

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

2 11:21 a.m.

3 CHAIRPERSON ANDERSON: All right. Our
4 next case is Case Number 19-CMP-00050, BIN-1301,
5 License Number 91682. Will the parties please
6 approach and identify themselves for the record,
7 please.

8 MR. LEE: Good morning, Mr.
9 Chairperson. John Lui on behalf of the District
10 of Columbia.

11 CHAIRPERSON ANDERSON: Good morning,
12 Mr. Lui.

13 MR. COSTLEY: Janon Costley, BIN-1301.

14 CHAIRPERSON ANDERSON: Mr. --

15 MR. COSTLEY: Costley, C-O-S-T-L-E-Y.

16 CHAIRPERSON ANDERSON: C-O --

17 MR. COSTLEY: S-T-L-E-Y.

18 CHAIRPERSON ANDERSON: Mr. Costley.

19 MR. COSTLEY: Yes.

20 CHAIRPERSON ANDERSON: Good morning.

21 MR. COSTLEY: Good morning.

22 MR. BAILEY: David Bailey on behalf of
23 1301 Wine and Bar.

24 CHAIRPERSON ANDERSON: I didn't hear
25 your last name.

1 MR. BAILEY: Bailey.

2 CHAIRPERSON ANDERSON: Bailey. Good
3 morning, Mr. Bailey. Good morning. Are there
4 any preliminary matters in this case?

5 MR. LUI: No, Mr. Chairperson. We are
6 ready to proceed.

7 CHAIRPERSON ANDERSON: All right.
8 This is a show-cause hearing status -- I'm sorry,
9 this is a show-cause hearing. Did the parties
10 disclose any documents that they're relying on
11 this morning?

12 MR. LUI: The District did.

13 CHAIRPERSON ANDERSON: All right.
14 Were you guys here at the status hearing that we
15 had for this case?

16 MR. COSTLEY: No, we had to have a
17 postpone because it was --

18 CHAIRPERSON ANDERSON: So you were not
19 here at the status hearing leading up to this
20 one.

21 MR. COSTLEY: No.

22 CHAIRPERSON ANDERSON: All right.
23 Does the government wish to make an opening
24 statement?

25 MR. LUI: Very briefly. Good morning,

1 Board Members. We are here today in the show-
2 cause matter of SST Management, LLC, trading as
3 BIN-1301, located at 1301 U Street, NW.

4 The show-cause notice issued in this
5 matter concerns the charge that the licensee
6 failed to follow the terms of the board-approved
7 license by increasing the occupancy of the
8 licensed establishment, in violation of D.C. Code
9 Section 25-823A(7).

10 You will hear today from Investigator
11 Garcia, George Garcia, and the evidence will show
12 that the establishment had actually doubled, more
13 than doubled, its occupancy beyond what was
14 approved in its board-approved license.

15 And we have just one witness to call
16 today, Mr. -- Investigator George Garcia.

17 CHAIRPERSON ANDERSON: All right.
18 What's your relationship to the establishment?

19 MR. COSTLEY: I'm the general manager.

20 CHAIRPERSON ANDERSON: And you are
21 who, sir?

22 MR. BAILEY: I'm the agent;
23 representing agent.

24 CHAIRPERSON ANDERSON: You're the
25 agent?

1 MR. BAILEY: Yes.

2 CHAIRPERSON ANDERSON: So did you
3 provide -- what do you mean, you're the agent?

4 MR. BAILEY: The establishment gave me
5 approval to represent them in any hearings and
6 things --

7 CHAIRPERSON ANDERSON: I'm sorry, do
8 we have a copy of that on the --

9 MR. BAILEY: Yes, that's been
10 submitted.

11 CHAIRPERSON ANDERSON: All right. I'm
12 sorry. Your name again?

13 MR. COSTLEY: Janon Costley.

14 CHAIRPERSON ANDERSON: C-O-S -- and
15 you're Mr. Bailey, right?

16 MR. BAILEY: Yes, sir.

17 CHAIRPERSON ANDERSON: So either Mr.
18 Costley or Mr. Bailey, do you wish to make an
19 opening statement or do you defer until you
20 present your case?

21 MR. BAILEY: We'll defer until we
22 present our case.

23 CHAIRPERSON ANDERSON: All right.
24 Fine. Does the Government have a witness?

25 MR. LUI: Yes, Mr. Chairperson.

1 CHAIRPERSON ANDERSON: Who is that?

2 MR. LUI: Investigator George Garcia.

3 CHAIRPERSON ANDERSON: Mr. Garcia, can
4 you raise your right hand, please?

5 WHEREUPON,

6 GEORGE GARCIA

7 was called as a witness by Counsel for the
8 Government and, having been first duly sworn,
9 assumed the witness stand, was examined and
10 testified as follows:

11 CHAIRPERSON ANDERSON: Have a seat.

12 Thank you. Your witness, sir.

13 MR. LUI: Could you please state and
14 spell your first and last name?

15 THE WITNESS: George Garcia, G-E-O-R-
16 G-E, G-A-R-C-I-A.

17 MR. LUI: Mr. Garcia, where are you
18 currently employed?

19 THE WITNESS: ABRA.

20 MR. LUI: And what is ABRA?

21 THE WITNESS: The Alcoholic Beverage
22 Regulation Administration.

23 MR. LUI: And what is your position
24 and role at ABRA?

25 THE WITNESS: I'm an investigator.

1 MR. LUI: And how long have you been
2 an investigator for ABRA?

3 THE WITNESS: For about seven months
4 now.

5 MR. LUI: And what are your duties and
6 responsibilities as an investigator for ABRA?

7 THE WITNESS: I conduct inspections
8 and investigations of ABC-licensed establishments
9 in the District of Columbia.

10 MR. LUI: And are you familiar with
11 BIN-1301?

12 THE WITNESS: Yes.

13 MR. LUI: How are you familiar with
14 this establishment?

15 THE WITNESS: On March 23, 2019, we
16 went to do an inspection, as we were tasked with
17 the Board's task force.

18 MR. LUI: What happened that evening?

19 THE WITNESS: The establishment were
20 on a compliance list for ABRA for noise, so we
21 went into the establishment just to notify them
22 of the complaint, and their occupancy was a
23 little over, just by looking at it.

24 MR. LUI: And then what happened after
25 that; that evening?

1 THE WITNESS: Well, myself,
2 Investigator Felicia Dantzler, along with
3 Investigator Mark Ruiz, went into the
4 establishment to conduct a regulatory inspection
5 and just to make sure, and I went into the
6 establishment to conduct an occupancy check, so I
7 utilized a clicker to count how many people were
8 inside the establishment.

9 MR. LUI: Can you tell me more about
10 the counter? What is it?

11 THE WITNESS: The counter is just a
12 small device that, once you push that button, it
13 counts once, so each time you push the button
14 down, it counts once.

15 MR. LUI: How accurate is the counter?

16 THE WITNESS: It's accurate.

17 MR. LUI: And have you ever used a
18 counter before?

19 THE WITNESS: Yes.

20 MR. LUI: Approximately how many times
21 have you used a counter before?

22 THE WITNESS: I would say more than
23 30.

24 MR. LUI: What else happened that
25 evening when you were on your occupancy check?

1 THE WITNESS: We verified their ABC
2 license, along with the certificate of occupancy.

3 MR. LUI: What was the board-approved
4 license; what did it say?

5 THE WITNESS: For the ABRA license?

6 MR. LUI: Yes.

7 THE WITNESS: Thirty. Their total
8 occupancy was 30 for the inside of the
9 establishment.

10 MR. LUI: And when you utilized the
11 counter, how many patrons did you count?

12 THE WITNESS: Sixty-three.

13 MR. LUI: Mr. Chairperson, at this
14 time, the Government would like the Board to take
15 administrative notice of the case report and
16 Investigation 19-CMP-00050. Public record as
17 well.

18 CHAIRPERSON ANDERSON: So moved.

19 MR. LUI: No further questions of this
20 witness.

21 CHAIRPERSON ANDERSON: Either Mr.
22 Costley or Mr. Bailey, do you have any questions
23 to ask -- one person, do you have any questions
24 to ask the investigator? Who's asking the
25 questions?

1 MR. BAILEY: I will be.

2 CHAIRPERSON ANDERSON: Yes, Mr.
3 Bailey.

4 MR. BAILEY: Thanks. So,
5 Investigator, where did you work at prior to
6 being an ABRA investigator?

7 THE WITNESS: Perspecta, as a
8 contractor.

9 MR. BAILEY: As a contractor. As I
10 understand, you stated that, by looking at it,
11 you could tell that it was over capacity.

12 THE WITNESS: Correct.

13 MR. BAILEY: How, by looking at it,
14 could you tell that the establishment was over
15 capacity?

16 THE WITNESS: Because I couldn't
17 maneuver throughout the establishment.

18 MR. BAILEY: Okay. Also, did you
19 notice, were there any changes, additional
20 seating, at the establishment that was created to
21 increase their occupancy?

22 THE WITNESS: I'm sorry?

23 MR. BAILEY: Were there additional
24 seats in the establishment than what was
25 permitted on the occupancy level?

1 THE WITNESS: I can't recall.

2 MR. BAILEY: So you never counted the
3 amount of seats that were at the establishment?

4 THE WITNESS: No.

5 MR. BAILEY: Are you aware that the
6 occupancy load that's listed on the certificate
7 of occupancy is for seating capacity?

8 THE WITNESS: I'm sorry, say that
9 again?

10 MR. BAILEY: Are you aware that the
11 occupancy load listed on the CFO is for seating
12 capacity?

13 THE WITNESS: No, I'm not.

14 MR. BAILEY: Okay. Well, on the
15 certificate of occupancy, where it says,
16 occupancy load, it says, 30 number of seats, and
17 that's what was permitted. That's what the
18 establishment was operating as.

19 My next question is, so you have any
20 training as far as like, you know, knowing what
21 overcapacity could be?

22 THE WITNESS: Yes.

23 MR. BAILEY: Okay. What training did
24 you receive?

25 THE WITNESS: Training from ABRA.

1 MR. BAILEY: From ABRA. Okay. Did
2 you ever notify the fire marshal, fire inspector,
3 about the possible violation?

4 THE WITNESS: I can't recall.

5 MR. BAILEY: You can't recall. Do you
6 recall how many people were outside on the summer
7 garden that evening?

8 THE WITNESS: I can't recall.

9 MR. BAILEY: So you never counted the
10 amount of people that were on the summer garden
11 nor the people inside. At any time, could the
12 people that were on the summer garden have
13 entered the establishment while you were in there
14 counting?

15 THE WITNESS: No.

16 MR. BAILEY: They couldn't. Okay.
17 Next question is, did you -- when after you
18 discovered this possible violation, what did you
19 instruct the establishment to do at that time?

20 THE WITNESS: I didn't instruct the
21 establishment to do anything. The establishment
22 was notified that they were in violation due to
23 their occupancy.

24 MR. BAILEY: And my next question, did
25 the establishment start making people exit out of

1 the establishment after you informed them of
2 that?

3 THE WITNESS: The establishment
4 stopped people from entering the establishment,
5 but I can't recall if they had -- I didn't see
6 anyone exit the establishment.

7 MR. BAILEY: Okay. So I mean, how
8 long after you notified them of the violation did
9 you stay?

10 THE WITNESS: I'm sorry?

11 MR. BAILEY: How long after you
12 notified them of the possible violation did you
13 stay at the establishment?

14 THE WITNESS: We were probably at the
15 establishment for about, approximately, 15, 30
16 minutes.

17 MR. BAILEY: So you said, at that
18 time, when you all came in, they stopped letting
19 anybody in after you notified them, but you never
20 witnessed them start telling people that they had
21 to leave out.

22 THE WITNESS: No.

23 MR. BAILEY: No further questions.

24 CHAIRPERSON ANDERSON: Any questions
25 by any of the Board Members? Yes, Mr. Short.

1 MEMBER SHORT: Good morning still, Mr.
2 Garcia, or Investigator Garcia.

3 THE WITNESS: Good morning.

4 MEMBER SHORT: The statement was made
5 and the question was asked, when you saw the
6 number of people in this establishment, did it
7 look like it was safe to you?

8 THE WITNESS: No.

9 MEMBER SHORT: And when you counted
10 with your counter, you counted how many people?

11 THE WITNESS: Sixty-three people.

12 MEMBER SHORT: The certificate of
13 occupancy says, what is their maximum number of
14 people they can have in their establishment?

15 THE WITNESS: The occupancy load says
16 30.

17 MEMBER SHORT: Okay. And that means
18 standing, sitting, or anything, just 30 people,
19 correct? Standing, sitting, or whatever.

20 THE WITNESS: Right.

21 MEMBER SHORT: Only 30 people. And
22 when you notified them it was a dangerous
23 condition and you counted the people, did they
24 attempt to abate or get some of the people out,
25 or did they just keep on functioning?

1 THE WITNESS: The establishment
2 continued to function. I'm not sure if they had
3 people exit while my colleagues were outside. I
4 didn't witness anyone leave the establishment, I
5 just witnessed people not being able to enter the
6 establishment.

7 MEMBER SHORT: So the dangerous
8 condition continued.

9 THE WITNESS: Correct.

10 MEMBER SHORT: Okay. And the question
11 was asked, did you call the fire marshal, the
12 District of Columbia Fire Department, and you
13 answered, no?

14 THE WITNESS: I did not.

15 MEMBER SHORT: Okay. Would you do
16 that the next time? Would you call the next
17 time?

18 THE WITNESS: I would.

19 MEMBER SHORT: Good. Thank you.
20 That's all I have, Mr. Chair.

21 CHAIRPERSON ANDERSON: Any other
22 questions by any other Board Members? Mr.
23 Bailey, do you have any questions of the witness
24 based on the questions that were asked by the
25 Board?

1 MR. BAILEY: No, sir.

2 CHAIRPERSON ANDERSON: Mr. --

3 MR. LUI: No.

4 CHAIRPERSON ANDERSON: -- Lui?

5 MR. LUI: No, Mr. Chairperson.

6 CHAIRPERSON ANDERSON: Mr. Garcia,
7 thank you for your testimony. You can step down.

8 THE WITNESS: Thank you.

9 CHAIRPERSON ANDERSON: Does the
10 Government have any other witnesses?

11 MR. LUI: No, Mr. Chairperson.

12 CHAIRPERSON ANDERSON: Does the
13 Government rest?

14 MR. LUI: We just have closing
15 remarks.

16 CHAIRPERSON ANDERSON: Mr. Bailey, how
17 do you present -- how do you present -- propose
18 to defend the establishment?

19 MR. BAILEY: Well, the --

20 CHAIRPERSON ANDERSON: Are you making
21 an opening statement now? Tell me, are you
22 making an opening statement, you going to
23 testify, which one is it?

24 MR. BAILEY: I'm going to make the
25 opening statement.

1 CHAIRPERSON ANDERSON: You're going to
2 make the opening statement?

3 MR. BAILEY: Right.

4 CHAIRPERSON ANDERSON: Okay. Go
5 ahead.

6 MR. BAILEY: Okay. The investigator
7 stated that the occupancy load says 30, and we're
8 showing the certificate of occupancy, you can
9 clearly see that it states seating capacity. It
10 did not allow the certificate to also include
11 what the actual standing capacity is, which we
12 did go down to DC ABRA, there was a lot of mixup
13 with their CFO and the building permit number.

14 Finally got that squared away and it
15 actually showed what our total amount of people
16 would be allowed into the establishment, not just
17 seating. The capacity was done based on --

18 CHAIRPERSON ANDERSON: No, are you
19 making -- are you -- all right. I'm sorry to cut
20 you.

21 MR. BAILEY: Okay.

22 CHAIRPERSON ANDERSON: The reason I'm
23 saying that, if you're testifying, I need to
24 swear you in. If you're just doing an opening
25 statement, you're fine. That's why I was asking

1 you which one were you doing, and it appears that
2 you're testifying, so --

3 MR. BAILEY: And I need to testify
4 then.

5 CHAIRPERSON ANDERSON: Then if you're
6 testifying, then can you raise your right hand.

7 WHEREUPON,

8 DAVID BAILEY

9 was called as a witness by Counsel for the
10 Respondent and, having been first duly sworn,
11 assumed the witness stand, was examined and
12 testified as follows:

13 CHAIRPERSON ANDERSON: Okay. Go
14 ahead.

15 THE WITNESS: Going back to what I was
16 stating was that, the actual violation is for,
17 like, when I read up on it, that it is, if the
18 establishment has created an area in which they
19 allow additional occupants to come in, the
20 establishment never increased their seating
21 capacity at any time.

22 The amount of seats that were
23 permitted for the establishment was the amount of
24 seats that were in the establishment.

25 As I was also stating about the CFO,

1 we had an incorrect CFO that did not also allow
2 or have our -- what the standing capacity in the
3 establishment could be. It only had seating
4 capacity.

5 We have since then gotten that
6 corrected with DCRA and are filing that in with
7 ABRA so that that will be on record as well.

8 And once we -- like, their occupancy
9 load that's listed now that the DCRA approved is
10 now 49 people inside, and 31 persons on the
11 outside of the establishment.

12 We can actually state, that does not
13 include, like, the staff members and things of
14 that nature as well.

15 So like, one of my biggest concerns is
16 that the establishment itself did not make any
17 substantial changes to the place to allow
18 additional patrons to come in. They continued
19 with the amount of seats that they were permitted
20 to have, according to their CFO and according to
21 what was approved by the board.

22 And they did stop -- initially, the
23 investigator stated that the establishment
24 stopped people from coming in and then recanted
25 that statement, I think, and saying that the

1 establishment did not stop anyone from coming in,
2 when asked by Board Member Short, said that the
3 establishment did nothing to stop the amount of
4 people from going in, that they continued to
5 operate, but he stated earlier in his statement
6 that the establishment did stop the patrons from
7 coming in, but he did not witness -- because he
8 did not stay as they asked the people to leave.

9 That's it.

10 CHAIRPERSON ANDERSON: That's it? Mr.
11 Lui?

12 MR. LUI: On the date of the
13 violation, the ABC license says, capacity, 30,
14 right?

15 THE WITNESS: That's correct.

16 MR. LUI: And on that evening,
17 Investigator Garcia counted more than 30 patrons
18 that evening.

19 THE WITNESS: That's correct, sir.

20 MR. LUI: I have no further questions.

21 CHAIRPERSON ANDERSON: And so, Mr.
22 Bailey, so how many people did your ABRA say that
23 you can have in your establishment?

24 THE WITNESS: The ABRA license
25 reflects what our seating capacity is.

1 CHAIRPERSON ANDERSON: Which is what?

2 THE WITNESS: Thirty seats inside.

3 CHAIRPERSON ANDERSON: So are you
4 aware that you cannot exceed what's on your --
5 irrespective of what your certificate of
6 occupancy states, that you cannot exceed what
7 your ABRA license states unless you come back to
8 ABRA and ask them to increase it?

9 THE WITNESS: It was to my
10 understanding that we couldn't increase the
11 amount of seats that we put into the
12 establishment, other than what's already been
13 approved.

14 CHAIRPERSON ANDERSON: I'm sorry, I
15 didn't understand that.

16 THE WITNESS: That we couldn't
17 increase the amount of seats that were already
18 approved by ABRA.

19 CHAIRPERSON ANDERSON: Right, you
20 could or couldn't? You could or could not?

21 THE WITNESS: Could not. I'm sorry,
22 yes, could not add additional seats that were not
23 already approved.

24 CHAIRPERSON ANDERSON: But so are you
25 saying that you could have additional standing

1 folks?

2 THE WITNESS: What I'm stating is
3 that, the -- originally, when they got the CFO,
4 it never permitted them to add the amount of
5 people that -- or total allowed inside the
6 establishment. It only allowed for them to have
7 a seating -- what their seating capacity is.

8 CHAIRPERSON ANDERSON: Right.

9 THE WITNESS: And not what their total
10 amount of people that could be inside of the
11 establishment.

12 CHAIRPERSON ANDERSON: So what does
13 the certificate of occupancy that you currently
14 have, what does it state? What's the total
15 amount of people that can be --

16 THE WITNESS: Are you referring to the
17 one that was approved by you all or the one that
18 --

19 CHAIRPERSON ANDERSON: I'm asking you,
20 you said that you have a corrected certificate of
21 occupancy.

22 THE WITNESS: Right.

23 CHAIRPERSON ANDERSON: So how many
24 people does that certificate of occupancy -- how
25 many people can you have in the establishment

1 based on this, as you state, revised certificate
2 of occupancy?

3 THE WITNESS: It's 49 persons inside
4 and 31 persons on the summer garden.

5 CHAIRPERSON ANDERSON: So Mr. Garcia
6 said that there were 63 people inside. Is that
7 right? That was the testimony by Mr. Garcia.

8 THE WITNESS: Right. He also stated
9 there was no way that somebody could come inside
10 the establishment, so it was either they were
11 told they couldn't come in or they were still
12 going in and out. So that was one of my
13 questions to him, but he said that they wouldn't
14 allow anybody in, but then he said that the
15 establishment, you know, continued to operate.

16 CHAIRPERSON ANDERSON: I thought his
17 testimony was that -- I thought the question that
18 was asked was that there were no -- that no
19 additional folks were allowed in, but he didn't
20 recall whether or not folks had left to reduce
21 the number.

22 THE WITNESS: No, in the statement
23 after Board Member Short asked him, he said that
24 the establishment did nothing, and they continued
25 to operate. Continued to operate as normal.

1 CHAIRPERSON ANDERSON: So what is it
2 that you're saying the establishment did?

3 THE WITNESS: I mean, I'm just trying
4 to get --

5 CHAIRPERSON ANDERSON: I'm asking you,
6 sir. You're defending your establishment.

7 THE WITNESS: Okay.

8 CHAIRPERSON ANDERSON: So I'm asking,
9 what did the --

10 THE WITNESS: Well, I am defending my
11 establishment, I was trying to ask the
12 investigator, was there any way that people could
13 have been still entering and exiting the
14 establishment as he was counting, meaning, the
15 people that were allowed right there on the
16 summer garden, right outside the door, are going
17 in and out of the inside of the establishment.

18 So would it be possible for that
19 person to be -- another person to be counted as
20 somebody was leaving out.

21 CHAIRPERSON ANDERSON: So do you know
22 whether or not the establishment has come back to
23 ABRA with this revised certificate of occupancy?

24 THE WITNESS: We have the date to
25 submit, we just got it the other week, and so we

1 came in -- well, we were going to come down today
2 to submit it to ABRA.

3 CHAIRPERSON ANDERSON: Do you have a
4 copy of the document to provide to the Board?

5 THE WITNESS: I don't have a copy to
6 give to the Board. I do have our certificate of
7 occupancy.

8 CHAIRPERSON ANDERSON: We could make
9 a copy. You know, sir, if you're coming to a
10 hearing, and you're making representation, you
11 need to have a copy of the document to provide.
12 I don't know who you are, although you're under
13 oath, so can we get a copy of the document?

14 THE WITNESS: Yes.

15 CHAIRPERSON ANDERSON: Can you give it
16 to -- any other questions by any other Board
17 Members? Go ahead, Mr. Short.

18 MEMBER SHORT: Your name again, sir,
19 is?

20 THE WITNESS: David Bailey.

21 MEMBER SHORT: Mr. Bailey?

22 THE WITNESS: Yes, sir.

23 MEMBER SHORT: The law states you
24 can't have more people in than you're allowed to
25 have, you're only allowed to have 30 people.

1 That's your capacity. Thirty people. Is it
2 correct that you had over 60?

3 THE WITNESS: I cannot testify to
4 that. I was not there, sir.

5 MEMBER SHORT: Did you have 30?

6 THE WITNESS: It was at least 30
7 people in there.

8 MEMBER SHORT: It was over 30?

9 THE WITNESS: I said, it could --

10 MEMBER SHORT: Was it over 40, sir?

11 THE WITNESS: From what I gathered,
12 there was at least about 30, at least 30 people,
13 that were in there.

14 MEMBER SHORT: The investigator said
15 he counted 60.

16 THE WITNESS: Yes.

17 MEMBER SHORT: With a counter.

18 THE WITNESS: Yes, sir.

19 MEMBER SHORT: Do you use a counter
20 for people coming in and leaving your
21 establishment?

22 THE WITNESS: They do use a counter
23 now, as when they have a doorman present.

24 MEMBER SHORT: Did you have a counter
25 that night?

1 THE WITNESS: No, they did not.

2 MEMBER SHORT: Okay. The investigator
3 did.

4 THE WITNESS: Yes, sir.

5 MEMBER SHORT: Your current CFO that
6 you are getting a copy made says 49, correct?

7 THE WITNESS: Yes.

8 MEMBER SHORT: You were still over by
9 20-something people, correct?

10 THE WITNESS: Not to --

11 MEMBER SHORT: If you had 60 people
12 there, which were counted by the investigator,
13 you don't know how many you had because you
14 didn't have a counter, so you were over the
15 number that -- I'm looking now, it's -- it says,
16 49. So were you over even with the new document
17 you just provided? Were you over that night?

18 THE WITNESS: According to what the
19 investigator's stating, yes.

20 MEMBER SHORT: What do you think? Do
21 you think you were over?

22 THE WITNESS: Sir, as I said, I wasn't
23 present at the establishment that night.

24 MEMBER SHORT: Oh, you weren't there.

25 THE WITNESS: No, sir.

1 MEMBER SHORT: Thank you. That's all
2 I have, Mr. Chair. Thank you.

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

5 MEMBER CROCKETT: I have some.

6 CHAIRPERSON ANDERSON: Yes, Ms.
7 Crockett.

8 MEMBER CROCKETT: Mr. Bailey.

9 THE WITNESS: Yes.

10 MEMBER CROCKETT: Your establishment
11 was issued this ABRA license in 2016.

12 THE WITNESS: That's correct.

13 MEMBER CROCKETT: And it clearly
14 states that your capacity is 30, correct?

15 THE WITNESS: Yes, ma'am.

16 MEMBER CROCKETT: Because unlike the
17 CFO that you keep referring to, which says 30
18 seats, the ABRA license itself says, capacity,
19 30. It doesn't make a distinction between seats
20 or individuals.

21 THE WITNESS: That's correct.

22 MEMBER CROCKETT: So at what point did
23 you realize, it's been over three years, that
24 your capacity was only 30 at your establishment?

25 THE WITNESS: Well, I wasn't there

1 prior to. I just came on recently for the
2 establishment. So when they called me up and had
3 me come take a look at things, that's when I
4 instructed them that they had to -- that was the
5 initial, like, I know you're saying 30 seats, but
6 you got to get -- you need to go back down to
7 DCRA now. They will allow you to add the
8 additional amount of people that you're totally
9 allowed inside the establishment.

10 MEMBER CROCKETT: Okay. Thank you.

11 CHAIRPERSON ANDERSON: Any other Board
12 Members? All right. Yes, go ahead, Mr. Lui.

13 MR. LUI: Just closing remarks.

14 CHAIRPERSON ANDERSON: Do you have any
15 questions?

16 MR. LUI: I have no questions.

17 CHAIRPERSON ANDERSON: I mean, come
18 on. I'm keeping track. Any questions?

19 MR. LUI: No further questions.

20 CHAIRPERSON ANDERSON: All right. And
21 do you have any other witnesses, sir?

22 MR. BAILEY: Other than the GM, he's
23 here, that was actually there at the --

24 CHAIRPERSON ANDERSON: You tell me.
25 I'm asking you, do you have any other additional

1 witnesses?

2 MR. BAILEY: Yes.

3 CHAIRPERSON ANDERSON: Mr. Costley,
4 can you raise your right hand, please?

5 CHAIRPERSON ANDERSON: Are you going
6 to ask him questions?

7 MR. BAILEY: No.

8 CHAIRPERSON ANDERSON: Are you going
9 to ask him questions?

10 MR. LUI: No.

11 CHAIRPERSON ANDERSON: So why is he --
12 is he going to say something?

13 MR. BAILEY: Well, I'll ask him an
14 initial question, but he's just going to testify
15 to what happened that evening.

16 CHAIRPERSON ANDERSON: No, you need to
17 ask him a question. So since your a witness, Mr.
18 Costley, why don't you go over there.

19 MR. COSTLEY: Yes.

20 CHAIRPERSON ANDERSON: Go over there,
21 please. Can you raise your right hand, please?

22 WHEREUPON,

23 JANON COSTLEY

24 was called as a witness by Counsel for the
25 Respondent and, having been first duly sworn,

1 assumed the witness stand, was examined and
2 testified as follows:

3 CHAIRPERSON ANDERSON: All right. You
4 want to ask him a question, sir? And because
5 he's there, I don't want him making statements.
6 You need to ask him questions. You know what
7 he's about to say, so you need to ask questions
8 for him to elicit --

9 MR. BAILEY: Okay. That's fine.

10 CHAIRPERSON ANDERSON: Yes.

11 MR. BAILEY: Okay. Mr. Costley, when
12 did you find out about the --

13 CHAIRPERSON ANDERSON: Ask him to
14 state his name and his --

15 MR. BAILEY: Oh, I'm sorry. Can you
16 state your name for the record and what you were
17 --

18 CHAIRPERSON ANDERSON: -- who he is,
19 where does he work --

20 THE WITNESS: Janon Costley, general
21 manager, BIN-1301.

22 MR. BAILEY: Okay. When did you
23 become aware that you needed to increase your
24 occupancy level on your CFO?

25 THE WITNESS: It was actually, you

1 know, that evening because, you know, we noticed
2 that the certificate of occupancy was different
3 than total capacity in the space. We noted the
4 space is much larger than 30 seats, but we only
5 had 30 seats as the capacity on the certificate
6 of occupancy.

7 So I made you aware and you
8 recommended that we should go down and try to
9 address the situation. Our renewal was coming
10 up, so we decided to increase our occupancy and
11 address the issue as a part of our renewal
12 process.

13 As soon as we were informed by the
14 agent that we had -- we were over occupancy, I
15 addressed it with them on the spot and my manager
16 at the time, you know, also made the reference
17 and showed them that there was a difference
18 between the seating capacity and on the document
19 it says, capacity, so we were confused.

20 What's the total capacity? Because
21 seating capacity and capacity doesn't include my
22 kitchen staff, the bartender, all the other
23 people that worked there, so it was very
24 confusing for us.

25 So as soon as they told us that there

1 may be an issue, we asked people to leave, we put
2 somebody on the door, and we made sure that we
3 addressed the issue at the time until we figured
4 out -- and we've done that since then, until we
5 established what the issue is between the total
6 occupancy of the space versus the seating
7 occupancy.

8 And that was just -- that's -- you
9 know, we had no issue at the time. We said, hey,
10 there's some confusion between what the
11 certificate of occupancy states and what the
12 actual license states, and we addressed it at the
13 time.

14 And subsequently, we filed to increase
15 the occupancy, based upon the total occupancy
16 load, as opposed to just the seating capacity.

17 MR. BAILEY: Okay. At the time the
18 investigator came in, were people still entering
19 and exiting the establishment at the time when
20 they came in?

21 THE WITNESS: I'm not sure, because
22 there were people in and out, so I'm not sure
23 whether or not people were coming inside from the
24 patio and outside, but once he did come in and we
25 had the initial conversation, and he spoke with

1 my manager, they informed me and we started to
2 have people leave out of the building.

3 MR. BAILEY: And you said, since then,
4 what arrangements have you made to ensure that --

5 THE WITNESS: Well, we have somebody
6 on the door and he makes sure that he's looking
7 at the headcount of the space to make sure that
8 we're, based upon our understanding, because we
9 don't want to get another violation, of what's on
10 the ABRA license.

11 MR. BAILEY: That's all.

12 THE WITNESS: On our busiest nights,
13 which would be Thursday, and Friday, and
14 Saturday.

15 CHAIRPERSON ANDERSON: Mr. Lui?

16 MR. LUI: Just some brief questions.
17 Mr. Costley, how long have you been the general
18 manager of BIN-1301?

19 THE WITNESS: A year and some change.

20 MR. LUI: And what were you doing
21 prior to that?

22 THE WITNESS: I own a few businesses.

23 MR. LUI: Any restaurants?

24 THE WITNESS: No.

25 MR. LUI: Are you familiar with the

1 licensing process?

2 THE WITNESS: I've become familiar
3 with it, which is why we have someone that's
4 working with us now that used to be a former ABRA
5 officer.

6 MR. LUI: You testified that you had
7 people leave, could you expand on what you mean
8 by that; had people leave; had --

9 THE WITNESS: We made sure that, you
10 know, people exited the building to get to the
11 number that was in question.

12 MR. LUI: What do you mean by that?

13 THE WITNESS: And also, the
14 investigator said, we'll be back in, you know, an
15 hour, whatever, just make sure that your capacity
16 is at what's stated on your ABRA license, so
17 that's what we did at the time.

18 MR. LUI: Did you ask customers to
19 leave?

20 THE WITNESS: Yes.

21 MR. LUI: Okay. You asked customers
22 to leave that night.

23 THE WITNESS: Yes.

24 MR. LUI: No further questions.

25 CHAIRPERSON ANDERSON: Mr. Costley,

1 how do you keep track of how many people are left
2 in your establishment? Prior to this incident,
3 how did you -- how did the establishment keep
4 track of, irrespective of what the number is, how
5 did you keep -- how do you keep track of your
6 occupancy?

7 THE WITNESS: It was based upon -- we
8 typically don't get that busy. I mean, it's a --
9 you know, and it's not something that we had to
10 do before, but as the popularity of our venue
11 increased, more people were coming, so we had to
12 have someone at the door that would physically
13 count the people.

14 Until then, we didn't realize that we
15 should have probably had a clicker, but we
16 didn't.

17 CHAIRPERSON ANDERSON: So what do you
18 have -- how do you keep track of the occupancy
19 now?

20 THE WITNESS: Well, the doorman has a
21 clicker.

22 CHAIRPERSON ANDERSON: Any other
23 questions for any of the Board Members? Go
24 ahead, Mr. Short.

25 MEMBER SHORT: Mr. Costley, what is

1 your knowledge of the building code in
2 Washington, D.C.?

3 THE WITNESS: I don't have that much
4 knowledge of building codes.

5 MEMBER SHORT: Okay. Well, let me
6 inform you as a person who used to work for the
7 city.

8 THE WITNESS: Okay.

9 MEMBER SHORT: The total occupancy
10 means the number of clients you have in your
11 building. It doesn't count your staff, it
12 doesn't count your family, it doesn't count any
13 visitors you might have, only paying customers.
14 That says you could only have 30 on that
15 particular night, is that correct?

16 THE WITNESS: On which document?

17 MEMBER SHORT: On your certificate of
18 occupancy.

19 THE WITNESS: It says, total seated
20 capacity.

21 MEMBER SHORT: Seating, sir, says,
22 total number of people, so if you have --

23 THE WITNESS: That's not what we were
24 informed at DCRA.

25 MEMBER SHORT: Sir, if you don't know

1 the building code, I suggest that you get one.

2 THE WITNESS: Okay.

3 MEMBER SHORT: You're in business,
4 correct?

5 THE WITNESS: Yes.

6 MEMBER SHORT: Hopefully you don't run
7 into this problem again.

8 THE WITNESS: Understood, sir.

9 MEMBER SHORT: Thirty means only
10 thirty people, paying customers, your new one
11 says, 49. You can only have 49 customers in your
12 building when you're open for business selling
13 alcohol. Do you understand that?

14 THE WITNESS: Based upon what you just
15 informed me, but based upon the knowledge that
16 we've, kind of, gained over the last couple of
17 weeks in going through this process of trying to
18 --

19 MEMBER SHORT: This is a question. If
20 you were correct, then why are you sitting there
21 today trying to justify what you didn't count --

22 THE WITNESS: I'm not trying to
23 justify. I'm just basing it on -- you asked me
24 about my knowledge, and I'm just addressing my
25 knowledge, that's all. And I said, you may be

1 right, but based upon the questions that we
2 asked, because we did want to understand the
3 difference, and we were told that, yes, there is
4 an occupancy for kitchen staff that would be
5 included in the number. We were told that.

6 MEMBER SHORT: Sir, that is not true.
7 Only paying customers. You can only have, now,
8 since you're going to submitting this, for 49,
9 but until this is approved, you can only have 30
10 people, paying customers, in your business.
11 Period.

12 THE WITNESS: Okay.

13 MEMBER SHORT: And every time the
14 investigator comes in, counts over, now, 49, or
15 whatever you have posted on the wall in your
16 business, that's seating, standing at the bar,
17 whatever else.

18 THE WITNESS: Okay.

19 MEMBER SHORT: You can only have that
20 number of paying customers in your business.

21 THE WITNESS: Okay.

22 MEMBER SHORT: Hopefully we won't see
23 you again for the same thing. Hopefully not.

24 THE WITNESS: Okay. I hope not
25 either. We want to be in compliance. I'm not

1 trying to argue with you or disagree with you.

2 MEMBER SHORT: Okay. I understand.

3 Okay. But your answers --

4 THE WITNESS: I would like to learn as
5 well.

6 MEMBER SHORT: -- sound like you were
7 still slightly confused when you said you want to
8 talk about how many people you have working for
9 you.

10 THE WITNESS: Okay. No.

11 MEMBER SHORT: That number is not
12 included --

13 THE WITNESS: Okay. Understood.

14 MEMBER SHORT: -- in your occupancy.

15 THE WITNESS: Understood.

16 MEMBER SHORT: And if the investigator
17 comes there again and sees the same thing, he's
18 probably going to write you a ticket again.

19 THE WITNESS: We won't have that
20 problem.

21 MEMBER SHORT: Okay. Thank you.

22 That's all I have, Mr. Chair. Thank you very
23 much.

24 THE WITNESS: Thank you.

25 CHAIRPERSON ANDERSON: Any other

1 questions by any of the Board Members? Do you
2 know what the -- your previous certificate of
3 occupancy, do you know what it stated that your -
4 - what it stated your occupancy load was?

5 THE WITNESS: According to the
6 document, it says, seated capacity. Even when we
7 went to DCRA, they also looked at it and said it
8 doesn't include your total occupancy of the
9 space, and we gave them the rendering to the
10 space, with the bar, with the seats that we have,
11 and they actually went through the process of
12 telling us how many people could actually be in
13 the space, and it's based upon the number of
14 bathrooms that we had.

15 We only had two bathrooms. If we had
16 more bathrooms, we could actually have more
17 people in the space, seated and standing.

18 CHAIRPERSON ANDERSON: Thank you, sir.
19 I don't know what DCRA does and that's not my job
20 to question DCRA.

21 THE WITNESS: Understood.

22 CHAIRPERSON ANDERSON: We just go with
23 what DCRA says.

24 THE WITNESS: I understand.

25 CHAIRPERSON ANDERSON: Okay. All

1 right. Mr. Lui, do you have any questions based
2 on the questions that were asked?

3 MR. LUI: No questions.

4 CHAIRPERSON ANDERSON: Mr. Bailey, any
5 questions on him based on the questions that were
6 asked by the Board?

7 MR. BAILEY: No, sir.

8 CHAIRPERSON ANDERSON: Thank you very
9 much, sir, Mr. Costley, for your testimony. You
10 can have a seat.

11 THE WITNESS: Thank you.

12 CHAIRPERSON ANDERSON: Do you have any
13 witnesses or do you rest?

14 MR. BAILEY: I'm going to rest, sir.

15 CHAIRPERSON ANDERSON: All right. Do
16 you have a rebuttal witness?

17 MR. LUI: No rebuttal witness.

18 CHAIRPERSON ANDERSON: Do you wish to
19 close?

20 MR. LUI: Yes, Mr. Chairperson.

21 CHAIRPERSON ANDERSON: Go ahead, sir.

22 MR. LUI: The Government has provided
23 sufficient evidence for the Board to find that
24 the licensee failed to follow the terms of their
25 board-approved license by increasing the

1 occupancy of the licensed establishment in
2 violation of D.C. Code Section 25-823A(7).

3 We heard from Investigator Garcia that
4 on the evening of March 23, 2019, he visited the
5 establishment to conduct an occupancy check, he
6 reviewed the ABC license, which stated,
7 indicated, that the maximum capacity is 30
8 people.

9 He determined that the establishment
10 was in violation by using a counter. The counter
11 is accurate. He has used this counter before.
12 And on that evening, he determined that there
13 were 63 patrons.

14 That's double the approved -- what's
15 approved on its license. It's irrelevant what
16 the establishment did that evening in terms of
17 trying to ask people to leave. They were in
18 violation of the board-approved license when the
19 investigator did his investigation, a compliance
20 check, for occupancy.

21 The Government has, therefore, met its
22 burden by a preponderance of the evidence and has
23 proven the charge. The Government asks that the
24 Board, as provided under D.C. Code Section 25-
25 830, a fine under that code provision. Thank

1 you.

2 CHAIRPERSON ANDERSON: Thank you. All
3 right, Mr. Bailey, you can wrap-up through a
4 closing statement and then tell us what is it
5 you're asking the Board to do.

6 MR. BAILEY: In closing, for the
7 establishment, they were not -- unfortunately,
8 were not aware of what they could operate as.
9 And since then, they have now been made aware of
10 and have made those steps to make sure that these
11 issues do not happen again.

12 Also, going through the necessary
13 steps to make sure that a proper certificate of
14 occupancy has been done and getting ready to
15 submit that to be approved.

16 They have hired someone now to be at
17 the door during their busy nights to assure that
18 they do not go over whatever the approved
19 occupancy load, whether it be 30 or 49.

20 We're asking the Board just to -- if
21 we could possibly get a warning. That's what I
22 would like to have, is a warning, like he had.
23 He did comply that evening with -- excuse me, not
24 comply, but he did, at the end of that night,
25 tell people that they had to leave, and then

1 stopped people from coming in when he was made
2 aware that he couldn't have more than 30 people
3 inside, not just the 30 seats.

4 CHAIRPERSON ANDERSON: All right.
5 That's it?

6 MR. BAILEY: Yes, sir.

7 CHAIRPERSON ANDERSON: The record is
8 now closed. Do the parties wish to file proposed
9 findings of fact and conclusion of law or waive
10 their right to do so? Meaning that, do you want
11 the Board to make a decision based on the
12 presentation that was made today, or do you want
13 to read, review -- wait for the transcript to be
14 issued, and then you can read the transcript, and
15 then make legal arguments about what it is that
16 you want the Board to do?

17 MR. BAILEY: The Board to make the
18 decision.

19 CHAIRPERSON ANDERSON: I'm sorry?

20 MR. BAILEY: The Board to do the
21 decision.

22 CHAIRPERSON ANDERSON: All right. Mr.
23 Lui?

24 MR. LUI: The Government waives.

25 CHAIRPERSON ANDERSON: All right. As

1 Chairperson of the Alcoholic Beverage Control
2 Board for the District of Columbia, in accordance
3 with D.C. Official Code Section 2574B of the Open
4 Meetings Act, I move that the ABC Board hold a
5 closed meeting for the purpose of seeking legal
6 advice from our counsel on Case Number 19-CMP-
7 00050, BIN-1301, pursuant to D.C. Official Code
8 Section 2574B(4), of the Open Meetings Act, and
9 deliberating upon Case Number 19-CMP-00050, BIN-
10 1301, for the reasons cited in D.C. Official Code
11 Section 2574B(13) of the Open Meetings Act. Is
12 there a second?

13 MEMBER SHORT: Second.

14 CHAIRPERSON ANDERSON: Mr. Short has
15 seconded the motion. I will now take a roll call
16 vote on the motion that has been second. Ms.
17 Crockett?

18 MEMBER CROCKETT: I agree.

19 CHAIRPERSON ANDERSON: Mr. Cato?

20 MEMBER CATO: I agree.

21 CHAIRPERSON ANDERSON: Mr. Short.

22 MEMBER SHORT: I agree.

23 CHAIRPERSON ANDERSON: Mr. Anderson.
24 I agree. As it appears that the motion has
25 passed, I hereby give notice that the ABC Board

1 will recess these proceedings to hold a closed
2 meeting in the ABC Board conference room,
3 pursuant to Section 2574B(b) of the Open Meetings
4 Act. Thank you very much for your presentation.

5 MR. LUI: Thank you.

6 CHAIRPERSON ANDERSON: We'll issue a
7 decision -- hold on a minute. We'll issue a
8 decision in 90 days. Yes, Ms. --

9 MEMBER CROCKETT: I'm looking at the
10 new certificate of -- this is an FYI to you.

11 MR. BAILEY: Okay.

12 MEMBER CROCKETT: I'm looking at your
13 new certificate of occupancy, I'm a proud Dunbar
14 graduate, I can do math, your CFO states that you
15 can have 30 seats and 13 standing, which equals
16 49. That's not the math that I was taught in
17 D.C. public schools.

18 So you might want to look at that and
19 get that sorted out, because 13 plus 30 has
20 always equaled 43. So before you have any other
21 discrepancies with your CFO, I'm encouraging you
22 to figure out what that's about.

23 MR. BAILEY: I'm not seeing what
24 you're --

25 MEMBER CROCKETT: In the conditions

1 and restrictions section, it says, bar cocktail
2 lounge with 30 seats/13 standing, indoors, equals
3 total occupant load of 49.

4 MR. BAILEY: Okay.

5 MEMBER CROCKETT: Forty-three, as far
6 as I can tell.

7 MR. BAILEY: I got you.

8 MEMBER CROCKETT: So avoid any further
9 confusion about how many people you can have in
10 your space, you might want to go back to DCRA.

11 MR. COSTLEY: This might have happened
12 before.

13 CHAIRPERSON ANDERSON: All right.

14 MEMBER CROCKETT: Thank you.

15 CHAIRPERSON ANDERSON: The board is in
16 recess until our 1:30 hearing. Thank you. Good
17 day.

18 (Whereupon, the hearing in the above-
19 entitled matter was concluded at 12:01 p.m.)
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Before: DCABRA

Date: 12-04-19

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