



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

2 10:10 a.m.

3 AGENT FLETCHER: Would the parties in  
4 the matter of Hawthorne, the parties in the  
5 matter of Hawthorne, please come forward. This  
6 is Case Number 19-PRO-00155, 1336 you Street, NW,  
7 License Number ABRA-099603. This is a Retailer  
8 Class CT Petition to Amend or Terminate the  
9 Settlement Agreement. The protest issues are  
10 adverse impact on peace, order, and quiet. My  
11 name is Laverne Fletcher conducting the Roll Call  
12 hearing as the Board's Agent.

13 Introductions beginning with the  
14 applicant, please?

15 MR. BROGAN: Sure. Francis Brogan on  
16 behalf of the applicant.

17 AGENT FLETCHER: Francis, how do you  
18 spell your last name?

19 MR. BROGAN: B-R-O-G-A-N.

20 AGENT FLETCHER: B-R-O-G-A-N?

21 MR. BROGAN: Yes, ma'am.

22 AGENT FLETCHER: Mr. Brogan, would you  
23 put your contact information --

24 MR. BROGAN: I already did.

25 AGENT FLETCHER: You already did?

1 MR. BROGAN: Yes, ma'am.

2 AGENT FLETCHER: Thank you. Present  
3 on behalf of a group of -- there's a group of  
4 five individuals?

5 MS. JOHNSON: Good morning, Ms.  
6 Fletcher.

7 AGENT FLETCHER: Good morning.

8 MS. JOHNSON: How are you?

9 AGENT FLETCHER: Aileen Johnson. I'm  
10 here on behalf of a party of five, and I have one  
11 of the party of five with me, and I have a  
12 procedural matter to raise.

13 AGENT FLETCHER: Okay. I'm ready.

14 MS. JOHNSON: Oh, okay. Thank you.  
15 I have a procedural matter, twofold. First is  
16 that we, the party of five, did not receive  
17 notice of the petition from ABRA when the  
18 petition was filed by Hawthorne to terminate or  
19 amend, and on the final day of the petition  
20 period --

21 AGENT FLETCHER: Right.

22 MS. JOHNSON: -- I saw the placard,  
23 and I filed something, but as a party of five to  
24 the settlement agreement, we are entitled to  
25 notice from ABRA. And so I am going to file

1 copies of statements from the three people who  
2 are not here, and I am making a statement, and  
3 Mr. Dan Wittels, who is a member of the party of  
4 five, can make his representation of not having  
5 received notice from ABRA. I also am going to --  
6 and let me give you that.

7 AGENT FLETCHER: Yes. Thank you.

8 MS. JOHNSON: Would you like a copy?

9 MR. BROGAN: That be great. Thank you  
10 very much.

11 MS. JOHNSON: Sure. I also am going  
12 to make a motion to -- and so my motion with  
13 respect to this matter, if it goes forward --

14 AGENT FLETCHER: Okay.

15 MS. JOHNSON: -- is that there would  
16 be replacarding and proper notice. But also  
17 believe grounds exist to just dismiss this  
18 matter, because in the petition, it says, "I  
19 affirm other parties to the settlement agreement  
20 refused to meet with the licensee."

21 AGENT FLETCHER: Okay.

22 MS. JOHNSON: And it is checked in the  
23 affirmative. The petition also has an addendum  
24 speaking of attempts to speak to the ANC, but  
25 this is false with respect to the party of five.

1 The licensee never reached out to the party of  
2 five to negotiate its interest in terminating or  
3 amending the settlement agreement. And so I  
4 believe that this petition should be dismissed,  
5 because of this fatal misrepresentation of the  
6 facts, the letter that is dated September 26th  
7 describes claims that emails were made to the ANC  
8 and a conversation was promised with the ANC but  
9 one never happened. But you'll note -- and I  
10 guess you have a copy of the petition there?

11 AGENT FLETCHER: The actual --

12 MS. JOHNSON: The actual petition.

13 AGENT FLETCHER: Yes.

14 MS. JOHNSON: Yes. And you'll note  
15 that it doesn't anywhere claim that it tried to  
16 communicate, negotiate, contact the signatories.  
17 We are all -- the original party of five, we all  
18 still live at the address listed on the  
19 settlement agreement.

20 AGENT FLETCHER: Okay.

21 MS. JOHNSON: And so I believe that  
22 this petition should be dismissed for failure to  
23 contact the parties and for stating falsely that  
24 the other parties refused to meet. I affirm to  
25 you that is not true.

1 MR. WITTELS: I never heard anything  
2 either if that helps.

3 AGENT FLETCHER: Okay. Mr. Wittels,  
4 could you state your name and spell it for the  
5 record, please?

6 MR. WITTELS: Absolutely, my name is  
7 Dan Wittels, W-I-T-T-E-L-S, and I live at 1325  
8 Wallach Place, NW.

9 AGENT FLETCHER: Yes. Thank you. Ms.  
10 Johnson, the issue related to the placarding that  
11 you mentioned and not receiving notice, you know,  
12 I've become aware that that was actually a  
13 licensing issue so --

14 MS. JOHNSON: Yes, ma'am.

15 AGENT FLETCHER: So I know you -- I  
16 know this is all going on for the record.

17 MS. JOHNSON: Yes, ma'am.

18 AGENT FLETCHER: So the licensing  
19 division has been contacted --

20 MS. JOHNSON: Thank you.

21 AGENT FLETCHER: -- to get back with  
22 you on that.

23 MS. JOHNSON: Okay.

24 AGENT FLETCHER: The -- in terms of  
25 the applicant's failure to contact the parties

1 about the settlement agreement, there is no  
2 regulatory requirement that they actually do  
3 that, and there's no -- in the regulations,  
4 there's no a requirement for that. And so  
5 there's no penalty for that. It's a good way to  
6 proceed, I mean, if you want to try to  
7 renegotiate the reach out to the parties, but  
8 it's not a requirement. But it's on the record,  
9 though, that he stated he did and didn't for  
10 whatever value it has along the way.

11 MS. JOHNSON: Okay.

12 AGENT FLETCHER: In terms of the --

13 MR. BROGAN: May I clarify, Ms.  
14 Fletcher? Our letters, we spoke with the ANC.  
15 We did not speak with the protestants. I would  
16 agree with-- we're not disputing that. I guess  
17 we never got a 24, so we didn't reach out to you  
18 promptly. We apologize. We did try to reach out  
19 to the ANC. They didn't respond. We provided  
20 proof of that.

21 AGENT FLETCHER: Yes. And so you did  
22 reach out. I was just to the -- so I understand.  
23 And so, ma'am, that's on the record as well. We  
24 don't require you to do it. You did it. If you  
25 had a settlement agreement with the ANC and you

1 all had spoken and you wanted to renegotiate, you  
2 could have done that outside of here. But, you  
3 know, it's on the record.

4 MS. JOHNSON: Okay. Yes, because it's  
5 -- as you know, it's one Board order that  
6 incorporates the settlement agreement.

7 AGENT FLETCHER: Yes.

8 MS. JOHNSON: So --

9 AGENT FLETCHER: Yes.

10 MS. JOHNSON: -- things happen.

11 AGENT FLETCHER: And so -- yes. And  
12 well, this is the procedure to file a protest  
13 against the amendment or termination, so this is  
14 the process through which you do that. If the  
15 parties are granted standing in this case, then  
16 you're required to come here and participate in  
17 mediation to try and do exactly what you just  
18 said, Ms. Johnson.

19 MS. JOHNSON: Okay.

20 AGENT FLETCHER: The -- in terms of  
21 the group of five, I read your protest letter,  
22 Ms. Johnson, and so what's missing from it is the  
23 signature of the parties. So I see that you  
24 signed on their behalf. I'm looking at the  
25 original protest letter that was submitted. When



1 you say the undersigned designated representative  
2 is the attorney of record making this December 9,  
3 2019 request on behalf of the objectors who  
4 include Sarah Goldfrank; that's S-A-R-A-H G-O-L-  
5 F-R-A-N-K, Sarah Goldfrank.

6 MS. JOHNSON: O-L-D -- G-O-L-D.

7 AGENT FLETCHER: G-O-L-D-F-R-A-N-K,  
8 and I'm just going to -- I'll give the court  
9 reporter these names in a moment. I'll spell  
10 them out, Saskia Mooney, Dan Wittels. Mr.  
11 Wittels, you're here?

12 MR. WITTELS: Yes.

13 AGENT FLETCHER: Guy Podgornik.

14 MS. JOHNSON: Podgornik, and that's  
15 why they gave me emails attesting that --  
16 verifying what I stated in the petition letter.  
17 And that's the problem with not getting notice is  
18 on the final day, trying to rush around to get  
19 signatures from people who are not there, and  
20 that's why, as they're designated representative,  
21 I filed that letter, and then they have  
22 subsequently -- because I knew that it might be  
23 prudent to have verification from them, to submit  
24 those emails that I submitted to you from them  
25 stating that yes, they are protestants to this

1 matter.

2 AGENT FLETCHER: And Ms. Johnson, you  
3 are part of the group of five as well?

4 MS. JOHNSON: I am.

5 AGENT FLETCHER: Okay. So there is a  
6 group of five. The regulations require that -- I  
7 will just read them for the record, and then I'll  
8 just continue with all the other information --

9 MS. JOHNSON: Okay.

10 AGENT FLETCHER: -- responding to the  
11 other information you provided. 23BCMR states  
12 that all protests shall be signed by the  
13 protestant and contain the protestant's full  
14 name, email address, and mailing address. And so  
15 the protestant didn't sign the protest letter,  
16 and you just said reason, it was they didn't --  
17 you didn't have time to gather the signatures.

18 MS. JOHNSON: I didn't have time to  
19 gather the signatures. They didn't have notice  
20 that there was a termination pending.

21 AGENT FLETCHER: Okay. And also, the  
22 document that you just gave me, Ms. Johnson --

23 MS. JOHNSON: Yes.

24 AGENT FLETCHER: -- this is from Guy  
25 L. Podgornik.

1 MR. WITTELS: Podgornik.

2 AGENT FLETCHER: This is --

3 MS. JOHNSON: Podgornik.

4 AGENT FLETCHER: -- this is one of the  
5 emails you were just referring to?

6 MS. JOHNSON: Yes.

7 AGENT FLETCHER: So his intent was to  
8 do what in providing you this?

9 MS. JOHNSON: His intent is to verify  
10 that he's an original member, he's a member of  
11 the party of five protest, he objects, and he is  
12 unable to -- and I am his representative.

13 AGENT FLETCHER: Okay. And so here's  
14 an email from Ms. Mooney?

15 MS. JOHNSON: Yes.

16 AGENT FLETCHER: Serving the same  
17 purpose?

18 MS. JOHNSON: Yes.

19 AGENT FLETCHER: It's not signed but  
20 it's an email. You mention there was no time to  
21 get the official signatures, etcetera?

22 MS. JOHNSON: Yes.

23 AGENT FLETCHER: So Ms. Mooney also  
24 provided the same letter?

25 MS. JOHNSON: Yes.

1 AGENT FLETCHER: And Ms. --

2 MS. JOHNSON: Goldfrank.

3 AGENT FLETCHER: -- Goldfrank as well?

4 MS. JOHNSON: Yes.

5 AGENT FLETCHER: So that's five  
6 people.

7 MS. JOHNSON: Yes.

8 AGENT FLETCHER: So you're here. Mr.  
9 Wittels' here. The three people that are not  
10 here, they didn't sign the protest letter for the  
11 reason you stated, but they provided you with  
12 these emails just to verify that --

13 MS. JOHNSON: Yes.

14 AGENT FLETCHER: -- they filed the  
15 protest. They didn't get to sign them because of  
16 the time --

17 MS. JOHNSON: Yes.

18 AGENT FLETCHER: -- frame, so nobody  
19 got to do that. So here's what I'm going to do,  
20 because what I'm going to have to do is just  
21 follow the rules. I'm going to dismiss the group  
22 of five because they're not present and they  
23 didn't sign the protest letters. And what that  
24 means, just so that you know, the Board will  
25 issue a Board order dismissing the protest. But

1 Ms. Johnson, you know this process, and you file  
2 a motion for reinstatement for all the reasons  
3 that you just said that the protestants should  
4 have been granted standing. If that happens,  
5 you'll be kept informed along the way, Mr., is it  
6 Brogan?

7 MR. BROGAN: Brogan, yes.

8 AGENT FLETCHER: So the Board will  
9 issue an order dismissing the protest for the  
10 reason that I just stated. Ms. Johnson will have  
11 10 days from the date that order is received to  
12 seek reinstatement and to ask the Board to take  
13 into consideration everything she just said  
14 today. The Board's Agent doesn't have the  
15 authority today to grant standing under these  
16 circumstances, but the ABC Board can.

17 MS. JOHNSON: Okay.

18 AGENT FLETCHER: So that's the ruling  
19 of the Board's Agent today, that the group of  
20 five is dismissed because the protest letters  
21 weren't signed, timely but unsigned. And I  
22 already explained what happens next. Any  
23 questions about that?

24 (No response.)

25 AGENT FLETCHER: Anything for the

1 record?

2 MS. JOHNSON: Yes. I'm just wondering  
3 as a member of the bar, can't I be their legal  
4 representative here?

5 AGENT FLETCHER: You can be their  
6 legal representative but they're still required  
7 to sign a protest letter.

8 MS. JOHNSON: And --

9 AGENT FLETCHER: But the other thing,  
10 Ms. Johnson, yes -- yes, you're right about what  
11 you're saying. You are allowed to be their legal  
12 representative, and they would not need to be  
13 here, not even you Mr. Whittle. But the  
14 requirement to sign the protest letter is there.  
15 That's -- yes.

16 MS. JOHNSON: Okay. And so the  
17 argument that I would be making to the Board is  
18 that the licensing division's failure to issue  
19 notice to the party of five put the party of five  
20 at a disadvantage of being aware that this  
21 petition had been filed --

22 AGENT FLETCHER: Yes.

23 MS. JOHNSON: -- and not being aware  
24 that this petition had been filed were at a  
25 disadvantage filing on the day it was filed with

1 their representative --

2 AGENT FLETCHER: Yes.

3 MS. JOHNSON: -- because they could  
4 not sign it.

5 AGENT FLETCHER: Yes.

6 MS. JOHNSON: And even as the  
7 licensing division is reviewing this matter,  
8 would you -- you are still obligated, you're  
9 saying, to dismiss the petition?

10 AGENT FLETCHER: So what happens, that  
11 issue was brought to the attention of the  
12 licensing division, as you know, already. So  
13 they are looking -- so when the Board looks at  
14 this, they'll look at their -- what they found.

15 MS. JOHNSON: Okay.

16 AGENT FLETCHER: Right now I know that  
17 this matter was referred to the licensing  
18 division, so I have the same information as you  
19 do about that.

20 MS. JOHNSON: Okay.

21 AGENT FLETCHER: I don't know what  
22 they found but when you submit your motion for  
23 reconsideration, the Board will have the result  
24 of that and will take into consideration what you  
25 just said. They'll take it into consideration

1 that the protest could not be filed because of  
2 the placarding. But somebody in the licensing  
3 division is going to look at the case that you  
4 made this morning for the reason that the parties  
5 got late notice and no --

6 MS. JOHNSON: No notice -- no notice.

7 AGENT FLETCHER: They received no  
8 notice.

9 MS. JOHNSON: They received no notice.  
10 I am not obligated to do ABRA's notification --

11 AGENT FLETCHER: Yes.

12 MS. JOHNSON: -- procedure.

13 AGENT FLETCHER: No. I agree with  
14 you. Yes. And we, on my end, we sent out the  
15 notices for you to appear today, but we are not  
16 involved in the notices that you didn't get. But  
17 I know those are important.

18 MS. JOHNSON: Yes.

19 AGENT FLETCHER: That's the first  
20 step. So that's what's missing. So I understand  
21 100 percent, and although the Board's Agent can't  
22 take that into consideration today because it --  
23 there's nothing conclusive yet, they're looking  
24 into it --

25 MS. JOHNSON: Okay.



1                   AGENT FLETCHER:  -- but Ms. Johnson,  
2                   when you file your motion for reconsideration,  
3                   and I know that you will, by that time, the Board  
4                   will have all -- can look at everything.

5                   MS. JOHNSON:  Okay.  And what of the  
6                   second -- the other issue I raised about the flaw  
7                   in the petition itself I that it's -- there's a  
8                   misrepresentation about the settlement agreement  
9                   signatories refusing to meet or not even  
10                  addressing the fact, since it says -- on number  
11                  16, it's checked, "I affirm that the other  
12                  parties to the settlement agreement refused to  
13                  meet with the licensee," what -- that seems to me  
14                  to be a legal issue for General Counsel's office.

15                  AGENT FLETCHER:  I didn't read the  
16                  settlement agreement.  Is there any provision in  
17                  the settlement agreement that requires the  
18                  parties to meet to renegotiate the settlement  
19                  agreement upon request.  So I haven't looked at  
20                  the settlement agreement, so I don't know if  
21                  there's some provision in there like that that  
22                  would be enforceable.  But the -- like I stated,  
23                  if the Board grants you reinstatement of the  
24                  protest, you would have an opportunity to  
25                  renegotiate the settlement agreement during the

1 mediation if, you know, that's what the parties  
2 decide to do.

3 AGENT FLETCHER: Could I have a moment  
4 to look at this again?

5 (Pause.)

6 MS. JOHNSON: Yes. The -- I want to  
7 just say that the parties have the settlement  
8 agreement -- I mean the licensee has the  
9 settlement agreement attached to its license.

10 AGENT FLETCHER: Yes.

11 MS. JOHNSON: And so unfamiliarity  
12 with the process is in inadequate response when  
13 the settlement agreement is attached to the  
14 license. And further along, it says that no  
15 portions of the settlement agreement have ever  
16 been violated.

17 AGENT FLETCHER: Okay.

18 MS. JOHNSON: And so clearly, there is  
19 a reference to the settlement agreement, because  
20 it's stated in the letter that's written. So  
21 that means that the licensee knows about the  
22 settlement agreement --

23 AGENT FLETCHER: Yes.

24 MS. JOHNSON: -- sees the parties to  
25 the settlement agreement, and yet still affirms

1 that there was a request to meet and a refusal.  
2 So the document is sort of self-executing as to  
3 what their obligation is.

4 AGENT FLETCHER: So they're -- so I'm  
5 not aware of any regulation that requires the  
6 parties to meet to renegotiate a settlement  
7 agreement. Sometimes -- I mean you can do that  
8 outside of ABRA. For example, if you -- Mr.  
9 Brogan, if you have a settlement agreement with a  
10 group of five and you wanted to amend or  
11 terminate the settlement agreement, you could  
12 meet, not even at ABRA, to renegotiate the  
13 settlement agreement. That's if you want to.  
14 That's option if you want to, it's voluntary, but  
15 there's no requirement in our regulations that  
16 requires you to renegotiate that settlement  
17 agreement out -- anywhere in this process. But  
18 during the mediation is when you would have an  
19 opportunity to do that, but I'm not aware of any  
20 obligation that requires you to do it outside of  
21 this process.

22 MR. WITTELS: If I may?

23 AGENT FLETCHER: Yes.

24 MR. WITTELS: So I'm just looking at  
25 this document, and I'm not as familiar as the

1 rest of you in this particular area of law here,  
2 but -- so this petition, you know, to amend or  
3 terminate, and then we -- I assume the questions  
4 on the petition are -- sort of have their  
5 foundation in regulation or law.

6 AGENT FLETCHER: Yes.

7 MR. WITTELS: And we have a positive  
8 affirmation here saying parties refused to meet  
9 with, so I mean we've established they're aware  
10 of the fact that they have a settlement agreement  
11 with the parties and, you know, this --

12 AGENT FLETCHER: Yes. This --

13 MR. WITTELS: -- signing --

14 AGENT FLETCHER: -- I understand.

15 MR. WITTELS: -- your name to this  
16 statement, which is, you know, if I -- at the  
17 risk of being too direct, I mean it's just  
18 patently false.

19 AGENT FLETCHER: I understand what  
20 you're saying. It's just there's no requirement  
21 that you -- there's no requirement that you meet  
22 to renegotiate the settlement agreement.

23 MS. JOHNSON: There is a requirement  
24 to honestly complete paperwork, however.

25 AGENT FLETCHER: Yes. So then you can

1 -- and you can address that in your petition to  
2 the Board for the purpose of the Roll Call  
3 Hearing.

4 MS. JOHNSON: Okay.

5 AGENT FLETCHER: So Ms. Johnson, you  
6 know I understand what you're staying 100  
7 percent. Just with the limitation of what we do  
8 at the Roll Call Hearing, I can't -- that's  
9 something, actually, that the Board would have to  
10 address in your petition for reinstatement or  
11 even if you do it separately, that's something  
12 they have to address. And I understand what  
13 you're saying, Mr. Wittels. It's just that the  
14 Board's Agent can't --

15 MR. WITTELS: I understand.

16 AGENT FLETCHER: -- can't respond to  
17 that without the Board.

18 MS. JOHNSON: Yes. I mean it's a  
19 really -- it's a problem as well that there  
20 wasn't notice, because other people who are not  
21 party to the settlement agreement would certainly  
22 object to terminating the settlement agreement.

23 AGENT FLETCHER: Yes. In addition to  
24 the five.

25 MS. JOHNSON: In addition to the five.

1           AGENT FLETCHER:  If they had had an  
2 opportunity to file a protest.

3           MS. JOHNSON:  Right.

4           AGENT FLETCHER:  Well, one thing we've  
5 been able to establish today is that there is a  
6 group of five.  We established that, and the  
7 Board has to decide about the rest.  Did you have  
8 any questions, Mr. Brogan?

9           MR. BROGAN:  No.

10          AGENT FLETCHER:  Okay.

11          MS. JOHNSON:  Well, I thought we had  
12 established that there's a group of five, but  
13 it's --

14          AGENT FLETCHER:  And let me -- it's --  
15 yes, but I mean it has to happen today --

16          MS. JOHNSON:  Okay.

17          AGENT FLETCHER:  -- at the Roll Call  
18 Hearing so, yes, clearly, it was, but sometimes  
19 people file a protest and it's -- they think  
20 they've got a group of five but they don't, you  
21 know, when I add up the numbers.  So it just  
22 depends.  I mean that's part of my job today on  
23 the record to establish that a group of five  
24 filed a protest so that it's on public record.  
25 Yes.  So I just counted five.

1 MS. JOHNSON: Okay.

2 AGENT FLETCHER: But it still has to  
3 be on the record.

4 MS. JOHNSON: Okay.

5 MR. WITTELS: And the rules require  
6 their physical presence?

7 AGENT FLETCHER: No, not today. It  
8 would have been fine if only Ms. Johnson showed  
9 up today. You came and that's good, but only Ms.  
10 Johnson needed to come today. If their  
11 signatures had been on the protest letters, then  
12 we would -- I would have granted conditional  
13 standing --

14 MR. WITTELS: Oh, okay.

15 AGENT FLETCHER: -- and the other  
16 three would have showed up at the status hearing.  
17 So no, it's fine that Ms. Johnson came today.  
18 It's just that the signatures are missing from  
19 the protest letter for the reasons that Ms.  
20 Johnson just explained. But that's the  
21 situation.

22 MR. WITTELS: If I could, I had one  
23 other sort of trivial thing. The Board may  
24 consider not meeting so close to the holidays in  
25 the future, it makes it difficult.

1                   AGENT FLETCHER: Yes. The -- well,  
2 you know, the Roll Call Hearings are set, dates  
3 and all are set by statute. That can be -- you  
4 know, if somebody were to have gotten a Roll Call  
5 Hearing notice to appear today, and somebody  
6 said, "We're traveling, we're out of the  
7 country," I mean it can be rescheduled. But the  
8 dates just -- the dates are just what they are.  
9 They're set ahead of time. We hold the hearings  
10 on the date that they're set unless somebody  
11 contacts us and says for some reason we can't  
12 come. I mean there's -- the General Counsel's  
13 office can always change the date if we know it's  
14 not a good day.

15                   MR. WITTELS: Okay.

16                   AGENT FLETCHER: And so --

17                   MS. JOHNSON: Well, since the other  
18 members cannot come, why can't you reschedule the  
19 Roll Call date now?

20                   AGENT FLETCHER: Right. There's no  
21 signatures on the protest letters. That's the  
22 reason but if they weren't present -- if they had  
23 signed the protest letters, it wouldn't matter.  
24 We would just keep moving. You know, we would go  
25 to the mediation, then the status hearing. We



1 just keep moving, so there wouldn't be a need to  
2 reschedule even the Roll Call Hearing.

3 MS. JOHNSON: So at this point, I'm  
4 either going to, as a -- I'm going to hear from  
5 the licensing division about the replacarding?

6 AGENT FLETCHER: So -- right, so that  
7 happens outside of my division. You know, I work  
8 in the General Counsel's office, but the  
9 licensing division is going to look into that  
10 matter. I know it's been referred to them.

11 MS. JOHNSON: Okay.

12 AGENT FLETCHER: So that's on a  
13 separate track.

14 MS. JOHNSON: Okay.

15 AGENT FLETCHER: That -- when you --  
16 by the time you file your motion for  
17 reconsideration --

18 MS. JOHNSON: Why would I file that if  
19 the licensing division is going to replacard?

20 AGENT FLETCHER: We don't -- I don't  
21 know what the licensing division is going to do.

22 MS. JOHNSON: But I'm just --

23 AGENT FLETCHER: Yes, so --

24 MS. JOHNSON: -- hypothetically --

25 AGENT FLETCHER: -- yes, so I don't

1 know. So here's what will happen. If the  
2 licensing division replacards --

3 MS. JOHNSON: Okay.

4 AGENT FLETCHER: -- you will have an  
5 opportunity to file a protest again with your  
6 signatures.

7 MS. JOHNSON: Okay.

8 AGENT FLETCHER: You know, from where  
9 I sit, that would be my part.

10 MS. JOHNSON: Okay.

11 AGENT FLETCHER: So if they replacard,  
12 you'll get these five people to sign the protest  
13 letter, and then I'll see you again, and we'll  
14 just, you know, go through the steps of the  
15 mediation, the status hearing, and the protest  
16 hearing. Yes. But I don't know what the  
17 licensing division is going to do. Maybe they  
18 will replacard for the reason that you just said,  
19 and we just start over. I'll just see you again  
20 at the Roll Call.

21 MS. JOHNSON: Okay.

22 AGENT FLETCHER: And I have a note  
23 here today that you're here today, Mr. Wittels.

24 MR. WITTELS: Yes.

25 AGENT FLETCHER: You're here today.

1 You didn't sign the protest letter, but you're  
2 here, so I know that you're here. When you come  
3 back for the next Roll Call Hearing, if Ms.  
4 Johnson only showed up without you, it would be  
5 fine because only she needs to come, unless she  
6 decides to bring everybody.

7 MR. WITTELS: So if -- I'm sorry, just  
8 to be clear. So if Ms. Johnson comes to  
9 represent the group of five, and she has a letter  
10 with, obviously, with all -- with the four other  
11 signatories and signs herself -- I guess she can  
12 sign it, too, if she wanted -- that would be  
13 sufficient for --

14 AGENT FLETCHER: Yes.

15 MR. WITTELS: Okay.

16 AGENT FLETCHER: That would be  
17 sufficient. Think of anything else, Mr. Wittels?

18 MR. WITTELS: No, ma'am. Thank you.

19 AGENT FLETCHER: Okay. Anything else  
20 for the record, Ms. Johnson?

21 MS. JOHNSON: No. I -- yes -- yes.  
22 I think that it would do a disservice to the  
23 process and community relations for a party of  
24 five who did not get notice to be tossed from the  
25 process and have to put in the additional time to

1 appeal an order when what typically will happen  
2 in a case where the Board -- or rather when ABRA  
3 has a placarding issue is that it is placarded  
4 properly so there is notice. And that is the  
5 result I would -- the equities demand and the one  
6 in which ABRA follows its process. And things  
7 happen. I understand that these motions don't  
8 come up every year but still, we're at a  
9 disadvantage, and it -- through no fault of our  
10 own.

11 AGENT FLETCHER: Exactly. Mr.  
12 Wittels?

13 MR. WITTELS: May I? Thank you. Is  
14 it within the -- within -- as the Board's  
15 representative, is it within your authority to,  
16 given the extraordinary circumstances of this  
17 matter, just to simply delay action until the  
18 next date? That would serve us well.

19 AGENT FLETCHER: Yes. The only action  
20 that the Board's Agent can take today is the one  
21 that I've taken --

22 MR. WITTELS: Okay.

23 AGENT FLETCHER: -- the one that I've  
24 taken already. The Board can do something  
25 completely different once they take into

1 consideration what Ms. Johnson said, and they  
2 will. Once they take that into consideration,  
3 they can have a different ruling.

4 MR. WITTELS: Right. Thank you.

5 AGENT FLETCHER: Yes. I just found  
6 out about the placarding issue just this morning,  
7 probably around the same time -- you got some  
8 communication from us this morning, Ms. Johnson?

9 MS. JOHNSON: Yes.

10 AGENT FLETCHER: I found out at the  
11 exact same time that you did.

12 MS. JOHNSON: Okay.

13 AGENT FLETCHER: Somebody copied me on  
14 it. I didn't know there was a placarding issue  
15 at all.

16 MS. JOHNSON: Okay.

17 MR. BROGAN: Ms. Fletcher, can we ask  
18 to be cc'd on that correspondence, just, you  
19 know, we are involved in this process. We -- I  
20 didn't know there was a placard issue.

21 AGENT FLETCHER: Well, you should be  
22 -- so you should -- you -- so you should be  
23 copied, because you are responsible for the  
24 placarding.

25 MR. BROGAN: Right.

1                   AGENT FLETCHER: So we'll keep you  
2 informed.

3                   MR. BROGAN: I wasn't informed of this  
4 conversation this morning about the issue.

5                   AGENT FLETCHER: Well, yes, because  
6 that was a communication we received from Ms.  
7 Johnson. When we -- so that was between Ms.  
8 Johnson and the staff this morning, so you  
9 weren't copied on that. But anything from us  
10 related to the placarding that goes out, I mean  
11 Ms. Johnson wasn't under any obligation to copy  
12 you on that, because that was just her  
13 communication --

14                   MR. BROGAN: Sure.

15                   AGENT FLETCHER: -- to us.

16                   MR. BROGAN: It seems to be a material  
17 issue in the case moving forward, though, so we  
18 just want to make sure we're in the loop of what  
19 licensing division decides to do.

20                   AGENT FLETCHER: Well, yes. Well, you  
21 would have to do be. So they won't make any  
22 decision regarding placarding or replacarding  
23 without including you in it, because you would --  
24 well, you have to be included so.

25                   MR. BROGAN: Well, on the record, we

1 hung the placards for the proper amount of time.  
2 We can't control what ABRA did or did not do with  
3 notification, but --

4 AGENT FLETCHER: Yes.

5 MR. BROGAN: -- we hung the placards  
6 for the proper amount of time.

7 AGENT FLETCHER: Right. And so --

8 MS. JOHNSON: Right. He --

9 AGENT FLETCHER: -- when --

10 MS. JOHNSON: Right.

11 MR. BROGAN: Yes.

12 MS. JOHNSON: Yes. You can't be --

13 AGENT FLETCHER: -- and so when --

14 MR. BROGAN: --do we--

15 MS. JOHNSON: No.

16 AGENT FLETCHER: And when Ms. Johnson

17 --

18 MS. JOHNSON: They're supposed to let  
19 us know --

20 MR. BROGAN: Right.

21 MS. JOHNSON: -- that you -- that was  
22 happening.

23 MR. BROGAN: Yes.

24 AGENT FLETCHER: Exactly. And when  
25 Ms. Johnson files her motion for reconsideration

1 --

2 MS. JOHNSON: If it's necessary --

3 AGENT FLETCHER: If it's necessary.

4 MS. JOHNSON: -- because it may not be  
5 necessary.

6 AGENT FLETCHER: If it's necessary and  
7 Ms. Johnson files her motion for reconsideration,  
8 you receive a copy of that motion as well, and  
9 then you have an opportunity to respond to it.  
10 And so I suppose your response would be what you  
11 just said, that -- your response would be that  
12 you placarded for as long as you thought you were  
13 supposed to. So the Board will look at the whole  
14 thing, look at the whole situation, but you'll  
15 get a copy of the Board order, and so you'll be  
16 kept informed by us along the way.

17  
18 MS. JOHNSON: And let me just ask you  
19 sort of timing.

20 AGENT FLETCHER: Okay.

21 MS. JOHNSON: Is this like a letter  
22 that -- when would all -- when does the Board  
23 return, or the Board's in recess now?

24 AGENT FLETCHER: The Board -- that's  
25 exactly right. So the Board is in recess. The



1 Board comes every Wednesday.

2 MS. JOHNSON: Okay.

3 AGENT FLETCHER: This would normally  
4 go on the Board's agenda this coming Wednesday,  
5 but they're not here.

6 MS. JOHNSON: Right

7 AGENT FLETCHER: So they're coming  
8 back --

9 MS. JOHNSON: Then it's New Year's and  
10 that's a Wednesday.

11 AGENT FLETCHER: Yes. And so  
12 sometimes, depending on what it is, the Board  
13 will be informed about certain situations, and  
14 sometimes a vote can be taken on issues in their  
15 absence. But this -- they decide this may be  
16 something that waits for the agenda when they  
17 return. I don't know. I really can tell you I  
18 don't know what they'll do, but I can tell you  
19 that the General Counsel's office is aware.  
20 They're taking the proper steps to look into what  
21 you said, Ms. Johnson. So I can tell you that is  
22 happening now, so maybe something can be done  
23 between now and when the Board returns, but I  
24 wouldn't know. I won't be involved in that part  
25 at all. I'll only be involved if you replacard

1 it and you wound up back here again. I won't  
2 even know what's going on after today.

3 MS. JOHNSON: Yes. I just wanted to  
4 sort of have a -- if it was possible, to have a  
5 timing sense. I know I'm going to be --

6 AGENT FLETCHER: Because you know  
7 what, Ms. Johnson?

8 MS. JOHNSON: Yes, ma'am.

9 AGENT FLETCHER: If this waits until  
10 the Board returns, which most things will wait  
11 until they come out of recess --

12 MS. JOHNSON: Okay.

13 AGENT FLETCHER: -- they return, I  
14 think, January -- I don't have the schedule in  
15 front of me but it's January.

16 MS. JOHNSON: Okay.

17 AGENT FLETCHER: It may be the first  
18 Wednesday in January. I'm not positive right  
19 this minute.

20 MS. JOHNSON: Or the second since the  
21 first --

22 AGENT FLETCHER: Or the second.

23 MS. JOHNSON: -- is the first.

24 AGENT FLETCHER: Right. And so --  
25 right, so it would be -- it could be then before

1 they look at it, but I don't know because I'm,  
2 you know, I'm not a part of that process either.

3 MS. JOHNSON: Okay. And does the  
4 Board direct the licensing division to take  
5 action?

6 AGENT FLETCHER: Sean Gordy is in  
7 charge of licensing. That's S-E-A-N, Sean Gordy,  
8 G-O-R-D-Y. Sean Gordy is in charge of the  
9 licensing division, and so he -- I don't -- I'm  
10 not aware that he requires any direction from the  
11 Board related to placarding.

12 MS. JOHNSON: So he doesn't have to  
13 wait for the Board?

14 AGENT FLETCHER: Yes. He may not have  
15 to do that.

16 MS. JOHNSON: Okay.

17 AGENT FLETCHER: Yes. You know,  
18 that's his division, so that's what they do.

19 MS. JOHNSON: Okay. And also, for the  
20 record -- how do you pronounce your name?

21 MR. BROGAN: Brogan.

22 MS. JOHNSON: Brogan.

23 MR. BROGAN: Yes.

24 MS. JOHNSON: I've never met you.

25 MR. BROGAN: Hi. Nice to meet you.

1 MS. JOHNSON: Nice to meet you. I'm  
2 happy to meet with you.

3 MR. BROGAN: Okay. Yes. Well, let's  
4 exchange info after this.

5 MS. JOHNSON: Thank you.

6 AGENT FLETCHER: And so, you know, the  
7 other thing is if by some chance you meet and get  
8 everything resolved, then you can let us know.

9 MS. JOHNSON: Well, that's -- it's the  
10 holidays, no one's around.

11 MR. BROGAN: Nobody wants to be here  
12 today --

13 (Simultaneous speaking.)

14 MS. JOHNSON: Nobody wants to be here  
15 today, nobody's around, people are out of town.

16 AGENT FLETCHER: I know.

17 MS. JOHNSON: And so I -- you know,  
18 the first thing I have to do is parse this out  
19 for everybody else and -- but I am just, for the  
20 record, just want to express that there's no  
21 personal antagonism --

22 AGENT FLETCHER: Yes -- yes.

23 MS. JOHNSON: -- toward Mr. Brogan or  
24 Hawthorne, and --

25 AGENT FLETCHER: Yes.

1 MS. JOHNSON: -- you know, I'm happy  
2 to meet at some point in the future.

3 MR. BROGAN: Sure, sounds great.

4 AGENT FLETCHER: Okay. Mr. Wittels,  
5 anything else? I'm making sure everybody --

6 MR. WITTELS: No.

7 AGENT FLETCHER: Okay.

8 MR. WITTELS: I've done my best to  
9 talk you out of it. Honestly, I --

10 (Simultaneous speaking.)

11 (Laughter.)

12 AGENT FLETCHER: Well, then the Roll  
13 Call Hearing is concluded and happy holidays, and  
14 maybe I'll see you again.

15 MR. WITTELS: All right. Happy  
16 holidays.

17 MS. JOHNSON: Okay. Thank you. Happy  
18 holidays.

19 AGENT FLETCHER: Thank you.

20 (Whereupon, the above-entitled matter  
21 went off the record at 10:46 a.m.)

22

23

24

25

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In the matter of: Hawthorne

Before: DCABRA

Date: 12-23-19

Place: Washington, DC

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