

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

2 1:44 p.m.

3 CHAIRPERSON ANDERSON: All right. We
4 are back on the record. The next case is a Fact-
5 Finding Hearing, Case No. 19-251-00035, Don Juan
6 Restaurant and Carryout, License No. 15934.

7 Would all parties for this case,
8 please, appear and state your name for the
9 record?

10 INVESTIGATOR PLEITEZ: Investigator
11 Pleitez with ABRA.

12 CHAIRPERSON ANDERSON: Good afternoon,
13 Ms. Pleitez.

14 I see that the licensee is not here
15 for the Fact-Finding Hearing. The licensee was
16 informed and they are not here, so we are still
17 going to do this hearing and make a determination
18 what it is that the Board will do.

19 So, Ms. Pleitez, can you bring/
20 provide us some background information from the
21 Agency's perspective why we have this Fact-
22 Finding Hearing today?

1 INVESTIGATOR PLEITEZ: All right. I
2 was assigned to investigate an incident that
3 occurred at Don Juan Restaurant on January 11,
4 2019. This investigation determination was based
5 on an MPD-251, CCN No. 19006181, interviews with
6 the owner of the establishment and the reporting
7 officer.

8 The MPD-251 stated the following: On
9 the listed date and time and location, S1
10 approached V1 and V2 and assaulted them. S2
11 attempted to break up the fight. After the fight
12 was broken up, S1 unzipped his jacket and pulled
13 back his jacket intentionally exposing a BB gun.

14 S1 was placed under arrest for simple
15 assault and threats to do bodily harm and S2 was
16 arrested for possession of a BB gun and threats
17 in a menacing manner. S1 and S2 were transported
18 to 4D for processing.

19 On January 25th, I spoke to the
20 officer, Mrs. -- Officer Michelle Brown. She
21 stated that she was on duty on the night of the
22 incident and was approached by the victim. The

1 victim stated that -- I'm sorry, the officer
2 stated that everything on her report was accurate
3 and she added that the establishment's cameras
4 were not working at the time. However, the
5 victims reported that the incident occurred
6 inside the bathroom, which doesn't have cameras
7 anyway.

8 On February 1, 2019, I visited the
9 establishment and I spoke to the owner, Luis
10 Ferrufino. Mr. Ferrufino stated that he was at
11 the establishment on the night of the incident.
12 He stated that S1, who was the owner of another
13 ABRA establishment, entered the establishment
14 with security personnel, which was the person --
15 the security had the BB gun.

16 He stated that the victim advised him
17 that he approached the S1 to say hello inside the
18 bathroom and that's when the assault occurred.
19 During the regulatory inspection, I did speak
20 with Mr. Ferrufino about his cameras and asked
21 him if he had any footage for that night. He
22 stated that his cameras were not working on that

1 night and that he didn't have any cameras inside
2 of the bathroom. However, the establishment only
3 holds footage for seven days when they are
4 working.

5 He did provide me with the incident
6 log book that he had. I took a picture of that.

7 But furthermore, after ABRA records,
8 after an ABRA records check, it was determined
9 that Don Juan was wrong. It does have a security
10 plan. However, the voluntary agreement was
11 terminated on October 5, 2011, which was Board
12 Order 2011-387. As such, the licensed
13 establishment is no longer required to have a
14 security plan.

15 CHAIRPERSON ANDERSON: So you didn't
16 see any ABRA violations during your inspection?

17 INVESTIGATOR PLEITEZ: No, because
18 they are not, technically, required to have a
19 security plan.

20 CHAIRPERSON ANDERSON: Okay. Any
21 questions by any Board Members? Go ahead, Mr.
22 Short.

1 MEMBER SHORT: During your
2 investigation, were the occupants of the
3 establishment cooperative or did you run into any
4 road blocks during your investigation with the
5 licensee?

6 INVESTIGATOR PLEITEZ: They were
7 cooperative. Just that, on that night, the
8 cameras were not working.

9 MEMBER SHORT: Was that a problem or
10 did you --

11 INVESTIGATOR PLEITEZ: I'm sorry?

12 MEMBER SHORT: Did you have any reason
13 to think that that was -- that they ever worked?

14 INVESTIGATOR PLEITEZ: I'm not sure.
15 I couldn't -- I didn't look at the cameras,
16 because the screen was completely off.

17 MEMBER SHORT: Okay.

18 INVESTIGATOR PLEITEZ: So I'm not
19 sure.

20 MEMBER SHORT: So there wasn't a lot
21 you could do? There was not a lot that you could
22 do --

1 INVESTIGATOR PLEITEZ: Yeah.

2 MEMBER SHORT: -- at all. Okay.

3 Thank you. That's all I have, Mr. Chair.

4 INVESTIGATOR PLEITEZ: Thank you.

5 CHAIRPERSON ANDERSON: Go ahead, Mr.

6 Alberti.

7 INVESTIGATOR PLEITEZ: Yes.

8 MEMBER ALBERTI: Ms. Pleitez, thank
9 you for your report. As always, it's quite
10 really well-written. And but I mean -- and
11 because this is a good job, there is something
12 that got -- made me curious in here.

13 You said that Mr. Ferrufino said that
14 the S1, who was the owner of a neighboring
15 establishment, came in with the security
16 personnel and that Mr. Ferrufino's security staff
17 was standing over them the whole time.

18 Anything you can add? I mean, you
19 talked to Mr. Ferrufino, anything you can add to
20 that? I mean that piqued my curiosity.

21 INVESTIGATOR PLEITEZ: Well, Mr.

22 Ferrufino is the owner of Don Juan Restaurant.

1 MEMBER ALBERTI: Yeah.

2 INVESTIGATOR PLEITEZ: The security
3 guard was over another owner.

4 MEMBER ALBERTI: Yeah, so why would --
5 so just because another owner comes in, why would
6 his security staff be -- do you have any idea why
7 his security staff would be standing over the
8 other --

9 INVESTIGATOR PLEITEZ: So that was --

10 MEMBER ALBERTI: -- essentially a
11 patron?

12 INVESTIGATOR PLEITEZ: No, no. The --

13 MEMBER ALBERTI: Well, I mean, the
14 owner -- the S1 was -- in a sense was a patron.

15 INVESTIGATOR PLEITEZ: Yes. No, the
16 security -- the owner of the other establishment
17 brought his security from his establishment --

18 MEMBER ALBERTI: Oh, it was --

19 INVESTIGATOR PLEITEZ: -- into --

20 MEMBER ALBERTI: -- S1's security who
21 was standing over him the whole time?

22 INVESTIGATOR PLEITEZ: Yes. So S1 was

1 the owner of Juanitas.

2 MEMBER ALBERTI: Oh, I get it. So the

3 -- so --

4 INVESTIGATOR PLEITEZ: He brought his
5 security from Juanitas.

6 MEMBER ALBERTI: Who was sort of
7 guarding him?

8 INVESTIGATOR PLEITEZ: Yes.

9 MEMBER ALBERTI: Oh, that's what --
10 oh, now I understand.

11 INVESTIGATOR PLEITEZ: Yeah.

12 MEMBER ALBERTI: Oh, yeah, that's
13 spooky, yeah.

14 CHAIRPERSON ANDERSON: Ms. Pleitez,
15 and I'm trying to get some clarification here.
16 This establishment has been before us before.
17 They were here as late as the end of last year.
18 And last year they were charged with failure to
19 file a security plan.

20 And from what I'm seeing here, the
21 Board -- there was an OIC for \$1,500. So I'm not
22 sure if I agree that -- at least from looking at

1 the investigative history, if they are no longer
2 required to have a security plan.

3 INVESTIGATOR PLEITEZ: There was --
4 give me one second. So what caught my attention
5 and why I referred my questions to legal which in
6 turn told me that the security plan was no longer
7 valid because of the cancellation of the
8 settlement agreement.

9 CHAIRPERSON ANDERSON: Right.

10 INVESTIGATOR PLEITEZ: Was No. 19 for
11 a security plan. Per the security plan packet
12 it says "This security plan is a statement of
13 policy which the licensee will undertake to
14 implement in good faith. As such, it is
15 inspirational and does not create a standard of
16 conduct subject to enforcement actions nor does
17 it change the standard of care, otherwise,
18 applicable under the general law of negligence of
19 care, different from the standard of care under
20 current law for action based on toward
21 negligence, vicarious liability or respondeat
22 superior.

1 So my question to legal was was that
2 statement -- it's basically saying that anything
3 that is in the security plan can't be used.

4 CHAIRPERSON ANDERSON: No, but the --
5 the reason why I'm asking is because I'm must
6 looking at the investigative history.

7 INVESTIGATOR PLEITEZ: Yes.

8 CHAIRPERSON ANDERSON: And we charged
9 them in November. And they accepted an OIC for
10 violation of a security plan in 2018.

11 INVESTIGATOR PLEITEZ: So does that
12 mean that they are required to now file a
13 security plan?

14 CHAIRPERSON ANDERSON: That's what I
15 am trying to get some clarification from legal.

16 MEMBER ALBERTI: Yeah, I think legal
17 and OAG.

18 CHAIRPERSON ANDERSON: Right. Because
19 -- and so all right.

20 MEMBER ALBERTI: Can I ask one other?

21 INVESTIGATOR PLEITEZ: If that be the
22 case, I can charge one more thing.

1 CHAIRPERSON ANDERSON: All right.

2 INVESTIGATOR PLEITEZ: But I would
3 want to put it on --

4 MEMBER ALBERTI: I'm just wondering,
5 was anyone arrested?

6 INVESTIGATOR PLEITEZ: Yes.

7 MEMBER ALBERTI: And charged?

8 INVESTIGATOR PLEITEZ: Yes. Well, I
9 don't know if they were charged. I did send an
10 email to the officer, but when I spoke, she
11 called me and I think the questions came out.
12 But I can --

13 MEMBER ALBERTI: So --

14 INVESTIGATOR PLEITEZ: -- follow back
15 with that. I know that they were both arrested
16 that night.

17 MEMBER ALBERTI: Okay. So Chairman
18 Anderson, the reason I asked is that maybe we
19 should follow with this investigation in finding
20 out what charges, if any, were brought against
21 the other licensee.

22 INVESTIGATOR PLEITEZ: Other, yes.

1 MEMBER ALBERTI: Because I mean the
2 way I read this, he comes in. I guess it was a
3 male, right?

4 INVESTIGATOR PLEITEZ: Um-hum.

5 MEMBER ALBERTI: Correct. He comes in
6 with his security person who is standing over
7 him, it's kind of like he is like inviting or
8 expecting trouble. And if he was arrested, if it
9 was a felony assault, again if he is convicted,
10 his license is in danger. So I'm not sure if
11 maybe we should follow-up with information on the
12 other licensee, whoever that was.

13 I am just bothered by the fact that
14 they came into this establishment apparently
15 ready for trouble. I mean, they could have a
16 drink in their own place.

17 CHAIRPERSON ANDERSON: I am concerned
18 that this -- that we have this Fact-Finding
19 Hearing. It is based on information that I have
20 that proper notice was provided to the licensee.
21 That's not him, right?

22 MEMBER ALBERTI: No, that's not Mr.

1 Ferrufino.

2 CHAIRPERSON ANDERSON: Okay. Proper
3 notice was provided to the licensee and the
4 licensee is not here today to answer most of the
5 questions. So what I'm going to -- all right.
6 So any other comments, concerns by anyone else?

7 I need more information from the
8 Agency whether or not there is a statement,
9 whether the statement that they do not have a
10 security plan is correct, based on the fact that
11 I -- going through the investigative history, I
12 saw that we charged them and there was an Offer
13 in Compromise in December of 2018 for a violation
14 of a security agreement.

15 So what I will do is that the Board
16 will -- I'll recommend to the Board that we take
17 this matter under advisement until we have been
18 provided more information regarding the security
19 -- if there is a security plan and if there is a
20 security plan, then I will recommend to the Board
21 that we refer this matter over to the Attorney
22 General for violation of their security plan.

1 All right. Yes, Mr. Short?

2 MEMBER SHORT: Also I can concur with
3 Board Member Alberti that we should find out if
4 anybody was arrested also. Especially if the
5 owner was arrested.

6 CHAIRPERSON ANDERSON: You mean the
7 other of the other establishment. So I will also
8 have the Agency investigate to see what charges,
9 if any, were filed against, whether or not the
10 owner of the other establishment was prosecuted
11 and whether or not that owner was prosecuted,
12 whether or not we need to -- whether or not it's
13 a felony or a misdemeanor, that would require a
14 Board action, based on a conviction.

15 Okay. All right. Well, thank you,
16 Ms. Pleitez --

17 INVESTIGATOR PLEITEZ: Thank you.

18 CHAIRPERSON ANDERSON: -- for your
19 presentation today.

20 We are off the record.

21 (Whereupon, the Fact-Finding Hearing
22 was concluded at 1:58 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Don Juan Restaurant

Before: DC ABRA

Date: 05-01-19

Place: Washington, DC

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

Neal R Gross

Court Reporter

NEAL R. GROSS

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