on, I'm
24 not trying to cut you off, Mr. Celo. I mean
25 we're at a show cause hearing. The notice went

1 out to notify the party, the show cause notice
2 went out. We had a show cause status hearing,
3 and of course you can -- the parties can raise
4 jurisdictional issues at any point.

5 But I don't understand why is it that
6 the licensee is saying at this juncture they
7 really have no idea why they're being charged.
8 Why is it that motions weren't filed, why wasn't
9 a motion to dismiss filed previously, why was not
10 even these issue -- I mean one of the things that
11 I ask for at all show cause hearing status, I've
12 said are there any preliminary issues?

13 I mean this is something that could
14 have been raised earlier for us to address it,
15 and a motion could be filed by either side. A
16 motion could be filed by the licensee, and we
17 would have a response from the government. So,
18 we're here at a show cause hearing, the burden is
19 on the government, they will call their witness.
20 We will listen to the evidence presented by the
21 government.

22 Once the government has presented its
23 case, if you want to raise your motion, you can
24 raise your motion, the Board will make a
25 determination at that juncture whether or not we

1 believed that a directed verdict, if that's what
2 you call should be issued, or whether or not we
3 would allow you to present your case. And even -
4 - let me say it this way.

5 It's unlikely that the Board will make
6 a ruling on your oral motion. It's more likely
7 that we will have the licensee -- I'm sorry, the
8 government present its facts, you present your
9 facts, and the Board then will make a
10 determination whether or not the government has
11 met its burden. So, that's where I'd prefer we
12 move.

13 MR. KLINE: Mr. Chair, I would object
14 to that. Because it seems to me in any
15 proceeding such as this, the government has an
16 obligation to meet its burden. And if at the
17 conclusion of its case it hasn't met its burden,
18 then the board's got an obligation to rule on
19 that. I mean if they have not presented
20 sufficient facts to make out a violation, I hope
21 that the Board would fulfill its responsibility
22 and dismiss the charge at that point.

23 CHAIRPERSON ANDERSON: All right, Mr.
24 Kline, I stand corrected. It's premature at this
25 juncture for you to raise your motion.

1 MR. KLINE: Understood.

2 CHAIRPERSON ANDERSON: Let the
3 government present its case, and you can renew
4 your motion at that time, sir.

5 MR. KLINE: Thank you, Mr. Chair.

6 CHAIRPERSON ANDERSON: All right,
7 thank you. Do you have a witness you wish to
8 call, sir?

9 MR. CELO: Yes, the District calls
10 Jeremy Zollarcoffer.

11 CHAIRPERSON ANDERSON: Mr.
12 Zollarcoffer, good afternoon, sir, can you spell
13 and state your name for the record?

14 MR. ZOLLARCOFFER: Yes, my name is
15 Jeremy Zollarcoffer, it's spelled J-E-R-E-M-Y Z-
16 O-L-L-A-R-C-O-F-F-E-R.

17 CHAIRPERSON ANDERSON: Can you raise
18 your right hand? Do you swear or affirm to tell
19 the truth, and nothing but the truth?

20 THE WITNESS: Yes.

21 WHEREUPON,

22 JEREMY ZOLLARCOFFER
23 was called for examination by Counsel for the
24 Agency, having been first duly sworn, assumed the
25 witness stand, was examined and testified as

1 follows:

2 CHAIRPERSON ANDERSON: Your witness.

3 MR. CELO: Thank you, Mr. Chair.

4 DIRECT EXAMINATION

5 BY MR. CELO:

6 Q Mr. Zollarcoffer, what is your current
7 position?

8 A I'm an investigator for ABCA.

9 Q And can you tell us briefly what the
10 role of an investigator for ABCA is?

11 A I conduct inspections and
12 investigations for licensed ABC establishments
13 within the District of Columbia.

14 Q And did you have cause to conduct an
15 investigation on Flash Catering on October 21st,
16 2022?

17 A Yes, I was assisting another
18 investigator in some alleged charges of caterer
19 misuse.

20 Q And was that other investigator,
21 Investigator Puente?

22 A Yes, it was.

23 Q And you and Investigator Puente
24 prepared an investigative report as a result of
25 that investigation, correct?

1 A That's correct.

2 MR. CELO: All right. At this time I
3 request permission to share my screen.

4 CHAIRPERSON ANDERSON: Mr. Orellana,
5 can you please allow Mr. Celo to share his
6 screen?

7 BY MR. CELO:

8 Q I am showing what has been marked as
9 Government Exhibit No. 1, which has already been
10 admitted into evidence. Do you recognize this
11 document?

12 A I do.

13 Q Is this the investigative report we
14 were just discussing?

15 A That's correct, yes.

16 Q And is this a true and accurate copy
17 of the investigative report that was prepared
18 after your investigation with Investigator
19 Puente?

20 A Yes.

21 Q Now, during this investigation did you
22 conduct an examination of the warehouse?

23 A I did, yes, While I was there, when
24 I showed up the night of.

25 Q What did you observe?

1 A I observed a large event going on in
2 a warehouse, 2101 New York Avenue, it'd have a
3 nightclub atmosphere, and had several bars, had a
4 stage, and quite a few people in there.

5 Q Was there a disc jockey?

6 A Yes, there was.

7 Q And were people dancing?

8 A Yes, they were.

9 Q Would you classify the operation as a
10 nightclub?

11 A Yes, it appeared to be.

12 MR. KLINE: Up for legal conclusion.

13 CHAIRPERSON ANDERSON: Mr. Celo?

14 MR. CELO: Well, two fold, number one,
15 it's already been admitted into evidence, this is
16 included in the investigative report. And number
17 two, it's a categorization of the ABCA code,
18 which an investigator is more than capable of
19 making a determination, its part of his job to do
20 so.

21 MR. KLINE: Okay, fine, I'll cross him
22 on it.

23 CHAIRPERSON ANDERSON: All right, so
24 you're withdrawing your objection?

25 MR. KLINE: Yes, I withdraw it.

1 CHAIRPERSON ANDERSON: Okay, go ahead.

2 BY MR. CELO:

3 Q So, based on the music, the dancing,
4 the time of night, the multiple bars, the nature
5 of the event, you were able to classify it as a
6 nightclub?

7 A Yeah, it appears to be a nightclub. It
8 was a very large event held in a warehouse that
9 had a nightclub feeling to it. It had a live DJ,
10 disc jockey, there were other things going on,
11 but it was a large space with a large amount of
12 people that came across as being a nightclub
13 environment.

14 Q And they advertise themselves as such
15 online, correct?

16 A Yes.

17 Q And they had multiple shows per
18 weekend, every single week, right?

19 A As far as I can remember, yeah. They
20 were offering several events throughout the week,
21 I want to say between three and four if I
22 remember correctly.

23 Q And some weekends, according to the
24 investigation that you and Investigator Puente
25 had, some weekends they had multiple events per

1 day, correct?

2 MR. KLINE: Objection, leading the
3 witness all over the place.

4 CHAIRPERSON ANDERSON: Rephrase the
5 question, sir.

6 MR. CELO: I'll rephrase. What did
7 you find with Investigator Puente about their
8 advertising on their shows?

9 THE WITNESS: I'm not really sure. I
10 know that there was some bottle service
11 advertisements for different sections, and bottle
12 deals, which is common in the nightclub
13 classification. But I'm not sure if it was on
14 any kind of Eventbrite categorizing it as a
15 nightclub, I'm not familiar.

16 BY MR. CELO:

17 Q Now, ABCA has a nightclub license,
18 correct?

19 A That's correct.

20 Q And ABCA has a caterer's license?

21 A That's right.

22 Q Are there differences between the two
23 licenses?

24 A Yes.

25 Q Do nightclubs have to have security

1 plans?

2 A They do.

3 Q What type of things would be typical
4 for a nightclub security plan?

5 MR. KLINE: Objection as to relevance,
6 we are headlong off of this legal conclusion that
7 this is somehow a nightclub. I think the Board
8 is aware, and has ruled many, many times that
9 there is no formal definition of nightclub under
10 the law other than the one contained in the ABC
11 regulations, or the ABC statute. And that
12 definition is if you are licensed as a nightclub.

13 As the Board knows, we have taverns
14 that engage in activity that could be concluded
15 as nightclub activity in the vernacular, we have
16 restaurants that do that, to now go off on a line
17 of questioning that somehow this is improper
18 because that's what's required of nightclub
19 licensees is inappropriate.

20 MR. CELO: I'll get to those other
21 establishments, don't you worry. I ask for some
22 leeway here, the entire purpose of this charge is
23 operating beyond the scope of a caterer's
24 license. So drawing the distinction --

25 MR. KLINE: Then let's deal with

1 2000.1, Mr. Chair, because that is what the
2 charge is.

3 CHAIRPERSON ANDERSON: All right, I'm
4 going to overrule the objection at this juncture.
5 So, I think part of -- I'm going to overrule the
6 objection at this juncture, let's move on.

7 MR. CELO: I'll repeat the question.
8 What types of things would typically be in a
9 nightclub security plan?

10 MR. KLINE: Objection as to relevance,
11 they're not licensed as a nightclub, it's not
12 relevant.

13 MR. CELO: They are licensed as a
14 caterer, they are charged with operating beyond
15 the scope of a caterer's license.

16 MR. KLINE: Then ask them what they're
17 required in the caterer's security plan, not
18 licensed as a nightclub.

19 CHAIRPERSON ANDERSON: I'm overruling
20 the objection, I'm giving the government some
21 leeway to ask some questions. Let's move on.

22 MR. CELO: I'll repeat the question
23 again. What sorts of things are typical of a
24 nightclub security plan?

25 THE WITNESS: I guess I would start by

1 saying having sufficient security officers, or
2 response to notify emergency personnel in event
3 of emergency, things along those lines.

4 BY MR. CELO:

5 Q What about things like security
6 cameras, having security training, anything like
7 that?

8 A That's all correct as well.

9 Q Now, as opposing counsel just pointed
10 out, other establishments can operate in a
11 similar manner, restaurants, taverns, bars, all
12 those can obtain dancing endorsements, can obtain
13 live entertainment endorsements, and they can
14 have those type of operations, correct?

15 A That is correct.

16 Q But a caterer's license can't get a
17 dancing or live entertainment endorsement, can
18 it?

19 A No.

20 MR. KLINE: Objection, calls for a
21 legal conclusion. There's no requirement that
22 they obtain one. We're talking about law here.

23 MR. CELO: It does not call for a
24 legal conclusion, it's a question, a very yes or
25 no, up or down question in the statute. The ABCA

1 code explicitly lists the type of licenses that
2 can receive a dancing or live entertainment
3 endorsement. Caterer's license is not on that
4 list.

5 MR. KLINE: And we can go to
6 prohibition -- fine, I'll deal with it on cross.

7 CHAIRPERSON ANDERSON: I'll overrule
8 the objection, let's move on.

9 BY MR. CELO:

10 Q And caterer's licenses are not
11 required to have security plans, are they?

12 A I don't believe they are.

13 Q now you and Investigator Puente
14 advised Mr. Issa, who is here as a witness today,
15 that it was a violation to operate an
16 establishment in this manner under a caterer's
17 license, correct?

18 A Investigator Puente advised, I
19 believe, yes.

20 Q And he advised that Mr. Issa was still
21 operating off a caterer's license, that's the
22 language I see in this report, is it not?

23 A That's correct.

24 Q So, I'd like to talk about that still
25 in that sentence. Investigator Puente had

1 advised Mr. Issa and Mr. Mottaghi on previous
2 visits, did he not?

3 A I believe that's true, yes, he did in
4 previous cases.

5 Q And specifically on February 12th,
6 2022 and February 26th, 2022 did Investigator
7 Puente advise them that their manner of operation
8 was beyond the scope of their caterer's license?

9 MR. KLINE: Objection as to relevance.
10 The conclusion is that it's beyond the scope of
11 their catering license, first of all is a legal
12 conclusion. Second of all, what he told them
13 previously is irrelevant. We're here on this
14 case, and whether on this date under the facts of
15 this report the licensee is in violation, not
16 what happened previously.

17 MR. CELO: Mr. Chair, it's extremely
18 relevant to the penalty phase of this matter.
19 The fact that they have been advised multiple
20 times that operating their nightclub in this
21 manner in a continual fashion is beyond the scope
22 of a caterer's license goes to their knowledge
23 and intentionality, and is absolutely relevant
24 for potential penalty in this case.

25 MR. KLINE: Repeat penalties are dealt

1 with in the schedule as a matter of law.

2 MR. CELO: And whether or not this is
3 an aggravating factor is a relevant conclusion
4 for where in the schedule the penalty would fall.

5 CHAIRPERSON ANDERSON: All right, I'm
6 overruling the objection.

7 MR. CELO: I don't recall,
8 Investigator Zollarcoffer, if you had an
9 opportunity to answer. But specifically on
10 February 12th, 2022, and February 26th, 2022 did
11 Investigator Puente advise Mr. Issa and Mr.
12 Mottaghi that their manner of operating this
13 establishment was beyond the scope of their
14 caterer's license?

15 THE WITNESS: Yes. He did advise them
16 in the previous past about circumventing the
17 system on trying to get a license, and using the
18 caterer over, and over, and over again. I
19 believe him explaining to him saying that you're
20 operating outside the scope of a caterer's
21 license for the previous two violations.

22 BY MR. CELO:

23 Q Now, how did Mr. Issa respond when so
24 advised?

25 A I believe I recall him, with the

1 understanding that he was just trying to get
2 through, knowing that he already had dates booked
3 out, and he was willing to accept whatever was
4 coming. But his main goal was to transition to
5 another place down in Ivy City, but until then
6 he's going to keep on going, until I think
7 December of that year.

8 So, his intentions were to move to
9 another place down in Ivy City, continue on
10 regardless of what Investigator Puente was
11 advising him of.

12 Q And specifically in this report, he
13 advised Mr. Puente that he needed to make money,
14 and still have to book talent to stay relevant in
15 the industry, and that he intends to keep
16 operating until the end of December, those were
17 the

18 MR. KLINE: Objection, leading the
19 witness.

20 THE WITNESS: That's accurate --

21 CHAIRPERSON ANDERSON: Hold on, Mr.
22 Zollarcoffer, hold on please. I'm sorry, yes,
23 sir, go ahead?

24 MR. CELO: That wasn't actually a
25 leading question, I was asking if I'm reading the

1 report correctly, which calls for a yes or no
2 answer, it wasn't suggesting an answer, so that's
3 not a leading question.

4 MR. KLINE: I think you didn't ask him
5 if that was what was in the report, and certainly
6 we can all read the report. I know all the Board
7 members are competent to read the report, as am I
8 and my client. So, I don't really understand the
9 purpose of the question, and I don't believe that
10 was the question.

11 MR. CELO: Respectfully, the question
12 was are these the quotes from the report? And
13 secondly, the reason for the question was to
14 highlight the specific quotes just to make sure
15 that everyone is aware what is contained within
16 the report which is already in evidence.

17 CHAIRPERSON ANDERSON: All right, is
18 there a question? Let's move on.

19 MR. CELO: The question is are those
20 the quotes in the report?

21 THE WITNESS: Yes, they are.

22 BY MR. CELO:

23 Q Now, you mentioned the advertising as
24 an event space and bottle service, those were
25 Exhibit Nos. 14 and 15, correct?

1 A That's correct, yes.

2 Q Scrolling through to Exhibit No. 14,
3 can you please describe what Exhibit No. 14 is an
4 advertisement for?

5 THE WITNESS: Is that the -- are we
6 still on the bottle service exhibit, or I'm
7 looking at something different?

8 MR. CELO: This is Exhibit No. 14,
9 page 20.

10 MR. KLINE: Objection, presumably the
11 document speaks for itself, unless he's got some
12 independent knowledge as to what it is.

13 CHAIRPERSON ANDERSON: So, what is the
14 document we're looking at, what's on my screen?
15 I don't know, what is it? I don't know what it
16 is.

17 MR. CELO: This was identified as
18 advertisement for the facility in the
19 investigative report.

20 THE WITNESS: I believe this is the
21 website that was referred to on -- where he was
22 posting the parties --

23 MR. KLINE: There's an objection
24 pending, Mr. Chair.

25 CHAIRPERSON ANDERSON: Hold on, hold

1 on. What was your objection, Mr. Kline?

2 MR. KLINE: I forgot now. My
3 objection was that he was asked what this meant,
4 and my objection was the document speaks for
5 itself.

6 CHAIRPERSON ANDERSON: I don't know
7 what the document is though, you're saying the
8 document speaks for itself, I don't know what the
9 document is. So, I want --

10 MR. KLINE: Maybe he needs to be asked
11 to identify it first, and maybe that's where we
12 are, or should be.

13 CHAIRPERSON ANDERSON: Yes, I want the
14 witness to identify what is the document that
15 we're looking at.

16 MR. CELO: That was my question, Mr.
17 Chair.

18 CHAIRPERSON ANDERSON: Can the witness
19 identify the document?

20 THE WITNESS: Yes, sir. So, Warehouse
21 2101 is, I believe the website that they use to
22 advertise for their events that offer bottles,
23 the menu, et cetera, and a little bit of back
24 information of the space that they're occupying.

25 BY MR. CELO:

1 Q And you looked at their website as
2 part of the investigation?

3 A I personally didn't look too far into
4 the website, I played assisting role on gathering
5 some of this information, but I believe this is
6 the site that I came across in the past.

7 Q And under the events tab, did they
8 list a number of events?

9 A I'm not sure. Number of events to
10 come?

11 MR. CELO: Yes.

12 THE WITNESS: Or the number of events
13 that -- I believe they did have a calendar on
14 events upcoming.

15 MR. CELO: Okay, thank you.

16 BY MR. CELO:

17 Q And as part of your investigation did
18 you and Investigator Puente look into their past
19 history, their investigative history?

20 A Yes.

21 Q And looking at pages three and four of
22 your report -- or I'm sorry, two and three of
23 your report, there are two charges that involved
24 operating beyond the scope of their caterer's
25 license from 2/12/22, and 2/26/22, is that

1 correct?

2 A That's what I see, yes.

3 Q And from charge one in each of those
4 cases -- well, first how did these cases resolve?

5 A Some of the charges were fines paid,
6 and some of them were dismissed in warnings, the
7 previous ones, but I believe that --

8 Q And more generally were these charges
9 all through an OIC?

10 MR. KLINE: If you know.

11 THE WITNESS: Yes.

12 CHAIRPERSON ANDERSON: Was that an
13 objection, Mr. Kline?

14 MR. KLINE: No, it's fine.

15 THE WITNESS: I believe that they did
16 so in OIC with court orders, yes.

17 BY MR. CELO:

18 Q Thank you. And specifically to charge
19 one in these two cases, how was the charge of
20 operating beyond the scope of their caterer's
21 license resolved?

22 MR. KLINE: Mr. Chairman, I'm going to
23 object. This calls for legal conclusions, it's
24 all set forth in the report, it's all set forth
25 in the board's official records. He's not the

1 best witness to testify as to how these were
2 resolved, I think we can all see for ourselves.

3 CHAIRPERSON ANDERSON: I'll sustain
4 the objection in this case, let's move on.

5 MR. CELO: In that case, Mr. Chair, I
6 renew my preliminary matter motion for the Board
7 to take judicial notice of Board Order 22-663,
8 and 22-637 -- or I'm sorry, Just 22-663 in both
9 cases, as it was a joint OIC. And I ask that
10 Board Order 22-663 be incorporated into the
11 record.

12 CHAIRPERSON ANDERSON: 22, what case
13 is that?

14 MR. CELO: Board Order 22-663
15 involving both case 22-251-0002, and 22-CMP-
16 000018.

17 CHAIRPERSON ANDERSON: Okay, that's
18 fine, the Board will take judicial notice of
19 these orders. All right, that's fine.

20 MR. KLINE: Mr. Chairman, I don't
21 believe that both of those cases are referenced
22 in that order.

23 CHAIRPERSON ANDERSON: I'm looking at
24 the case history, I don't have the order, but I'm
25 looking at the case history and I see case 22-

1 CMP-000018, and there is another case, case
2 number 22-251-0002. So, those are cases that are
3 referenced on the investigated history of the
4 case.

5 MR. KLINE: I would ask the Board to
6 look at its order.

7 MR. CELO: And I have pulled up the
8 order on the shared screen, it does reference
9 indeed both cases. It is, as identified, 22-663,
10 order approving the offer in compromise, and the
11 offer in compromise --

12 MR. KLINE: Going a little fast, let's
13 look at the offer in compromise.

14 CHAIRPERSON ANDERSON: Okay. You
15 don't have these documents in front of you, Mr.
16 Kline?

17 MR. KLINE: I do. I want the Board to
18 have them in front of them though.

19 CHAIRPERSON ANDERSON: All right.

20 MR. KLINE: So, if you will see, it
21 references -- stop moving -- the offer in
22 compromise for Board approval.

23 MR. CELO: Yes.

24 MR. KLINE: Scroll down please.

25 References 22, we went past it. 22-251-0002. I

1 don't see any reference to the other case.

2 MR. CELO: Well, I do believe this one
3 was amended, I apologize. There was an amendment
4 because of that typographical error, and the
5 Board order itself does explicitly reference --
6 here's the amendment. The Board notes that a
7 typo on the second page refers to 22-251-0002,
8 which is incorrect. The Board modified this page
9 to read 22-CMP-00018.

10 MR. KLINE: Okay, no objection.

11 CHAIRPERSON ANDERSON: All right, so
12 let's move on.

13 BY MR. CELO:

14 Q Investigator Zollarcoffer, is it your
15 understanding that Flash Catering had been
16 operating with this establishment in this manner
17 since at least February of 2022, and intended to
18 continue its operations through December of 2022?

19 MR. KLINE: Objection, let's talk
20 about specific facts, and the terms of what his
21 understanding is, and upon that, what
22 understanding might be based. It's a leading
23 question.

24 MR. CELO: Mr. Chair, the question
25 asked based on his investigation, was it his

1 understanding that Flash Catering had operated in
2 this matter since at least February of 2022, and
3 expected, or intended to continue operating, that
4 was the word I used, until December of 2022.

5 CHAIRPERSON ANDERSON: Can you answer
6 the question, Mr. Zollarcoffer?

7 THE WITNESS: I believe that is true,
8 they were consistently using Flash Catering to
9 use these events on a consistent basis for that,
10 I believe it was that time frame.

11 MR. CELO: No further questions at
12 this time.

13 CHAIRPERSON ANDERSON: Thank you.
14 Cross?

15 MR. KLINE: Good afternoon
16 investigator.

17 THE WITNESS: Good afternoon.

18 CROSS EXAMINATION

19 BY MR. KLINE:

20 Q So, you concluded that this was a
21 nightclub operation, is that right?

22 A No, I didn't conclude that it's a
23 nightclub. It appears to be a nightclub, it
24 operated on every three or four, however many
25 times a week, and it appeared to be a nightclub

1 environment.

2 Q Okay, but you cited certain activity
3 that led you to believe that, right?

4 A From what I've seen when I visited the
5 establishment, that's what I'm going off of.

6 Q All right, and what you saw was you
7 saw people dancing, correct?

8 A That's right.

9 Q You saw several bars, correct?

10 A That's correct.

11 Q You saw a DJ, correct?

12 A Correct.

13 Q And those were the things that led you
14 to believe that it was a nightclub type
15 operation, right?

16 A Yeah, well it's a monster space with
17 probably thousands of people in there. We're not
18 talking about a little place. I mean could it
19 have been a large festival event, like that, but
20 we're talking a massive amount of people.

21 Q So, along with the three factors I
22 cited, then in addition it would be the size of
23 the place?

24 MR. CELO: Objection to the
25 characterization. Investigator Zollarcoffer also

1 identified the number of events and continuing
2 operation for the three factors.

3 MR. KLINE: Mr. Chairman, if I may,
4 this is cross examination. Mr. Celo can
5 certainly take the stand and testify if that's
6 what he wants to die, but right now I'm cross
7 examining his witness.

8 MR. CELO: And I've objected to you
9 categorizing it as the three things that you
10 identified the only other thing --

11 MR. KLINE: Mr. Chair, this is cross,
12 are you kidding?

13 CHAIRPERSON ANDERSON: Mr. Kline, Mr.
14 Celo, I'm overruling the objection. Again, this
15 is cross. Ask your question, Mr. Kline.

16 MR. KLINE: Okay. So, the things that
17 led you to believe that this was, in terms of
18 activity that you observed on the premises, let's
19 confine it to that, the activity that you
20 observed on the premises that led you to believe
21 that this was a nightclub type operation was you
22 saw a DJ, you saw people dancing, and you saw
23 several bars, correct?

24 THE WITNESS: That's correct. Also,
25 I forget his name here, he was basically

1 explaining to me that he hires artists to come in
2 and perform, and do things like that.

3 BY MR. KLINE:

4 Q Okay, so in addition to that, there
5 might have been, in lieu of a DJ, there might be
6 live entertainment, correct?

7 A They were definitely booked out
8 entertainers that --

9 Q I'm talking about what you observed,
10 and what you experienced which led you to
11 conclude that this was nightclub activity.

12 MR. CELO: Objection, badgering the
13 witness, allow him to answer the specific
14 question that is asked without interrupting
15 please.

16 CHAIRPERSON ANDERSON: Gentlemen, this
17 is cross examination, Mr. Kline, please ask your
18 question again, sir.

19 MR. KLINE: Yeah, so my question is
20 you observed -- I'm talking about the activity
21 that you observed, it was dancing, several bars,
22 and music, it was a DJ, although your
23 understanding is sometimes it might have been
24 live music, right?

25 THE WITNESS: Yeah, I believe that was

1 the second point that the promoter was basically
2 explaining on why he kept on rolling, was the
3 fact that he had these artists.

4 MR. KLINE: Okay, that's not my
5 question. My question to you is your conclusion
6 as you said you concluded that it was a
7 nightclub, you were asked that, and you said yes,
8 so I'm trying to get to what it is that you
9 observed. We've isolated these three factors,
10 you added a fourth, thank you said the size of
11 the venue, that was what led you to that
12 conclusion, right?

13 THE WITNESS: Yes, it appears to be a
14 night club.

15 BY MR. KLINE:

16 Q Okay, how many weddings have you been
17 to?

18 A Maybe a couple.

19 Q A couple. Was there alcohol served at
20 those weddings?

21 MR. CELO: Objection, relevance.

22 MR. KLINE: It's completely relevant.

23 CHAIRPERSON ANDERSON: I'm going to
24 overrule the objection, I'm trying to figure out
25 where we're going, so I'm overruling the

1 objection, because I need us to get to the point
2 of this case.

3 MR. KLINE: At the weddings that you
4 went to, was there alcohol served?

5 THE WITNESS: Yeah, one of them was,
6 yeah.

7 BY MR. KLINE:

8 Q Okay, and are you aware that alcohol
9 is frequently served at weddings?

10 MR. CELO: Objection, relevance, the
11 investigator's personal experience with weddings
12 has no relevance to the discussion we are having
13 today.

14 MR. KLINE: I expanded it beyond his
15 personal experience, and it is very relevant
16 because he's concluded that this operation was a
17 nightclub.

18 CHAIRPERSON ANDERSON: I'm overruling
19 the objection, if the witness can answer the
20 question, he may answer the question.

21 MR. KLINE: So, you're aware that
22 alcohol is served at weddings, right?

23 THE WITNESS: In not all cases, I've
24 been to plenty of weddings that are dry, Mr.
25 Kline. I'm not sure what you're getting at,

1 because the cultural differences, so alcohol is
2 not incidental, it's not part of weddings, no.

3 BY MR. KLINE:

4 Q But it's not unusual for there to be
5 alcohol at a wedding, is it?

6 A It depends, if that's your walk of
7 life. I know many cultures that don't involve
8 it.

9 Q All right, you went to one that had
10 alcohol, correct?

11 A I have been.

12 Q All right, were there bars?

13 THE WITNESS: Were there what?

14 MR. KLINE: Were there bars for people
15 to order alcohol?

16 THE WITNESS: No, there was not a bar,
17 no.

18 MR. KLINE: There was not a bar, okay.

19 BY MR. KLINE:

20 Q And is there frequently music at
21 weddings?

22 A Yes.

23 Q And can that be sometimes live, and
24 sometimes a DJ?

25 A Sure.

1 Q And do people sometimes dance at
2 weddings?

3 A It all depends, most likely.

4 Q Most likely. And when we think of
5 catered events, a lot of weddings are catered,
6 aren't they?

7 THE WITNESS: Are you saying this is
8 a wedding?

9 MR. KLINE: I'm not saying anything,
10 I'm just asking you a question.

11 CHAIRPERSON ANDERSON: Mr.
12 Zollarcoffer, your job is to answer the question,
13 not ask questions --

14 THE WITNESS: I apologize.

15 (Simultaneous speaking.)

16 CHAIRPERSON ANDERSON: If you can
17 answer the question, if you can't, right.

18 THE WITNESS: There was just a lot of
19 reference to weddings. I'm not sure. So to
20 answer your question, so to answer your question,
21 what was the last one you

22 MR. KLINE: The last one that I asked
23 is, many weddings are catered, aren't they?

24 THE WITNESS: For the most part that
25 is correct. Yes. Well --

1 MR. KLINE: So, there certainly could
2 be a catered event where there would be a DJ or
3 live music, people dancing, bars setup for people
4 to order alcohol. And the only difference
5 between what you saw and what might be
6 permissible is there might a woman, or a man
7 depending, in a white dress or a white outfit and
8 vows are exchanged, right?

9 MR. CELO: Objection.
10 Miscategorization and to relevance.

11 MR. KLINE: Mr. Chair, it goes to the
12 crux of the case. He's made a determination that
13 this is somehow impermissible under the catering
14 license because these activities were going on.
15 So I'm asking him about another type of event,
16 which I think we all know are frequently catered,
17 and what's the difference, there is somebody in a
18 white dress? That's what I'm trying to figure
19 out.

20 CHAIRPERSON ANDERSON: Okay.

21 THE WITNESS: Well --

22 CHAIRPERSON ANDERSON: All right, hold
23 on. Hold on. I'm overruling the objection.
24 Answer the question if you can, sir.

25 THE WITNESS: So I missed the last

1 part of that question. I had an answer for you.

2 MR. KLINE: So, I'll ask it again.

3 THE WITNESS: Can you repeat the --
4 yes.

5 MR. KLINE: So you said you visited
6 this event, you saw music, you saw people
7 dancing, you saw several bars, you saw people
8 consuming alcohol. I think we've established
9 that you might see the same things at a catered
10 wedding. And my question to you is, the only
11 difference between those events is that we have
12 two people who exchange vows and committed
13 themselves to each other. Is that the only
14 difference between what you saw, what you seem to
15 think is impermissible, and a wedding that might
16 be catered, which would you think a wedding being
17 catered is permissible? Let's establish that
18 first.

19 THE WITNESS: Well no, I think it's
20 important to note that this established has been
21 reported from the community --

22 MR. KLINE: That's not my question to
23 you --

24 THE WITNESS: -- about having large --

25 MR. KLINE: -- Investigator.

1 THE WITNESS: -- large events.

2 MR. KLINE: Investigator, that's not
3 my question.

4 (Simultaneous speaking.)

5 CHAIRPERSON ANDERSON: Hold on.

6 THE WITNESS: But to answer --

7 CHAIRPERSON ANDERSON: Hold on --

8 (Simultaneous speaking.)

9 THE WITNESS: To answer your --

10 (Simultaneous speaking.)

11 CHAIRPERSON ANDERSON: Hold on, Mr.
12 Zollarcoffer.

13 (Simultaneous speaking.)

14 CHAIRPERSON ANDERSON: Hold on a
15 minute, Mr. Zollarcoffer. All right.

16 MR. CELO: Chairman Anderson, the
17 Investigator, the Witness has to be given the
18 opportunity to answer. He was asked a tricked
19 question and he was answering with the best of
20 his ability. He was asked a yes or no question
21 that didn't have a yes or no answer.

22 CHAIRPERSON ANDERSON: I'm aware of
23 that, that's why -- all right. Mr. Kline, you
24 need to give the Witness an opportunity to answer
25 the question. To answer the question that's

1 being asked.

2 MR. KLINE: If he attempts to answer
3 the question that I ask, I will certainly do so.

4 CHAIRPERSON ANDERSON: Mr. Kline, you
5 asked a question and the Investigator is
6 answering the question the way he receives it.
7 He might not, he might not be answering the
8 question the way you want him to answer it, but
9 he is answering the question the way he believes
10 this is the answer that's to the question that's
11 being asked, so.

12 MR. KLINE: All right. Let me ask the
13 question again then because maybe he didn't
14 understand the question. The question I asked
15 you is a simple yes or no question.

16 And the question is, a catered wedding
17 event, a wedding event where a caterer provides
18 alcohol and food, where there is dancing, music,
19 bars, alcohol and food consumption, is it your
20 understanding that that is permissible under a
21 catering license?

22 THE WITNESS: Yes. If it was a one
23 time event.

24 MR. KLINE: Okay.

25 THE WITNESS: Not over and over again.

1 MR. KLINE: Okay. And if there was a
2 particular location, and I can think of many,
3 where there were weddings every weekend under a
4 catering license, and there was a catering
5 license and it was a wedding and it had the
6 attributes that we've discussed, is that
7 permissible under a catering license?

8 THE WITNESS: No, I don't believe so.

9 MR. KLINE: Are you aware of the
10 provisions in the ABC law concerning the protest
11 of a catered event site?

12 THE WITNESS: No. Not necessarily,
13 no. I don't believe.

14 MR. KLINE: All right, fair enough.
15 All right. Now the other two cases that you've
16 been asked extensively about, that resulted in
17 the OIC, were you involved in those?

18 THE WITNESS: No, I didn't write
19 those. I wasn't involved. I might have been
20 present on, I'd have to look over the hearing.
21 I'd have to look over the case report --

22 CHAIRPERSON ANDERSON: Mr.
23 Zollarcoffer --

24 THE WITNESS: -- to simply see whether
25 I was present.

1 CHAIRPERSON ANDERSON: Mr.
2 Zollarcoffer, a question has been asked, yes or
3 no. If you don't know, I don't know. If you
4 don't -- You're not being asked to speculate,
5 sir.

6 THE WITNESS: I don't --

7 CHAIRPERSON ANDERSON: Answer the
8 question to the best of your knowledge, sir.

9 THE WITNESS: I don't know. I'm not
10 sure. I believe I was aware, or might have been
11 present for one of them, but I'm not a hundred
12 percent sure. I just --

13 MR. KLINE: Okay. But You're aware --

14 THE WITNESS: -- remember the, I
15 remember these.

16 MR. KLINE: But You're aware it went
17 on, what went on because you were asked and
18 answered questions about them, right?

19 THE WITNESS: About the previous
20 charges?

21 MR. KLINE: Yes. Yes.

22 THE WITNESS: Yes. Yes, I am aware.

23 MR. KLINE: Okay.

24 THE WITNESS: I am aware of the track
25 here.

1 MR. KLINE: And didn't the previous
2 cases involve concern about a certificate of
3 occupancy and whether there was an appropriate
4 certificate of occupancy for the number of people
5 that were there?

6 Isn't it true that both of those cases
7 involved that?

8 MR. CELO: Objection. The relevance
9 --

10 MR. KLINE: Seriously?

11 MR. CELO: The relevance --

12 MR. KLINE: You've opened the door
13 wide open. What are we talking about?

14 MR. CELO: The relevance of charges,
15 in addition to the charge at issue today is not
16 relevant as it relates to those other matters.

17 MR. KLINE: Mr. Chair, Mr. Celo wants
18 to have it both ways.

19 CHAIRPERSON ANDERSON: I'm overruling
20 the objection. If the Witness can answer the
21 question, he can. If not, let's move on. Are
22 you able to answer the question, Mr.
23 Zollarcoffer?

24 THE WITNESS: I'm not sure about the
25 specifics on the C of O on the previous cases.

1 MR. KLINE: Then what do you know
2 about the previous cases then?

3 THE WITNESS: I know, I just know from
4 the history. And I have to look at the specific
5 cases to see whether or not I was involved but
6 I'm just looking at the history showing that
7 there's been a pattern of operating a caterer's
8 license outside the scope of the caterer's
9 license that's been charged two times prior to
10 this charge.

11 MR. KLINE: Okay.

12 THE WITNESS: For the same location,
13 same situation.

14 MR. KLINE: All right. You were asked
15 a lot about a security plan and whether one is
16 required or not required. You don't have any
17 idea what provisions that this establishment had
18 for security, do you?

19 THE WITNESS: Flash Catering? Flash
20 Catering?

21 MR. KLINE: I'm sorry?

22 THE WITNESS: I can't hear what you
23 said.

24 MR. KLINE: This location --

25 THE WITNESS: Please --

1 MR. KLINE: -- you don't have any idea
2 what provisions they had for security, do you?

3 THE WITNESS: No, I don't believe it
4 was required for their caterer's license. They
5 didn't mention anything. That I know of.

6 MR. KLINE: Okay. So you agree that
7 a security plan is not required for a catering
8 license?

9 THE WITNESS: Yes, that's correct.
10 It's not required.

11 MR. KLINE: All right. And you agree
12 that for the weddings that we talked about, no
13 security plan would be required, correct?

14 THE WITNESS: That's correct. That's
15 correct.

16 MR. KLINE: And you agree that the
17 weddings that we talked about, there would be no
18 entertainment endorsement required under a
19 caterer's license, would there be?

20 THE WITNESS: No. The caterer's is
21 the ultimate loophole.

22 MR. KLINE: The ultimate loophole? So
23 loophole meaning that it's perfectly legal, isn't
24 it?

25 THE WITNESS: Your screen is frozen,

1 I can't, I didn't hear you.

2 MR. KLINE: I said, so --

3 (Simultaneous speaking.)

4 MR. KLINE: So when you say it's a
5 loophole you admit that it's legal but maybe some
6 people don't like the fact that it's legal,
7 right?

8 THE WITNESS: Well, the caterer's
9 license doesn't require the security plan. They
10 don't require it. So it's more so --

11 MR. KLINE: Right.

12 THE WITNESS: -- for like, you know,
13 it's more so for like using it for special events
14 and, you know, just not on a continuous basis of
15 the same club every week, the same club every
16 week, several times a week.

17 MR. KLINE: Okay. How long have you
18 bene an investigator?

19 THE WITNESS: Four years.

20 MR. KLINE: All right. And how long
21 have you been in the District of Columbia?

22 THE WITNESS: Living? I mean, I'm
23 familiar with the area, 20 years. Full-time --

24 MR. KLINE: Okay.

25 THE WITNESS: -- that's five, six,

1 five years.

2 MR. KLINE: Okay. What did you do
3 before you were an investigator?

4 MR. CELO: Objection. Relevance.

5 CHAIRPERSON ANDERSON: I'm going to
6 overrule the objection.

7 THE WITNESS: I worked law
8 enforcement. Department of Corrections.

9 MR. KLINE: Okay. All right, I don't
10 have any further questions of the Witness at this
11 time. Thank you.

12 CHAIRPERSON ANDERSON: Any questions
13 by any Board Members? Go ahead, Mr. Short.

14 MEMBER SHORT: Okay. Investigator
15 Zollarcoffer, how are you this afternoon?

16 THE WITNESS: Good afternoon, Mr.
17 Short. I'm doing well, thank you.

18 MEMBER SHORT: Okay. Now, on the
19 night that you investigated and wrote violations
20 for 2101 New York Avenue Northeast, was there a
21 wedding going on?

22 THE WITNESS: No, there was no
23 wedding.

24 MEMBER SHORT: What time of day or
25 night was it?

1 THE WITNESS: Approximately 11:15 p.m.
2 This is, all these events happen at night.

3 MEMBER SHORT: Okay. And to your
4 knowledge, as an Investigator for ABCA, has any
5 other caterer been charged with operating as a
6 nightclub in Washington, D.C.?

7 THE WITNESS: Not that I know of --

8 MEMBER SHORT: To your knowledge.

9 THE WITNESS: -- of the top of my
10 head, Mr. Short. Not to my knowledge, Mr. Short.

11 MEMBER SHORT: Can you tell me the
12 normal operation of a catering, or caterer's
13 license? What are their normal operating
14 procedures?

15 THE WITNESS: Well, I understand
16 caterer's license to be used as, to facilitate
17 and event, in the event that they have a space,
18 public space, private space, and they want to
19 thrown on an event and they want to sell alcohol
20 in the District, so they can use a caterer's
21 license to facilitate that. The food portion of
22 it. And then the alcohol --

23 MEMBER SHORT: How --

24 THE WITNESS: -- can be used --

25 (Simultaneous speaking.)

1 MEMBER SHORT: Are permits required
2 whenever the caterers do that for the event?

3 THE WITNESS: Yes.

4 MEMBER SHORT: Was there ever anything
5 filed in the Office of ABCA, to your knowledge,
6 for the use of 2101 New York Avenue Northeast for
7 any catered events? To your knowledge.

8 THE WITNESS: Not to my knowledge.

9 MEMBER SHORT: So I could, so anyone
10 listening to your testimony could say, it's very
11 unusual for a caterer not to have a permit, and
12 illegal for a caterer not to come and file and
13 pay a permit fee, is that correct?

14 THE WITNESS: That's correct.

15 MR. KLINE: Mr. Chairman, I object.
16 That's wrong as it calls for a conclusion of law.
17 It's wrong as a matter of law. There is no such
18 requirement.

19 MEMBER SHORT: Can Mr. Zollarcoffer
20 answer the question, Mr. Chair?

21 CHAIRPERSON ANDERSON: I have no idea
22 how I got muted. All right. I myself am not
23 aware, but if the Witness can, if he knows, he
24 can answer. Then he -- go ahead.

25 THE WITNESS: I'm sorry, Mr. Short,

1 can you repeat that again?

2 MEMBER SHORT: Okay. It seems to also
3 happen when we get interesting questions that I
4 have to repeat it and I think it's distracting,
5 but however, I will try to reconstruct my
6 question as best I possibly can.

7 THE WITNESS: Okay.

8 MEMBER SHORT: The question I ask, and
9 wanted a answer to, was, are caterer or catering
10 licenses in the District of Columbia normally
11 have to pay a fee and get, to operate for a
12 catering event if they are using their license
13 during?

14 THE WITNESS: I don't believe so. I
15 believe that they have the caterer's license that
16 they keep in compliance, and then they can use
17 their license for certain events. I don't think
18 it has to be pre-approved for them to use their
19 caterer's license prior to an event.

20 MEMBER SHORT: To your knowledge --
21 (Simultaneous speaking.)

22 MEMBER SHORT: To your knowledge, Mr.
23 Zollarcoffer, has any, have you ever, or know of
24 any investigator who has been sent out to
25 investigate a licensed catered event?

1 THE WITNESS: Sure. We've been sent
2 out to look into certain catered events in the
3 City, yes, that we know that are operating a
4 caterer's license.

5 MEMBER SHORT: On February, let me do
6 this again. On Friday, October the 21st of 2022,
7 was there any notice or any application made for
8 an event to be catered at 2101 New York Avenue
9 Northeast? That's yes or no.

10 THE WITNESS: No. No.

11 MEMBER SHORT: Okay. Now, what I'd
12 really like to know is, and it's been brought up
13 several times in this case, that this is not the
14 first time that the 2101 New York Avenue
15 Northeast has been cited and paid fines, is that
16 correct?

17 THE WITNESS: That's correct.

18 MEMBER SHORT: What were those fines
19 for, sir?

20 THE WITNESS: For Case 22-2510002 was
21 operating beyond the scope of a caterer's
22 license. Primary charge. Sold, delivered and
23 served alcohol beverage without offering
24 sufficient food. That was charge two. Received
25 complaints from the public concerning disruptive

1 activity, charge three. Operating without
2 obtaining an updated certificate of occupancy.
3 Operated in violation of multiple fire codes.
4 The Board referred to OIG for show cause. And
5 the Board accepted an OIC in lieu of the hearing
6 for charge one, \$1,000, charge two, \$1,000,
7 charge three was dismissed. Charge four was a
8 warning. Charge five was dismissed.

9 So they were cases similar to this
10 that were charged, and there was an offer in
11 compromise for two of them I believe.

12 MEMBER SHORT: You mentioned fire code
13 violations. Were there any fire regulations
14 found that night, and if so, did the fire
15 department issue any violations?

16 THE WITNESS: I don't believe so, sir.
17 Not on that particular night.

18 MEMBER SHORT: Has the fire
19 department, to your knowledge, ever issued a
20 violation to 2101 New York Avenue Northeast?

21 THE WITNESS: That I'm not aware of.

22 MR. CELO: I'll respectfully object to
23 the relevance as it relates to the charge in
24 issue today.

25 MEMBER SHORT: Thank you. I

1 understand. Well, I guess my last question would
2 be, Mr. Zollarcoffer, and I think this is
3 permissible, what is the total number of
4 violations that money has been paid by this
5 caterer, or catering license?

6 MR. KLINE: Calls for a legal
7 conclusion. I'm not sure I can even answer that.

8 MEMBER SHORT: I asked for the number
9 of dollars that have been paid for fines. That's
10 not asking for a conclusion, that's asking for a
11 fact that's on the reports that have been filed
12 with ABCA.

13 MR. KLINE: How does this Investigator
14 know what's been paid?

15 MEMBER SHORT: It's in the history,
16 Mr. Attorney, Sir. Mr. Kline. It's in the
17 history. And the history is truthful knowledge
18 of this caterer's experiences, both legal and
19 illegal, for ABCA. And as so being in the
20 history, I would like to ask again if
21 Investigator Zollarcoffer can give us the number
22 of fines that have been charged and the number,
23 and the amount of dollars, on public record, that
24 have already been admitted for this hearing? If
25 you can answer that, Mr. Zollarcoffer, I would

1 appreciate it.

2 THE WITNESS: Okay. I'm going to, so
3 I believe there's \$4,000 that's been paid on the
4 last two charges that's been paid in full for
5 these. \$4,000. I might have missed the, you
6 were breaking up, I might have missed the end
7 part of that, Mr. Short, but there have been four
8 different violations, they've all been paid,
9 \$4,000 in total.

10 MEMBER SHORT: And were they paid
11 \$1,000 each?

12 THE WITNESS: Yes. Charge one,
13 \$1,000, charge two, \$1,000. That was for case
14 ending in 00018. Case ending in 00002, charge
15 one was \$1,000, charge two was also \$1,000.
16 Total of \$4,000 paid.

17 MEMBER SHORT: So, and is it true that
18 the night you were there on Friday, October the
19 21st, 2022, they had already been told that they
20 could not keep operating like that illegally, is
21 that true or false? Yes or no?

22 THE WITNESS: Yes.

23 MR. KLINE: Objection as to illegally.

24 THE WITNESS: That's true.

25 MR. KLINE: That's for the full Board

1 to make a determination as to what's illegal.

2 MEMBER SHORT: Mr. Kline, I do believe
3 when you pay \$4,000 over a certain period of time
4 for the same, for the same types of violations,
5 that that history is part of the record, and that
6 they didn't pay the money and keep operating
7 illegally. It was illegal for them to do that
8 after they paid the fine. And they were told the
9 reason for that was they could not operate safely
10 or with a license in that location. At that
11 address. They had been informed.

12 MR. KLINE: Your understanding of what
13 is an offer in compromise is very different than
14 mine. I'll just say that.

15 CHAIRPERSON ANDERSON: Let's --

16 MR. CELO: Mr. Chair?

17 CHAIRPERSON ANDERSON: Let's move on.
18 Let's move on. Do you have another question, Mr.
19 Short?

20 MEMBER SHORT: Mr. Zollarcoffer, I'd
21 like to thank you for your excellent report and
22 for doing your duty as you are paid by the
23 District of Columbia. And this Board supports
24 everybody who works for ABCA and for the District
25 of Columbia. Thank you for your Service. That's

1 all I have, Mr. Chair.

2 CHAIRPERSON ANDERSON: Any other
3 questions by any other Board Members?

4 Mr. Zollarcoffer, why did an ABCA
5 Investigator show up at the establishment this
6 time? This night?

7 THE WITNESS: What time did we arrive?

8 CHAIRPERSON ANDERSON: No, sir. Why
9 did ABCA show -- why was an investigator at this
10 location?

11 THE WITNESS: I believe we got a
12 hotline, a hotline phone call about large crowds
13 kind of spilling into the street, New York Ave.
14 A warehouse that appeared to be throwing these
15 large parties. I think it was a call. It was a
16 call from the public to respond over there for
17 large crowds in the street.

18 CHAIRPERSON ANDERSON: So when the
19 investigator, so were you one of the
20 Investigators who showed up?

21 THE WITNESS: Yes. On October 21st,
22 yes, I was.

23 CHAIRPERSON ANDERSON: So what did you
24 see on October 21st when you, when you appeared
25 at the location?

1 THE WITNESS: I remember arriving on
2 the, at the location, seeing large crowds of
3 people. We entered, we met with the ABC manager.
4 There was several different shops in there
5 selling jewelry. They had some food for sale. I
6 believe it was pizza to the side. There was an
7 entrance where they were charging, or they might
8 have already had prepaid tickets for the event.

9 And then as you moved further into the
10 back of the facility it kind of just opened up
11 into like a massive open warehouse space, which
12 had the majority of the people back there with
13 stages that were assembled. And, yes, kind of
14 like a concert environment.

15 CHAIRPERSON ANDERSON: Why did you say
16 it like a concert environment? Why did you say
17 that?

18 THE WITNESS: Well --

19 CHAIRPERSON ANDERSON: Why did you
20 start it like that?

21 THE WITNESS: Well it was a very large
22 space. You know, it's one of the larger spaces
23 that I've been to in the District. It had a big
24 stage, there was people performing. You know,
25 just a concert type, you know, people blowing

1 smoke and different types of lighting. And just,
2 it was a lot of people, loud music. And the way
3 that the stage was setup it appeared to be like a
4 nightclub type of concert going on.

5 CHAIRPERSON ANDERSON: So are you
6 stating that based on your experienced as an
7 Investigator that this appeared to be a
8 nightclub, is that what You're testifying to,
9 sir?

10 THE WITNESS: Yes.

11 CHAIRPERSON ANDERSON: All right. Any
12 other questions by any other Board Members? Mr.
13 Kline, any recross?

14 MR. KLINE: Investigator, you said
15 that the two previous charges involved activities
16 similar to what you saw here, is that correct?

17 THE WITNESS: Yes. That's correct.

18 MR. KLINE: Okay. Now, in looking at
19 the investigative history, in CMP, in 22-CMP-
20 00018, charge one said that they licensee sold,
21 delivered and served alcoholic beverages without
22 offering sufficient food. Isn't that what that
23 says?

24 THE WITNESS: I believe operated
25 beyond the scope of the caterer's license, right?

1 MR. KLINE: Well, look at, okay. It
2 says, operated beyond the scope of its catering
3 license. And then what does it say right after
4 that?

5 MR. CELO: Objection as to --

6 MR. KLINE: Number three --

7 MR. CELO: Objection as to the
8 categorization. Opposing Counsel is reading
9 charge two, which is a different charge, and
10 which is not --

11 MR. KLINE: I stand corrected. Charge
12 two then.

13 MR. CELO: Well, in that case I object
14 to relevance.

15 MR. KLINE: Seriously?

16 MR. CELO: The fact that they were, at
17 that time, not selling sufficient food is not
18 relevant to whether or not they were operating
19 beyond the scope of their caterer's license in
20 this instance.

21 MR. KLINE: It is relevant --

22 CHAIRPERSON ANDERSON: All right --

23 MR. KLINE: -- when the suggestion has
24 been made that this Applicant is on notice
25 because of the prior charges, and the Witness is

1 asked whether the previous charges related to
2 fact, and I'm paraphrasing, related to facts
3 similar before the Board in this case.

4 MR. CELO: All right.

5 MR. KLINE: And an examination of the
6 history reflects that that's just simply untrue.

7 MR. CELO: All right.

8 CHAIRPERSON ANDERSON: I'm overruling
9 -- go ahead, Mr. Celso.

10 MR. CELO: Opposing Counsel is
11 suggesting that because there were additional
12 violations we should not look at operating beyond
13 the scope of the caterer's license. If they were
14 operating beyond the scope of the caterer's
15 license because they sold, delivered and served
16 alcoholic beverage without offering sufficient
17 food, that would have been a single charge. It's
18 two separate distinct charges.

19 And the fact that they were committing
20 more violations in the past than they are now
21 does not in any way exclude, excuse the fact that
22 they are still committing some of the same
23 violations.

24 MR. KLINE: Mr. Chairman, here's my
25 problem. My problem is, in the previous cases

1 there were specific charges related to operating
2 beyond the scope of the catering license that are
3 specifically referenced in 23-DCMR-2000.1.

4 Specifically the reference to sufficient food.
5 So at least we're on notice as to what it is that
6 the Applicant is charged with doing or not doing.

7 In this case we have operated beyond
8 the scope of his catering license referencing 23-
9 DCMR-2000.1, and we have no idea, other than,
10 well gee, it looks like a nightclub, we think
11 it's a nightclub, you can't do that. And then
12 further, it goes on to say that it operated
13 without following construction codes by not
14 obtaining an updated certificate of occupancy.
15 And in this case there is a certificate of
16 occupancy attached.

17 So for me not to be able to question
18 the Witness as to why it is he concluded that
19 they're similar is beyond me. I don't
20 understand.

21 CHAIRPERSON ANDERSON: All right. All
22 right. All right, this is recross. Questions
23 were asked by the Board, and I have given the
24 Attorney an opportunity to recross. And so,
25 that's where we are. So these are issues that

1 were raised by a Board Member, so let's move on
2 from here. All right.

3 MR. KLINE: So is he to answer the
4 question or no, I'm unclear?

5 CHAIRPERSON ANDERSON: yes, he should
6 answer the question --

7 MR. KLINE: Okay.

8 CHAIRPERSON ANDERSON: -- if he can
9 answer the question.

10 MR. KLINE: All right. I'll try to
11 move it along. So, Investigator, isn't it true
12 that as reflected in your investigative history,
13 with respect to 22-CMP-00018, and Case Number 22-
14 2510002, in those two cases you had, number one,
15 charges of selling, delivering and alcohol
16 without offering sufficient food, isn't that
17 correct?

18 THE WITNESS: That is one of the
19 charges, right. Charge two. Right.

20 MR. KLINE: Okay. And that, that
21 wasn't present in this --

22 THE WITNESS: So --

23 MR. KLINE: -- case that's before the
24 Board today, right?

25 THE WITNESS: That particular wasn't

1 present in the charges? No, this --

2 MR. KLINE: Yes. I mean, You're not
3 alleging --

4 THE WITNESS: -- charges --

5 MR. KLINE: -- that they weren't
6 selling food, are you?

7 THE WITNESS: No.

8 MR. KLINE: Okay. And then there were
9 also concerns, in both cases, related to a
10 certificate of occupancy, correct?

11 THE WITNESS: That's correct.

12 MR. KLINE: And there, and in this
13 case there is a certificate of occupancy that's
14 appropriate because it's indeed attached to your
15 report, correct?

16 THE WITNESS: Correct.

17 MR. KLINE: So when you say that the
18 facts in the previous two cases were similar to
19 the facts here, that's entirely correct is it?

20 THE WITNESS: No, it is. It is
21 similar. We're talking about a consistent, we're
22 talking about two different charges that were
23 prior to this, that are for the same reason. For
24 the same reason --

25 MR. KLINE: All right.

1 THE WITNESS: -- operating beyond the
2 scope of the caterer's license.

3 MR. KLINE: All right. Let me ask you
4 this. You were asked whether there was a wedding
5 going on. Is there any requirement in 23-DCMR-
6 2000.1 that in connection with a catered event a
7 wedding be involved?

8 MR. CELO: Objection. Relevance. And
9 it's --

10 MR. KLINE: It's following up on the
11 question asked by the Board Member.

12 - END PART 2 -

13 CHAIRPERSON ANDERSON: Let the witness
14 answer the question, if he can. So, I'll
15 overrule the objection.

16 THE WITNESS: Ask the question again,
17 Mr. Kline.

18 BY MR. KLINE:

19 Q Is there any requirement in
20 23 DCMR 2000.1 that a catered event involve a
21 wedding?

22 A Specifically, no. A caterer -- no.
23 A caterer --

24 Q It could be all kinds of events,
25 right?

1 A That's right.

2 Q Okay. So, as an investigator, your
3 job is to investigate and you've got to look at
4 the Code and regulations and make a determination
5 based upon the Code and regulations what you
6 believe a violation might be, correct?

7 A Right.

8 Q All right. So, looking at
9 23 DCMR 2000.1 -- and if you don't have it, we
10 can pull it up for you -- what is it,
11 specifically, in 23 DCMR 2000.1, given your
12 experience as an investigator, you contend that
13 this Licensee violated?

14 A I don't believe that that was one of
15 the violating charges, was, is 2000.1 --

16 Q You don't believe --

17 A -- or whatever you referred to.

18 Q Yeah.

19 A Is that one of the charges? I thought
20 it was -- one of the charges, I thought it was --

21 Q Yeah.

22 A That it was under --

23 Q That is the charge.

24 A -- 20.113.

25 MR. KLINE: All right. No further

1 questions.

2 CHAIRPERSON ANDERSON: Mr. Celo?

3 MR. CELO: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. CELO:

6 Q Investigator Zollarcoffer, when you
7 were identifying the factors that led to the
8 violation with counsel for the Licensee, there
9 were several things listed, including several
10 bars, the DJ, dancing, the size of the space,
11 live entertainment, and the continual operation
12 with multiple events each weekend.

13 Of those, I'd like to focus on the
14 continual operation. Can you explain why that is
15 a problem for a caterer?

16 A Caterers are not meant to be used in
17 that way --

18 MR. KLINE: Objection.

19 THE WITNESS: -- on a consistent --

20 MR. KLINE: Does not -- objection.

21 THE WITNESS: -- on a consistent
22 basis.

23 MR. KLINE: Objection.

24 CHAIRPERSON ANDERSON: Hold on. Hold
25 on, Mr. Zollarcoffer.

1 What is your objection, Mr. Kline?

2 MR. KLINE: It goes beyond the scope
3 of cross and it calls for a legal conclusion.
4 You know, this isn't in the law. I don't know
5 what we're talking about. Like, let's show me in
6 the law where it says that this is a violation.
7 That's been my objection throughout this. Where
8 in the law is this a violation?

9 MR. CELO: It absolutely does not go
10 beyond the scope of cross. If the Board will
11 recall, I objected to the categorization of
12 Attorney Kline in that he excluded the continual
13 operation with multiple events each weekend,
14 which Investigator Zollarcoffer had testified to
15 on cross he excluded that when he was going over
16 "Why is this a violation?" questions. And my
17 objection was overruled with a specific proviso
18 that I can inquire on it on redirect. So, it's
19 not beyond the scope.

20 And secondly, I am not asking for the
21 legal conclusion. I'm asking why that factor was
22 relevant to Investigator Zollarcoffer when he was
23 describing the situation and the violation.

24 CHAIRPERSON ANDERSON: I'm overruling
25 the objection.

1 MR. CELO: All right.

2 CHAIRPERSON ANDERSON: Go ahead.

3 BY MR. CELO:

4 Q Investigator Zollarcoffer, to repeat
5 the question, the continual operation with
6 multiple events held each weekend, that factor
7 that you identified, why was that a problem for
8 you for a caterer?

9 A It's my understanding that a caterer
10 is not to be used that way. It's for special
11 events, not to be consistently used for that
12 purpose several times a week for what appears to
13 be a nightclub. You know, like, just from what
14 I know, caterers aren't supposed to be used for
15 that the same address, continuing events on a
16 consistent basis that are already scheduled out
17 to be six months in advance.

18 Q And is it your understanding that
19 Flash Catering was organizing these events?

20 A Yes.

21 Q And do caterers typically organize the
22 entertainment and the live performances of
23 events, or are they, typically, responsible for
24 the food and, incidental to the food, the
25 alcohol?

1 A Yeah. Caterers I believe are just
2 responsible for the food and the alcohol, but
3 they don't necessarily -- they don't necessarily
4 have to do anything --

5 Q As part of your investigation, did you
6 look into the social media of Flash Catering?

7 A I didn't personally.

8 Q Okay. And when you referred to
9 continual operation, you said that there were, I
10 believe you said three to five events per
11 weekend. Is that an accurate accounting of your
12 testimony?

13 MR. KLINE: Objection.

14 THE WITNESS: Maybe.

15 MR. KLINE: Goes beyond the scope.

16 THE WITNESS: I don't think --

17 MR. KLINE: Objection. Goes beyond
18 the scope, and I've got no opportunity to recross
19 on this point.

20 MR. CELO: It was --

21 CHAIRPERSON ANDERSON: I'm overruling.
22 I'm overruling the objection.

23 Let the witness answer the question,
24 if he can.

25 BY MR. CELO:

1 Q Did you testify that it was three to
2 five events per weekend? Was that the accurate
3 number you had testified to?

4 A Somewhere along those lines. I want
5 to say, yeah, maybe three or four events, I think
6 that they had scheduled, but definitely on
7 Fridays and Saturdays and I believe maybe once
8 during the week.

9 Q Okay. And when you referred to
10 continual operation, over the course of how many
11 months were you referring to?

12 A That, I believe, was several months.
13 I'm not 100 percent sure on how many months.
14 Maybe a year's time.

15 Q Okay. And just to hit on the wedding
16 question once more, are weddings, typically, one-
17 off events or do the same two people continually
18 get married three to four times a week for an
19 entire year?

20 A Yeah, I guess no. One particular
21 time.

22 Q So, this is a distinguishable manner
23 of operation?

24 A Yes.

25 Q And in the manner of operation that

1 you observed, was this charge for the continual
2 operation of a nightclub or was it for any of the
3 other things Investigator Kline -- or I'm sorry
4 -- Attorney Kline asked you about as they related
5 to Charge 2, 3, 4, or 5 of the other cases in the
6 investigative history?

7 MR. KLINE: Objection.

8 THE WITNESS: No, it's --

9 MR. KLINE: Objection.

10 CHAIRPERSON ANDERSON: Hold on.

11 What's the nature of your question,
12 Mr. Kline?

13 MR. KLINE: We're beyond the scope.
14 I mean, I don't avoid what?

15 MR. CELO: Mr. Chair, Investigator --
16 or Attorney Kline extensively inquired as to
17 Charge 2. In that case, they were food. In this
18 case, there's no food.

19 Charge 3, there was a Fire Code
20 violation, complaints from the public. We went
21 through --

22 MR. KLINE: Yeah, but those were
23 actual violations under the Code. I mean, we're
24 just making it up.

25 MR. CELO: And Attorney Kline is

1 arguing that, without those other charges, he
2 can't possibly know why his client is operating
3 beyond the scope of the caterer's license.

4 My question is to point out that the
5 basis for that charge in all three instances was
6 their manner of operating and continuously
7 running a nightclub while uses a caterer's
8 license. And that is consistent throughout all
9 three cases.

10 CHAIRPERSON ANDERSON: All right. I'm
11 overruling the objection.

12 Let the witness answer the question,
13 if he can.

14 THE WITNESS: So, I believe that is
15 the ongoing -- the basis of it all, right.
16 They're continually operating a nightclub on a
17 caterer's license on a weekly basis.

18 MR. CELO: Nothing further at this
19 time.

20 CHAIRPERSON ANDERSON: Thank you.

21 Do you have another witness, sir?

22 MR. CELO: No. The District rests.

23 CHAIRPERSON ANDERSON: All right. All
24 right. We're going to take a break.

25 And when we come back, you can call --

1 do you have a witness You're planning to call,
2 Mr. Kline?

3 MR. KLINE: No, sir. I plan to move
4 to dismiss.

5 CHAIRPERSON ANDERSON: All right. All
6 right.

7 It is 3:23. We'll be off the record
8 until 3:35. We'll be off the record until 3:35.
9 All right.

10 (Whereupon, the above-entitled matter
11 went off the record at 3:23 p.m. and resumed at
12 3:39 p.m.)

13 CHAIRPERSON ANDERSON: We're back on
14 the record.

15 Do you have a witness you wish to
16 call, Mr. Kline?

17 MR. KLINE: I move to dismiss the
18 single charge that has been made against the
19 Applicant and wish to be heard on argument.

20 The Government has not met its burden
21 of proof and I wish to argue why that is.

22 CHAIRPERSON ANDERSON: The Board is
23 not going to rule on your motion at this
24 juncture, Mr. Kline. The Board will reserve your
25 motion. I'm not saying that we will not rule on

1 your motion, but at this juncture the Board is
2 not going to make a ruling. We're going to
3 reserve making a decision on your motion.

4 One of the things that I stated
5 before, I do not know why that the parties did
6 not file motions if you strongly believe that,
7 based on the charging documents, we -- you have
8 had -- and I'm just, I'm just saying,
9 processwise, that the parties could have filed
10 motions that would have given the Board an
11 opportunity to look at the law and make a
12 decision prior to the hearing. We have not filed
13 any motions.

14 I am not comfortable making a decision
15 at this juncture. I believe that you should
16 present your case.

17 The Board, once we have consulted with
18 -- we listened to the presentation that was made
19 by the Government. We'll look at the law, our
20 consultant with legal, and we'll make a decision
21 whether or not we are going to dismiss the case
22 based on the motion that was made.

23 So, at this juncture, if you want to
24 rest or not present the case and make arguments,
25 that is your option, but we're going to reserve

1 making a decision on your motion at this
2 juncture.

3 MR. KLINE: Okay. Then, I will
4 proceed with the case.

5 First, I would ask that the Board take
6 administrative notice of an exhibit that was
7 filed, which is from WJ -- and I don't like, I
8 don't like submitting things from the press, but
9 I think it's appropriate in this case -- from
10 WJLA TV website.

11 It's a story dated December 14th,
12 2010. And we submitted it as an exhibit timely.
13 The title of it is, "How Grey Goose Mansion" --

14 MR. CELO: Objection.

15 MR. KLINE: -- "became a" --

16 CHAIRPERSON ANDERSON: Hold on. Hold
17 on. Hold on one minute, please.

18 Let him finish. I don't know what it
19 is, so you can't object at this moment, sir. Let
20 me find out what it is that's being asked to
21 place in the record.

22 Go ahead, Mr. Kline.

23 MR. KLINE: The title of it is, "How
24 Grey Goose Mansion became a popular night spot
25 without becoming a nightclub." And in the story,

1 there are statements from the then-Chair of the
2 ABC Board, Charles Brodsky, along with a
3 spokesperson for ABRA by the name of Cynthia
4 Simms.

5 So, we are asking the Board to take
6 administrative notice, along with anything in the
7 Board's records relating to the fact-finding
8 concerning the Grey Goose Mansion, which was in
9 operation back in 2010.

10 Mr. Brodsky says, quote

11 MR. CELO: Objection.

12 MR. KLINE: -- quote --

13 CHAIRPERSON ANDERSON: Hold on. Hold
14 on. Hold on. Hold on.

15 Let me ask a question first.

16 MR. KLINE: Sure.

17 CHAIRPERSON ANDERSON: Was this
18 document -- I'm asking it to you, Mr. Celso -- was
19 this document provided seven days prior to the
20 hearing?

21 MR. CELO: It was on an amended
22 notice. I don't recall if the amendment was six
23 or seven days prior to the hearing, but they did
24 file a timely exhibit notice and this was an
25 amendment within 24 hours. So, we are not

1 challenging the timeliness.

2 CHAIRPERSON ANDERSON: All right.

3 MR. CELO: However, before any of the
4 quotes are read, I do have several objections to
5 raise about the admissibility of this exhibit,
6 and I wish to be heard on that.

7 CHAIRPERSON ANDERSON: But I don't
8 know what the -- the problem that I'm having at
9 this juncture, I don't know what it is. So, your
10 objection --

11 MR. CELO: But, respectfully, Mr.
12 Chair, it is not appropriate for the trier of
13 fact to see this document. If I can just explain
14 my position, please?

15 CHAIRPERSON ANDERSON: All right. Go
16 ahead, sir.

17 MR. CELO: All right. The exhibit
18 that is being sought to be introduced is an
19 irrelevant and unreliable newspaper article,
20 essentially -- it's from ABC 7 News concerning
21 the Board's determination of a fact-finding
22 hearing in 2010 -- which contains multiple levels
23 of unreliable and out-of-context statements from
24 various at-the-time ABRA personnel.

25 If Attorney Kline wants to argue about

1 the precedent of this fact-finding hearing, then,
2 certainly, he could cite to the case and argue
3 the case. It is not, however, appropriate to,
4 instead of citing to the case and the Board's
5 order, to cite to the opinion of a reporter who
6 is interpreting the case for public consumption.

7 Moreover, I would note that this was
8 Attorney Kline's case. He has access to the
9 order. He can cite to the order. He was the
10 attorney in this case.

11 And it is absolutely not appropriate
12 to take specific quotes or comments out of
13 context, based on the reporter thought would make
14 a good story, and for this Board to take judicial
15 notice of that.

16 The proper evidence, if it is deemed
17 to be relevant at all -- and I would argue that
18 it is not because the case is quite
19 distinguishable from the current case -- but the
20 proper evidence is this Board's order from 2010,
21 not a newspaper article interpreting the Board's
22 order.

23 So, I would argue that this is highly
24 irrelevant, highly prejudicial, and unreliable,
25 and this Board should not take notice of it and

1 should not admit a newspaper article into the
2 record.

3 CHAIRPERSON ANDERSON: So, Mr. Kline,
4 why is that you are submitting a newspaper
5 article -- and I don't know because I have not
6 seen it -- that is interpreting what the Board
7 wrote in its order in 2010? Or their version of
8 what's written in the order?

9 MR. KLINE: I'm not. There is no
10 order. It was a fact-finding hearing. There's
11 no order. There is no order. The Board held a
12 fact-finding hearing and that was the end of it.
13 So, there is no order.

14 But what there are, are public
15 statements quoted from the Chair of the ABC Board
16 and from then-ABRA's public spokesperson, which
17 informs the public as to what the law is.

18 Now, if Mr. Celo had some problem with
19 that, then he certainly could call another
20 witness and dispute that these are the quotes
21 that were made by Mr. Brodsky or Ms. Cynthia
22 Simms. But, in the absence of that -- and we'll
23 get into it on closing -- but, I mean, we have
24 serious due process concerns here where the
25 public is entitled to know what the expectations

1 are under the law.

2 And when the Chair of a Board and the
3 spokesperson for an agency says very clearly --
4 which I'll read to you, if I'm allowed -- what
5 the law is, then it seems to me that that informs
6 the Board as to whether this should be the
7 violation or not, simply based upon whether the
8 public has been made aware, in accordance with
9 the requirements of the Fifth Amendment regarding
10 due process, and as quoted by the case that we
11 discuss probably every other week, only never by
12 name, which is Papachristou v. City of
13 Jacksonville, Supreme Court, and it deals with
14 loitering and vagrancy.

15 And it ruled that this is
16 unconstitutional because nobody knew what they
17 were and they were applied inconsistently. And
18 that's exactly what's going on here, and it will
19 be shown, if I'm allowed to submit what I
20 proffered.

21 MR. CELO: And if I may respond, Mr.
22 Chair --

23 CHAIRPERSON ANDERSON: Yes, sir.

24 MR. CELO: -- with my own proffer?

25 The case in question is highly

1 distinguishable from the current case. The case
2 from 2010 involves an establishment that was
3 operating, arguably, a nightclub style of
4 Service, but it was argued -- it was operating it
5 from a venue that rented the venue out to a
6 number of different parties. This was operating
7 once a month, sometimes more, in distinct
8 individual services with distinct individual
9 agreements with the catering Service.

10 And the premises were rented out for
11 weddings. They were rented out for things during
12 the day. They were rented out for a hot yoga
13 studio. They were rented out for all sorts of
14 things at all sorts of times, which is a very
15 different situation than Flash Catering operating
16 this warehouse exclusively for a year and running
17 events multiple times every single week.

18 So, it's not --

19 MR. KLINE: Mr. Celo is stating facts
20 that are not in evidence.

21 MR. CELO: And it is truly not
22 relevant to the current proceeding.

23 CHAIRPERSON ANDERSON: We're talking
24 about a newspaper article. I mean, if we had
25 maybe the transcript of the hearing, if we had --

1 MR. KLINE: Mr. Chairman, these are
2 public statements made by the Chair of the ABC
3 Board and by the spokesperson for the agency.

4 CHAIRPERSON ANDERSON: Mr. Kline, with
5 all due respect, I'm currently the Chair of the
6 ABC Board. I don't speak for the Board. I mean,
7 I speak for the Board when there's a quorum. So,
8 I can only state that, as the Chair, I don't go
9 to the newspaper. And I don't know what the
10 Board did in 2010. But, in 2023, I do not talk
11 to a newspaper report and say, "I am here
12 speaking for the Board." I mean, if I was to
13 talk to a newspaper reporter, I will say, "This
14 is my personal opinion." But, outside of a
15 quorum, I cannot speak for the Board.

16 So, I'm --

17 MR. KLINE: And Ms. Simms, the
18 spokesperson for the agency, didn't speak for the
19 agency, either?

20 CHAIRPERSON ANDERSON: Ms. Simms spoke
21 for -- well, the problem that I'm having, we're
22 talking about a newspaper article, sir.

23 MR. KLINE: Can I read the quotes to
24 the Board to make a determination as to whether
25 they're relevant? I mean, that's normally what

1 you would do.

2 CHAIRPERSON ANDERSON: You know, Mr.
3 Kline, You're going to force me to make a
4 decision at this juncture. And so, this is what
5 I'm going to do, Mr. Kline. I'm going to consult
6 with our Legal Office. Okay?

7 MR. KLINE: Sure.

8 CHAIRPERSON ANDERSON: All right.

9 As Chairperson of the Alcoholic
10 Beverage and Cannabis Board for the District of
11 Columbia, and in accordance with D.C. Official
12 Code Section 2-575 of the Open Meetings Act, I
13 move that the ABC Board hold a closed meeting for
14 the purpose of seeking legal advice from our
15 counsel on Case No. 22-CMP-00084/catering,
16 pursuant to D.C. Official Code Section
17 2-575(b)(4)(A) of the Open Meetings Act.

18 And all right. And as well, I said
19 deliberating upon Case No. 22-CMP-00084/catering,
20 for the reasons cited in D.C. Official Code
21 Section 2-575(b)(13) of the Open Meetings Act.

22 Is there a second?

23 MEMBER SHORT: Mr. Short. I second.

24 CHAIRPERSON ANDERSON: Mr. Short has
25 seconded the motion.

1 I will now take a roll call vote, now
2 that it's been properly seconded.

3 Mr. Short?

4 MEMBER SHORT: Mr. Short. I agree.

5 CHAIRPERSON ANDERSON: Mr. Cato?

6 MEMBER CATO: Bobby Cato. I agree.

7 CHAIRPERSON ANDERSON: Ms. Hansen?

8 MEMBER HANSEN: Jeni Hansen. I agree.

9 CHAIRPERSON ANDERSON: Mr. Grandis?

10 MEMBER GRANDIS: Edward Grandis. I
11 agree.

12 CHAIRPERSON ANDERSON: And Mr.
13 Anderson. I agree.

14 The matter passes 5-0-0.

15 I give regular notice here we will
16 take a brief recess.

17 It's 3:53. We are off the record. We
18 will be back, once we are ready to be back. All
19 right?

20 Then, we're off the record. Thank
21 you.

22 (Whereupon, the above-entitled matter
23 went off the record at 3:53 p.m. and resumed at
24 4:00 p.m.)

25 CHAIRPERSON ANDERSON: We're back on

1 the record.

2 Mr. Kline?

3 Mr. Grandis, I know You're here
4 because I can look at you.

5 (Laughter.)

6 All right. Mr. Celso, what was the
7 purpose you raised an objection -- what was the
8 nature of your objection?

9 MR. CELO: My objection was multifold.

10 First, the proper evidence to put
11 before the Board would be a transcript of the
12 hearing or any orders that stemmed from the
13 hearing. It is not the best evidence to put
14 forth a newspaper article interpreting the
15 hearing.

16 Second, that it is irrelevant to these
17 proceedings.

18 And third, that the newspaper article
19 is unreliable; contains out-of-context quotes,
20 and therefore, should be excluded on three
21 separate bases.

22 CHAIRPERSON ANDERSON: Okay. Mr.
23 Kline?

24 MR. KLINE: Yes.

25 CHAIRPERSON ANDERSON: Do you have a

1 response?

2 MR. KLINE: Yeah, on all points.

3 First of all, the transcript was one
4 thing, but these were public statements that were
5 made and were out there in the public sphere.

6 In terms of their reliability, Mr.
7 Celo has known about this for a week and it was
8 timely filed, just to be clear for the record.
9 So, he was certainly free to go get whatever
10 rebuttal evidence that he wanted, if he thinks
11 it's unreliable.

12 It is an out-of-court statement. They
13 are hearsay. However, they're not hearsay,
14 actually, because they're not offered for the
15 truth of the matter asserted. They're not even
16 hearsay, No. 1.

17 And, No. 2, I mean, the Board can give
18 them whatever weight they want to give them.

19 In terms of their relevance, we have
20 a due process issue here. And this Licensee is
21 told that it violated the law, and it's told it
22 violated the law, despite the fact that the Chair
23 of the ABC Board in a very similar setting said
24 exactly that it didn't violate the law. And the
25 spokesperson for the agency said, basically, what

1 the investigator said, that it's a loophole. And
2 if it's a loophole, then, as I said to the
3 investigator, then it's not illegal, and that's
4 what these people say.

5 So, as a matter of due process, we
6 think this is very relevant because to suggest
7 that -- and we'll go through in closing 2000.1
8 and what it says and what it requires, and how
9 it's far afield of what we've talked about here.
10 But this gives it some context, and the Board can
11 do with it what it will.

12 But it would seem to us that quotes
13 from the Chair of the Board, even though he
14 doesn't speak for the entire Board, and comments
15 from the spokesperson for the agency are very
16 relevant in terms of what should be expected from
17 licensees.

18 MR. CELO: And may I respond?

19 CHAIRPERSON ANDERSON: Yes, sir.

20 MR. CELO: First of all, if they're
21 not offered for the truth of the matter asserted,
22 then they're not going to be adding context to
23 these proceedings.

24 Secondly, that also calls into
25 question their relevance.

1 And thirdly, because the situation in
2 the case 13 years ago was a fundamentally
3 different set of facts than the current case,
4 particularly as it relates to what Investigator
5 Zollarcoffer testified was the primary issue in
6 these charges being brought -- the continual
7 operation of a nightclub day-in/day-out for a
8 year -- that is a very different situation than
9 what was occurring in 2010. And therefore, any
10 of these quotes are not relevant because they are
11 not addressing the same fact pattern.

12 MR. KLINE: It may or may not be
13 different. And Mr. Celo can point out those
14 differences. If I may tender the article, I
15 think you'll see it's not really all that much
16 different, and he can certainly argue how it's
17 different, but that doesn't go to its
18 admissibility. That goes to its value to the
19 Board.

20 And, you know, to say, oh, it's
21 completely different, I invite you to read the
22 article and draw your own conclusions as to
23 whether it's completely different.

24 And am I suggesting that this is
25 binding upon the Board? No. But what I'm

1 suggesting is notice was given by the agency, by
2 the Chair of the ABC Board, as to what conduct
3 was acceptable. And to now just turn that on its
4 head and say, "Yeah, you know, who cares?" -- I'm
5 sorry, I mean, that's a violation of due process
6 and it raises the very issues that were at issue
7 in Papachristou, which goes to due process in
8 terms of, do we know what conduct is prohibited?
9 Do we know what conduct is required? Or are we
10 going to make it up as we get to each case?

11 And if you read this article, and go
12 back and look at the transcript, which You're
13 free to do because it's part of your record, and
14 I've ask that administrative notice be taken of
15 it, you'll see they're not all that different at
16 all.

17 MR. CELO: Relevance and prejudice go
18 directly to admissibility. It's not a weight
19 question. This is a question of admissibility.

20 MR. KLINE: What's the prejudice?

21 MR. CELO: Fundamental facts at issue
22 are different in this case and the case from 13
23 years ago, and quotes about a case that is not
24 similar from 13 years ago are not relevant to
25 these proceedings. They can only prejudice these

1 proceedings. That should not be admitted.

2 CHAIRPERSON ANDERSON: All right.

3 Both parties have made great arguments.

4 Again, we're talking about 13 years
5 ago. We're talking about statements by the Board
6 Chair 13 years ago and statements by the
7 spokesperson for the agency 13 years ago. And
8 D.C. is a completely different city than it was
9 13 years ago. Maybe what was acceptable 13 years
10 ago might not necessarily be acceptable now in
11 2023.

12 With that said, this is an
13 administrative hearing. So, we do not
14 necessarily go by the strict Rules of Evidence in
15 an administrative hearing.

16 And so, in this particular case, I'm
17 going to make a motion that the Board allow the
18 document in and that we will give it the weight
19 that it's due.

20 Is there a second?

21 MEMBER GRANDIS: Mr. Grandis. I
22 second.

23 CHAIRPERSON ANDERSON: Mr. Grandis has
24 seconded.

25 I'm going to take a roll call vote.

1 Mr. Short?

2 MEMBER SHORT: Mr. Short. Present.

3 CHAIRPERSON ANDERSON: Mr. Cato?

4 MEMBER CATO: Bobby Cato. I agree.

5 CHAIRPERSON ANDERSON: Ms. Hansen?

6 MEMBER HANSEN: Jeni Hansen. I agree.

7 CHAIRPERSON ANDERSON: Mr. Grandis?

8 MEMBER GRANDIS: Edward Grandis. I
9 agree.

10 CHAIRPERSON ANDERSON: And Mr.
11 Anderson. I agree.

12 The matter passes 4-0-1, yeah, I think
13 4-0-1 with Mr. Short voting present.

14 All right. So, we're going to allow
15 the document in, but we'll give it the weight
16 that it's due.

17 One of the concerns that I have with
18 this case, there are a lot of motions that have
19 been made. And it would help the Board if we had
20 received in the sense that -- the motion that you
21 have raised earlier, Mr. Kline, if it was done in
22 writing, so the Board would have had an
23 opportunity to review the law and make a decision
24 earlier.

25 And it's the same thing, Mr. Celso, in

1 the sense that the document was provided seven
2 days. You're not objecting to the timeliness of
3 the document. Maybe if you did, maybe I would
4 have ruled otherwise. Okay?

5 So, we will allow the document and
6 give it the weight that it's due.

7 MR. KLINE: Mr. Chair, with that, I
8 would like to read the quotes that are from Mr.
9 Brodsky and Ms. Simms.

10 CHAIRPERSON ANDERSON: And you can do
11 that, Mr. Kline, but, as I've stated before, as
12 you know, the Board operates three members is a
13 quorum. And any statements that were made by any
14 Board member outside of a quorum cannot bind the
15 Board to say these are the position of the Board.
16 At least, currently, as Chair, that is my
17 position.

18 But, yes, sir, go ahead and read what
19 you have.

20 MR. KLINE: I've already acknowledged
21 that, Mr. Chair.

22 CHAIRPERSON ANDERSON: Yes.

23 MR. KLINE: I mean, I understand that;
24 I've acknowledged that, and it goes to the issue
25 of notice more so than, you know, what the Board

1 should decide in terms of what the common
2 understanding was.

3 So, if I may?

4 CHAIRPERSON ANDERSON: Yes, sir.

5 MR. KLINE: Quote, Mr. Brodsky, quote:

6 "We think you did an end run and opened up a
7 nightclub in a neighborhood that doesn't
8 appreciate it. I live one block away and I don't
9 appreciate it."

10 Quote: "`They didn't break the law,
11 and if they did it somewhere else again, they
12 wouldn't be breaking the law,' says Cynthia
13 Simms, a spokesperson for ABRA."

14 "Simms adds that ABRA may take a
15 closer look at catering licenses, but, for now,
16 the Grey Goose Mansion is completely aboveboard."

17 Quote: "`When they discovered it, it
18 was like, wow, they really thought outside the
19 box and made this work,' Simms says."

20 So, with that, I call Afshin Mottaghi
21 to the stand for some questions.

22 MR. CELO: I would object.

23 CHAIRPERSON ANDERSON: And you have so
24 noted, Mr. Celo, that You're -- I mean, one of
25 the things that I'm trying to do is to preserve a

1 record. So, if this matter is appealed, if this
2 matter is appealed, based on whatever decision
3 that's made by the Board, the Court of Appeals
4 will have a full record to make a determination.
5 So, that's the basis of us making some of the
6 determinations that has been made within this
7 case, is to preserve the record.

8 MR. CELO: Respectfully, Mr. Chair,
9 that's why I did not interrupt, so that the
10 record would be complete. But I would like the
11 opportunity for the record to object and move to
12 strike.

13 CHAIRPERSON ANDERSON: So noted.

14 All right. Go ahead, Mr. Kline.

15 MR. KLINE: Swear the witness, Mr.
16 Chair.

17 CHAIRPERSON ANDERSON: Who is the
18 witness that You're calling, sir?

19 MR. KLINE: Afshin Mottaghi.

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

22 WHEREUPON,

23 AFSHIN MOTTAGHI

24 was called for examination by Counsel for the
25 Licensee, and having been first duly sworn, was

1 examined and testified as follows:

2 CHAIRPERSON ANDERSON: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. KLINE:

5 Q Mr. Mottaghi, what's your connection
6 with Flash Catering?

7 A I am the operator of Flash Caterer.

8 Q You were involved in the decisions
9 concerning the prior Offers in Compromise, is
10 that correct?

11 A Yes, sir.

12 Q And you agreed to accept Offers in
13 Compromise?

14 A Yes, sir.

15 Q Why was that?

16 A Well, when we were made to understand
17 that we needed to provide, you know, get a C of O
18 for the location, and, you know, it was obtained
19 -- this was explained to me as, you know, the
20 major part of what we were doing wrong, to help
21 correct the issue.

22 Q Okay. And did you hold any events at
23 that warehouse before the C of O was corrected?

24 A Before, not -- only the ones that we
25 were, that we got the violation for.

1 Q Okay. But, after the violation and
2 before the C of O was corrected, did you hold any
3 events there?

4 A No.

5 Q Okay. Now, are you the only, the only
6 catering company that works at that location?

7 A I'm unaware of if I am or not.

8 Q Okay. But do you operate there
9 continuously, daily, three to six times a
10 weekend, as it was -- as it was testified to?

11 A No, that's not true. The events there
12 were infrequent and we were not always -- you
13 know, we were hired to the events as needed, but
14 there were definitely not that many events there.

15 Q Okay. And when this happened on
16 October 21st of 2022, did you make another change
17 to your operation or another change to how you
18 conducted these events at that point?

19 A At that point, they were -- they
20 further advised to actually get one-day liquor
21 licenses, which, then, you know, we started for
22 the months of October and November.

23 Q Okay. And did you pull several one-
24 day or temporary licenses for --

25 A Yes.

1 Q -- for events there?

2 A Yes. There were, I think, six pulled
3 in October. That's how many events that were
4 there, and maybe about the same number, you know,
5 throughout, each month throughout the end of the
6 year.

7 Q Is it your testimony that you
8 attempted to comply with the law, as you
9 understood, throughout the running of all these
10 events?

11 A Yes. I'd say everybody that -- you
12 know, every time that we were pointed out that we
13 needed to do something different, whether it was,
14 you know, getting a C of O or getting a one-day
15 license, or, you know, providing fire exits, and
16 so forth, we complied immediately.

17 Q Okay.

18 MR. KLINE: Those are all the
19 questions I have. Thank you.

20 CHAIRPERSON ANDERSON: Mr. Celo, do
21 you have any questions for the witness?

22 MR. CELO: Mr. Chair, Members of the
23 Board, may it please the Board.

24 CROSS-EXAMINATION

25 BY MR. CELO:

1 Q Mr. Mottaghi, am I pronouncing that
2 correctly?

3 A No, but that's okay.

4 Q Well, please, how is the correct
5 pronunciation?

6 A Mottaghi.

7 Q Mottaghi?

8 A Yeah. Thank you.

9 Q Thank you.

10 You have a website for Flash, correct?

11 A Yes, sir.

12 Q And it's www.flashdc.com?

13 A Correct.

14 MR. KLINE: Objection. We're well
15 outside the scope of direct.

16 MR. CELO: I ask a little bit of
17 leeway because this is very relevant to what he
18 was directed about.

19 MR. KLINE: I don't care how relevant
20 it is. I've been denied my right to make a
21 Motion to Dismiss that would be promptly ruled
22 on. I purposely kept my testimony tight, and I
23 would object to examination beyond the cross of
24 -- beyond the scope of direct.

25 MR. CELO: I would also note that this

1 is not recross. This is cross-examination of the
2 Licensee in this matter. And I believe that
3 inquiring about his operation is well within the
4 scope that I am entitled to at this point.

5 MR. KLINE: It's beyond the scope of
6 direct because I didn't even need to put him on
7 the stand.

8 CHAIRPERSON ANDERSON: But you did put
9 him on the stand, sir.

10 MR. KLINE: For very limited purposes,
11 not to be asked everything in the world.

12 CHAIRPERSON ANDERSON: I'll give the
13 Government some leeway, but I'm going to overrule
14 your objection.

15 But, as stated, Mr. Celso, the witness
16 testified to some general topics. So, you are
17 somewhat limited in the questions that can be
18 asked.

19 MR. CELO: Absolutely. Yes, Mr.
20 Chair.

21 BY MR. CELO:

22 Q When did -- well, strike that.

23 You said that you stopped holding
24 events until you got a new C of O. When did you
25 get a new C of O?

1 A I have to go back and take a look.
2 I'm not sure.

3 Q Do you know the month?

4 A I am unaware.

5 Q Well, how many months were you shut
6 down?

7 A I believe about three to four months.

8 Q Okay. And you held no events, then,
9 between February and somewhere in the May-June
10 range?

11 A Probably until May. I'm not sure,
12 maybe June. I don't remember, to be honest with
13 you.

14 Q And after that, you continued hosting
15 events, correct?

16 A No, we catered the events there.

17 Q Okay. And you advertised those
18 events?

19 A We did not advertise for those events.

20 Q Okay. I am showing you -- permission
21 to share my screen?

22 CHAIRPERSON ANDERSON: Mr. Orellana,
23 okay, please allow Mr. Celso to share his screen.

24 BY MR. CELO:

25 Q I'm about to show you what was marked

1 as Government Exhibit 2 for the anticipated trial
2 in both, actually, of the previous two cases
3 involving these charge -- charges.

4 So, this would end up being
5 Government --

6 CHAIRPERSON ANDERSON: We're not,
7 we're not sharing your screen, sir.

8 MR. CELO: I wanted to --

9 CHAIRPERSON ANDERSON: Oh, okay. All
10 right.

11 MR. CELO: -- go here before I shared
12 my screen.

13 BY MR. CELO:

14 Q But it would have been Exhibit 2 in
15 both Case NOS. 22-251-00002 and 22-CMP-000018.
16 And it is a screen shot from the website
17 www.flashdc.com.

18 MR. KLINE: Beyond the scope of
19 direct. It's from the previous case. Relevance.
20 Timing. It hasn't been previously disclosed.

21 What else? I mean, here I am. I put
22 on a witness for very specific purposes. And
23 somehow, that opens the door for opposing counsel
24 to use exhibits that were not even listed and
25 provided in advance. I mean, this is an ambush

1 and is improper, and I strenuously object.

2 MR. CELO: It is rebuttal evidence,
3 Mr. Chair. And specifically, it is being offered
4 to rebut the contention that Mr. Mottaghi -- and
5 I apologize if I'm not pronouncing that correctly
6 -- but that the Licensee was not operating events
7 as frequently as the Government alleged, and his
8 contention that they were only operating one
9 event a week or six events a month, or what have
10 you.

11 Specifically, this is his calendar
12 from his website from 7/3, so July 3rd, 2022
13 through October 8th, 2022.

14 And it is rebuttal evidence that need
15 not be disclosed in advance because, frankly, I
16 could not have foreseen the allegation that he
17 was operating so few events and had no basis for
18 disclosing that evidence before today.

19 CHAIRPERSON ANDERSON: I'm going to
20 overrule the objection.

21 BY MR. CELO:

22 Q All right. I am now sharing
23 Government Exhibit 2 with you. Do you recognize
24 this website?

25 A Yes, sir.

1 Q And is it your website?

2 A Yes, it is.

3 Q Now, I see here on your website, on
4 Friday, July 8th, and Saturday, July 9th, a total
5 of three events. Is that correct?

6 A That's correct, sir.

7 Q And that, on Monday, July 10th, there
8 was an event?

9 A Correct.

10 Q And on July 14th, 15th, 16th, there
11 were four events?

12 A Correct, sir.

13 Q And on July 17th, 21st, and 23rd, you
14 have five events?

15 A That's correct again.

16 Q So, is it fair to say that you were
17 operating three to five events per weekend, per
18 week?

19 A At my brick-and-mortar location, yes,
20 sir. At 645 Florida Avenue, that's the calendar
21 for our brick-and-mortar location called Flash.
22 This is irrelevant to Flash Catering.

23 Q So, these events were not being held
24 on (audio interference) --

25 A No, sir.

1 Q Then, please describe when you would
2 apply your catering license.

3 A When we were hired to cater an event.

4 Q Well, who would hire you?

5 A Somebody who was having an event at
6 that location, at whatever location, whether it
7 be a wedding or a party or an office event.

8 Q In 2022, how many clients did you
9 have?

10 A Probably three.

11 Q All right. And I assume that Mr. Issa
12 was one of your clients?

13 A Yes, sir.

14 Q And he would have you cater events at
15 his warehouse?

16 A Yes, sir.

17 Q And you ran them in the same style
18 that you ran your brick-and-mortar events,
19 correct?

20 A No, sir. We don't serve food at our
21 brick-and-mortar location.

22 Q All right. That's fair.

23 Other than the food, though, the
24 musical events, you ran in the same manner as you
25 ran them at your brick-and-mortar place, correct?

1 A We don't run --

2 MR. KLINE: Objection. Objection.

3 Relevance. What does this have to do with

4 23 DCMR 2000.1?

5 MR. CELO: The manner of operation is

6 highly relevant to how we're discussing the

7 caterer's license.

8 MR. KLINE: Mr. Chair, can we look at

9 23 DCMR 2000.1, please, in terms of what it says?

10 And we are so far afield here.

11 (Pause.)

12 CHAIRPERSON ANDERSON: What section?

13 MR. KLINE: I mean, first, it says

14 that it "authorizes the licensee to sell,

15 deliver, and serve alcohol for consumption on the

16 premises of a catered event" -- check -- "at

17 which the licensee is also serving prepared food.

18 The caterer is a business entity engaged

19 principally in the processing, preparation, and

20 Service of food products which is prepared

21 especially for the customer for an event," and

22 the Service of alcohol is incidental to food

23 prep.

24 Three, "Shall not be granted or

25 maintained by entities which only serve snack

1 items." And then, it defines what snack items
2 are.

3 And this whole notion of a continuous
4 operation being prohibited, even if we know what
5 that is, that's nowhere in 2000.1. And that's
6 the whole point of the news article, is that
7 maybe we don't like it. Maybe some people don't
8 like it. Well, change the law then.

9 But what he's being asked has nothing
10 to do with what's set forth in 23 DCMR 2000.1,
11 which is the section of the regulations which the
12 Licensee is charged with violating.

13 It's completely irrelevant.

14 CHAIRPERSON ANDERSON: But, at least
15 at this juncture, it was a clarification of being
16 -- the witness was being impeached based on the
17 calendar at least -- maybe I'm lost, but the
18 Government put forth the website for what they
19 thought was the calendar for Flash Catering. And
20 the clarification was -- and the witness
21 testified that this was not the calendar for
22 Flash Catering, but the calendar for Flash, which
23 is a separate entity.

24 And I think we're just getting some
25 clarification between the difference between the

1 Flash Catering and Flash. I thought that was
2 just some clarification that had been --

3 MR. KLINE: (Audio interference.)

4 CHAIRPERSON ANDERSON: All right.
5 Okay. Go ahead, if you can answer the question,
6 sir.

7 THE WITNESS: I don't remember the
8 question.

9 BY MR. CELO:

10 Q Are the musical events that are held
11 when you cater events for Mr. Issa, are they
12 operated, run as the ones that you hold, your
13 event at Florida location?

14 A I'm sorry, are they operated or run
15 what?

16 Q In the same way that you run your
17 musical events at the Florida, at the Florida
18 location.

19 A No, we don't, at the Florida location,
20 we hire the music, the talents, and, you know,
21 everything.

22 As a caterer, we're only providing
23 food and beverage services.

24 Q Now, you were advised you had to get
25 one-day liquor licenses, and you say that you

1 started to adopt that practice, correct?

2 A Yes. The location, yes.

3 Q But you had also been advised that you
4 were violating your caterer's license in previous
5 visits by Inspector Puente, correct?

6 A I wasn't told that we were violating
7 the liquor, the catering license, but we were
8 told that we weren't using it in a proper manner,
9 which I disagreed with or did not, you know,
10 agree with 100 percent -- not as it had been
11 explained to me.

12 Q Now, you were charged twice for
13 operating without a caterer's license, correct?

14 A I believe we were --

15 MR. KLINE: Objection. Facts not in
16 evidence. He has a catering license. He was not
17 charged with that.

18 MR. CELO: I apologize.

19 BY MR. CELO:

20 Q You were charged twice for operating
21 beyond the scope of your caterer's license,
22 correct?

23 A I believe that that's correct.

24 Q Okay. And you spoke to Investigator
25 Puente on February 12th, 2022, correct?

1 A That is correct.

2 Q And he advised that the operation of
3 this nightclub was beyond the scope of your
4 caterer's license?

5 MR. KLINE: Objection to the
6 characterizations to the nightclub. Assumes
7 facts not in evidence and contrary to the
8 testimony that we've heard thus far.

9 CHAIRPERSON ANDERSON: Rephrase your
10 question, Mr. Celo.

11 BY MR. CELO:

12 Q Investigator Puente told you that
13 operating the nightclub in the manner it was
14 operating is beyond the scope of your caterer's
15 license, did he not?

16 MR. KLINE: The same objection. It's
17 not a nightclub. That's not what it is. We have
18 nightclub licenses. That's the legal definition
19 of nightclub; that's all there is.

20 CHAIRPERSON ANDERSON: Mr. Kline, the
21 clarification is that's what Mr. Puente said to
22 him, whether or not it's the correct
23 interpretation of the law. All the attorney is
24 asking, "Is this what Mr. Puente told you, the
25 investigator told you, when you had the

1 conversation with him?" He can say, "This is
2 not."

3 So, I'm overruling the objection. He
4 can answer the question, if he can, by saying
5 what his view is.

6 And I'll give you an opportunity to
7 ask -- I'll give you an opportunity, on this
8 particular question, I'll give you an opportunity
9 on this rebuttal to ask questions.

10 MR. KLINE: Thank you.

11 THE WITNESS: Yeah. Mr. Puente also,
12 you know, identified that or clarified that we
13 weren't selling food, and that's what made it
14 beyond the scope of a license, which we actually
15 were.

16 BY MR. CELO:

17 Q How well do you remember that
18 conversation?

19 A Frankly, I mean, I remember it pretty
20 well.

21 Q Okay. Even though it was nine months
22 ago?

23 A Like I said, pretty well.

24 Q And Investigator Puente found that you
25 were intoxicated during that conversation, did he

1 not?

2 A That was his opinion, sir. I was not
3 intoxicated.

4 Q Okay. And you were the ABC manager in
5 charge of Flash Catering at that time, correct?

6 A For that event, yes, sir.

7 Q And you were not present during the
8 12/26 -- or sorry -- February 26th, 2022 event,
9 correct?

10 A February 26th, '22 event, I can't
11 remember if I was or not.

12 Q Well, regardless of whether you were
13 or not, you did read the investigative report
14 after you were charged, did you not?

15 A Did I what?

16 Q Read the investigative report after
17 you had been charged?

18 A Yes, sir.

19 Q Okay. And you accepted liability for
20 the charge when you accepted the OIC, correct?

21 MR. KLINE: Objection. Calls for a
22 legal conclusion and beyond the scope of direct.
23 He's not a lawyer. He doesn't know what it means
24 when you said --

25 CHAIRPERSON ANDERSON: I'm going to --

1 MR. KLINE: -- the OIC, other than he
2 made a deal.

3 CHAIRPERSON ANDERSON: I'm going to --

4 MR. CELO: If he doesn't know what it
5 means, I question the representation.

6 CHAIRPERSON ANDERSON: All right. I'm
7 going to sustain the objection. Let's move on.

8 BY MR. CELO:

9 Q You have two primary tier violations
10 in your investigative history for operating
11 beyond the scope of your caterer's license,
12 correct?

13 MR. KLINE: Objection. Wrong as a
14 matter of law. It's one primary. That's how
15 they're calculated. They were resolved in one
16 OIC, which counts as one primary.

17 CHAIRPERSON ANDERSON: So, Mr. Celso --

18 MR. CELO: So, if I may, if I may, Mr.
19 Chair, they are two primary. They're both first
20 primaries, but they are two separate primary
21 charges.

22 CHAIRPERSON ANDERSON: If it's a
23 distinction, I think --

24 MR. KLINE: It's well beyond the scope
25 of direct, Mr. Chair.

1 CHAIRPERSON ANDERSON: I thought -- I
2 allowed certain questions because it was as
3 rebuttal. So, I'm not sure if this -- I'm going
4 to -- I'm sustaining the objection because I
5 allowed certain things, certain questions to be
6 asked because there was no -- it was because --
7 it was per rebuttal. We're now beyond rebuttal.
8 So, if you cross-examine the witness on direct,
9 then that's where we should be now.

10 BY MR. CELO:

11 Q You testified that you tried to comply
12 with the law, correct?

13 A Yes.

14 Q Okay. So, you had previously two
15 separate primary tier violations for operating
16 beyond the scope of your caterer's license,
17 correct?

18 A I believe so.

19 Q And you said that you changed your
20 operations by selling food with the alcohol,
21 correct?

22 A No, we've always sold food, sir.

23 Q Well, you didn't sell food with the
24 alcohol on February 12th or February 26th, 2022?

25 A Yes, we did. We've always sold food,

1 sir.

2 Q You didn't sell sufficient food with
3 the alcohol on either of those two dates,
4 correct?

5 MR. KLINE: Objection. Argumentative.
6 Asked and answered.

7 MR. CELO: No. He is drawing a
8 distinction, saying he always sold food. And, in
9 fact, as I think about those reports, he did sell
10 a modicum of snacks, and therefore, he was
11 telling the truth. However, he did not sell
12 sufficient food to be served with the alcohol
13 because he was charged with those two violations,
14 and he accepted an OIC on both counts. So, it is
15 a fair line of questioning.

16 MR. KLINE: Except it's way beyond the
17 scope of direct. Mr. Chair, how long does this
18 fishing expedition get to go on?

19 MR. CELO: Mr. Chair, I am explicitly
20 asking what steps he took to allegedly comply
21 with the law. This was a direct question that he
22 was asked on direct, and I am exploring that
23 question very specifically.

24 CHAIRPERSON ANDERSON: I'm going to
25 overrule the objection. I'm looking at the

1 investigative history and there is -- there is
2 some distinction within, within -- there is some
3 distinction within the charge itself. So, I will
4 allow, I will allow -- I'll overrule the
5 objection.

6 BY MR. CELO:

7 Q Okay, sir. You altered the type and
8 amount of food that you serve with your alcohol
9 following the first two charges, correct?

10 A We've sold the same amount of alcohol
11 -- of food with -- in the previous -- as
12 previously, as going forward.

13 Inspector Puente was under the
14 impression that we were not selling any food at
15 all.

16 Q Is that so?

17 A That is so, sir.

18 Q And you contend that you were selling
19 food?

20 A Yes, sir.

21 Q So, why did you accept liability for
22 violating Charge 2 of both those previous
23 violations?

24 A We were, you know, we were operating
25 without the C of O, and I understood that to be a

1 mistake.

2 Q Okay. Well, I certainly can
3 understand that, and that was Charge 4 in both.
4 Yeah, that was Charge 4 in both of those cases,
5 correct?

6 A I believe so.

7 Q And in both cases, that resulted in a
8 warning?

9 MR. KLINE: Mr. Chairman, I object.
10 Like what is this?

11 CHAIRPERSON ANDERSON: All right.

12 I'm --

13 MR. KLINE: What are we doing here,
14 Mr. Chair?

15 MR. CELO: I want to know what changes
16 he made to comply with the law. He just
17 testified --

18 MR. KLINE: And he testified to that.

19 MR. CELO: The only thing, the only
20 thing he changed as updating the Certificate of
21 Occupancy, for which he got a warning. That
22 means that he did not change his manner of
23 operation that resulted in Charge 1 or Charge 2,
24 for which he paid fines.

25 This is absolutely appropriate

1 impeachment on cross-examination.

2 MR. KLINE: Mr. Chair --

3 MR. CELO: So, what he did --

4 MR. KLINE: -- I will never enter into
5 an OIC again. I will never do it. If this is
6 what's going to happen when entering into an OIC,
7 I will never do it again. I will never recommend
8 that a single client trade off charges in any
9 manner if this is going to be allowed. I'll
10 never let -- not under my watch; it won't happen.

11 This is outrageous. It's an Offer in
12 Compromise. That means there's tradeoff. Some
13 things are dismissed. Some things you admit to
14 and you pay a fine. Some things you agree you'll
15 get a warning on.

16 Mr. Celo knows this. This is
17 outrageous.

18 CHAIRPERSON ANDERSON: All right. I'm
19 sustaining the objection.

20 I think that we have had enough
21 probative on this issue, and I think we need to
22 move -- we need to move on to a decision. The
23 Board needs to make a decision whether or not,
24 based on what's in the charging document, and
25 whether or not the Government has met its burden

1 in providing sufficient evidence that the
2 Licensee is guilty of the infraction charged.
3 And so, that's the case in point. And I think we
4 have moved, we have moved afar from that, from
5 where we need to be. So, let's get back there
6 and let's move on.

7 MR. CELO: No further questions at
8 this time.

9 CHAIRPERSON ANDERSON: All right.
10 Thank you.

11 Mr. Kline? Brief.

12 MR. KLINE: I don't have anything. I
13 don't have anything further.

14 CHAIRPERSON ANDERSON: Thank you.
15 Do you have another witness, sir?

16 MR. KLINE: I do not. We rest.

17 CHAIRPERSON ANDERSON: All right.

18 Now, we have moved -- I'm sorry -- we
19 had moved beyond -- we, the Board, had asked the
20 questions already, Mr. Short. So, it was an
21 opportunity for the attorneys to ask questions.

22 So, unfortunately, this has gone on so
23 long, but the Board had had its opportunity to
24 ask questions. And so, therefore, questions were
25 being -- hold on.

1 Because it's been a long time ago, was
2 the Board allowed to ask questions of the
3 Licensee?

4 MR. CELO: That was my first cross-
5 examination, Mr. Chair.

6 CHAIRPERSON ANDERSON: That was your
7 first? So, therefore, the Board was not given an
8 opportunity to ask questions of the Licensee. I
9 apologize if -- we've been going back and forth.

10 So, Mr. Kline, I'll ask you, was the
11 Board allowed to ask questions of your client?

12 MR. KLINE: I don't recall.

13 CHAIRPERSON ANDERSON: All right.

14 MR. KLINE: I don't think you did --

15 CHAIRPERSON ANDERSON: All right.

16 MR. KLINE: -- but I don't know if you
17 were given the opportunity. I can't say. I
18 don't know one way or the other.

19 CHAIRPERSON ANDERSON: All right. All
20 right. I believe that Mr. Short has a question.

21 I apologize, Mr. Short, but because we
22 have been going back and forth so long, I thought
23 that the Board had had an opportunity.

24 All right. So, if you have a
25 question, Mr. Short, go ahead, please.

1 EXAMINATION BY BOARD MEMBERS

2 MEMBER SHORT: First of all, thank you
3 very much. I appreciate You're allowing me to
4 ask questions, Mr. Chairman.

5 Mr. Mottaghi, again, refresh my
6 memory. What is your particular role with Flash
7 and with Flash Catering?

8 THE WITNESS: I'm the owner of and
9 operator of both.

10 MEMBER SHORT: What was at 2101 New
11 York Avenue before you started renting or
12 obtaining use of that particular address?

13 THE WITNESS: I believe it was a
14 warehouse space. I'm not 100 percent sure what
15 the use was.

16 MEMBER SHORT: Did anyone ever use it
17 as a venue for catering or use it for a nightclub
18 prior to you taking use of it?

19 THE WITNESS: I have, I have no idea.

20 MEMBER SHORT: What kind of
21 construction did you have to do to that address
22 prior to your opening up?

23 THE WITNESS: I was just a caterer.
24 I was not, I was not involved in the buildouts of
25 the space.

1 MEMBER SHORT: Okay. You mentioned
2 earlier, too, or it was mentioned earlier that
3 fire inspections were done on the location, is
4 that correct?

5 THE WITNESS: That's correct.

6 MEMBER SHORT: What did the fire
7 department or fire marshal direct you to do and
8 what did you do?

9 THE WITNESS: We have a fire, a fire
10 -- what do you call it? -- plan, a fire escape
11 plan, and, as well, have an active fire alarm
12 system there.

13 MEMBER SHORT: So, did you have those
14 things when you were given that warning or that
15 citation by the fire department?

16 THE WITNESS: They were not in place.
17 Actually, they were not in place. The fire alarm
18 system was in place, but it was not to the
19 requirements of the fire department.

20 MEMBER SHORT: How many people were
21 that night when the fire marshal came? How many
22 people did you have in your venue?

23 THE WITNESS: At that night, I would
24 estimate between 5 to 6 hundred.

25 MEMBER SHORT: And under your own

1 testimony, the fire alarm system was not
2 functioning correctly, correct?

3 THE WITNESS: It was functioning
4 correctly. It was not up to the standards, you
5 know, that the fire department would require.
6 There were some modifications they asked for.

7 MEMBER SHORT: I can understand your
8 answer, but, again, if you were doing it legally,
9 your fire alarm was legal, you would have never
10 been cited by the Fire Marshal's Office. Is that
11 correct? Yes or no?

12 THE WITNESS: Well, I would say that's
13 -- it was multiple. It was also they didn't like
14 the fact of the -- what do you call it? -- the
15 strobes. There weren't enough strobes for them.
16 But the system itself was functional, but, yes,
17 it was not up to their standards.

18 MEMBER SHORT: And maybe you know the
19 answer to this and maybe you don't. Had there
20 been an emergency event and the fire alarm system
21 malfunctioned, would you have had any
22 responsibility?

23 THE WITNESS: I would assume yes.

24 MEMBER SHORT: So, if someone got
25 injured and you were operating, you admit that

1 you put the public in danger, is that correct?

2 THE WITNESS: I would have to say yes.

3 MEMBER SHORT: Thank you very much for
4 your honesty and for your answer.

5 That's all I have, Mr. Chair.

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

8 Any other questions by any of the
9 Board members?

10 (No audible response.)

11 Mr. Celo?

12 MR. CELO: No recross on that.

13 CHAIRPERSON ANDERSON: Mr. Kline?

14 MR. KLINE: No.

15 CHAIRPERSON ANDERSON: Thank you.

16 Do you have another witness, Mr.
17 Kline?

18 MR. KLINE: I do not. Thank you.

19 CHAIRPERSON ANDERSON: Do you rest?

20 MR. KLINE: I do.

21 CHAIRPERSON ANDERSON: Do you need a
22 break to do closing? Or do the parties need a
23 break prior to closing? Or are they ready to go
24 to closing?

25 MR. KLINE: I'm ready.

1 MR. CELO: We're ready.

2 CHAIRPERSON ANDERSON: Go ahead, Mr.
3 Celso.

4 MR. CELO: Before I begin, I do
5 request to reserve time for rebuttal.

6 CHAIRPERSON ANDERSON: Yes, sir.

7 MR. CELO: Thank you.

8 CLOSING STATEMENT ON BEHALF OF THE GOVERNMENT

9 MR. CELO: Mr. Chair, Ladies and
10 Gentlemen of the Board, may it please the Board.

11 This case centers around what it means
12 to be a caterer. How is a caterer defined?
13 That's what we've been arguing about this entire
14 time, and that is what this case centers on.

15 A caterer is defined as "an entity,
16 partnership, person who" -- and I apologize; I'm
17 pulling it up now -- "who is principally engaged
18 in the processing, preparation, and Service of
19 food products which it has prepared, especially
20 for the customer, for an event, and the Service
21 of alcoholic beverage is incidental to the food
22 preparation and Service."

23 In this case, Flash Catering was not
24 operating as a caterer. They were operating to
25 run a continuously operating nightclub at a

1 brick-and-mortar location. They were not hired
2 for events. They were continuously running this
3 nightclub, and we have heard no significant
4 evidence to the contrary.

5 Certainly, Mr. Mottaghi challenged the
6 amount of days that they were operating, the
7 period of time, not the continuous nature of it.

8 Instead, what we have heard arguments
9 on is that the Licensee could not possibly know
10 that the Board was challenging their method of
11 operation; could not possibly know that the way
12 that they were operating this nightclub was in
13 violation of their caterer's license, that they
14 did not have notice.

15 You received a newspaper article that
16 supposedly shows they did not have notice,
17 despite that being for a very different set of
18 facts 13 years ago.

19 What notice did they have? Well, they
20 had multiple Show Cause Notices, three of them,
21 in fact. This exact charge for this exact
22 behavior was put forth in Case No. 22-251-00002
23 and 22-CMP-00018.

24 And the Licensee testified that he,
25 quote, "tried to cooperate with the law," that he

1 changed his operation. How did he do that? He
2 told you. He went out and got a Certificate of
3 Occupancy. Now, in that charge, he received a
4 warning about those prior cases. He also said
5 that he did nothing else; that he did not make
6 other changes.

7 Now, I didn't get to get into this
8 fully, but he was charged and accepted an OIC for
9 the method of his food preparation and the amount
10 of food and type of food that was sold. And yet,
11 he did testify that he made no changes to that
12 manner of operation, despite a finding of a
13 primary tier violation in each case.

14 He also was charged with operating
15 beyond the scope of his caterer's license because
16 of the continual nature of the operation of this
17 nightclub in a continuous event manner --
18 ongoing, with plans to continue for about a year.

19 He made no changes in his manner of
20 operation. He made no changes until the third
21 charge, when he started to get single-day liquor
22 license permits for his events. Typically, he
23 has not been charged since he started to get
24 individual single-day events because the manner
25 of operation was changed, because it was no

1 longer in violation of the Code.

2 Now, Attorney Kline has repeatedly
3 raised that there are no facts -- no facts --
4 that we cited whatsoever to say that this is
5 inappropriate use of a caterer's license. And
6 that's simply not true.

7 It is the continual, ongoing operation
8 of a nightclub day-in/day-out for a year
9 involving multiple bars, DJs, live events,
10 dancing, and doing so in continual operation in
11 that manner through the end of December 2022.
12 That is what was cited as a violation of the
13 caterer's license -- running a nightclub without
14 the caterer's license -- or without a nightclub
15 license; with the caterer's license.

16 And he was notified of this on
17 February 12th, 2022, by Investigator Puente; on
18 February 26th, 2022, by Investigator Puente.

19 He accepted responsibility for it by
20 signing the OIC on September 14th, 2022, and
21 then, he was told again by Investigator Puente on
22 October 21st, 2022. And only after that,
23 finally, after that, did he change his manner of
24 operation.

25 Why did they do it? Well, according

1 to the quote by Investigator Zollarcoffer, they
2 did it to make money and to stay relevant in the
3 business. And they intentionally continued to do
4 so through December because they were just
5 getting fined.

6 You know what? When Attorney Kline is
7 about to discuss a loophole in the system, well,
8 they found a loophole. They made a lot of money
9 over the course of that year, and they've paid
10 \$4,000 fines and whatever fine this Board issues
11 today. And that's it. I don't know how much
12 money they made, but I'm sure it was a good deal
13 and I'm sure it was a good loophole for them.

14 But let's consider why we require
15 different licenses. Why does this Board require
16 a nightclub to have a nightclub license? Well,
17 it requires it for safety. It requires it, so
18 that the public knows what it should do for a
19 protest hearing.

20 Does this Board expect and intend for
21 people unlicensed to operate nightclubs
22 continuously for a year while using somebody's
23 caterer's license as their manner of operation to
24 avoid protest hearings, to avoid public comment
25 in such a manner, for continuous operation? No,

1 protest hearings are part of opening new
2 nightclubs in the District, and nightclubs are
3 required to have a security plan. Why? Because
4 they are a uniquely dangerous environment if they
5 are not properly run and secure. Caterers don't
6 need to have a security plan.

7 As Attorney Kline mentioned earlier,
8 other people can operate in a manner similar to a
9 nightclub, but only if they get endorsements.
10 They need a live music endorsement. They need a
11 dancing endorsement.

12 Why do we require that? Just like we
13 feel like being bureaucrats? No. This Board
14 requires it, so that the public can comment, so
15 that protests can happen, and so that the Board
16 can ensure that these operations are occurring in
17 a licensed, safe manner.

18 By continuously operating a nightclub
19 with only a caterer's license, the Licensee
20 avoided all of the checks and balances expected
21 of this Board and of the District.

22 There are reasons for these licenses.
23 There are reasons that we don't just have a
24 single "do anything" license in this District.

25 And by flaunting the rules, by

1 knowingly continuously violating the rules for
2 months on end, the Licensee has spat in the face
3 of those safety precautions.

4 This is a situation in which this
5 Board must weigh the safety of the District, the
6 purpose of the license, the intent of the law.
7 And I submit to you that the Licensee knowingly
8 and dangerously violated that intent again and
9 again; and that this Board should not dismiss the
10 charge.

11 Instead, it should find the Licensee
12 liable and issue a fine that appropriately raises
13 the intentionality behind this ongoing violation.

14 Thank you and I reserve my time.

15 CHAIRPERSON ANDERSON: Thank you. Mr.
16 Kline?

17 MR. KLINE: Mr. Celo weaves a good
18 tale, however it seems to ignore the law and the
19 facts that have been proven in this case. He
20 would lead you to believe that this operation was
21 wholly dangerous. But lo and behold, if they got
22 a One-Day license it's fine. So this whole
23 notion and hysteria that somehow this Licensee is
24 evading the law, and avoiding the requirements
25 that are set forth for on-premise licensees --

1 apparently it's okay if you get a One-Day, but
2 it's not okay if you do it under a catering
3 license.

4 Now, let's first talk about the facts,
5 then we'll talk about the law. In terms of the
6 facts, there is no evidence that Flash Catering
7 ran a nightclub operation in this warehouse, with
8 any frequency, over a year. You heard Mr.
9 Mottaghi's testimony, which is unrebutted in
10 terms of what he did. There's lots of innuendo,
11 but oh, they're doing events three-to-five -- and
12 apparently they based it upon his brick and
13 mortar website.

14 You know what also they based it on --
15 Exhibit 14. Take a look. It's Exhibit 14 to the
16 Investigator's Report, apparently it's a web page
17 from Warehouse 2101. And it talks about this
18 space being available and being curated and
19 operated, not by Flash Catering, by Nu Androids.
20 That's not Flash Catering. The government is
21 confused as to what went on here, and what Mr.
22 Mottaghi's role, and what Flash Catering's role
23 was in the operations.

24 He testified, again unrebutted, that
25 he was responsible for the catering. If you look

1 at the certificate of occupancy that's attached
2 to the report, it's not issued to Flash Catering
3 or to Flash, or Mr. Mottaghi -- it's issued to a
4 separate entity. So the operation of the
5 warehouse was separate and apart, operated as an
6 event space. And this business, Flash Catering,
7 was brought in as a caterer.

8 Now, there's been lots of words and
9 lots of testimony, and there was even, in
10 closing, discussion about what the policy should
11 be, what the intent of the law should be. Well,
12 the first thing we have to deal with is the plain
13 language of the law. What's prescribed, what's
14 required -- that's what we have to look at, not
15 what we think the law should be.

16 And I have to correct Mr. Celo,
17 because he said the Board doesn't require
18 endorsements, because they're not needed. No,
19 the Board doesn't require endorsements, the Board
20 didn't pass the law -- the Council passed the
21 law. So it's the Council that determines what's
22 required, and then it's of course the Board's job
23 to interpret the law. But the Board has to
24 interpret the law as written, and apply the law
25 as written.

1 Now, even the investigator, on cross,
2 conceded, yeah, they found a loophole. Well,
3 what's a loophole? A loophole is something where
4 people may not like it, but it is in accordance
5 with the law. And the reason that we used the
6 article concerning the Grey Goose Mansion,
7 because that was exactly the case there. And Mr.
8 Celo says oh, it's completely different -- read
9 the article, you'll see it isn't different. They
10 were doing this Grey Goose vodka sponsored
11 mansion every weekend, the community was
12 concerned about it, and the Chair of the ABC
13 Board -- again, not binding upon you, doesn't
14 speak for the Board -- but said yeah, I don't
15 like it but they can do it.

16 The spokesperson for ABRA, now ABCA,
17 says they didn't break the law, and if they did
18 it somewhere else again they wouldn't be breaking
19 the law. Has there been any change in the law
20 since then? No, the only change that there's
21 been has been in the Office of Attorney General
22 where they decided that this case was worthy to
23 prosecute.

24 Now, let's talk about what the law
25 says, because that is what this case is about, is

1 what is in the statute and what the requirements
2 are. This Licensee is charged with violating DC
3 Code 2000.1, which is in the municipal
4 regulations, and relates to the operation of a
5 caterer. And we went through it before, but I
6 think it's important enough to go through it
7 again. Remember, they're charged with violating
8 2000.1 of 23 DCMR. That means you as the Board
9 have to find something in 2000.1 that they
10 violated.

11 Now, guess what's not in 2000.1,
12 continually operating a nightclub. That's not in
13 here. What's in here? It says -- and we did it
14 before but I think it's important to do it again.
15 The caterer's license to authorize the licensee
16 to sell, deliver, and serve alcoholic beverages
17 for consumption on the premises of a catered
18 event -- check. That's exactly what the
19 catering, the licensed caterer was doing at
20 which the licensee is also serving prepared food.

21 Well, there's no issue about that,
22 there's no allegation. And in fact Mr. Celo
23 would have you believe they didn't make any
24 changes from their previous operation. There
25 wasn't any suggestion here that they weren't

1 serving prepared food. So either the
2 investigators got it wrong the first time or
3 there was a change made, because they didn't
4 charge it the second time.

5 We go on in 2000.1, a caterer is the
6 business entity engaged principally in the
7 processing, preparation, and Service of food
8 products which it has prepared especially for the
9 customer of -- for the customer for an event.
10 Exactly what went on here, there's no allegation
11 to the contrary. And the Service of alcoholic
12 beverages is incidental to the food preparation
13 and Service. Now, there's been some discussion
14 over the years as to whether that incidental to
15 the business operations of the caterer or the
16 particular event. In this case it doesn't
17 matter, there's no allegation that the alcoholic
18 beverages were not incidental, no one said that.

19 And then lastly, a caterer's license
20 shall not be granted to, or maintained by,
21 entities which only serve snack items. Snack
22 items include, but are not limited to, potato
23 chips, popcorn, pretzels, nuts, cookies, and
24 candy -- that's it. So that's what they're
25 charge with violating. So which of these

1 provisions does the -- I've asked this, I asked
2 this before this case came before you, of the
3 government, I've asked it throughout this hearing
4 -- which of these provisions is it that they
5 violated? Because I can't figure it out.

6 Based on all the testimony that we've
7 heard, what I've heard is well, we don't like
8 what they did. They were continuously operating
9 a nightclub -- although, what they were doing
10 with these events, and I think this was
11 established by the testimony, is no different
12 than what they would be doing if there were
13 weddings being held or fundraisers, birthday
14 parties, any number of special events.

15 There's no allegation that this is any
16 different, the investigator reluctantly testified
17 that yeah, people might drink alcohol at
18 weddings, they might hear music, they might
19 dance. I think his experiences are a lot
20 different than mine, in terms of weddings --
21 maybe because I'm older and have been to a lot
22 more weddings -- but I think we all know that's
23 fairly common. And that's exactly what's alleged
24 went on here, is that people were dancing, they
25 were listening to music, they were having a good

1 time. Which is the same thing they would be
2 doing at a wedding, a birthday party, a
3 fundraiser.

4 But 2000.1 doesn't say it has to be a
5 wedding, doesn't say it has to be a fundraiser,
6 doesn't say that it has to be a birthday party.
7 It only says it has to be a catered event. And
8 the un rebutted testimony is that Flash Catering
9 was brought in by the operator of the warehouse
10 to do the catering.

11 Now, much is made about oh, he, like,
12 knew he was in violation. Yeah, he kept changing
13 course and saying okay, if I'm doing it wrong,
14 let me do it right, all right. And this whole
15 discussion about the OICs is offensive, because
16 we all know that offers in compromise are part of
17 this process so that things are more efficient,
18 so we don't go to hearing on every single case.
19 And the licensee makes decisions sometimes -- in
20 my experience, sometimes they didn't do anything
21 wrong, but you know what, cheaper to pay the
22 fine, than to pay me. And that's a fact of life.
23 I tell my clients all the time, the difference
24 between being right and proving it is called
25 legal fees.

1 And these people are in business, so
2 they make a business decision. Maybe Mr. Celo
3 doesn't like that, and they're branded with the
4 scarlet letter because they agreed to an offer in
5 compromise. But I hope that that's not the
6 position that this Board's going to take, in this
7 case or any other. Because again, as a lawyer
8 advising clients in the future, I would have to
9 think, really, twice about ever recommending
10 again that they do a staff settlement or enter
11 into an offer in compromise. Because a lawyer
12 like Mr. Celo will come along and say see, You're
13 a bad guy. Look what you did, you admitted it.
14 So you knew what you were doing, You're a
15 recidivist, it's terrible.

16 Now, in this case that's not even
17 true. Mr. Celo argues, well, they're all the
18 same. No, they're not all the same. In the
19 first two cases, there was something of grave
20 concern. And I know Mr. Short would raise it if
21 we went to hearing, which is the C of O was not
22 appropriate. And Mr. Mottaghi was like, you
23 know. So the fact that they were given a warning
24 for that, who cares, the case was resolved. And
25 in Mr. Mottaghi's mind that was the big issue.

1 Because, as Mr. Short points out, that
2 involves public safety. So yeah, that's what he
3 was concerned about. He was concerned about
4 public safety, warehouse needs to get the C of O
5 right, otherwise we're not going to do any more
6 events until they do -- they ultimately did. And
7 as far as he was concerned, the other issue
8 potentially being food -- which apparently wasn't
9 an issue going forward, because they weren't
10 charged with it again -- he made a change. And
11 then they can't come in again in October, and
12 they say no, you can't do it this way.

13 We don't agree that they can't do it
14 this way, for all the reasons that we've argued
15 today. But guess what Mr. Mottaghi did, he said
16 all right, then, fine. We'll just get One-Days.
17 Will that make you happy? And they said yes, so
18 he got One-Days. So this whole notion that he
19 just barreled on down the road, oblivious and
20 seemingly impervious to the requirements of ABCA
21 or the Board, is just woven out of whole cloth.
22 It's just simply not true, it's not supported by
23 the facts.

24 And let me talk about why this whole
25 notion of asking you to apply the law as written,

1 and not make it up as we go along, and not do 180
2 from what was done in the Grey Goose Mansion case
3 -- albeit 13 years ago. And that's because of
4 the case that I alluded to earlier, which relates
5 to the loitering and vagrancy law. And that
6 case, Papachristou v. City of Jacksonville at 405
7 US 156 (1972), he rolled on a situation that
8 we've talked about many times, which is loitering
9 and vagrancy.

10 And the Supreme Court said well, no,
11 we can't let this go on, because it's so vague
12 what's going to happen? Well, the government's
13 going to go after people they don't like, and let
14 the people that they don't have a problem with
15 go. And the police officers on the street will
16 use their discretion, they'll arrest people of a
17 certain race, they'll arrest people from a
18 certain neighborhood, and the rest of them they
19 won't fool with. That's why it's important that
20 we are a nation of laws, which means we don't
21 look at things in the present and look back and
22 say yeah, we don't like that, that's illegal.
23 You can't do that, because we don't like it.

24 Instead, what we do is we apply the
25 law as written. And in this case, the law as

1 written is 2000.1 and that's the only thing the
2 Licensee has been charged with. So if we start
3 hearing about 25 DC Code 113 and what have you,
4 he's not charged with that, and we're not on
5 notice that he's charged with that. The only
6 thing we're on noticed that he's charged with is
7 23 DCMR 2000.1 -- I went through with you what is
8 in there. And it's important to know what is not
9 in there, which are all the things that Mr. Celo
10 was arguing. Which is, well, but it looks like a
11 nightclub.

12 Okay, well, it doesn't say you do all
13 this, but if it looks like a nightclub you can't
14 do it. It doesn't say that. And in fact, the
15 ABC Board recognized that in 2010 and made public
16 statements -- there was a fact-finding hearing.
17 And I asked you not to rely on the public
18 statements in the news article, because I share,
19 and I've expressed it to this Board many times in
20 other cases, consternation about using press
21 clippings in a contested case.

22 It is not something I do lightly, I
23 don't think it's right. But in this case, when
24 the ABC Board says well, this is what it is and
25 there's nothing we can do about it. And the

1 spokesperson for the Agency says exactly the same
2 thing, she says exactly what the investigator
3 says, well, it's a loophole and -- and guess
4 what, if the Council wanted to close that
5 loophole in the last 13 years, they had ample
6 opportunity to do so. If the Board, the Board
7 with the assistance of the Agency, pushes omnibus
8 bill every two years -- if the Board thought it
9 was a loophole and wanted to close it, there were
10 plenty of opportunities.

11 So, if we don't like it then let's
12 change it. But don't punish people who complied
13 with the law as written and say yeah, we don't
14 like it. So, yeah, you may have complied with
15 the law but it still looks like you ran a
16 nightclub. You know, all this notion about, well
17 yeah, you need an entertainment endorsement.

18 Now, there's one other point, and I
19 wanted to make sure that I don't lose sight of
20 this. So the argument is that these places can
21 run, and they can be out of control, and there's
22 no check on them. Well, that's just not correct,
23 as a matter of law. And there is the provisions
24 in the code for what is called a catered site
25 protest.

1 So what happens is, if you have this
2 warehouse and it goes on, and there's events, and
3 they have a wedding every other weekend, or they
4 have the events that were run by Flash every
5 weekend or what have you. Then, under 23 DCMR
6 2008, the protestants -- who are the same
7 protestants that you see almost every week in
8 regular license proceedings -- ANC, group of
9 five, Chief of Police, and the others that are
10 authorized citizens incorporated citizens
11 associations -- they can protest the site and
12 say, yeah, we don't want this in our
13 neighborhood.

14 And guess what happened in Grey Goose,
15 guess what the end of the story is -- the
16 neighborhood protested the catered site. And
17 that's in your records. You'll find that, it's a
18 matter of your public records. So the system
19 worked. And the idea that these caters can go on
20 forever, as suggested by Mr. Celo, and there's no
21 controls on them, and they're operating outside
22 the law, it's just nonsense. It's not the way it
23 works, it's not what's in the law. There were
24 guardrails and there's a system in place.

25 Is it perfect, I don't know, I leave

1 that to you and I leave that to the Council.
2 But, if it's not perfect, the way to fix it is
3 not to punish people for when they've complied
4 with the law, it's to go change the law and say
5 we need more. And the Board has not been shy
6 about doing that when it's needed. And if it's
7 needed here, who knows, we may even, you know, in
8 my other -- wearing my other hat -- might even
9 support you doing it. But it's just not right.
10 And it is not only not right, it is
11 unconstitutional and a denial of due process to
12 announce a new standard -- particularly, when
13 it's not supported by the language -- that is
14 contrary to the announced policy of the Agency,
15 and at least the Chair of the ABC Board.

16 And Mr. Anderson, Chairman Anderson,
17 I respect that you say you don't speak for the
18 Board, but you know what, if you did talk to the
19 press -- and I know you don't make it habit of
20 doing that -- people don't know that, You're the
21 Chairman of the ABC Board. And when you say
22 something, people are going to listen. And if
23 you say it's okay then they're going to say well,
24 I guess it's okay. And if they get cited,
25 they're going to say wait, I don't understand,

1 the Chairman of the ABC Board said it was okay.

2 And You're going to say yeah, but I
3 wasn't speaking for the Board. No, You're not
4 going to do that. I mean, that's just -- it's
5 completely unfair. And fairness -- and you've
6 always been fair, and we -- mostly -- and we
7 appreciate that. I mean, it's important that
8 there be fairness. And you may not like it --
9 and sometimes I know that you see things and you
10 got to swallow hard and You're like, we don't
11 really like this but we're constrained by the
12 law. Maybe you like it here, maybe you don't.
13 If you don't, I would submit You're constrained
14 by the law, they didn't violate the law, there
15 shouldn't be any punishment.

16 If there is punishment -- well, let me
17 add one other thing and then I'll be done. This
18 would be a second primary tier, because there's
19 only one prior order with respect to a primary
20 tier violation. So this would only be a second,
21 and I just want to make sure that that's clear
22 for the record. Thank you, and thanks for your -
23 - thank you, departing Board members. And thank
24 you, staying Board members, for your attention
25 today and hearing us.

1 CHAIRPERSON ANDERSON: Thank you. Do
2 you wish to speak, Mr. Celso?

3 MR. CELO: I do.

4 CHAIRPERSON ANDERSON: Go ahead, sir.

5 MR. CELO: May it please the Board.
6 How could he possibly have been on notice that
7 his behavior was wrong? How could it be
8 possible? It could be that he accepted liability
9 for it twice before. Now, I keep bringing that
10 up and that's not because of a scarlet letter, as
11 Attorney Kline said. It's not because I think
12 he's a bad person, it's because it answers the
13 question. How could the Licensee know that what
14 he was doing was wrong, know that it was
15 violating the code? Because he was charged with
16 it twice, he accepted liability for it twice, he
17 paid fines for it twice. So yes -- yes, he knew.

18 Attorney Kline brought up a lot of
19 examples of things that are similar to nightclubs
20 in certain respects, that a caterer can do. But
21 one thing that was true of each and every one of
22 those were that they were events, single events.
23 If we look at 2000.1, what part of that was
24 violated? A caterer is a business entity engaged
25 principally in the processing, preparation, and

1 Service of food products which it has prepared
2 especially for the customer for an event. This
3 was not a caterer engaged in an event. This was
4 not Grey Goose Mansion where the caterer was
5 hired individually for each event, and those
6 events were not continuous, were not weekly, were
7 not the same night of the week.

8 In our case before us, we have
9 evidence showing that a caterers license was used
10 to operate a nightclub continuously and
11 consistently, throughout the course of a year.
12 And when asked are you going to stop, the answer
13 was nope, we're going to keep operating until the
14 end of February 2020 -- or, December 2022 when
15 the brick and mortar opens. That wasn't done for
16 the purpose of, we don't think we're wrong. That
17 was, no, we know we've been charged, we know
18 we're about to be charged again, but this is a
19 good business we're going to keep doing it until
20 we can open a brick and mortar facility.

21 They were not principally engaged in
22 the preparation of food, with alcohol being
23 incidental, for an event. This was a continuous
24 operation of a nightclub. And as Attorney Kline
25 pointed out, this Board's job is to interpret the

1 law as written. If a nightclub can be
2 continuously run under a caterers license, what
3 is the point of a nightclub license? If this is
4 set as precedent today, why would anyone come to
5 you and apply to go through the hoops to get the
6 nightclub license? Why would anyone go through
7 the process of putting together the security
8 plan, facing the protest hearings before they
9 open the establishment?

10 If this is a loophole that is an
11 ultimate loophole, and avoids any subject to
12 Board control, to the safety provisions we have
13 for the operation of nightclubs, then it's a
14 precedent that everyone is going to be taking up.
15 The fact of the matter is, we have a definition
16 of what caterers can do, and they are constrained
17 to work an event at a time. They do not get to
18 operate nightclubs continuously for a year.
19 That's what this case is about and that is why I
20 urge you to find a violation in this matter.
21 Thank you.

22 CHAIRPERSON ANDERSON: Thank you, Mr.
23 Celso. I just want to get some clarification, and
24 I'm not -- this is not pointing out that I'm
25 going to vote one way or the other. I'm just

1 looking at the investigative history and I'm
2 confused. So, Mr. Kline, so -- and I know we
3 discussed this, I just wanted to get some
4 clarification. For case number 22-CMP-00018 and
5 case number 22 251-00002, were these the two
6 cases that were in the OIC?

7 MR. KLINE: In the previous OIC, yeah.
8 Both of these cases were in the previous OIC.
9 There was one OIC, one order. And we talked
10 about earlier, that was a typo that was
11 apparently corrected. There was a typo in the
12 OIC and the Board corrected it in it's order,
13 which I missed, so I apologize. That dealt with
14 these two cases, numbers one and two on the
15 investigative report.

16 CHAIRPERSON ANDERSON: So if the Board
17 was to find this, this then would be a second
18 primary tier, is that what -- because, I just
19 want to make some --

20 (Simultaneous speaking.)

21 MR. KLINE: Yes.

22 CHAIRPERSON ANDERSON: Yeah, I just
23 want to make -- that at least I'm clear in my
24 mind, whatever decision is made, that we'll know
25 where we are in the count.

1 MR. KLINE: Yeah. I don't think
2 there's any dispute about that. I would ask the
3 Board to ask Mr. Celso, but I don't think there's
4 any dispute about that.

5 CHAIRPERSON ANDERSON: I'm looking at
6 paperwork that says something otherwise, that's
7 why -- I'm looking at the case history, that's
8 why I'm just trying to get some clarification, so
9 that's why.

10 MR. CELO: As I understand the
11 counting scheme, Mr. Chair, because both previous
12 primary tier violations were resolved before
13 these charges were -- well, before the violation
14 in this case occurred -- that the Board could
15 count this as the third. That's my understanding
16 of the counting scheme, but certainly I would
17 defer to the Board and its determination.

18 (Simultaneous speaking.)

19 CHAIRPERSON ANDERSON: Mr. Kline, I
20 will I was just asking a question because I
21 know you made it a point by saying it's second.
22 I saw something that said something else.
23 Whatever decision that's made by the Board, we
24 will consult with Legal. And this is Donovan
25 Anderson looking at a document and seeing

1 something. Whatever decision is made by the
2 Board, the decision -- the Board makes a decision
3 which is consistent with the law, and Legal
4 provides us -- our legal office will provide us -
5 - will clarify the law to us, and will clarify
6 the count to us to ensure that whatever decision
7 that we make is supported by the law in the
8 statute, okay? I just was just --

9 MR. KLINE: Mr. Chairman, you put me
10 in a very difficult position. What is that

11 (Simultaneous speaking.)

12 CHAIRPERSON ANDERSON: Mr. Kline, you
13 don't

14 MR. KLINE: What is that document?
15 We're in a contested case hearing. If we're
16 looking at something else, I want it on the
17 record

18 (Simultaneous speaking.)

19 CHAIRPERSON ANDERSON: No, I'm looking
20 at the investigative history, Mr. Kline. And so,
21 the investigative history that I have it appears
22 to me it's the third. And that's why I was
23 asking you -- I'm looking at the investigative
24 history, that's why I was asking you were these
25 specifically two cases that were part of the OIC?

1 Because if you look at the investigative

2 (Simultaneous speaking.)

3 MR. KLINE: If I can clarify, if you
4 look at the investigative history, specifically
5 charges one and two, they both reference Board
6 Order Number 2022-663, and that's where they were
7 resolved.

8 CHAIRPERSON ANDERSON: And that's --
9 as I said before, just looking at investigative
10 history, it says three, it would appear to be
11 three. But that's why I'd asked the
12 clarification, that both cases were part of a
13 Board Order, an OIC, so therefore all right. I
14 just want to -- because I know in your closing
15 you said that this would be two, so I just want
16 to be -- but that no way indicates how I'm
17 leaning towards this case, okay? All right --

18 MR. KLINE: Got it, thank you.

19 CHAIRPERSON ANDERSON: Thank you. The
20 case is now closed. I guess let me ask the
21 parties, do the parties wish to do proposed
22 findings of fact and conclusions of law, or do
23 they wish to waive that?

24 MR. CELO: Government's willing to
25 rest on oral argument.

1 MR. KLINE: Same with the Licensee.

2 CHAIRPERSON ANDERSON: Okay, thank
3 you. The Board then will issue a decision within
4 90 days.

5 As Chairperson of the Alcoholic
6 Beverage and Cannabis Board for the District of
7 Columbia, in accordance with DC Official Code
8 Section 2-575 of the Open Meetings Act, I move
9 that the ABC Board hold a closed meeting for the
10 purpose of seeking legal advice from our counsel
11 on Case Number 22-CMP-000084, Flash Catering,
12 pursuant to DC Official Code Section 2-
13 575(b)(4)(a) of the Open Meetings Act. And
14 deliberating upon Case Number 22-CMP-00084, Flash
15 Catering for the reasons cited in DC Official
16 Code Section 2-575(b)(13) of the Open Meetings
17 Act. Is there a second?

18 MEMBER CATO: Bobby Cato seconds.

19 CHAIRPERSON ANDERSON: Mr. Cato has
20 second -- Mr. Cato and Ms. Hansen has second the
21 motion, we'll now have a roll call vote. Mr.
22 Short?

23 MEMBER SHORT: Mr. Short, I agree

24 CHAIRPERSON ANDERSON: Mr. Cato?

25 MEMBER CATO: Bobby Cato, I agree.

1 CHAIRPERSON ANDERSON: Ms. Hansen?

2 (No audible response.)

3 CHAIRPERSON ANDERSON: Mr. Grandis?

4 MEMBER GRANDIS: Edward Grandis, I
5 agree.

6 CHAIRPERSON ANDERSON: And Mr.
7 Anderson, I agree. As it appears that the motion
8 has passed, I hereby give notice that ABC Board
9 will recess this proceeding to hold a closed
10 meeting, pursuant to Section 2-575 of the Open
11 Meetings Act. Thank you for your presentation
12 today, have a great day.

13 MR. CELO: Thank you all. And thank
14 you again to the departing Board members, I'm
15 glad we gave you an exciting one to go out on.

16 MR. KLINE: Thank you.

17 CHAIRPERSON ANDERSON: Okay, thank
18 you.

19 (Whereupon, the above-entitled matter
20 went off the record at 5:27 p.m.)
21
22
23
24
25

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In the matter of: Flash Catering

Before: DC ABCA

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