

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
:
Kat, LLC :
t/a Cloud Restaurant & :
Lounge Sports Bar :
1919 9th Street NW : Show Cause
Retailer CT - ANC 1B : Hearing
License No. 93572 :
Case #22-251-00014 :
:
(Allowed Establishment :
to be Used for :
Unlawful Purposes, :
Increase in Occupancy :
Without Board Approval) :
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Wednesday
November 9, 2022

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

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

ALSO PRESENT:
JOSE ORELLANA, DC ABRA Staff
TESFIT KIFLU, Applicant
RICHARD BIANCO, Applicant Counsel
ANTHONY CELO, Assistant Attorney General

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

2 (1:34 p.m.)

3 CHAIRPERSON ANDERSON: Good afternoon.

4 We're on the record. Good afternoon, everyone
5 and welcome to the afternoon session of the ABC
6 Board. My name is Donovan Anderson. I'm
7 Chairman of the Board. Joining me this afternoon
8 are three other board members; Mr. Bobby Cato who
9 should be joining us shortly, Ms. Rafi Crockett,
10 and Ms. Jeni Hansen. The Board has four members
11 in attendance and we have a quorum. Just as an
12 FYI for the public, three members of the Board
13 constitutes a quorum. So any time we have three
14 members on the board, we can meet and conduct
15 business.

16 Before we get underway with this
17 afternoon's hearing calendar, I need to make a
18 few instructions very clear so that the conduct
19 of these hearings is understood by everyone. We
20 have four cases scheduled for this afternoon.
21 Once a case is called, I will take a moment for
22 our IT specialist to elevate the rights for each
23 party to enable their camera and microphone. And
24 then and only then will you have the ability to
25 enable your equipment. If your case has not been

1 heard, you will remain mute and your camera will
2 be disabled. At the conclusion of each case, the
3 parties will have the option to leave. If a
4 party chooses to stay, all cameras and
5 microphones for the concluded case will be
6 disabled. Should you have any questions or
7 require technical assistance through the hearing,
8 please submit that using the question and answer
9 feature.

10 The first case on our afternoon
11 calendar, it's a show-cause hearing. And it is
12 Case No. 22-251-00014, Cloud Restaurant and
13 Lounge Sports Bar, License No. 93572. Mr.
14 Orellana, can you please elevate the rights of
15 the parties in this case please?

16 MR. ORELLANA: Richard Bianco, your
17 access has been elevated. Anthony Celo, your
18 access has been elevated. That is all, Chairman.

19 CHAIRPERSON ANDERSON: Good afternoon.
20 Let's start with the Government to introduce
21 himself for the record please.

22 MR. CELO: Good afternoon, Mr. Chair.
23 Assistant Attorney General, Anthony Celo, A-N-T-
24 H-O-N-Y C-E-L-O on behalf of the District today.

25 CHAIRPERSON ANDERSON: Good afternoon,

1 Mr. Celo. Mr. Bianco, can you introduce yourself
2 for the record please?

3 MR. BIANCO: Yes, Mr. Chair. Good
4 afternoon. Richard Bianco, R-I-C-H-A-R-D B-I-A-
5 N-C-O on behalf of the Respondent in this case,
6 which is Cloud Lounge. Sitting next to me, I
7 have Tesfit Kiflu. He is the owner of the
8 Respondent establishment. And I can have him
9 spell his name.

10 CHAIRPERSON ANDERSON: Yes. Please have him
11 identify himself for the record and spell and
12 state his name please.

13 MR. KIFLU: Okay, Mr. Chair. My name
14 is Tesfit Kiflu, which is T-E-S-F-I-T and last
15 name is Kiflu, K-I-F-L-U.

16 CHAIRPERSON ANDERSON: Good afternoon,
17 sir. All right, this matter -- Thank you. This
18 matter is scheduled for a show-cause hearing.
19 Mr. Celo, are there any preliminary matters in
20 this case?

21 MR. CELO: Yes, Mr. Chair. It is my
22 understanding that the parties have agreed to a
23 significant stipulation in this case,
24 specifically we have a stipulation as to all the
25 facts contained within the investigative report.

1 And I would note just for the record that as a
2 matter of law, the investigative report including
3 all exhibits are incorporated into the record.

4 CHAIRPERSON ANDERSON: Well, that's
5 fine. But at this juncture -- so if there are
6 stipulations, then I would ask for someone to put
7 on the record what the stipulations are. So if
8 there's an agreement on the stipulations -- there
9 is a stipulation on the facts. So the purpose of
10 this hearing then would be -- what's the purpose
11 of the hearing then?

12 MR. CELO: The questions that remain
13 are purely legal questions. We do have a dispute
14 as to how the number of violations should be
15 counted, which we would have to argue. And then
16 of course there is the question of the
17 appropriate penalty for the violations which are
18 stipulated to, which would be a Board
19 determination.

20 CHAIRPERSON ANDERSON: Then I would
21 ask that if there are stipulations, then I would
22 for, I guess yourself to put the stipulations on
23 the record so at the least the Board will know
24 what it is that the parties have stipulated to.
25 And then the Government would present -- the

1 Government would present its arguments and then
2 the Licensee would present its argument. And
3 since the Government has the burden, I'll give
4 the Government the opportunity to have the last
5 word if they so choose.

6 MR. CELO: Yes, Mr. Chair. Just so I
7 understand, because the stipulation is to the
8 investigative report and the accuracy therein, do
9 you want me to simply read the investigative
10 report in its entirety?

11 CHAIRPERSON ANDERSON: So you're
12 basically asking the Board to -- I guess what I'm
13 trying to find out -- you're asking -- you're
14 sending the Board back to -- I think -- I guess
15 what I'm trying to find out is how do I create a
16 record? So if I don't put -- and so you can help
17 me. I need to make sure that I create a record.
18 So I know that --

19 MR. CELO: Mr. Chair, if I may? My
20 understanding of the proper procedure here is
21 that because the investigative report is an
22 exhibit in the record, the facts contained
23 therein are incorporated onto the record.
24 They're not verbally incorporated, but they are
25 evidence in the record that can be relied upon

1 and are in the public eye. I think that we could
2 simply verbally assert that the only dispute is
3 like I said, the legal dispute over which prior
4 cases should or should not count as prior
5 violations. But I am happy to read the facts
6 that are stipulated to. It would just be reading
7 the investigative report, which I'm capable of
8 doing.

9 MR. BIANCO: Mr. Chair, let me make
10 this suggestion. The report in this case is not
11 as long as we would typically see. The actual
12 narrative looks like it's maybe a page at most.
13 So if it assists the Board, it might make sense
14 to either read it in its entirety or to parse out
15 the relevant facts here, which I think the only -
16 - or most pertinent meaningful fact is
17 essentially that there were 170 patrons in the
18 establishment that has an occupancy certificate
19 for 122. And we agree and stipulate that that is
20 what happened. And there are some additional
21 details in the report, but I think really the
22 main thing for the Board's consideration is that
23 fact. And Mr. Celo can correct me if I'm wrong.

24 MR. CELO: I do think that based on
25 the charges, there are several other relevant

1 facts that would need to be included. At this
2 point, I would just propose reading the report
3 into the record to make sure there are no
4 questions.

5 CHAIRPERSON ANDERSON: You're saying
6 the report is a page? Let me find the report.

7 MR. CELO: The report is about a page
8 and a half.

9 CHAIRPERSON ANDERSON: I just think
10 that -- I know that the, when we write a
11 decision, we're going to -- of course, we have to
12 read the report to make the decision because if
13 we're not -- And I'm aware that the case report
14 is a part of the record by statute. But I'm just
15 trying to - We have a court reporter, so I just
16 want to have -- create some type of public
17 record. And so what I'll ask -- let me find the
18 report. Okay. I don't seem to have access to
19 the case report right now. Oh, yes I do. Give
20 me a --

21 When I'm reading the report, this
22 report was taking me to -- what I'll ask, just
23 summarize if you're able to summarize the report.

24 You don't necessarily have to read the whole
25 report. Just summarize the report. The Board

1 will also take administrative notice of our own
2 documents, and so in making a decision, the Board
3 will -- I'll ensure that we all review the case
4 report, so we can make an appropriate decision.
5 So I'll just ask that you summarize the report
6 and then we can go straight to the arguments that
7 are being made.

8 MR. CELO: Yes, Mr. Chair. May it
9 please the Court? In summary, this case involves
10 an ABRA investigation by Mark Ruiz who determined
11 that on Sunday, April 3rd, 2022, an assault
12 occurred at Cloud Restaurant and Lounge Sports
13 Bar in which one male patron assaulted another
14 male patron within the establishment. It was
15 found that the establishment was in violation of
16 DC Code 25-762-V1 and 25-823-A2. Specifically
17 that the establishment engaged in a method of
18 operation conducive to and conducive of
19 disorderly conduct and increased their occupancy
20 without ABC Board approval. This determination
21 was made following a review of the police report
22 and surveillance video, which is also
23 incorporated into the record.

24 Specifically, the establishment was
25 approximately 40 percent over capacity with more

1 than 170 patrons in the establishment. The video
2 shows that it was (audio interference). The
3 findings also include that numerous patrons were
4 rolling marijuana cigarettes in full view of
5 security personnel, but no effort was made to
6 intervene or to stop this. As a result of the
7 conditions that were in the establishment at the
8 time, it enabled the fight to break out. And the
9 fight included physical assaults and a bottle
10 being thrown and smashing against the wall. The
11 establishment was then vacated. And when MPD did
12 evacuate the establishment, 173 patrons were
13 counted on video exiting the establishment.
14 During the fight, it did expand to the point
15 where multiple patrons were fighting one another.
16 And I would note that security officers did
17 properly notify MPD of the situation and MPD did
18 arrive at the scene.

19 CHAIRPERSON ANDERSON: All right. So
20 as you said, the gist of this case is that the
21 video showed that there were approximately --
22 there were 170 patrons in the establishment and
23 it was 40 percent over capacity. So what is the
24 approved capacity for this establishment?

25 MR. CELO: The maximum capacity was

1 122 patrons and 173 were in attendance.

2 CHAIRPERSON ANDERSON: All right. Go
3 ahead, sir. You, you can present the format that
4 you, you think it's appropriate for us to make a
5 decision.

6 MR. CELO: I would suggest proceeding
7 directly to argument. I don't believe either
8 side intends to present evidence given the
9 stipulation.

10 CHAIRPERSON ANDERSON: All right. Mr.
11 Bianco, is that correct?

12 MR. BIANCO: That's correct. Although
13 I don't think Mr. Celso's initial remarks were
14 limited to facts. There were certainly
15 conclusions and argument in there. So we
16 certainly stipulate to the facts in the report,
17 but not legal conclusions such as we admit
18 liability for Charge 1. That is a matter for the
19 Board to determine. We do acknowledge that there
20 were 170 -- roughly 170 patrons. We do
21 acknowledge that there were 122 permitted on the
22 Certificate of Occupancy. But the speculation,
23 conjecture, argument, assumption are not facts
24 that we're stipulating to. We'll stipulate the
25 facts that are contained in the report. If it

1 aids the Board for me to put specifically what I
2 believe those to be on the record -- and Mr. Celo
3 can correct me if I'm wrong, that might be the
4 best way forward.

5 MR. CELO: And if I may, I do
6 apologize if I was inartful with any of my
7 language. Just to be very clear, the statement I
8 made as to legal conclusions was citing the
9 determination made by the investigator. I was
10 not suggesting that the establishment was
11 agreeing with that determination, merely that the
12 investigative report contained the determinations
13 of the investigator. So if I was inartful in my
14 language, I do apologize.

15 MR. BIANCO: And I agree that that was
16 the determination of the investigator. That's
17 what the investigator says. That's what the
18 report says. We just don't agree that that is a
19 fact.

20 CHAIRPERSON ANDERSON: All right,
21 that's fine.

22 MR. BIANCO: So other than that, I
23 think yes, proceeding with legal arguments on the
24 open points. And as I discussed with Mr. Celo
25 yesterday, because this is almost -- yeah, it's

1 completely a legal issue, I will be requesting
2 proposed findings of fact and conclusions of law
3 at the end of today's hearing.

4 CHAIRPERSON ANDERSON: That's fine.
5 Go ahead, Mr. Celo.

6 MR. CELO: Thank you, Mr. Chair. May
7 it please the Board? Ladies and gentlemen of the
8 Board, today the facts are not in dispute as you
9 have you just heard. You are being asked to make
10 two determinations -- well, three determinations.
11 I apologize. Number one, whether the facts meet
12 the standards of the charges alleged. Number
13 two, if that is the case, the number of
14 violations that this establishment has had. Both
15 of the charges as you will hear are primary tier
16 violations. And number three, of course the
17 extent of any penalty that would be deemed
18 appropriate.

19 I just summarized the facts, but in
20 brief, brief recap, the establishment did allow
21 disorderly conduct to occur in two ways. Number
22 one, by operating significantly over capacity --
23 40 percent over capacity by having people jammed
24 in shoulder to shoulder as is clearly visible
25 through the video, which is part of the record

1 and I encourage you to watch should you have any
2 questions or concerns about that. They
3 dramatically increased the likelihood that a
4 fight would occur. They operated in a way that
5 was conducive to the disorderly conduct of the
6 fight breaking out and the patrons being injured.

7 Number two, however, they operated in
8 a way to allow disorderly conduct when as seen on
9 the video, numerous patrons were rolling and
10 smoking marijuana cigarettes in full view of
11 security personnel and no one intervened to stop
12 that situation. That in and of itself is a
13 violation of regulation. And that is operating
14 in a way that permits disorderly conduct.

15 Therefore I believe that the facts
16 clearly demonstrate that both of the charges
17 which were made in this case have been met. And
18 in fact that Cloud Lounge is liable for both
19 Charge 1 and Charge 2; they increased occupancy
20 and they allowed the establishment to be used for
21 disorderly purpose.

22 The second question before the Board
23 and the second dispute, which I anticipate my
24 respective colleague to raise is the question of
25 which number violation is this incident? The

1 District contends that this is the third primary
2 tier violation for each charge within the
3 relevant time period, within three years. (Audio
4 interference) issue are in the investigative
5 history, but they are Case No. 20-CIT-00310 and
6 22-251-0007 -- maybe 00007. I do not believe
7 that there is a question as to the first.

8 The second case, 31422 case involved
9 a homicide that took place. The Board in that
10 case requested a summary suspension. The summary
11 suspension was issued. The matter was resolved
12 when the Board approved an OIC in lieu of
13 hearing. That OIC resolved not just the summary
14 suspension, but the underlying -- the penalty for
15 the underlying charges in that case.

16 Specifically it required a revision to the
17 security plan with extensive specifics required
18 for what that revision would entail. It required
19 ensuring the functionality of security cameras,
20 which at the time were nonfunctional. It
21 instituted a fine of \$2,000 and required a
22 compliance walk-through. The suspension was
23 lifted upon successful completion of all of the
24 OIC terms and Cloud Lounge again began operation.

25 I anticipate that the argument of

1 Cloud Lounge will be that this should not count
2 as a violation because they never admitted
3 liability and because no show cause hearing ever
4 took place. These arguments are incorrect.
5 First, while the District acknowledges that for
6 civil purposes, Cloud Lounge did not admit
7 liability in this case, there was a finding and a
8 determination of liability. And by entering into
9 the OIC, the Board found that they were liable
10 for the charges. They did not admit it, but that
11 still means it is counted because it was still a
12 finding of liability before this Board.

13 Secondly, as to the question of --
14 procedural question that no show cause ever took
15 place in this hearing, that is because the OIC
16 which resolved the summary suspension did more
17 than simply resolve the summary suspension. It
18 was a universal OIC, which resolved the
19 underlying charges. Therefore, not only was no
20 show cause hearing necessary, it would have been
21 inappropriate to hold the show cause hearing as
22 that would have brought double jeopardy concerns
23 because we would be bringing a show cause hearing
24 for a matter that was already resolved and
25 already negotiated and settled through an OIC.

1 In this case, we are dealing with the
2 third violation because that summary suspension
3 matter was resolved through an OIC, which
4 accounted for the underlying charges and because
5 there was a finding of liability for Cloud
6 Lounge.

7 That brings us to the third and final
8 consideration, which is the extent to which a
9 penalty is appropriate. The District does
10 believe that a fine is appropriate in this
11 matter. The facility was operating extensively
12 over capacity -- again, 40 percent over capacity.
13 It was people packed in like sardines and the
14 circumstances that led to the fight were
15 inevitable. They were easily preventable. And
16 it very much Cloud Lounge's responsibility that
17 that fight took place, that disorderly conduct
18 occurred on their premises. Therefore, the
19 District request finding of liability on both
20 charges and the appropriate penalty for a third
21 violation on both counts. And with that, I
22 reserve time for rebuttal. Thank you.

23 CHAIRPERSON ANDERSON: Mr. Bianco.

24 MR. BIANCO: Thank you, Mr. Chair. On
25 behalf of the Applicant, we are here today for a

1 show cause hearing on two charges. Charge one,
2 that an establishment was being operated for a
3 disorderly purpose and charge two, that occupancy
4 was increased without approval of the Board.
5 According to the charging document, the
6 information -- the underlying information or
7 facts that they claim support these charges are
8 for -- are the same. For charge two, that there
9 were approximately 170 -- they say 173
10 individuals in the establishment, which is only
11 allowed to have 122 individuals. And we
12 acknowledge that that is the case.

13 For the second charge, which is the
14 disorderly purpose charge, it's based on the same
15 facts. As to the argument about marijuana
16 cigarettes being smoked in the establishment,
17 that's not part of the case. It's not in the
18 charging documents. It's not before the Board.
19 Not to mention that there's no facts cited in the
20 investigative report indicating that anything
21 being smoked was in fact marijuana. There is
22 some speculation as to that fact, but there
23 certainly is no actual evidence. Were there
24 people smoking on the video? There were. Why
25 was that not charged? I don't know. I can only

1 speculate. And what I would speculate is that
2 because this Board does not regulate smoking. So
3 aside it from not being charged, I think there is
4 a significant legal question as to whether the
5 Board could even consider it if in fact it was
6 charged.

7 The second thing I would like to
8 discuss briefly is this disorderly purpose
9 charge. And there's more to it than simply
10 saying, well, they were over occupancy and
11 therefore it was a disorderly purpose. There is
12 more that the Government has to prove that they
13 haven't and can't in this case. Specifically,
14 using the words of the Director of the Agency, a
15 Licensee is not responsible for a single incident
16 of assault or violence where there is not a
17 demonstrable connection between the incident and
18 the establishment's operation. And that quote
19 comes from a Court of Appeals case 1215 CT, LLC
20 versus DC ABC Board 213A Third 605-DC-2019.

21 Here, what the video shows and the
22 relevant video, which is attached to the
23 investigative report as or identified by OAG as
24 Exhibit 2E, which shows Camera 10 at 1:54 a.m.
25 and 23 seconds. And as Mr. Celo encouraged, I

1 hope the Board will watch what occurs at that
2 point and at that location, which is the victim
3 walking unimpeded through a path towards the exit
4 of the establishment. And from the left-hand
5 side of the screen, the assailant runs up on him
6 and attacks him from behind.

7 Now I'm not sure how the District
8 argues that such an attack that the Board will
9 see on the video, is in any way correlated to
10 overcrowding. But it seems to me that both in
11 the report and the District's argument, their
12 assumption is that overcrowding equals fights.
13 But they have to do more than just say that there
14 were too many people in the establishment;
15 therefore this fight occurred. They can't do
16 that in this case based on the evidence that is
17 on the record.

18 Shifting your attention now to the
19 count of violations. I think Mr. Celo in broad
20 strokes has the dispute right. What we're
21 arguing over is whether the OIC resolving the
22 summary suspension in Case No. 2022-CMP-0007
23 counts for today's purposes as a violation. If
24 it does count, the violation in this case would
25 be the third. And if it does not count, the

1 violation in today's case would be the second,
2 which makes a significant difference in terms of
3 the penalty.

4 We believe that the resolution of the
5 summary suspension case was not a finding of
6 violation by the Board and we think it's pretty
7 clear. Here is what we say in support of our
8 position. Number one, the OIC on its face says
9 the Respondent does not admit liability. But
10 perhaps more importantly, other than not
11 admitting liability, we don't admit to any facts.
12 There's nothing in the OIC acknowledging in any
13 way, shape, or form any facts upon which a
14 violation could even be found. All we
15 acknowledge in the OIC is receipt of service of
16 the summary suspension notice and that we were
17 giving up the opportunity to cross examine
18 witnesses and put on evidence with respect to the
19 summary suspension.

20 Another important point is that in
21 Case 0007, the establishment has not been charged
22 with any violation of the alcohol laws. If we
23 look at the regulations, they give us, I think,
24 some insight into what needs to happen in order
25 for a violation to take place. Specifically 23-

1 DCMR-808.3 states that the computation of prior
2 adjudicated cases whose dates of adjudication
3 fall within the applicable review period count.
4 So what we're dealing with is a determination of
5 a date of adjudication.

6 The very next section, point 4B says,
7 the date of adjudication shall be the date that
8 the Board issues a final written order finding
9 liability. That didn't happen. There was no
10 finding written order making a finding of
11 liability. Moreover, it could not have happened
12 because the issue of liability was not even
13 before the Board. Again, looking to the
14 regulations. 23-DCMR-611.1, the Board must serve
15 the Licensee notice of the allegations against
16 them 30 days prior to a hearing. It didn't
17 happen. It did not happen. No notice was given
18 and in the OIC, no notice was waived.

19 1611.4, the Board shall make its
20 findings of fact based upon the evidence that has
21 been presented to it. Here, no evidence was
22 presented. The Licensee admitted to no facts.
23 The Licensee admitted to no violations. And
24 there were no findings of facts as would have
25 been required by the Administrative Procedures

1 Act to find that a violation took place. No
2 charges have been levied in Case No. 0007. There
3 was no show-cause notice. And what I think is
4 significant about that and what I think the
5 Boards should consider is the legal standard.
6 It's different.

7 So the legal standard justifying a
8 summary suspension deals with danger to the
9 public regardless of whether it was a violation
10 of the alcohol laws. Maybe conduct is a
11 violation, maybe it isn't. It deals with
12 dangerousness only and not liability. And
13 whether or not to lift a summary suspension, all
14 that needs to be shown is that the establishment
15 can re-open safely. And as the Board is well
16 aware, frequently to give the Board a level of
17 comfort requires conditions. And those
18 conditions aren't necessarily punitive
19 conditions. Those conditions are supposed to be
20 imposed so that the establishment in the Board's
21 estimation can operate safely.

22 Now that is a very different standard
23 from what needs to be shown for a violation under
24 a show cause. Specifically in a show cause, the
25 Government has to show by substantial evidence on

1 the record that an alcohol law has been violated.
2 And as an aside, in that case, they can't, which
3 is the reason why we would not agree to any
4 liability. There is nothing that happened in
5 that situation that could have conveyed
6 liability. What happened was a tragedy. But it
7 was not a tragedy in any way caused or that my
8 client could have in any way prevented. In fact,
9 on the evening in question, they were operating
10 in a manner that was above and beyond --

11 (Simultaneous speaking.)

12 MR. CELO: Objection.

13 MR. BIANCO: -- called for in their
14 agreement.

15 CHAIRPERSON ANDERSON: Hold on, Mr.
16 Celso. He's closing and so I know this is a
17 little bit different. So he's closing, so I'm
18 not going to -- I'm not going to allow any
19 objections because it's closing. You'll get an
20 opportunity, Mr. Celso to clarify the record if
21 you -- if you so desire.

22 MR. BIANCO: And I think in briefing,
23 it will be important to ask the Board to take
24 judicial notice of the records in Case 0007. And
25 the parties will have the opportunity to make

1 whatever argument they like about the facts of
2 that case.

3 In closing briefly on the issue of
4 penalty, it's our contention here that there is
5 one violation. And we're not trying to hide from
6 that. The establishment was over occupancy.
7 We're not putting the Government to their proof
8 on it and hoping for the best. It's a fact. And
9 you know, there's going to be some sanction based
10 on that violation. And we ask number one, that
11 it be the only violation. And number two, that
12 the minimum penalty be imposed. And we think
13 it's important for the Board to consider as set
14 forth in the investigative report that once this
15 attack -- once this attack occurred, the
16 establishment's security took appropriate
17 measures and handled the incident correctly,
18 which minimized any harm. And as noted in the
19 report, there were no injuries. And based on
20 those facts, we ask that the Board impose the
21 minimum penalty for one primary tier violation.
22 Thank you.

23 CHAIRPERSON ANDERSON: Thanks. Mr.
24 Celso.

25 MR. CELO: Thank you. May it please

1 the Board? I would like to start with the issue
2 of the disorderly purpose. As you just heard,
3 opposing counsel seeks to suggest that there is
4 only one potential action that could be
5 considered or construed as disorderly -- as a
6 disorderly purpose before the Board. As you
7 heard, he frames it entirely around the question
8 of a single assault from one patron to the other.
9 That is not the contention, nor interpretation of
10 the Board. Beginning with the disorderly question
11 of the marijuana cigarettes. Attorney Bianco
12 argued that this never came up in the charging
13 documents and therefore cannot be argued here and
14 now. I respectfully disagree.

15 Reading from the show cause notice in
16 the third paragraph of Charge 1, it does state
17 specifically that from approximately 1:30 to 1:50
18 a.m., he, Investigator Ruiz, observed multiple
19 patrons rolling what appears to be marijuana
20 cigarettes and smoking them freely near security
21 guards without intervention by staff or security.
22 It's in the charging document. It is also in the
23 show cause notice where he specifies that this
24 can be seen on cameras 1, 7, and 13 at that 1:33
25 to 1:50 timeframe. So that issue is open. It is

1 live. It was charged. It is part of disorderly
2 purpose. And the video clearly demonstrates that
3 the individuals are smoking these marijuana
4 cigarettes in full view of security without
5 intervention.

6 Secondly, the fight is not simply a
7 question of two individuals fighting each other.
8 Again, I refer to the investigative report, which
9 has been stipulated to. Specifically on Page 2
10 in the second bold section where it cites to the
11 camera and to what we can see on video on cameras
12 10 and 13 between 1:50 and 2:08 a.m., a male
13 patron physically assaults another male patron
14 from behind as we've discussed. Security
15 intervenes. However, security is unable to
16 immediately remove the aggressor as he is hiding
17 within the crowd. Because that establishment was
18 so drastically overcrowded, this aggressor was
19 able to hide for a significant period of time
20 within the crowd, within the bodies. Could not
21 be located. Could not be identified by security.

22 What happened at that point? Multiple
23 patrons became unruly. A patron throws a bottle
24 across the room, hitting a wall, just missing
25 another patron. A fight commences involving

1 multiple individuals and that fight spills out.
2 That is what happened because this establishment
3 was overcrowded. It's not just one incident of
4 one patron and another patron engaging in a
5 fight. It is the aftermath.

6 Because this establishment was so
7 overcrowded, they couldn't find the aggressor.
8 He was able to just duck down and hide in the
9 crowd. Because the establishment was so
10 overcrowded, the fight spilled out. The people
11 nearby who were pushed and shoved because they
12 were crammed together so tightly, they started
13 fighting. A bottle was thrown and nearly hit
14 somebody in the head before it shattered against
15 the wall. The overcrowding was a direct result -
16 - direct cause of the disorderly conduct that
17 occurred in that establishment on that night.
18 Therefore, that charge is absolutely appropriate.

19 Lastly, I want to get back to the
20 question of the previous OIC and the disclaiming
21 of liability. When we look at what the purpose
22 is of disclaiming liability in these contexts,
23 the purpose is generally speaking to avoid
24 admitting liability for future civil litigation.
25 Because as we know, an admission of liability in

1 this context would be admissible against the
2 party in a civil lawsuit. It does not mean that
3 no finding of fact occurred. It does not mean
4 that no finding of liability occurred. It just
5 means that they did not admit to liability.

6 I would draw the analogy to the
7 criminal context to an Alford or no contest plea.
8 In that situation, a person pleads no contest.
9 They do not admit liability, but there is still a
10 finding of a guilt by the Court and for
11 sentencing calculations, it still counts as a
12 guilty verdict. The same logic applies here.
13 Just because they don't admit liability doesn't
14 mean hey, you can't ever use this against me in
15 the future. It is the -- the question that is
16 relevant is what does the determining body -- in
17 this case, the Board, determine occurred? And in
18 this case, we have a determination of liability.

19 Now I want to get to the question of
20 the show cause. Yes, we agree that no show cause
21 was brought in that matter. The facts of that
22 case were not put on at a show cause hearing.
23 However, that does not excuse this case from
24 being counted against the establishment. Let's
25 consider for a second the logical extension of

1 the argument that Attorney Bianco made. Let's
2 play it out.

3 If we have a show cause notice sent
4 out and we reach an OIC, that can be used for
5 purposes of counting past violations. However,
6 if we have a situation in which there is a
7 summary suspension and we resolve that summary
8 suspension through an OIC, then while no show
9 cause was brought, so we can't use that for
10 counting previous violations. In general,
11 summary suspensions occur for activity that is
12 far more severe and immediate, far more dangerous
13 to the District than standard show-cause
14 violations. As a result, the precedent that
15 Attorney Bianco is suggesting would yield to
16 situations in which the most serious offenses
17 could not be counted, but the least serious
18 offenses could be counted.

19 Alternatively, I suppose the other
20 solution would be that all summary suspensions
21 would require show-cause hearings to be brought.
22 But that creates perverse disincentives on the
23 system. In this case that we're talking about,
24 007, we were able to resolve that matter through
25 a universal OIC. Attorney Bianco indicated that

1 it was merely terms to make sure that there was
2 no danger, nothing punitive. But I would note
3 that the third term of that OIC was a fine.

4 Specifically a \$2,000 fine for the
5 violations of their security plan, which, again,
6 Respondent shall pay a fine in the amount of
7 \$2,000 for violations of their security plan.
8 That right there is an ABRA violation. That is
9 an alcohol violation. They were fined for it.
10 They paid the fine. Now I agree, they did not
11 admit liability, but they were found to have
12 violated their security plan. They were fined
13 for it and they paid that fine.

14 Under the suggestion of Attorney
15 Bianco, if this Board were to make that the
16 precedent for how we handle these type of
17 situations, it would create drastic, perverse
18 disincentives. Either the most severe violations
19 that lead to summary suspensions could not be
20 charged or we could not resolve them in due
21 course with a single settlement. We would be
22 forced to resolve them first on the suspension
23 front, then bring a show cause, then re-litigate
24 the exact same facts, and then resolve that
25 independently.

1 The interest of judicial economy clearly
2 requires that we be able to resolve these matters
3 as a universal settlement if appropriate, as it
4 was in this instance. And the most severe
5 violations cannot then hide behind a shield of no
6 show cause was brought because we resolved it
7 early. Therefore I believe that the facts, the
8 law, and the past violations are clear. And we
9 respectfully request an appropriate penalty for
10 two first-degree violations for a third offense.
11 Thank you.

12 CHAIRPERSON ANDERSON: Thank you, sir.
13 All right. The record is now closed. And as you
14 have stated, Mr. Bianco, you are going to file
15 proposed findings of facts and conclusions of
16 law.

17 MR. BIANCO: That's correct.

18 CHAIRPERSON ANDERSON: And the
19 transcript will be available within three weeks.
20 And the proposed findings of facts and
21 conclusions of law are due to the Board 30 days
22 after receipt of the transcript. And so the
23 Board therefore will issue its decision within 90
24 days after we've received the proposed findings
25 of facts and conclusion of law.

1 MR. CELO: Mr. Chair?

2 CHAIRPERSON ANDERSON: Yes, sir.

3 MR. CELO: District requests
4 permission to file simultaneous findings of facts
5 and conclusions of law.

6 CHAIRPERSON ANDERSON: That's fine.
7 It's anticipated. I'm sorry, Mr. Celo. It's
8 anticipated that that would be done at the same
9 time. So I apologize, sir. All right.

10 As Chairperson of the Alcoholic
11 Beverage Control Board for the District of
12 Columbia and in accordance with D.C. Official
13 Code Section 2-575 of the Open Meetings Act, I
14 move that the ABC Board hold a closed meeting for
15 the purposes of seeking legal advice from our
16 counsel on Case No. 22-251-00014, Cloud
17 Restaurant and Lounge Sports Bar pursuant to DC
18 Official Code Section 2-575(b)(4)(A) of the Open
19 Meetings Act and deliberating upon Case No. 22-
20 251-00014, Cloud Restaurant and Lounge Sports
21 Bar. For the reasons cited in D.C. Official Code
22 Section 2-575(b)(13) of the Open Meetings Act, is
23 there a second?

24 MEMBER CROCKETT: I will second.

25 CHAIRPERSON ANDERSON: Ms. Crockett

1 and Ms. Hansen have seconded the motion. We'll
2 now have a roll call vote. Mr. Cato.

3 MEMBER CATO: Bobby Cato, I agree.

4 CHAIRPERSON ANDERSON: Ms. Crockett.

5 MEMBER CROCKETT: Rafi Crockett, I
6 agree.

7 CHAIRPERSON ANDERSON: Ms. Hansen.

8 MEMBER HANSEN: Jeni Hansen, I agree.

9 CHAIRPERSON ANDERSON: And Mr.
10 Anderson, I agree. The matter passes 4-0-0. It
11 does appear that the motion has passed. I hereby
12 give notice that the ABC Board will recess this
13 proceeding to hold a closed meeting pursuant to
14 Section 2575 of the Open Meetings Act. So the
15 decision of the Board will await the proposed
16 findings of facts and conclusions of law prior to
17 issuing a final decision in this case. Thank you
18 very much. Have a great afternoon.

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

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In the matter of: Cloud Restaurant

Before: DC ABRA

Date: 11-09-22

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