

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

IN THE MATTER OF: :

:

512 Rhode Island Ave, LLC :

t/a Grapes n' Hopes Market :

512 Rhode Island Ave NW : Fact Finding

Retailer B - ANC 6E : Hearing

License No. 77268 :

:

(Request to place license :
in Safekeeping) :

Wednesday
February 28, 2018

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Donovan W. Anderson, presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
NICK ALBERTI, Member
BOBBY CATO, JR., Member
MIKE SILVERSTEIN, Member
JAMES SHORT, Member

ALSO PRESENT:

ANDREW KLINE, Licensee's Counsel
HOUSHANG MOMENIAN, Licensee
COUNTEE GILLIAM, ABRA Investigator
KEVIN PUENTE, ABRA Investigator

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

2 10:19 a.m.

3 CHAIRPERSON ANDERSON: All right. We
4 are back on the record. Our next case, we have a
5 Fact-Finding Hearing for Grapes n' Hopes Market,
6 License No. 77268.

7 Will the parties, please, approach and
8 identify themselves for the record, please?

9 MR. KLINE: Good morning. Andrew
10 Kline on behalf of the licensee.

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

13 MR. MOMENIAN: Houshang Momenian, the
14 licensee.

15 CHAIRPERSON ANDERSON: Mr. Momenian?

16 MR. KLINE: Momenian.

17 CHAIRPERSON ANDERSON: Can you also
18 spell your name for the record, please, sir?
19 Spell your name, sir.

20 MR. MOMENIAN: Spell last name, M-O-M-
21 E-N-I-A-N, first name H-O-U-S-H-A-N-G.

22 CHAIRPERSON ANDERSON: And can you

1 also put it right on the piece of paper in front
2 of you, too, sir?

3 MR. MOMENIAN: Okay.

4 CHAIRPERSON ANDERSON:

5 INVESTIGATOR PUENTE: Kevin Puente,
6 Investigator.

7 CHAIRPERSON ANDERSON: Mr. Puente.

8 INVESTIGATOR GILLIAM: Countee
9 Gilliam, Investigator.

10 CHAIRPERSON ANDERSON: Mr. Gilliam.

11 All right. We are here this morning for a Fact-
12 Finding Hearing. And one of the reasons why the
13 Board has asked for a Fact-Finding Hearing is
14 because the establishment is asking to be -- for
15 the liquor license to be placed back in
16 safekeeping.

17 And I remembered this case. I think
18 this case kind of preceded my tenure here on the
19 Board and I have been on the Board as Chair for--
20 this is my second and I'm about to enter my third
21 year. And it appears that what had happened was
22 that the license was in safekeeping. The Board

1 had threatened to cancel it.

2 The owner had stated that he was going
3 to open and utilize the license. And so,
4 therefore, that was -- the Board did not cancel
5 the license, based on the premise that the
6 license would be in operation.

7 Now, we have another request to place
8 the license back in safekeeping and we are trying
9 to get some more clarification and need to find
10 out some information, was this license ever in
11 safe -- I'm sorry, was this license ever in
12 operation? And so maybe the licensee can provide
13 us some information.

14 And then we also have two
15 Investigators and so they can provide us some
16 information from their perspective.

17 So I think, Mr. Kline, you can go and
18 let us know what is going on.

19 MR. KLINE: Okay. Sure. So Mr.
20 Momenian, just to refresh the Board's
21 recollection and then for Board Member Cato, who
22 was not here, I think, when we last discussed

1 this matter, owns the property where the store is
2 located. He has owned it for quite some time.
3 He applied and was approved for the license, did
4 not open and the Board, of course, requested that
5 it be advised as to what was going to happen with
6 the location. Was the license going to be
7 utilized?

8 I think we were here last summer, as
9 I recall, and Mr. Momenian had pledged that he
10 would open the store and take the license out of
11 safekeeping. He did do that. In the middle of
12 doing that, the opportunity came for him to
13 acquire the property next door.

14 Now, when we were here last summer, we
15 disclosed to the Board that he had been
16 developing plans to develop the corner where the
17 store is and was knee-deep in that when he then
18 had the opportunity to acquire the piece next
19 door. He began rethinking those plans.

20 Now, of course, he is thinking of and
21 pursuing developing both pieces together. But in
22 the interim, now that his intentions can be

1 focused on the store, he intends to reopen the
2 store and will do so within 30 days.

3 So I think technically, although we
4 don't have a time period in our regulations,
5 something going forward we may want to address
6 with the Council, because I think it's a little
7 unclear as to what the safekeeping requirements
8 are, it would seem, at this point, the license
9 should be in safekeeping until such time as he
10 reopens. Although, he is prepared to tell you
11 today that he will be open within 30 days.

12 CHAIRPERSON ANDERSON: Mr. Puente?

13 INVESTIGATOR PUENTE: I reached out to
14 the Wholesaler Association to see which
15 wholesalers were delivering alcohol to the
16 establishment. I only heard back from two
17 wholesalers: Premium and Capital Eagle. Premium
18 made one delivery on May 15, 2017 and Capital
19 Eagle made one delivery in September 2017. And
20 those are the only two deliveries within the past
21 year to the establishment from the wholesalers.

22 CHAIRPERSON ANDERSON: Mr. Gilliam,

1 what, if anything, can you add?

2 INVESTIGATOR GILLIAM: Just from
3 working, I can remember assisting with a
4 regulatory inspection in, I would say, between
5 January, February or March of 2016, when the
6 establishment was open and operating, and two
7 other times in 2017 I was assigned to do a
8 regulatory inspection that whole year and they
9 wasn't open.

10 CHAIRPERSON ANDERSON: You say a whole
11 year?

12 INVESTIGATOR GILLIAM: The whole year.
13 The whole -- of the whole of last year, 2017, I
14 had two -- I remember I had two inspections
15 scheduled, one was in the wintertime and one was
16 in the summertime, they both was closed that
17 entire year.

18 CHAIRPERSON ANDERSON: So, Mr. Kline,
19 what --

20 MR. KLINE: I'm a little confused and
21 I thought maybe my brain was addled in terms of
22 my memory, but, and the Board's records will sure

1 reflect this, we were here last summer, I
2 believe, in June or July and, at that point, had
3 pledged that the business would be open by the
4 end of the summer.

5 So I don't think, in terms of before
6 that, I'm a little puzzled as to why there would
7 have been an expectation at that point that the
8 store would be open. We had this conversation
9 last summer. He would open by the fall. He did
10 open for a short period of time. And then, as I
11 indicated, got distracted with this other
12 property acquisition.

13 So I'm a little puzzled in terms of
14 the time line and at least in terms of what I
15 know and what the Board's records should reflect
16 in terms of the history of this establishment.

17 CHAIRPERSON ANDERSON: Mr. Puente,
18 when did you say the last delivery that you had
19 in 2017 was?

20 INVESTIGATOR PUENTE: It was by
21 Capital Eagle on September 30, 2017.

22 CHAIRPERSON ANDERSON: Which is, I

1 guess, consistent with what you are saying then.

2 MR. KLINE: Right, that's our
3 understanding. And the May delivery, I don't --
4 I mean, I'm a little puzzled by that. As equally
5 puzzled by that, because it doesn't jive with
6 what we know.

7 CHAIRPERSON ANDERSON: Was that -- I'm
8 not sure if that's relevant, but what
9 information, if any, do you have about that
10 delivery?

11 INVESTIGATOR PUENTE: It was for,
12 approximately, about 15 cases of alcohol. There
13 is a note in -- the invoice says to deliver after
14 2:00 p.m.

15 MEMBER SILVERSTEIN: How many?

16 INVESTIGATOR PUENTE: That's all I
17 have on that.

18 CHAIRPERSON ANDERSON: 15 cases it
19 says?

20 INVESTIGATOR PUENTE: Yes. Yes, 15.

21 CHAIRPERSON ANDERSON: 15. All right.

22 MR. KLINE: Yeah, just so all of the

1 Board is aware, I know we discussed it before,
2 this store is tiny. It's -- you know, those of
3 you who are not familiar with the location, it's
4 very, very small. So 15 cases, that fully stocks
5 that store. I mean, it's more than enough.

6 Okay. And Mr. Momenian advises he
7 ordered -- he had product from four or five
8 different wholesalers.

9 CHAIRPERSON ANDERSON: Well, as was
10 stated, we only got information from --

11 MR. KLINE: Right. But just we are
12 clear in terms of, you know, we didn't take 15
13 cases of alcohol and pour them down the sink.
14 There was other alcohol and the store was
15 actually open.

16 CHAIRPERSON ANDERSON: Any other
17 questions? Any questions by Board Members? Mr.
18 Alberti?

19 MEMBER ALBERTI: So, Mr. Momenian,
20 what hours were you generally open during -- you
21 opened when, in September through -- when were
22 you open? When was the license active? During

1 which -- during what months?

2 MR. MOMENIAN: When I took the
3 license, it took a few weeks to get the manager
4 license, manager license and then we just opened.

5 MEMBER ALBERTI: When was that?

6 MR. MOMENIAN: Just about the time
7 that we ordered, September.

8 MEMBER ALBERTI: September. Okay.

9 MR. MOMENIAN: Yeah.

10 MEMBER ALBERTI: All right. Some time
11 in September?

12 MR. MOMENIAN: Yeah.

13 MEMBER ALBERTI: All right. And then
14 you ceased operations when?

15 MR. MOMENIAN: Maybe 30, 40 days after
16 we stop negotiating to buy the building next
17 door, 510 Rhode Island. And also we were
18 confused for where to put our sign. We --
19 because initially when we take the license, they
20 were talking about the -- some -- because the
21 property is big even though --

22 MEMBER ALBERTI: I understand, yes.

1 MR. MOMENIAN: -- we were not sure
2 where we can put our sign. And then the
3 opportunity came to take the 510 Rhode Island and
4 we -- even though we have to spend a lot of money
5 to get the blueprint for five story building. I
6 mean, four plus the basement. And then we stop
7 all of it and --

8 MEMBER ALBERTI: Okay. So when was
9 that? When did you cease operations?

10 MR. MOMENIAN: Well, just right away
11 after we purchased that.

12 MEMBER ALBERTI: And when was that?
13 Give me a date. I need a date.

14 MR. MOMENIAN: Just October, something
15 like that.

16 MEMBER ALBERTI: So you were open
17 September and October? You were open two months?

18 MR. MOMENIAN: No, one month.

19 MEMBER ALBERTI: One month you were
20 open?

21 MR. MOMENIAN: Right.

22 MEMBER ALBERTI: Generally, what hours

1 were you open?

2 MR. MOMENIAN: After lunch, after
3 lunch until 5:00, 6:00.

4 MEMBER ALBERTI: So from 12:00 to 5:00
5 or 6:00?

6 MR. MOMENIAN: Yeah, right, after.

7 MEMBER ALBERTI: Okay. And if you
8 were to be open in 30 days, what hours would you
9 have?

10 MR. MOMENIAN: Well, the ABC thought
11 we would do it after lunch until 7:00.

12 MEMBER ALBERTI: Okay. So you were
13 open one month. You ordered 15 cases, I guess,
14 probably beer from that distributor. Have you
15 order from other?

16 MR. MOMENIAN: From other, yes.

17 MEMBER ALBERTI: Other wholesalers?

18 MR. MOMENIAN: Everyone.

19 MEMBER ALBERTI: Okay.

20 MR. MOMENIAN: Well, everyone in the
21 market.

22 MEMBER ALBERTI: Do you have those

1 records?

2 MR. MOMENIAN: Yes, I have it.

3 MEMBER ALBERTI: Okay.

4 MR. MOMENIAN: I have.

5 MEMBER ALBERTI: What has happened to
6 the alcohol that wasn't sold?

7 MR. MOMENIAN: It's there.

8 MEMBER ALBERTI: It's there. Okay.

9 So could you provide -- could you arrange to meet
10 with our Investigators to provide those records
11 and show them the alcohol that is there?

12 MR. MOMENIAN: Sure, sure.

13 MEMBER ALBERTI: Okay. Great. That
14 would be much appreciated.

15 MR. MOMENIAN: Sure.

16 MEMBER ALBERTI: I'm not sure if
17 that's the role of the Board, but that's my
18 suggestion, if we were to grant you continued
19 safekeeping.

20 CHAIRPERSON ANDERSON: Any other
21 questions by any other Board Members? Any
22 comments that anyone needs to -- any final

1 comments?

2 MR. KLINE: Yes. I would just like to
3 say in terms of the policy here, obviously, the
4 District of Columbia Council in their infinite
5 wisdom gets to make the overall policy. They
6 pass the laws. The law is pretty clear in terms
7 of the Board's oversight over licenses in
8 safekeeping.

9 But from a policy standpoint, I would
10 ask the Board to consider that licensees who have
11 licenses in safekeeping pay continuing license
12 fees, which is money in the District's coffer,
13 and also pay, under the law that was changed a
14 few years ago, I think under the leadership of
15 many of the Members of this Board, so that there
16 is an additional fee, a safekeeping fee on top of
17 that.

18 So a couple of things. One is
19 personally and, you know, Board Members may feel
20 differently, but I don't understand the policy of
21 why do we care whether licenses are in
22 safekeeping. People are paying for them and

1 that's money, it's free money for the District,
2 which I think is always a good thing. From where
3 I stand, I think that's a great thing.

4 And then so from that standpoint, from
5 a policy standpoint, I think that's all good in
6 terms of allowing licenses to be in safekeeping.

7 And then from the licensee's
8 standpoint, they, obviously, have an investment,
9 they continue to pay. So you know, I would urge
10 the Board, in this case and in other cases, to
11 seriously consider whether it is appropriate and
12 under what circumstances it is appropriate to
13 actually cancel somebody's license because of
14 those two policy concerns.

15 Now, granted, we all know what the law
16 says and the Board has to act accordingly in
17 accordance with the law. But I just, you know,
18 wanted to make that point, because I'm puzzled by
19 this whole safekeeping provision in the law in
20 terms of people pay, let them keep it in
21 safekeeping. That's my position. That's not
22 what the law says, so I want to be clear.

1 CHAIRPERSON ANDERSON: Well, let me
2 ask you, Mr. Kline, prior to this short period
3 that the license was in use, how long has this
4 license been in safekeeping?

5 MR. KLINE: I don't know the answer to
6 that question. And I'm not being coy, because it
7 was originally approved as a 405.1, so there was
8 a -- there certainly was a long period of time
9 where it technically was not in safekeeping, but
10 I'm not going to mislead the Board. I mean, it
11 was not being used because it was subject to a
12 405.1, which meant it wasn't being used.

13 So the regulations are a little
14 different. I think the fact that it's the same
15 in terms of -- yeah, it was approved some time
16 ago.

17 CHAIRPERSON ANDERSON: I --

18 MEMBER ALBERTI: So can I -- go ahead.

19 CHAIRPERSON ANDERSON: And I know we
20 are having --

21 MR. KLINE: Philosophical.

22 CHAIRPERSON ANDERSON: Yeah. I know

1 we are having this conversation because you raise
2 a point.

3 MR. KLINE: Sure.

4 CHAIRPERSON ANDERSON: And so at what
5 period of time should the Board act if a license
6 is not being in operation from the time it was
7 approved? And so how long do you believe is a
8 reasonable period of time for a license to come
9 online? I understand that, for example, have a
10 fire, so --

11 MEMBER ALBERTI: Yes, but I think
12 there is two questions here.

13 CHAIRPERSON ANDERSON: Go ahead, Mr.
14 Alberti.

15 MEMBER ALBERTI: And so, Mr. Kline, I
16 mean, we have -- Mr. Kline, you are asking --
17 let's make sure we have both.

18 So one was the 405 question. How long
19 do you think it is reasonable for someone to have
20 their license approved --

21 MR. KLINE: Um-hum.

22 MEMBER ALBERTI: -- I believe this

1 license was approved in 2006. Am I correct?

2 MR. KLINE: Um --

3 MEMBER ALBERTI: That's what our
4 records show.

5 MR. KLINE: That's possible, yeah.

6 MEMBER ALBERTI: All right. And it
7 was in 405 status, meaning that the license was
8 approved, but you didn't have like a C of O. You
9 couldn't open, because you didn't have the other
10 documents from DCRA.

11 MR. KLINE: Right.

12 MEMBER ALBERTI: All right. That's
13 what a 405 means.

14 MR. KLINE: Right.

15 MEMBER ALBERTI: Okay. How long was
16 it in 405?

17 MR. KLINE: Quite a long period of
18 time. I concede that.

19 MEMBER ALBERTI: You don't know. You
20 don't know?

21 MR. KLINE: I don't know offhand, but
22 I know it was quite a long period of time.

1 MEMBER ALBERTI: Okay. So --

2 MR. KLINE: There is an explanation
3 for it.

4 MEMBER ALBERTI: -- my -- so I think
5 the answer to the Chair's question, there is two
6 questions.

7 MR. KLINE: Sure.

8 MEMBER ALBERTI: How long do you think
9 it is reasonable to keep something in a 405
10 status? And how long do you think it is
11 reasonable to keep something in a safekeeping
12 status?

13 MR. KLINE: I mean my personal
14 opinion, as long as people are paying the fees
15 and the District is getting the money, as long as
16 need be.

17 MEMBER ALBERTI: So, Mr. Kline, to
18 play devil's advocate --

19 MR. KLINE: Sure.

20 MEMBER ALBERTI: -- we now have -- I
21 think we are almost, if we are not at a cap at
22 Class A, we are almost at a cap of Class A. So

1 do you think it is justifiable for someone to
2 apply for a Class A License, put it in 405 status
3 and leave it there for five years while we have a
4 cap and no one else can get a Class A License?

5 MR. KLINE: I mean, that's a good
6 question.

7 MEMBER ALBERTI: That's why I asked
8 it.

9 MR. KLINE: No, I know. I mean, and
10 I think from a policy standpoint that makes a lot
11 of sense. Inasmuch as we do have caps, I mean,
12 that's a different issue in terms of whether
13 there should be caps given the footage --

14 MEMBER ALBERTI: This is a Class C and
15 we have a cap.

16 MR. KLINE: I understand.

17 MEMBER ALBERTI: So keep that in mind.

18 MR. KLINE: Given the footage
19 restrictions and everything else that is
20 involved, I am not sure exactly why we have a
21 cap. I know why we had it at one point. And
22 then we had --

1 MEMBER ALBERTI: Because the Council
2 put it in place. So --

3 MR. KLINE: Well, that's --

4 MEMBER ALBERTI: -- don't talk to us.
5 This is not a question for us to answer, Mr.
6 Kline.

7 MR. KLINE: I understand that.

8 MEMBER ALBERTI: The reasons why the
9 Council put it in place are any anything to do
10 with the policies of this Board.

11 MR. KLINE: No, I understand. But we
12 are sort of having a general policy discussion.

13 MEMBER ALBERTI: Right. Okay.

14 MR. KLINE: So you know, I think it is
15 appropriate. And I think that's a point well-
16 taken. And our concern has been when, you know,
17 and the issue for a lot of years and I think the
18 Board -- the reason the Board took many of the
19 actions that it did, is because landlords would
20 stockpile these licenses in different
21 neighborhoods and we would find out that one
22 landlord, you know, in the neighborhood might

1 control, you know, four or five licenses and no
2 one else could get in and there was a market out
3 there for, you know, a lot of money for licenses.

4 But when we have someone here who not
5 only owns the property and is an operator and has
6 a history, frankly, as a retail operator, I mean,
7 I want the Board to be clear that this is not a
8 real estate magnet. This is someone who has
9 operated food, wholesale establishments in this
10 town for how many years?

11 MR. MOMENIAN: Many years.

12 MR. KLINE: Many years.

13 MR. MOMENIAN: Yes. Since '80 -- I
14 mean, '79.

15 MR. KLINE: Since '79. So I mean, he
16 is an operator. He is not strictly a landlord.
17 So for those folks, I think that is a different
18 answer than for a landlord who is just tying them
19 up as we saw in Georgetown and other
20 neighborhoods or for Bs and other things. Oh, I
21 might get a tenant, so, you know, let me just
22 hold on to that.

1 So I don't know that I fully answered
2 your question, but those would be the policy
3 considerations that I think come into play under
4 those circumstances.

5 CHAIRPERSON ANDERSON: All right. Mr.
6 Short?

7 MEMBER SHORT: Yes. Mr. Kline --

8 MR. KLINE: Yes, sir.

9 MEMBER SHORT: -- since I have been on
10 the Board, when I first came on, we had a back-
11 list of safekeepings and some of the research we
12 did and some of the discussions we had, I'll give
13 you a scenario that really got my attention.

14 This particular license at 1512 or 512
15 Rhode Island Avenue, correct?

16 MR. KLINE: Right.

17 MEMBER SHORT: Now, that is a pretty
18 vibrant strip now. The whole area has been
19 revived. Let's say I had a property at 520 or
20 513 across the street and I wanted to have a B
21 License, because -- but I couldn't because there
22 is a licensee that has a license at 512 that is

1 not being used, because our records will reflect
2 -- because that building or that is in
3 safekeeping for a lot of years.

4 Now, I have a property and I want to
5 have a license, but I can't get one, because the
6 Code won't allow me to. So that was one reason
7 I, as a Board Member, voted for us to kind of
8 push this list along.

9 So what would you say to that? If I--
10 let's say he had a neighbor two doors down,
11 probably only two doors down that wanted to have
12 a B License, but couldn't because he is too close
13 to this safekeeping. What would you say to that
14 person?

15 MR. KLINE: I think that's a fair
16 point. I mean, I think that's a very fair point.

17 In this situation though, he is ready
18 to reopen, so I think all that becomes --

19 MEMBER SHORT: Well, he did reopen.

20 MR. KLINE: Right. But he --

21 MEMBER SHORT: And then he wants to go
22 back into safekeeping.

1 MR. KLINE: Well, no, but now he is
2 saying he will reopen the store again within 30
3 days. That's what we told you at the outset,
4 yes.

5 MEMBER SHORT: Mr. Kline, let's be
6 honest.

7 MR. KLINE: I am.

8 MEMBER SHORT: Okay. Now --

9 MR. KLINE: I am.

10 MEMBER SHORT: -- I'm speaking for
11 both sides. Now, okay. What I'm seeing as a
12 Board Member is this license being in safekeeping
13 is not in safekeeping at the time, correct?

14 MR. KLINE: I don't --

15 MEMBER SHORT: It's not in safekeeping
16 now.

17 MR. KLINE: -- know.

18 MEMBER SHORT: No, it's not. It's
19 not. You are asking to put it in safekeeping,
20 back into safekeeping now today, right?

21 MR. KLINE: That's correct.

22 MEMBER SHORT: That's why we are here.

1 MR. KLINE: Right.

2 MEMBER SHORT: All right. Now --

3 MR. KLINE: Thank you.

4 MEMBER SHORT: -- so the last time you
5 was here to take -- was to take it out of
6 safekeeping, which was less than somewhere around
7 six months, eight months ago, correct?

8 MR. KLINE: That's correct.

9 MEMBER SHORT: So it seems like the
10 Board is a lot of time we are spending with you
11 and this client, because he wants it out, he
12 wants it in, he wants it in, he wants it out.

13 MR. KLINE: Well, it's like --

14 MEMBER SHORT: No, no, wait a minute.

15 MR. KLINE: I'm sorry.

16 MEMBER SHORT: I'm just saying from an
17 honest point of view.

18 MR. KLINE: Right.

19 MEMBER SHORT: It might appear to
20 someone who doesn't know anything about these
21 hearings or proceedings, who just happens to read
22 about it in the newspaper, would say wow, so a

1 person can out/in, in/out and if I have a
2 license, do I want to move down the street? That
3 whole time I'm in limbo where I could be giving
4 the city a whole lot of money tax-wise if I had a
5 business that was operating and open.

6 Can you see my point now?

7 MR. KLINE: No, I see your point.

8 MEMBER SHORT: Okay.

9 MR. KLINE: But what I'm telling you
10 is he will reopen the store. He has said he will
11 reopen the store. In terms of anybody reading in
12 the newspaper, then they need to read the
13 transcript and understand what went on, because
14 the Board has discretion.

15 And what we are telling -- we have
16 given you the background in terms of why this
17 happened. This isn't just willy-nilly. This is
18 not a large corporation. This is a self-made
19 entrepreneur in the District of Columbia and he
20 had this opportunity for the property next door.
21 Maybe he doesn't multi-task as well as a lot of
22 us, but that's where his energies were focused,

1 at that point, in terms of -- yes, sir? Yes, you
2 can talk.

3 MR. MOMENIAN: Okay.

4 MR. KLINE: He wants to talk. Go
5 ahead, Mr. Momenian.

6 MR. MOMENIAN: I'm sorry. I think I
7 owe you to explain myself. I start working 1968
8 in Washington, D.C. across 14th Street across from
9 White House, Hot Shoppe, Marriott. I graduate
10 from Howard University. I had the store 14 and
11 Rhode Island where 7-Eleven is, a mini market, 7-
12 Burger across from 1405 Rhode Island. There is
13 McDonalds across from our building, across the
14 street coffee shop, 18th Street, Southeast, I was
15 in -- all over Washington small stores.

16 This property when we got it, we were
17 going to open, but it's not easy to go through
18 D.C. Government get it right. So and it's not --
19 I'm not blaming anybody, but they said that the
20 property is bigger, you get a better chance to
21 have more right.

22 So I have done a lot of work. Maybe

1 I should have brought to see how much I spend to
2 get the blueprint, a nice one, a good one, but
3 then we see that the neighbors in other areas,
4 the buildings are better and we are just wasting
5 the property, so we bought the next door,
6 otherwise we put a lot of effort to get the
7 blueprint for this and but just to do it better.

8 And they told us that we have a right
9 to put it in safekeeping. So we said let's do
10 most important to get the best out of this land.
11 So if we knew that the -- we have no right to put
12 it in safekeeping, we would never put it. We
13 would keep it, whatever we could do until the
14 week before the demolition.

15 But they said you can do it, then we
16 say okay we do it. Let's get it -- get the
17 blueprints ready and other things. I have been
18 all over this town. During as a student, worked
19 summer jobs. I graduate Howard University 1974.

20 So I'm just 50 years in Washington
21 working. I'm going to do best I can.

22 CHAIRPERSON ANDERSON: Yes, Mr.

1 Alberti?

2 MEMBER SHORT: Can I?

3 MEMBER ALBERTI: So Mr. --

4 CHAIRPERSON ANDERSON: Let him finish.
5 Go ahead, Mr. Short.

6 MEMBER SHORT: Did not you bring some
7 plans in to us the last time you were here or the
8 time before last? Did you bring some plans in on
9 what you were going to be doing with that
10 property? That you were going to open a larger
11 store, that you were going to -- what happened
12 with those plans? What happened with that plan?

13 MR. MOMENIAN: I have it. I have it.
14 But then whenever opportunity came to buy the
15 next door, because when the law says bigger, it's
16 less waste, I'm mechanical engineer. I have been
17 consultant before I start my business, worked
18 construction.

19 MEMBER SHORT: The question I have for
20 you again is why did not you develop the plans
21 you brought in before?

22 MR. KLINE: Because he had the

1 opportunity to buy 510 and he pursued that. He
2 has now acquired 510 and instead of doing a
3 development on just 512, he is now going to do it
4 on 510 and 512, so he has abandoned the efforts,
5 which was represented by the plans that we had --
6 last had before you, which were drawn just for
7 512, and is going to do both properties together.

8 MEMBER SHORT: Now, you know why I
9 asked that question, correct? Now, you know why
10 I asked that question?

11 MR. KLINE: Yes.

12 MEMBER SHORT: But that wasn't
13 presented to us this whole time. He was saying
14 now you want to go back into safekeeping again.
15 But you didn't say completely why you wanted to
16 go back into safekeeping.

17 MR. KLINE: Right. Maybe we didn't
18 communicate it as clearly.

19 MEMBER SHORT: No, you didn't
20 communicate that, so we are not getting the
21 information in a digestible manner. Speaking
22 just for myself as a Board Member.

1 MR. KLINE: I understand. I
2 understand.

3 MEMBER SHORT: When you start talking
4 about plans for 510, that maybe should have been
5 something you started off with. I mean, that
6 would have played a little better on my mind, as
7 a Board Member, because -- now, let me ask you a
8 question, Mr. Alberti had asked some questions
9 about someone coming out to take a look at his --
10 the alcohol that he already has in now.

11 MR. KLINE: Sure. And the records,
12 yes.

13 MEMBER SHORT: Okay. Will he have
14 those plans on-site for 510 when the Investigator
15 comes out?

16 MR. KLINE: If you want us to, sure.

17 MEMBER SHORT: I think that would be
18 nice.

19 MR. KLINE: We have had them before
20 you before. I mean, you guys have seen them
21 before.

22 MEMBER SHORT: No, you have had for

1 510. I mean, 512.

2 MR. KLINE: Oh, no, they are not
3 finished yet.

4 MEMBER SHORT: Oh, okay.

5 MR. KLINE: The 510 plans are not
6 done, at this point.

7 MEMBER SHORT: Oh, okay. All right.
8 Because we have seen the ones for 510, as you
9 know.

10 MR. KLINE: 512.

11 MEMBER SHORT: 512. You presented
12 those.

13 MR. KLINE: Yes, sir.

14 MEMBER SHORT: So I don't know.

15 MR. KLINE: The ones for 510/512
16 combined are in development. Okay. The plans
17 are not done, at this point. He just closed on
18 the acquisition in the fall, maybe three months
19 ago. So he is determining how best to proceed
20 with the development on the two lots.

21 MEMBER SHORT: Okay.

22 MR. KLINE: And that's not something

1 that happens overnight.

2 MEMBER SHORT: Another question I have
3 for you then is why not just go ahead and
4 surrender this license and as soon as he gets
5 everything developed, just apply for a new one.

6 MR. KLINE: Well, for all the reasons
7 that you voiced on the other side. I mean, if he
8 does that and he plans and builds the building
9 for a Retail B Store and someone opens up across
10 the street, then he doesn't have what he needs.
11 I mean, that's why we frequently come to you for
12 licensing before we go through the DCRA process.
13 And some of the communities don't understand it.
14 They are like well, you are too early. You
15 shouldn't be here. You should have your building
16 permits.

17 And it's kind of like well, if we are
18 going in for a restaurant or we're going in for a
19 liquor store or we're going in for a beer and
20 wine market, then we are not going to spend all
21 this money developing plans --

22 MEMBER SHORT: This is my second --

1 MR. KLINE: -- if we don't have a
2 license.

3 MEMBER SHORT: -- term as a Board
4 Member. And I have heard you before on so many
5 occasion and it seems like to me if I were
6 representing this gentleman, I would have came in
7 and said we are doing something next door, that's
8 the reason why we need to maybe ask for another
9 safekeeping.

10 But that wasn't what you said. You
11 simply said you want to backup. Is that what you
12 said today?

13 MR. KLINE: I said several --

14 MEMBER SHORT: So what are you -- what
15 exactly are you saying?

16 MR. KLINE: -- things. One of the
17 things that I advised the Board is that he has
18 acquired the property next door and he was
19 rethinking the development. I said that at the
20 outset. If I didn't say it as clearly as I
21 should have, I apologize for that, but I did
22 mention that during the course of my initial

1 presentation.

2 But if it wasn't clear, I apologize.

3 But it is clear now.

4 MEMBER SHORT: I'm finished. Thank
5 you.

6 CHAIRPERSON ANDERSON: Mr. Alberti?

7 MEMBER ALBERTI: So my question is
8 going to segue on some of the comments of Mr.
9 Short.

10 When do you expect to break ground on
11 this new development?

12 MR. MOMENIAN: I prefer to open and
13 not to --

14 MEMBER ALBERTI: That's not my
15 question. When do you expect to break ground on
16 the new development?

17 MR. MOMENIAN: It depend on D.C.
18 Government, because now D.C. Government --

19 MEMBER ALBERTI: Okay. So you --

20 MR. KLINE: Give your best guess.

21 MEMBER ALBERTI: Your best guess.

22 MR. MOMENIAN: In two years.

1 MEMBER ALBERTI: Two years.

2 MR. MOMENIAN: Yeah.

3 MEMBER ALBERTI: So we would expect
4 the store to be open for two years?

5 MR. MOMENIAN: Yeah, the store going
6 to be open until I break the ground. I going to
7 keep it open --

8 MEMBER ALBERTI: All right.

9 MR. MOMENIAN: -- just a week before
10 demolition.

11 MEMBER ALBERTI: All right. Okay.
12 This -- my last one is not a question. It's a
13 comment, so everybody understands the
14 ramifications here.

15 MR. MOMENIAN: Um-hum.

16 MEMBER ALBERTI: If this license goes
17 back into safekeeping, if any license goes into
18 safekeeping, in this case we have a license that
19 goes into safekeeping, right, while it's in
20 safekeeping, if someone wants to open another
21 Class B next door, they can, because the 400 foot
22 rule does not apply, prohibition on 400 feet does

1 not apply to a license that is in safekeeping.

2 So the danger here is that, okay,
3 somebody comes and wants to open a Class B across
4 the street and they are not prohibited. They
5 open a Class B across the street and then Mr.
6 Momenian comes back and he opens his Class B
7 across the street from the new one that just
8 opened a year ago.

9 So now, we have two Class Bs right
10 across the street from each other and that sort
11 of circumvents the will of the Council, which
12 says -- I mean, the Council wrote the law that
13 says you will not -- you are prohibited from
14 opening a Class B within 400 feet of another
15 Class B. That's one of the dangers here.

16 MR. KLINE: Right. But it's not a
17 danger if he reopens the store, because, at that
18 point, he is open. It is not a situation where
19 he is blocking another store with a license that
20 is not activated. He is going to activate the
21 license.

22 MEMBER ALBERTI: Since 2006, he have

1 had that danger, Mr. Short. That's all I'm
2 pointing out. Since 2006 --

3 CHAIRPERSON ANDERSON: Mr. Kline.

4 MEMBER ALBERTI: Mr. Kline. Mr.
5 Kline, that -- sorry. Mr. Kline --

6 MR. KLINE: That's because he has done
7 a better job presenting my case today than I
8 have.

9 MEMBER SHORT: I'm going to law school
10 later.

11 MEMBER ALBERTI: So but, you know, I
12 want everyone to recognize that we have been in
13 that situation for what, eight years or more.

14 CHAIRPERSON ANDERSON: Any other
15 questions?

16 MEMBER ALBERTI: That's the end of my
17 comments.

18 CHAIRPERSON ANDERSON: Any other
19 comments by any other Board Members? All right.
20 We will take this matter under advisement.

21 So as Chairperson -- oh, I'm sorry.
22 Do you have any final comments that you want to

1 make before we make a -- we try to --

2 MR. KLINE: The only final comment I
3 would make is, at this point, we are amending our
4 request for safekeeping, because as was pointed
5 out during the discussion, the license is not
6 currently in safekeeping. There are no minimum
7 requirements in the regs, as I mentioned before,
8 I think that is a deficiency, the statute in the
9 regs in terms of when a license has to go into
10 safekeeping.

11 Inasmuch as he intends to operate the
12 store and reopen it within the next 30 days, we
13 are only asking that the license be in
14 safekeeping to the extent that the Board believes
15 it needs to be in safekeeping during that period.

16 So in other words, if the license is
17 not now in safekeeping and it need not be in
18 safekeeping until he reopens, then our request is
19 moot. Does that make sense?

20 MEMBER ALBERTI: I just can't help it
21 here. I have to point out that the license
22 should have been in safekeeping as of November of

1 last year and it wasn't.

2 MR. KLINE: Well, no, it has been --
3 it was --

4 MEMBER ALBERTI: Mr. Kline --

5 MR. KLINE: -- applied --

6 MEMBER ALBERTI: -- I think, you know,
7 your comments just rubbed me the wrong way. All
8 right?

9 (Simultaneous Speaking)

10 MR. KLINE: I'm sorry. I didn't
11 think --

12 MEMBER ALBERTI: Whether we think it
13 should be in -- it should have been. By your own
14 admission --

15 MR. KLINE: He is --

16 MEMBER ALBERTI: -- that -- wait.

17 MR. KLINE: But that's not the -- your
18 facts are not correct.

19 MEMBER ALBERTI: The licensee -- Mr.
20 Kline, by the licensee's own admission it closed
21 at the end -- by the end of October.

22 MR. KLINE: Right.

1 MEMBER ALBERTI: It should have gone
2 back into safekeeping.

3 MR. KLINE: It can't go into
4 safekeeping until you order it and then you
5 approve it.

6 MEMBER ALBERTI: No, no, no, no, no,
7 no, no, no. As soon as you see -- Mr. Kline, I
8 thought you were more knowledgeable. As soon as
9 you cease operations, you are supposed to file
10 for safekeeping with this Board.

11 MR. KLINE: Okay.

12 MEMBER ALBERTI: Which did not happen.

13 MR. KLINE: We're talking at each
14 other. We are talking at each other.

15 CHAIRPERSON ANDERSON: All right. Let
16 me ask a question.

17 MR. KLINE: The point is --

18 CHAIRPERSON ANDERSON: Mr. Kline?

19 MR. KLINE: -- as was pointed out
20 previously, it is not in safekeeping until the
21 Board rules that it can be in safekeeping.

22 MEMBER ALBERTI: Absolutely,

1 absolutely.

2 MR. KLINE: Okay.

3 MEMBER ALBERTI: But you are --

4 MR. KLINE: That's why we are here
5 today.

6 MEMBER ALBERTI: -- avoiding the issue
7 of it's the licensee's responsibility to notify
8 us when they cease operations and that did not
9 happen.

10 MR. KLINE: It did happen.

11 CHAIRPERSON ANDERSON: All right. Let
12 me ask a question.

13 MEMBER ALBERTI: It did not happen --

14 CHAIRPERSON ANDERSON: Hold on.

15 MEMBER ALBERTI: -- when he ceased
16 operations.

17 CHAIRPERSON ANDERSON: Hold on one
18 minute.

19 MR. KLINE: It has happened since
20 then.

21 CHAIRPERSON ANDERSON: When was this
22 request made?

1 MR. KLINE: When was the request for--
2 when did you surrender it?

3 CHAIRPERSON ANDERSON: Do you remember
4 the date? And that will just end the --

5 MR. MOMENIAN: I brought it in.

6 CHAIRPERSON ANDERSON: And that will
7 end this discussion. That's why I'm asking the
8 question.

9 MR. KLINE: I don't know.

10 CHAIRPERSON ANDERSON: If you know the
11 date.

12 MR. KLINE: He brought the license
13 here. He turned it in for safekeeping.

14 MR. MOMENIAN: October.

15 MR. KLINE: I think we are having a
16 semantical disagreement here and that's all it
17 is.

18 CHAIRPERSON ANDERSON: I was just
19 trying to clarify for the record, that's why I
20 had asked the question.

21 MR. KLINE: Your records reflect when
22 he filed it.

1 CHAIRPERSON ANDERSON: All right. All
2 right. Anything that the Investigators want to
3 say?

4 INVESTIGATOR PUENTE: No, sir.

5 INVESTIGATOR GILLIAM: No.

6 CHAIRPERSON ANDERSON: All right. All
7 right. As Chairperson of the Alcoholic Beverage
8 Control Board for the District of Columbia and in
9 accordance with DC Official Code Section 2-574(b)
10 of the Open Meetings Act, I move that the ABC
11 Board hold a closed meeting for the purpose of
12 seeking legal advice from our counsel on the
13 Fact-Finding Hearing in Grapes n' Hopes Market,
14 pursuant to DC Official Code Section 2-574(b)(4)
15 of the Open Meetings Act and deliberating upon
16 Grapes n' Hopes Market, for the reasons cited in
17 DC Official Code Section 2-574(b)(13) of the Open
18 Meetings Act. Is there a second?

19 MEMBER SHORT: Second.

20 CHAIRPERSON ANDERSON: Mr. Short has
21 seconded the motion. I will now take a roll call
22 vote on the motion before us now that it has been

1 seconded.

2 Mr. Cato?

3 MEMBER CATO: I agree.

4 CHAIRPERSON ANDERSON: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON ANDERSON: Mr. Short?

7 MEMBER SHORT: I agree.

8 CHAIRPERSON ANDERSON: Mr.

9 Silverstein?

10 MEMBER SILVERSTEIN: I agree.

11 CHAIRPERSON ANDERSON: Mr. Anderson?

12 I agree.

13 As it appears that the motion has
14 passed, I hereby give notice that the ABC Board
15 will recess this proceeding to hold a closed
16 meeting in the ABC Board conference room pursuant
17 to Section 2-574(b) of the Open Meetings Act.

18 One last thing, Mr. Kline,
19 specifically, what is it that you guys are asking
20 for?

21 MR. KLINE: We are asking that the
22 store be allowed to reopen and resume operations

1 no later than 30 days from today.

2 CHAIRPERSON ANDERSON: Okay. Fine.

3 Thank you.

4 MR. KLINE: Thank you.

5 CHAIRPERSON ANDERSON: All right. We
6 are in recess.

7 (Whereupon, the Fact-Finding Hearing
8 was concluded at 10:57 a.m.)

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In the matter of: Grapes n Hopes

Before: DCABRA

Date: 02-28-18

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