

C-O-N-T-E-N-T-S

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Countee Gilliam	15	37	55	
Eyob Asbeha	59	72		

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LICENSEE

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

2 10:34 a.m.

3 CHAIRPERSON ANDERSON: All right. The
4 next case on our Show Cause Hearing Calendar is
5 Case No. 17-CMP-00569.

6 Would the parties please approach and
7 identify themselves for the record, please?

8 MS. PHILLIPS: Good morning, Mr.
9 Chair. Louise Phillips, Assistant Attorney
10 General on behalf of the District of Columbia.

11 CHAIRPERSON ANDERSON: Good morning.

12 MS. PHILLIPS: The establishment owner
13 is out on the telephone, I think, speaking to his
14 lawyer, so if you need a mini break?

15 CHAIRPERSON ANDERSON: I think --

16 MS. PHILLIPS: His advice lawyer as
17 opposed to his I'm going to appear today lawyer.

18 CHAIRPERSON ANDERSON: Can you state
19 your name for the record, sir?

20 MR. ASBEHA: Excuse me?

21 CHAIRPERSON ANDERSON: Good morning.
22 Can you state your name for the record?

1 MR. ASBEHA: Yeah, Eyob Asbeha.

2 CHAIRPERSON ANDERSON: Mr. Asbeha, can
3 you -- there is a sign-in sheet. Can you sign-
4 in?

5 MR. ASBEHA: There is nothing here,
6 that's why I was trying to look at.

7 MS. PHILLIPS: We can share for the
8 moment- until we get another one.

9 CHAIRPERSON ANDERSON: Actually, no,
10 it's -- he is sitting there. See if it's in his
11 pile, please.

12 Are there any preliminary matters in
13 this case?

14 MS. PHILLIPS: The preliminary matter
15 that I have is that the count, which refers to
16 the ABC Manager not having his original license
17 on his person when the Investigator came in, a
18 warning letter was issued on October 31st of last
19 year. So that count and the factual predicate,
20 which is in the factual dissertation that
21 discusses that issue should be dismissed.

22 The remainder of the facts for the

1 security plan and the settlement agreement
2 violations remain to -- at issue.

3 CHAIRPERSON ANDERSON: So what's the
4 charge in this case then?

5 MS. PHILLIPS: The charge is Charge 2
6 of the notice, but the factual predicates are
7 with Charge 1, that's why I worded the dismissal
8 as I did.

9 CHAIRPERSON ANDERSON: Hold on one
10 minute. So --

11 MS. PHILLIPS: So Charge 2 is failure
12 to comply with the settlement agreement and a
13 Board Order and a security agreement, I believe,
14 and the part in the factual predicate that talks
15 about the ABC Manager not having an original copy
16 of his license on his person is dismissed. And
17 that factual predicate, which is in like
18 paragraph 1, is also dismissed.

19 The remaining facts will move down to
20 Count 2, because that's what they concern.

21 CHAIRPERSON ANDERSON: So, Mr. Asbeha,
22 what is it that you believe this charge -- what

1 were you charged with, sir?

2 MR. ASBEHA: Yeah, I thought I was
3 charged with no ABC Manager and --

4 CHAIRPERSON ANDERSON: I'm sorry, no
5 what?

6 MR. ASBEHA: Well, I thought I was
7 charged with no ABC Manager, but there was an ABC
8 Manager at the --

9 CHAIRPERSON ANDERSON: But she said
10 that that's not --

11 MR. ASBEHA: -- business.

12 CHAIRPERSON ANDERSON: -- the charge.
13 So why --

14 MS. PHILLIPS: I said it was
15 dismissed.

16 CHAIRPERSON ANDERSON: That was
17 dismissed, right. So what is the charge that
18 brought -- so in your mind, what is the violation
19 that you are here for today?

20 MR. ASBEHA: That was -- I thought I
21 was a violation and if she dismissed, I don't
22 think you have to pursue this.

1 CHAIRPERSON ANDERSON: But what about
2 the second issue about the settlement agreement,
3 the violation? What about that? This is what
4 Ms. Phillips just stated. She stated that this
5 is the other issue.

6 MR. ASBEHA: Yeah, other. As I can
7 see like most of the violations are now correct
8 and like I cannot like take this as a valid
9 report, so I'm here for ABC Manager License and
10 they changing mind to the next violation.

11 So for me, I don't think it's valid.

12 CHAIRPERSON ANDERSON: But, sir, there
13 are two charges. There are two charges. The
14 first charge is that your ABC Manager on duty
15 during licensed hours failed -- of sales failed
16 to have his original license, that's one charge,
17 right?

18 And the second charge is that you
19 failed to comply with the settlement agreement
20 with the Board's Order in violation of DC Code.
21 So there are two charges you were charged with,
22 right?

1 Charge 1 has been dismissed.

2 MS. PHILLIPS: No.

3 CHAIRPERSON ANDERSON: So why is it
4 you don't understand Charge 2?

5 MR. ASBEHA: I understand whatever it
6 says, but it's not -- I'm not saying I'm not --
7 I'm protesting that one, too, because it's not
8 right.

9 CHAIRPERSON ANDERSON: I just want to
10 make sure that when you present your case today,
11 we are not talking about ABC Manager, all right?

12 MR. ASBEHA: Yeah, it's because that
13 one is dismissed, so I don't --

14 CHAIRPERSON ANDERSON: Are you sure
15 about that?

16 MR. ASBEHA: Yes.

17 CHAIRPERSON ANDERSON: So you are not
18 going to argue about the ABC Manager?

19 MR. ASBEHA: That's dropped.

20 CHAIRPERSON ANDERSON: You are going
21 to argue about the settlement agreement
22 violation.

1 MR. ASBEHA: Yes, sir.

2 CHAIRPERSON ANDERSON: Right?

3 MR. ASBEHA: Yes, sir.

4 CHAIRPERSON ANDERSON: So we are
5 clear?

6 MR. ASBEHA: Yes, sir.

7 CHAIRPERSON ANDERSON: All right.

8 Does the Government wish to make an opening
9 statement?

10 MS. PHILLIPS: Briefly. On Charge 2,
11 the settlement agreement says that the applicant
12 shall keep his doors and windows closed when
13 music is playing. The ABRA Investigator will
14 testify with regard to the fact that the doors
15 were open and music could be heard outside the
16 establishment.

17 Another violation within this same
18 charge is trash. You see a picture in the
19 investigative report, which will be part of the
20 record if it's accepted, that the trash
21 containers are open and there is trash on the
22 curb outside the containers.

1 And then the settlement agreement also
2 talks about no flashing signs and this
3 establishment had two flashing signs: An ATM
4 sign that was flashing and I think it is "Yes, We
5 Hookah" was also a flashing light. So those are
6 the three settlement and order violations that
7 this establishment is charged with on the date in
8 question, which I will tell you in a minute,
9 August 27, 2017.

10 So at the end of this hearing, I
11 believe the Board can find for the Government
12 that the establishment violated those three
13 clauses of the settlement agreement and the Board
14 Order.

15 CHAIRPERSON ANDERSON: Thank you.

16 Mr. Asbeha, do you wish to make an
17 opening statement now or do you want to do it
18 when you present your case?

19 MR. ASBEHA: I will make an opening
20 statement.

21 CHAIRPERSON ANDERSON: You want to do
22 one, you want to do it now?

1 MR. ASBEHA: Yeah.

2 CHAIRPERSON ANDERSON: Go ahead, sir.

3 MR. ASBEHA: Yeah. The first
4 violation for the noise and Investigator Hargrave
5 the one who came over there, not Investigator
6 Gilliam. And when we approached to us, he says
7 you cannot -- it's 8:00 p.m. My settlement
8 agreement says we can play music until 10:00 p.m.
9 And we didn't have a DJ. We didn't have a DJ
10 that night. We was playing Pandora music. It
11 was like jazz music. You can't even hear outside
12 while you are inside.

13 So when he approach us, there was no
14 music and he say he had a video. We can see the
15 video that he has. He say on the street he can
16 hear from the street. He came all the way to the
17 door and he can't even listen to the music from
18 the door, the main door. So he came inside. We
19 could like -- we can talk and everything like we
20 are talking right now. There was no music loud
21 and everything. And if he have evidence of that,
22 I would like to see that one.

1 And about the flash light, Ms. Anita
2 Norman, which is ANC, when we talked the first
3 time, it was supposed to be the flash lights that
4 goes to the sky or that's what we talked. But it
5 stays flash light, but the flash light it stays
6 as ATM sign. It's ATM. I have -- and they talk
7 to me, if you know house which was 10 feet flash
8 lights across the street that says ATM sign, I
9 don't think that's going to hurt anybody. And
10 I'm not even making out of it, it's just
11 convenience to checks or convenience for
12 customers to pay and that's why we did it.

13 So when I say the ATM sign for the
14 cell phone, I don't really talk to Mr. Gilliam,
15 that this is going -- considered as a violation,
16 I like -- trash it, and I trash it in front of
17 him, but I try to explain to him what it says the
18 flash light, the big lights not just ATM flashing
19 light. I don't think on my side or anybody's ATM
20 is flashing sign or something is going to hurt
21 any community or the neighborhood. That's why
22 the ANC stand for.

1 So I don't think the ATM is as a sign
2 is harmful to people. Just that it was there and
3 by the time Mr. Gilliam came, it was gone. We
4 trashed it right away.

5 CHAIRPERSON ANDERSON: The reason I --
6 remember this is an opening -- you have done this
7 before, right? So you know the opening statement
8 how is it, so it appears that you were telling me
9 your case.

10 So remember, an opening statement is
11 that you tell me what the case is and where -- do
12 you plan to call any witnesses or is it just you?

13 MR. ASBEHA: It's just me.

14 CHAIRPERSON ANDERSON: All right.
15 Okay. So I'll -- so you have given your opening
16 statement and now I'm going to let the Government
17 now call its witnesses and you understand once
18 the Government calls it witness, you have an
19 opportunity --

20 Sir, your case is over, sir. If you
21 need to speak, you need to get to the back of the
22 room because I can hear you up here, sir. Okay?

1 And the gentleman who I'm talking to, he knows
2 exactly who I'm talking to. All right.

3 All right. So the way the process is,
4 so you know the Government is going to call its
5 first witness. After Ms. Phillips cross-examine
6 -- direct examination, then you will have a
7 chance to ask questions and your questions should
8 be directly based on the questions that she asked
9 him, so maybe you need to take some notes, make a
10 pointer to yourself that, okay, these are
11 questions that she asked. I didn't like his
12 answer, so I need to clarify it in the record.

13 All right? So I don't want you to ask
14 questions about other issues that are not
15 relevant to what she asks. Okay? All right. Go
16 ahead, Ms. Phillips, call your first witness.

17 MS. PHILLIPS: Thank you, Mr. Chair.
18 The Government calls the Investigator Countee
19 Gilliam.

20 CHAIRPERSON ANDERSON: All right.
21 Investigator Gilliam, can you raise your right
22 hand, please?

1 Whereupon,

2 INVESTIGATOR COUNTEE GILLIAM

3 was called as a witness by Counsel for the
4 Government, and having been first duly sworn,
5 assumed the witness stand and was examined and
6 testified as follows:

7 INVESTIGATOR GILLIAM: I affirm.

8 CHAIRPERSON ANDERSON: Okay. Thank
9 you. Your witness, ma'am.

10 MS. PHILLIPS: Thank you, Mr. Chair.

11 DIRECT EXAMINATION

12 BY MS. PHILLIPS:

13 Q Will you state your name and spell it
14 for the record, please?

15 A Okay. Investigator Countee, C-O-U-N-
16 T-E-E last name is Gilliam, G-I-L-L-I-A-M.

17 Q And what is your occupation at the
18 moment?

19 A I'm an Investigator for ABRA.

20 Q And briefly, what does that job
21 entail?

22 A Well, my job entails conducting

1 investigations and inspections of ABC-licensed
2 establishments throughout the District of
3 Columbia.

4 Q And did you conduct an investigation
5 on Kiss -- of Kiss Tavern on August 27, 2017?

6 A Yes, ma'am, I did.

7 Q And when you conduct investigations,
8 do you put your findings in a report?

9 A Yes, ma'am.

10 Q Did you do so in this matter?

11 A Yes, ma'am.

12 MS. PHILLIPS: I would like to
13 approach the witness --

14 CHAIRPERSON ANDERSON: Sure.

15 MS. PHILLIPS: -- to show the
16 investigation report. I have one for you, but
17 you already have one, but at least that one is
18 stapled.

19 CHAIRPERSON ANDERSON: All right.

20 BY MS. PHILLIPS:

21 Q Here you go, sir.

22 A Thank you.

1 Q Before we get into the investigation
2 report, have you -- how long have you been with
3 ABRA?

4 A This is my third year of service.

5 Q And prior to your service with ABRA,
6 did you have any occupations in which you
7 conducted investigations and reduced them to
8 reports?

9 A Yes, ma'am.

10 Q And what was that occupation?

11 A I was a security manager for the
12 Virginia Department of Corrections.

13 Q And how long were you a Virginia --
14 whatever you said.

15 A A security manager.

16 Q Thank you, sir.

17 A For 13 years.

18 Q Thank you. All right. You have the
19 report in front of you. Would you turn to the
20 last page of the report? Is that your signature?

21 A Yes, ma'am.

22 Q And whose signature is the other

1 signature?

2 A That's Chief Jackson, Chief of
3 Enforcement.

4 Q Okay. And when you went out to this
5 establishment on the -- August 27, 2017, did you
6 have somebody with you?

7 A Yes, ma'am, I did.

8 Q And who was that?

9 A My supervisor, supervisor and
10 Investigator Kevin Hargrave.

11 Q And you wrote the report, so all the
12 facts in the report you actually witnessed
13 firsthand. Is that fair?

14 A Yes, ma'am, that's correct.

15 Q And what did Mr. Hargrave do?

16 A He -- Mr. Hargrave, he was --
17 Supervisory Investigator Hargrave -- excuse me,
18 I'm sorry. He videotaped some of the incidents
19 and while he was videotaping, I was actually
20 interviewing the ABC Manager.

21 Q Okay. And so are -- is the video part
22 of the exhibits to this report?

1 A Yes, ma'am, it's Exhibit 1.

2 Q Okay. Thank you. And do you have the
3 copy of it?

4 A Yes, ma'am, I do.

5 Q And is it on here or do you need to
6 put the little --

7 A There's a copy of it on there, but
8 that doesn't work. I actually got the thumb
9 drive to put --

10 Q Okay.

11 A -- but whatever you would like. If
12 you would like for me to put the thumb drive in,
13 I can do that as well.

14 Q Let's wait and see how it works.

15 A Okay.

16 Q All right. Just tell me how you
17 arrived at the -- why you arrived at the
18 establishment in question on the date in question
19 and what you did subsequently.

20 A Okay. Well, on the date in question,
21 Supervisory Investigator Hargrave and myself was
22 conducting monitoring the 600 Block of Florida

1 Avenue. When we approached the back door of
2 Kiss, we observed that the back door was open and
3 I was -- I could hear music playing as I passed.

4 So I parked the car, walked across the
5 street and I was waiting for Supervisory
6 Investigator Hargrave to catch up to me. And he
7 started videotaping from the opposite end of
8 Florida Avenue.

9 Q Um-hum.

10 A And so when we got to the back door,
11 we could hear music playing. We went inside the
12 establishment and I identified myself to the ABC
13 Manager and advised him I was going to conduct a
14 regulatory inspection.

15 During the regulatory inspection, I
16 notified him of the violation for the back door
17 being open and he didn't have -- he did not have
18 his ABC Manager's -- that doesn't matter.

19 Q That's right.

20 A That was dismissed. I advised him of
21 that violation and I explained to him the purpose
22 of what a settlement agreement was. During this

1 time, the establishment was fairly -- opening and
2 I was trying to educate them about what a
3 settlement agreement is, that they had to follow
4 everything in the settlement agreement and so
5 forth.

6 Q And so did you find any violations
7 other than the open door during your regulatory
8 inspection on the date and time in question?

9 A Well, at that time, I didn't. Upon
10 further review when I got back to the office, I
11 actually reviewed the settlement agreement again
12 and that's when I realized that the trash was in
13 there as well as the no flashing signage was
14 inside the settlement agreement. So that I
15 didn't notate during the regulatory inspection.
16 I actually observed that when I came back and
17 reviewed the settlement agreement once again.

18 Q Okay. So upon returning to ABRA, you
19 reviewed the settlement agreement and then
20 discovered other violations which you had
21 witnessed when you were there conducting your
22 regulatory inspection. Is that fair?

1 A Yes, ma'am, that's correct.

2 Q Okay. All right. So let's -- well,
3 have we talked about all the factual predicates,
4 because I'm about to go to the exhibits?

5 A (No audible answer.)

6 Q Is that a yes?

7 A Yes. Yes, ma'am. I'm sorry.

8 Q Okay.

9 MS. PHILLIPS: All right. I guess
10 what I would like to do first is try to work the
11 exhibits. So I would like permission for
12 Investigator Gilliam to come down here and work
13 this machine for me.

14 CHAIRPERSON ANDERSON: Sure, that's
15 fine.

16 MS. PHILLIPS: So he can see, if
17 that's all right with the Board.

18 (Video played.)

19 MS. PHILLIPS: All right. We have a
20 flash drive, apparently, that's a little bit
21 better.

22 (Video played.)

1 INVESTIGATOR GILLIAM: Well, that's
2 actually -- that's music in the form of bass.

3 MS. PHILLIPS: Okay.

4 INVESTIGATOR GILLIAM: As well as
5 crowd noise in the background.

6 BY MS. PHILLIPS:

7 Q Now, are you in this picture that we
8 are looking at right now?

9 A Yes, ma'am, I am. If you actually
10 look across the street in front -- behind that
11 gray car, I've got a gray shirt on. It's kind of
12 fuzzy.

13 Q Is that -- it looks sort of white in
14 this picture?

15 A Yes, but it's gray.

16 Q Okay.

17 A It's the lettering on the back of that
18 gray car reflecting off of that gray car.

19 Q Okay.

20 A That's me standing opposite to the
21 establishment.

22 Q All right. And so this is the back of

1 the establishment, is that what you said?

2 A Yes, ma'am, this is the Florida Avenue
3 side. The actual front of the establishment is
4 located on T Street.

5 Q Okay. So shall we move on? Have we
6 seen what we can see on that picture?

7 A We can keep playing it.

8 (Video played.)

9 INVESTIGATOR GILLIAM: It will start
10 again, just give me a second.

11 BY MS. PHILLIPS:

12 Q Is that the back door?

13 A As you can see the rear door is open.
14 And to answer your question earlier, I was
15 talking -- me and Supervisory Investigator
16 Hargrave was talking back and forth before we
17 entered the establishment.

18 (Video played.)

19 INVESTIGATOR GILLIAM: Now, if you
20 hear that, you can hear the music playing. If
21 you heard it, you can hear the music playing
22 outside the establishment.

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(Video played.)

INVESTIGATOR GILLIAM: All right.

That's it for that particular one. Do you want to play 2?

BY MS. PHILLIPS:

Q What? Okay.

A With the signage, do you want me to do that now?

Q Yes, please.

A Okay.

Q Let's get all of the video out of the way before we move on, yeah.

A Yeah. All right.

(Video played.)

BY MS. PHILLIPS:

Q Can we see two flashing signs there or am I imagining things?

A In the top right hand corner on the front window pane, you will see the ATM letters flash up and then that sign that says "Yes, We Hookah," the actual LED lights around the perimeter of that sign will actually start

1 flashing.

2 Q Okay. Let's see it again, so we can
3 see it.

4 (Video played.)

5 BY MS. PHILLIPS:

6 Q All right.

7 A If you want me to do it again, I can
8 find it.

9 Q I'm fine.

10 MS. PHILLIPS: Does the Board need to
11 see it again?

12 CHAIRPERSON ANDERSON: Yes.

13 MS. PHILLIPS: I'm sorry?

14 CHAIRPERSON ANDERSON: Yes.

15 MS. PHILLIPS: Okay.

16 CHAIRPERSON ANDERSON: I just want to
17 make sure I --

18 (Video played.)

19 MS. PHILLIPS: Does anyone need to see
20 it again before we stop?

21 CHAIRPERSON ANDERSON: No, I'm fine.

22 Go ahead.

1 MS. PHILLIPS: Okay. So does anybody
2 need to see the earlier video again? Because I'm
3 leaving video after this.

4 CHAIRPERSON ANDERSON: Can you do the
5 earlier video. No, sir, not -- you can play the
6 video over when you want to. Let's do the
7 earlier video one more time, please.

8 (Video played.)

9 CHAIRPERSON ANDERSON: All right. I'm
10 fine.

11 MS. PHILLIPS: You're fine. All
12 right. Thank you, Mr. Gilliam. While he retakes
13 the stand, I move for the admission of the
14 investigative report.

15 CHAIRPERSON ANDERSON: Any -- what's
16 your position?

17 MR. ASBEHA: Can I ask any questions?

18 CHAIRPERSON ANDERSON: No, not yet,
19 sir. She is not done with you. She wants to
20 move the investigative report in the record. Do
21 you have any -- do you object or do you agree
22 with that?

1 MR. ASBEHA: I object.

2 CHAIRPERSON ANDERSON: Why do you
3 object, sir?

4 MR. ASBEHA: The video was not --

5 CHAIRPERSON ANDERSON: No, no.

6 MR. ASBEHA: -- because --

7 CHAIRPERSON ANDERSON: Listen to me,
8 sir.

9 MR. ASBEHA: All right.

10 CHAIRPERSON ANDERSON: The
11 investigative report, she wants to move it into
12 evidence. Do you object?

13 MR. ASBEHA: No, no objection.

14 CHAIRPERSON ANDERSON: So moved.

15 (Whereupon, the above-
16 referred to document was
17 marked as Government Exhibit
18 No. 1 for identification and
19 was received into evidence.)

20 CHAIRPERSON ANDERSON: Okay. Go
21 ahead.

22 MS. PHILLIPS: Thank you, Mr. Chair.

1 BY MS. PHILLIPS:

2 Q All right. So now we -- Exhibit 2 is
3 no longer relevant, because that count was
4 dismissed.

5 So Exhibit 3, what is that, sir?

6 A That's a copy of the settlement
7 agreement.

8 (Whereupon, the above-
9 referred to document was
10 marked as Government Exhibit
11 No. 3 for identification.)

12 BY MS. PHILLIPS:

13 Q And can you point the Board to the
14 pages which validate your reading of the
15 investigative report?

16 A Yes, ma'am.

17 Q I mean, I'm sorry --

18 A It's the --

19 Q -- validate your violations in this
20 investigative report.

21 A Yes, ma'am. All right. That would be
22 pages -- this one is not marked.

1 Q Okay. So are we going to start with
2 paragraph 3? Is that fair?

3 A Yes, paragraph 3, noise, that would be
4 Statement C.

5 Q Okay. All right. And the next
6 violation in the --

7 A Would be Statement 4 and that will be
8 trash and odors and that would be Statement B.

9 Q Is it also Statement A and B?

10 A Yes.

11 Q So read the two Statements A and B.

12 A Okay. Under trash and order,
13 Statement A says "All trash, recyclable materials
14 and grease stored outdoors of the establishment
15 shall be in containers that are impervious to
16 vermin, leaks and odors."

17 Statement B says "Any damage of leaky
18 containers shall be repaired or replaced within
19 72 hours. Outdoor containers shall be kept
20 closed at all times and no waste or other
21 materials should be stored outdoors except in
22 such containers."

1 Q Okay. And the next page, which
2 contains the clause that the establishment
3 violated?

4 A That would be Statement 8, signage.
5 Statement 8 says "No flashing signs."

6 Q Okay. And your next exhibit?

7 A The next exhibit will be the copy of
8 the regulatory inspection I did during my visit.

9 Q Okay. Before we move on to the copy
10 of the regulatory inspection, the page before
11 that, what is -- is the owner's signature on that
12 page?

13 A Are you talking about the settlement
14 agreement?

15 Q Yes, the page before your regulatory
16 report.

17 A Okay. Yes, ma'am, that's correct.

18 Q I mean, inspection. And who is Anita
19 Norman?

20 A She is the ANC Commissioner.

21 Q Okay.

22 A For 1B.

1 Q And I see this agreement was signed on
2 March 10, 2017. Am I reading it correctly?

3 A Yes, ma'am, that's correct.

4 Q All right. So Exhibit, what is this,
5 3 or 4? 4? What is that, your regulatory
6 inspection?

7 A Yes, ma'am.

8 (Whereupon, the above-
9 referred to document was
10 marked as Government Exhibit
11 No. 4 for identification.)

12 BY MS. PHILLIPS:

13 Q And the reason it doesn't contain the
14 settlement violations, other than noise
15 violation, is that because you didn't realize
16 that --

17 A During my visit?

18 Q Yes.

19 A Exactly, yes, ma'am, that's correct.

20 Q Yes, okay. So you had to go back and
21 read the settlement agreement in its entirety to
22 get all of the violations captured. Is that

1 fair?

2 A Yes, ma'am, that's correct.

3 Q All right. The next exhibit is what?

4 A The next exhibit is a copy of the
5 security plan.

6 (Whereupon, the above-
7 referred to document was
8 marked as Government Exhibit
9 No. 5 for identification.)

10 BY MS. PHILLIPS:

11 Q But there were no violations of the
12 security plan. Is that correct?

13 A There's no violations, no, ma'am.

14 Q And I think there is one more.

15 A And then --

16 Q Is there one more exhibit or two?

17 A -- yes, ma'am, it's going to be one
18 more. It's going to be Exhibit 6.

19 Q And what is Exhibit 6?

20 A Exhibit 6 shows the establishment
21 using their trash containers did not close, which
22 was a violation of the settlement agreement and

1 it has trash in their containers that was not
2 stored in containers, which was also another
3 violation of the settlement agreement.

4 (Whereupon, the above-
5 referred to document was
6 marked as Government Exhibit
7 No. 6 for identification.)

8 BY MS. PHILLIPS:

9 Q Well, as I look at this picture, I
10 also notice that the plastic bag to the right of
11 the two trash containers appears to be open. Am
12 I misapprehending that picture?

13 CHAIRPERSON ANDERSON: What are you
14 looking at, Ms. Phillips?

15 INVESTIGATOR GILLIAM: Exhibit 6.

16 MS. PHILLIPS: I'm looking at the
17 black trash bag to the right of the two trash --
18 open trash containers.

19 CHAIRPERSON ANDERSON: What exhibit
20 are you looking at, I'm sorry?

21 MS. PHILLIPS: Exhibit 6.

22 INVESTIGATOR GILLIAM: 6.

1 MS. PHILLIPS: Which is the one he is
2 discussing now.

3 CHAIRPERSON ANDERSON: Go ahead. I'm
4 sorry. Go ahead.

5 INVESTIGATOR GILLIAM: Back of the
6 last page.

7 BY MS. PHILLIPS:

8 Q I can't hear you. I'm sorry?

9 A It should be on the back of the last
10 page of the security plan.

11 Q Right. I have it. I have the
12 original one, so -- and he has the last page.

13 MS. PHILLIPS: Can you -- Mr. Chair,
14 do you see it?

15 CHAIRPERSON ANDERSON: Yes.

16 MS. PHILLIPS: What he is talking
17 about? Okay.

18 CHAIRPERSON ANDERSON: Yes, I have it.

19 INVESTIGATOR GILLIAM: Chairman, I
20 can't -- I don't see what you asked me. I can't
21 tell from these black and white copies.

22 MS. PHILLIPS: Okay. All right. I

1 have the only color picture. I apologize. May I
2 approach the witness?

3 CHAIRPERSON ANDERSON: Sure, go ahead.

4 INVESTIGATOR GILLIAM: Yes, that's
5 correct, the trash bag is open at the top.

6 BY MS. PHILLIPS:

7 Q Okay. Thank you. And is that the
8 last exhibit?

9 A Yes, ma'am.

10 Q All right. Have we covered all of the
11 pertinent facts of the visit that you had on
12 August 27, 2017 that line up with the charges
13 that you made in your report?

14 A Yes, ma'am, I believe so.

15 Q Okay.

16 MS. PHILLIPS: I'm finished with this
17 witness, Mr. Chair.

18 CHAIRPERSON ANDERSON: Your questions,
19 sir.

20 MR. ASBEHA: Yes.

21 CROSS-EXAMINATION

22 BY MR. ASBEHA:

1 Q Good evening, Mr. Gilliam. How many
2 times did you visit Kiss Tavern?

3 MS. PHILLIPS: Objection as to time.
4 Does he mean before the incident?

5 MR. ASBEHA: No. The investigation up
6 until now, how many times.

7 CHAIRPERSON ANDERSON: I'll give him
8 some -- I don't know where he is going, so just I
9 think I'm going to overrule the objection. I
10 mean, but I'm going to limit -- I don't know what
11 he is asking, so I think it appears that he is
12 just asking a general question, how many times
13 has he been there. The place is only open, I
14 think, less than a year, so I'll give him some
15 leeway for this first question, but I'm going to
16 -- I know where you are going and I'm going to --
17 and if you want to raise objections further, I
18 will listen intently and I will rule on this.

19 MS. PHILLIPS: Well, I will add
20 objection to relevance, because he sort of
21 clarified in mine, maybe you didn't hear it.

22 CHAIRPERSON ANDERSON: I did not hear,

1 so but the question was how many times have you
2 been. So you can answer that question and then
3 I'll see where we go with that.

4 MS. PHILLIPS: Okay.

5 CHAIRPERSON ANDERSON: Go ahead.

6 MS. PHILLIPS: Same objection, sir.

7 INVESTIGATOR GILLIAM: I can't put an
8 exact number, but I would say several.

9 BY MR. ASBEHA:

10 Q Several, like 20, 40 times?

11 A No. I would say between maybe 8 to
12 12.

13 Q All right. On August 27th while the
14 video was taken, who was taking the video?

15 A Investigator Hargrave.

16 Q And he was on -- can you tell me the
17 exact address that he was standing?

18 A In what part are you referencing to?

19 Q The part that was taking video. It
20 was across the street. What's across the street
21 from Kiss?

22 A Several -- it's several establishments

1 across the street.

2 Q Like?

3 A You have Uproar and Flash that I'm
4 aware of.

5 Q Flash, Uproar have smoke and
6 everything.

7 A Well, that's -- that's correct.

8 Q Do they play music? They have
9 rooftop. They have everything. They actual
10 address they are playing is --

11 CHAIRPERSON ANDERSON: Sir, remember
12 you need to ask him in the form of a question.
13 Not in an argument.

14 INVESTIGATOR GILLIAM: Yes, sir.

15 BY MR. ASBEHA:

16 Q I mean, have you ever had any contact
17 with them?

18 MS. PHILLIPS: Objection to relevance.

19 MR. ASBEHA: This is relevant because
20 the video was taken from their address. But the
21 time he was there, he cannot listen any music
22 from my door. He was at their place. Mr.

1 Hargrave was --

2 CHAIRPERSON ANDERSON: All right.

3 MR. ASBEHA: -- with the flash there.

4 CHAIRPERSON ANDERSON: I'll allow the
5 question. Go ahead.

6 BY MR. ASBEHA:

7 Q Can you hear the music from Flash or
8 Uproar from outside?

9 A Well, you can hear music when the
10 video first starts, but it's not from your
11 establishment. I know that. But as Supervisory
12 Investigator Hargrave gets to the back door where
13 I'm standing at, when I was just displaying the
14 video, that music I heard was -- actually did
15 come out of your establishment. This was when we
16 were standing right by your rear door.

17 Q But you can't hear it from outside,
18 because you guys were talking. The music was --
19 you cannot really hear from outside. We can hear
20 you from outside. So we --

21 MS. PHILLIPS: Objection,
22 argumentative.

1 CHAIRPERSON ANDERSON: Hold on.

2 MR. ASBEHA: It is.

3 CHAIRPERSON ANDERSON: Sir --

4 MR. ASBEHA: I'll ask another
5 question.

6 CHAIRPERSON ANDERSON: All right.

7 BY MR. ASBEHA:

8 Q Can you hear it from outside, that's
9 what I'm saying, because you were standing at
10 634. Can you hear it from 634, because the video
11 you showed me was a video of the street, from
12 across the street. Can you hear it where Kiss
13 was playing, that's what it is.

14 A Can you clarify the question?

15 Q Yeah. You were at 634. Mr. Hargrave
16 was like across the street.

17 A Okay.

18 Q So from the video, you cannot hear
19 where the music is coming from, because where he
20 was standing was at Kiss Tavern. I mean, Flash
21 or Uproar. So where Flash or Uproar or any of
22 them were playing music. Were they playing music

1 that night? That's what my question is.

2 A Oh, yes, there was other
3 establishments playing music, but as it relates
4 to where you say I'm standing at 634, that's when
5 I first heard the music coming from your
6 establishment. I was pretty aware of my
7 surroundings that you got Uproar and Flash across
8 the street, that's why I actually waited until I
9 walked across the street before I even did it,
10 because -- well, another thing that I didn't
11 testify to earlier, but I need to clarify for the
12 record.

13 When we drove past your establishment
14 in the actual -- in the Government car, that was
15 the reason why I can hear it through the window.
16 And that was coming from your establishment.
17 That was the reason, that was the beginning cause
18 of us -- for me actually coming inside the
19 establishment. Because when I passed it, I can
20 hear it. But, bear in mind that when we passed
21 the rear, I was going down -- I was going up
22 Florida Avenue headed towards Northeast.

1 So the passenger window of the
2 Government car, I actually stopped and you could
3 hear it at your back door.

4 Q What time was it?

5 A 8:05 p.m. on the day in question.

6 Q Do you understand that our settlement
7 agreement says we can open window depending on,
8 you know, the weather or any -- even though we
9 have, that's what it says in the settlement
10 agreement. The settlement agreement says we can
11 open the window until 10:00 p.m.

12 A The part of the settlement agreement
13 that the reason why I charged that violation is
14 because the part of the settlement agreement I
15 mentioned in my case says your window panels. It
16 doesn't say anything about a door. It doesn't
17 say anything about a door. And I'm talking about
18 the door, your rear door was open. The rear door
19 is not a window panel.

20 Q Okay. I have no question on that.
21 About the -- moving to the trash, do you know
22 what the exact trash it is? Like the address is

1 it in the front, is it in the back or where is
2 it? Did you take this picture? Who took this
3 picture?

4 A I took that picture. The picture of
5 the trash?

6 Q All right. The trash was -- is it in
7 front? Is it in the back?

8 A That was -- the trash is located in
9 front of your establishment.

10 MR. ASBEHA: I have no further
11 questions.

12 MS. PHILLIPS: Board questions or
13 redirect?

14 CHAIRPERSON ANDERSON: I'm sorry? You
15 have no more questions, right?

16 MR. ASBEHA: Yeah, that's correct.
17 But I need to ask about the flash sign, because--

18 CHAIRPERSON ANDERSON: You can ask him
19 about the flash, sir. So if you need him to --
20 if you want to ask him about the flash, then we
21 will put the flash -- we will put the thing back
22 and you can ask him questions. So --

1 BY MR. ASBEHA:

2 Q On Tuesday, the 28th, you look at the
3 settlement agreement and you came back and you
4 came and talked to me?

5 A And that's when I talked to you,
6 that's correct.

7 Q Okay, yes. And during that time, you
8 asked me about the flash and everything. And I
9 told you what happened. So what did I do after
10 you tell me that's not -- you cannot put a flash
11 and everything? And I -- what did I do after
12 that?

13 MS. PHILLIPS: Objection.

14 MR. ASBEHA: After you ask me --

15 CHAIRPERSON ANDERSON: Well, hold on,
16 sir.

17 MR. ASBEHA: After he asked me that,
18 I cannot put the flash light over there, what did
19 I tell you?

20 CHAIRPERSON ANDERSON: All right.
21 Hold on. What's the nature of the objection?

22 MS. PHILLIPS: Objection. Post-

1 remedial action once he established that he is
2 the owner, it's not relevant.

3 CHAIRPERSON ANDERSON: I'm sorry, you
4 said what, ma'am?

5 MS. PHILLIPS: I can't hear you.

6 CHAIRPERSON ANDERSON: I didn't hear
7 what you said.

8 MS. PHILLIPS: I said objection to
9 relevance. Post-remedial action is not relevant
10 once the ownership of the establishment has been
11 established.

12 CHAIRPERSON ANDERSON: I know, but I'm
13 not -- I don't know where he is going with that,
14 so I don't know where he is going with it. And
15 because he is not an attorney, that's why I'm
16 going to give him some leeway, but I hear you,
17 Ms. Phillips. But I don't know where he is going
18 with that, so I'll allow that question.

19 MS. PHILLIPS: I'm just putting my
20 objections in for the record --

21 CHAIRPERSON ANDERSON: Okay. Let's
22 fine.

1 MS. PHILLIPS: -- Mr. Chair.

2 CHAIRPERSON ANDERSON: You can answer
3 the question, if you remember.

4 INVESTIGATOR GILLIAM: Okay. Can you
5 repeat the question for me?

6 CHAIRPERSON ANDERSON: I think the
7 question was that what did he -- once you told
8 him about the flashing sign, what did he do?

9 INVESTIGATOR GILLIAM: What did he do?

10 CHAIRPERSON ANDERSON: Yes.

11 INVESTIGATOR GILLIAM: Well, if I
12 remember correctly, you disabled it. You
13 disabled the flash sign when I made notification
14 of the violation.

15 BY MR. ASBEHA:

16 Q Yeah, I explained to you those are the
17 flash lights that I was told by the ANC and he
18 said you have to.

19 A Well, I remember you saying that you
20 was telling me that what you felt like the
21 settlement agreement was pertaining to was some
22 big rounded lights. And I remember explaining to

1 you is if that was the case, that would be more
2 specific.

3 The way the settlement agreement
4 reads, it says no flashing signs.

5 Q I know the flash lights, what do you
6 see? Like what kind of flash lights do you see?

7 A No, it says no flashing signs, meaning
8 be illuminated.

9 Q I know. What kind of -- what does it
10 say? The flash lights, what do they say?

11 A Well, you have one ATM sign. One ATM
12 that was flashing intermittently and then that
13 "Yes, We Hookah" sign that was shown on the
14 videotape had the LED lights going around the
15 perimeter of it, that was flashing.

16 MR. ASBEHA: No further questions.

17 CHAIRPERSON ANDERSON: Okay. Mr.
18 Gilliam, let me ask you a question. Where was
19 the sound coming from? Where was the sound
20 coming from?

21 INVESTIGATOR GILLIAM: From his back
22 door, because he had the back door open of the

1 establishment. Now, Mr. Chairman, are you
2 talking about when I was at the back door?

3 CHAIRPERSON ANDERSON: Yeah, the --
4 you gave him a violation to say that you could
5 hear the sound, so I'm just saying was the door
6 permanently open or was it --

7 INVESTIGATOR GILLIAM: Yes, it was
8 blocked open.

9 CHAIRPERSON ANDERSON: It was blocked?

10 INVESTIGATOR GILLIAM: The door was
11 blocked open.

12 CHAIRPERSON ANDERSON: And so that's
13 where you -- and so, okay, it was coming from the
14 door, not from a window?

15 INVESTIGATOR GILLIAM: It was coming--
16 because the door was open, that's how I was able
17 to hear the music.

18 CHAIRPERSON ANDERSON: Okay. All
19 right. And what sign was -- from the video, what
20 were the signs or sign that you had seen
21 flashing?

22 INVESTIGATOR GILLIAM: I seen the --

1 it was an ATM sign. It was in the top right hand
2 on the far right window pane. And it was
3 actually the A the T the M was actually flashing.
4 It was going through a letter sequence and then
5 right to the left of that they had a sign that
6 said "Yes, We Hookah." And on the perimeter of
7 that sign, they had LED lights that actually
8 blinked, you know, going around the light, which
9 was displayed in the video.

10 CHAIRPERSON ANDERSON: So you are
11 saying --

12 INVESTIGATOR GILLIAM: There was two
13 signs.

14 CHAIRPERSON ANDERSON: Okay.

15 INVESTIGATOR GILLIAM: A total of two
16 signs.

17 CHAIRPERSON ANDERSON: All right.
18 Thank you. Now, when did you -- you took the
19 pictures of the trash. When was that?

20 INVESTIGATOR GILLIAM: The pictures of
21 the trash, that was taken that day by -- when I
22 was doing the regulatory inspection, Supervisory

1 Investigator Hargrave, he took the -- he took one
2 picture of the actual alleyway and then that's
3 when I took the pictures of the trash.

4 CHAIRPERSON ANDERSON: So about what
5 time of day was it, approximately?

6 INVESTIGATOR GILLIAM: Oh, that was
7 during the regulatory inspection, so it had to be
8 between 8:05 p.m. and 8:55, that's when I was at
9 the establishment.

10 CHAIRPERSON ANDERSON: Do you know if
11 this -- do you know was he scheduled for a trash
12 pickup that day? Do you know that?

13 INVESTIGATOR GILLIAM: Well, that was
14 a Sunday. No, that was a Sunday, because his
15 trash company is Enviro and they pick up six
16 times a week. And from my experience working in
17 the District, don't nobody pick up trash on a
18 Sunday.

19 CHAIRPERSON ANDERSON: So but -- so
20 you know he doesn't have trash pickup on Sunday,
21 that's your testimony?

22 INVESTIGATOR GILLIAM: No, sir, that's

1 correct.

2 CHAIRPERSON ANDERSON: All right. All
3 right. I don't have any further questions. Any
4 questions by of the Board Members? Yes, Mr.
5 Short?

6 MEMBER SHORT: Investigator, you
7 mentioned in your testimony that you were heading
8 on Florida Avenue and you said you were heading
9 toward Northeast?

10 INVESTIGATOR GILLIAM: Yes, sir. I
11 took the stretch between -- right there by --
12 it's Florida Avenue and 7th Street, N.W. Now, I
13 actually was headed --

14 MEMBER SHORT: Because I know 7th
15 Street runs north and south and Florida Avenue
16 runs east and west.

17 INVESTIGATOR GILLIAM: Exactly.

18 MEMBER SHORT: What I'm trying to
19 clarify is which direction on Florida Avenue were
20 you traveling?

21 INVESTIGATOR GILLIAM: So I was going
22 past -- I was actually heading towards -- I've

1 never been good with east and west, so I'm not
2 going to say east or west. I'm going to --

3 MEMBER SHORT: I'm telling you for the
4 record --

5 INVESTIGATOR GILLIAM: Okay.

6 MEMBER SHORT: -- Florida Avenue is
7 east and west.

8 INVESTIGATOR GILLIAM: Exactly. So to
9 the west is the east of 7th Street? If I'm going
10 past 7th Street, my next street, cross street, is
11 going to be 6th Street, what direction is that?
12 Is that east or west?

13 MEMBER SHORT: That would be west if
14 you are going from 7th Street to 6th Street.

15 INVESTIGATOR GILLIAM: Well, then I
16 was headed west on Florida Avenue.

17 MEMBER SHORT: It always helps the
18 testimony. Okay. Thank you very much.

19 INVESTIGATOR GILLIAM: Okay.

20 CHAIRPERSON ANDERSON: Any other
21 questions by any other Board Members? Mr.
22 Asbeha, do you have any questions of Mr. Gilliam

1 based on the questions that I asked and the
2 questions that Mr. Short asked?

3 BY MR. ASBEHA:

4 Q On 7th Street going east, where were
5 you going? When you head west, what direction
6 you say on the street? How many places do you
7 see on that street?

8 A Can you speak up? I can't hear you.

9 Q How many nightclubs do you see? I
10 mean, like lights do you see over there on that
11 spot?

12 A Once you cross 7th Street?

13 Q No. While you were driving, like the
14 exact spot that you heard music, how many clubs
15 are there?

16 A Well, I stopped in front of your
17 establishment now, that's where I stopped at,
18 so --

19 Q You just stated you were passing.

20 A I know, but I actually stopped. When
21 I heard the music, I actually stopped because of
22 the surrounding establishments to make sure it

1 was coming from yours. This is before I even got
2 out of the car.

3 Q Is Kiss the only one playing music or
4 other --

5 A Oh, no. As I testified earlier, there
6 were several establishments playing music.

7 MR. ASBEHA: No further questions.

8 CHAIRPERSON ANDERSON: Ms. Phillips?

9 MS. PHILLIPS: Thank you, Mr. Chair.

10 REDIRECT EXAMINATION

11 BY MS. PHILLIPS:

12 Q Now, since I am even more
13 directionally-challenged than you are, it seems
14 to me if you were passing the establishment one
15 way, the passenger side is to one side of the
16 street and if you are going the other direction,
17 the passenger window is the other way.

18 So when you were traveling down the
19 street, when you stopped when you were in the
20 car, and I -- did you roll down your window or
21 not?

22 A Yes. As I was driving and I actually

1 rolled down the passenger window where
2 Supervisory Investigator Hargrave was sitting.

3 Q And so is that passenger window on the
4 side of the establishment or on the side of --
5 the other side of the street?

6 A I don't know. I guess on the same
7 side of the establishment. I stopped right at
8 where his rear door was open. It was propped
9 open. I stopped right there.

10 Q Okay. All right. And now I would
11 like for you to turn to the settlement agreement.
12 And I know that in the questions that the owner
13 asked you, he started with the first clause of C,
14 which talks about the doors can be -- the window
15 panels can be open seasonally.

16 But there is another clause at the end
17 of that and what does that part of the clause
18 say?

19 A "Provided that the music is not
20 audible beyond the street curbside."

21 Q Okay. About the trash question that
22 was asked, as I read the settlement agreement, it

1 seems to me whether or not he was having a pickup
2 that day or not, he was still in violation
3 because the cans were open and trash was spread
4 out beside the cans. Is that a fair reading of
5 your testimony and the settlement and Board
6 Order?

7 A That's correct.

8 Q Thank you.

9 MS. PHILLIPS: Okay. I have no
10 further questions.

11 CHAIRPERSON ANDERSON: Thank you, Mr.
12 Gilliam, for your testimony. You can step down.

13 INVESTIGATOR GILLIAM: Thank you.

14 (Witness excused.)

15 CHAIRPERSON ANDERSON: Does the
16 Government have another witness?

17 MS. PHILLIPS: The Government does
18 not. And as long as we make sure that this stick
19 right here gets back with the original record,
20 the Government rests.

21 CHAIRPERSON ANDERSON: All right.
22 Thank you. I'll figure out how to do that. Mr.

1 Asbeha, do you have any witnesses?

2 MR. ASBEHA: Excuse me?

3 CHAIRPERSON ANDERSON: Do you have any
4 witnesses you plan to call?

5 MR. ASBEHA: No.

6 CHAIRPERSON ANDERSON: So you are
7 going to be your only witness. Can you raise
8 your right hand, sir, please?

9 Whereupon,

10 EYOB ASBEHA

11 was called as a witness for the Licensee, and
12 having been first duly sworn, assumed the witness
13 stand and was examined and testified as follows:

14 MR. ASBEHA: I do.

15 CHAIRPERSON ANDERSON: Okay. Remember
16 that, based on the testimony that you give, that
17 Ms. Phillips is going to cross-examine you and
18 then the Board will cross-examine you. So ahead,
19 sir.

20 MR. ASBEHA: So do I make a statement
21 or what do I say?

22 CHAIRPERSON ANDERSON: You are

1 presenting your case, sir. Tell me the way you
2 want to present your case.

3 MR. ASBEHA: All right.

4 DIRECT EXAMINATION

5 MR. ASBEHA: Yeah, as I say here, on
6 my settlement agreement, my --

7 CHAIRPERSON ANDERSON: And you will
8 need to tell us what document -- for the record,
9 you need to say what document you are
10 referencing.

11 MR. ASBEHA: Exhibit 6.

12 CHAIRPERSON ANDERSON: Okay. Go
13 ahead.

14 MR. ASBEHA: Exhibit 6 shows that my
15 trash were on the front side of my establishment.
16 But most of the time or all of the time, my
17 settlement agreement we keep those trash on
18 Florida Avenue, which is the back side. And all
19 the trash that you see there, they not from Kiss
20 Tavern. The Kiss Tavern on 7th Avenue says that
21 our trashes our located at the back of the
22 establishment. And he can come back -- they have

1 been there like several times and they saw that
2 our trash out in the back. We never put those
3 trash in the front.

4 And as you can see, you can ask Anita
5 ANC Norman -- I mean, Anita Norman, you can ask
6 her that our establishment's trash are located at
7 the back of the club. And I can show you the
8 video right now for it.

9 CHAIRPERSON ANDERSON: Show what
10 video, sir?

11 MR. ASBEHA: No, when you see the
12 video or anything, it shows that our trash or in
13 the settlement agreement picture, our trash
14 located in the back of the establishment, not in
15 front. That's the first case I have.

16 And all the trash that you see over
17 there, the plastic trash, everything, all the
18 other trash, they are not ours. That's to the
19 first case I want to say.

20 The second case about the noise is
21 Investigator Gilliam told us that he heard a lot
22 of sounds from the street and music or sound has

1 echo. It cannot -- it's not just like nature,
2 like music or sound reflects or has equal sound
3 in its nature, so the music that he heard was not
4 100 percent from Kiss.

5 And by law, we can ask Flash or
6 Investigator Hargrave were there, we ask them
7 they can know. Well, how come they are playing
8 music? They say -- he say they can play music.
9 They have a rooftop open area. We don't have
10 open area.

11 And what -- the video that was taken
12 is not from Kiss. The video that was taken is
13 across the street. And as long as you cannot
14 hear music up the street or on the street, I
15 don't think there is violation over there.

16 CHAIRPERSON ANDERSON: I'm sorry, you
17 said what, sir?

18 MR. ASBEHA: The music that was
19 playing in our establishment --

20 CHAIRPERSON ANDERSON: Why don't you--
21 okay. Why don't you have them play the video --

22 MR. ASBEHA: Yeah.

1 CHAIRPERSON ANDERSON: -- to establish
2 where is it that you said the music was coming
3 from?

4 MR. ASBEHA: If they can play it. I
5 can understand, I can explain it more.

6 CHAIRPERSON ANDERSON: You know you
7 can -- can we get the Investigator to -- or
8 someone to play this video, please? I thought
9 you said you were technology-challenged, Ms.
10 Phillips?

11 MS. PHILLIPS: I am.

12 CHAIRPERSON ANDERSON: Oh. The reason
13 why I asked is because I see stuff happening on
14 my screen, so --

15 MS. PHILLIPS: See, but I hit the
16 wrong thing, so --

17 CHAIRPERSON ANDERSON: That's why I
18 said I thought you were technology-challenged, so
19 I would leave it alone. We are getting someone
20 who understands the technology. It's just on the
21 desktop, so just hit the icon on the desktop,
22 please.

1 MS. PHILLIPS: What icon?

2 CHAIRPERSON ANDERSON: Move -- you
3 don't see the --

4 MR. ASBEHA: Where it says Kiss.

5 CHAIRPERSON ANDERSON: Yeah.

6 MS. PHILLIPS: That one?

7 CHAIRPERSON ANDERSON: Yeah.

8 MEMBER SHORT: And do right, yep.

9 CHAIRPERSON ANDERSON: And just click
10 it. I hope that if you click it it should open
11 and play. One more time, click it.

12 MEMBER SHORT: Double click it, yeah.

13 CHAIRPERSON ANDERSON: You're not
14 clicking, the cursor is not moving.

15 MS. PHILLIPS: Well, it is on the --
16 where you told me.

17 CHAIRPERSON ANDERSON: But you have to
18 click, click.

19 MS. PHILLIPS: Click, click? Do you
20 hear that, click, click?

21 CHAIRPERSON ANDERSON: All right.
22 Well, we will leave it alone. We are going to

1 have the -- yes. Can you play that?

2 PARTICIPANT: Two? This one?

3 CHAIRPERSON ANDERSON: There are two
4 videos, so which -- play --

5 MS. PHILLIPS: I think the first one
6 is the video that he is talking about.

7 CHAIRPERSON ANDERSON: Yeah, play,
8 yeah, please.

9 (Video played.)

10 PARTICIPANT: Pause it?

11 CHAIRPERSON ANDERSON: No. Yeah,
12 that's it.

13 MR. ASBEHA: I just want to pause it
14 like.

15 CHAIRPERSON ANDERSON: You want her to
16 pause it? So what are you saying now, sir?

17 MR. ASBEHA: I want to pause it.

18 CHAIRPERSON ANDERSON: Yeah, okay.

19 MR. ASBEHA: Just a little.

20 CHAIRPERSON ANDERSON: Tell her what
21 you want her to do.

22 MR. ASBEHA: I'm just telling her.

1 CHAIRPERSON ANDERSON: Yeah, all
2 right.

3 (Video played.)

4 MR. ASBEHA: I can ask. This -- the
5 video that he is showing is exactly where the
6 Uproar is, that's where the video was taped.

7 CHAIRPERSON ANDERSON: I'm sorry, you
8 said what, sir?

9 MR. ASBEHA: The location that the
10 video was taken is from Uproar. Behind it is
11 Uproar Club. They really have rooftop, they play
12 music. So the video that you can hear says from
13 the street. It's not from us. It's from Uproar
14 exactly and the Investigator Gilliam confirm
15 that, all the streets on that side playing music.

16 So there is no violation that the
17 music is mine or there is no 100 percent evidence
18 that the music is coming up the street, because
19 as he said, music was playing on all the three
20 clubs, which is on their side. My club is across
21 the street.

22 And the exact location that he is

1 playing is not from Kiss. You can see it from
2 here. It's from Uproar. Right behind it is
3 Uproar and they play music until 10:00 p.m. loud
4 and you can hear it from like all the way to 6th
5 Street. And even you can ask the neighborhood
6 over there and Anita Norman, they are allowed to
7 play music until 10:00 p.m.

8 Can you play it again for -- the first
9 one?

10 PARTICIPANT: Starting over?

11 MR. ASBEHA: Kiss, yes. No, just play
12 there.

13 (Video played.)

14 MR. ASBEHA: Can you hear the music
15 right there? You can hear -- never any music,
16 right? You can even hear the ambulance or the
17 cars moving. There are no music over there. Can
18 you move it again, play it?

19 (Video played.)

20 MR. ASBEHA: That's the door. I don't
21 see any noise complaint here.

22 CHAIRPERSON ANDERSON: Well, can you--

1 MR. ASBEHA: The music is not going
2 outside.

3 CHAIRPERSON ANDERSON: But can you let
4 it play for more, please?

5 (Video played.)

6 MR. ASBEHA: That's the door, that's
7 the main door. Can you hear music right there?
8 You cannot even hear music.

9 CHAIRPERSON ANDERSON: I think we have
10 to let the video play some more.

11 MR. ASBEHA: I'm going to play, yeah.

12 (Video played.)

13 MR. ASBEHA: You can see the DJ booth.
14 There was no DJ at that time. There was no DJ at
15 that time. We was just playing Pandora. And
16 like the place itself is soundproof. It's all
17 brick. You cannot -- the music won't go down and
18 DCRA came to check the sound. And there was no
19 violation on that one.

20 And when Kiss is open, it's closed.
21 We open at like 5:00 or before 10:00 p.m. or
22 something, after that's it's always closed. And

1 Investigator Hargrave and Investigator Gilliam
2 came probably 100 times, the two of them combined
3 came 100 times to my establishment. And they
4 have never found any noise complaints because we
5 always keep the door closed to -- after 10:00 or
6 most of the time after they came -- keep coming,
7 we literally close that door. There was no music
8 coming out.

9 And which is -- we have a good
10 relation with them. We literally close that
11 door. And I don't see any violations or noise
12 violations that is coming out to the street.

13 But from my club, you can hear the
14 music is coming from across the street, so I
15 don't think it's only me that is playing music
16 over there or it's only the music is coming from
17 my club. That's what I'm saying. That's only
18 like I can say about the noise violation that I
19 have, because by law, we can play music until
20 10:00 p.m.

21 And we open the door until 10:00 p.m.
22 and our music is -- it's not going out. We don't

1 have any -- I don't think we have anybody in the
2 neighborhood, by that time there was a DJ. For
3 the DJ, it could be more music or something, but
4 there was no DJ at that time that the play can be
5 heard outside the street or outside the door.

6 As you can see, the Investigator was
7 across the street. You can hear more music up
8 the street while they are approaching towards us,
9 there is no music at all. So I don't think there
10 is like noise violations here. That's what I'm
11 trying to say. Thank you. That's the only
12 thing.

13 CHAIRPERSON ANDERSON: All right.
14 That's it? You don't want --

15 MR. ASBEHA: No, about this. I'm
16 going to keep going.

17 CHAIRPERSON ANDERSON: Okay. Keep
18 going. Do you need to ask any other questions
19 about any other video?

20 MR. ASBEHA: About the flashing light.

21 CHAIRPERSON ANDERSON: Yeah, do you
22 need to ask -- no, do you need --

1 MR. ASBEHA: If you guys want to see
2 it, I've seen it.

3 CHAIRPERSON ANDERSON: No, sir. It's
4 you. Do you need to ask any questions about the
5 video? Because at least she is here, so there is
6 a different video.

7 MR. ASBEHA: Yes.

8 CHAIRPERSON ANDERSON: Okay. So do
9 you need to ask -- yeah, so as Ms. Phillips did,
10 she got the video out of the way, so go ahead.

11 (Video played.)

12 MR. ASBEHA: Yes, okay. As you can
13 see, the only thing that is flashing is the ATM.

14 CHAIRPERSON ANDERSON: Well, the video
15 is not playing, so let's play the video, please.

16 MR. ASBEHA: Okay.

17 (Video played.)

18 MR. ASBEHA: That's far enough. The
19 only thing that is flashing is the ATM. And I
20 don't think as a customer or as the owner that
21 the ATM sign, putting the ATM sign outside is
22 harmful to anybody, to my establishment or to the

1 community in that neighborhood.

2 Like you go like 360 over there. The
3 only ATM that is known over there is the Wells
4 Fargo, so it's convenient for us to split the
5 checks and everything, that's why we put the ATM
6 sign, so people from Howard Theater, from the
7 restaurants and everything can come and use it.
8 It's not even my ATM. I don't even make money
9 out of it. The only money I get is like not even
10 \$30 a month, so I don't think it's harmful.

11 And by that time, Investigator Gilliam
12 told me listen this is not going to hurt anybody.
13 I don't need it over there. And in front of him,
14 I trashed it on the trash. So I don't think
15 there is violation over there. If this was a
16 violation, it's my first and I would like -- I
17 like apologize for that and to the Board to
18 consider this as not harmful to anybody.

19 CHAIRPERSON ANDERSON: Do you have
20 anything else you want to say?

21 MR. ASBEHA: No, sir.

22 CHAIRPERSON ANDERSON: Ms. Phillips?

1 MS. PHILLIPS: Yes. I think it's just
2 one question, but I never say that, so because it
3 could be two.

4 CROSS-EXAMINATION

5 BY MS. PHILLIPS:

6 Q Did you bring any proof today that the
7 trash that was in the picture of Exhibit 6 of the
8 investigative report was not your trash?

9 A It's in my settlement agreement. If
10 you go to my settlement agreement, the documents,
11 the videos, everything on that premises can show
12 you where my trash are located.

13 Q Right.

14 A Check my settlement agreement.

15 Q So show me where in the settlement
16 agreement it says where you put your trash.

17 A In the settlement agreement, I thought
18 you have it.

19 Q Well, yeah, but I asked you to show me
20 where it is.

21 A Of my --

22 Q You have a copy of the investigation

1 report right there. Your pencil is on it.

2 A Yeah, but the exhibit doesn't show --
3 my exhibit or my evidence doesn't show here,
4 because I don't have it. But if you go my
5 journal, everything is here. You can see it.

6 Q Didn't you say that the settlement
7 agreement --

8 A No, no, give me one second. You just
9 asked me a question. I'm trying to answer it.

10 Q Okay.

11 A Yeah, on the document here and this,
12 I don't know what page it is.

13 CHAIRPERSON ANDERSON: What document
14 is that? Is that the security plan?

15 MR. ASBEHA: It's the --

16 MS. PHILLIPS: It's the security plan.

17 MR. ASBEHA: -- yes.

18 CHAIRPERSON ANDERSON: Okay.

19 MR. ASBEHA: You see where the X is?

20 BY MS. PHILLIPS:

21 Q Which X?

22 A In the back.

1 Q I see lots of X's.

2 A There is one X by Florida Street.

3 Q I don't see the street labeled, so I--

4 A Well, do you mind if I show you?

5 Q Yeah, just hold it up and show it on
6 yours.

7 A This is the main entrance. The one
8 that says the video here, in the picture here is
9 on T Street, which is the front entrance. And my
10 trash cans are located at the Florida Avenue,
11 which is between the kitchen and the club itself.
12 And it shows my settlement agreement that all my
13 trash are located on Florida Avenue, not T
14 Street.

15 Q Where? I'm sorry, I can't see
16 anything that is labeled or appears to be trash
17 cans on this diagram.

18 A It won't appear because --

19 Q It's not there?

20 A No. Hold on.

21 Q Well, let's start with the diagram
22 that you were just referencing --

1 A Yes.

2 Q -- in the security plan. Is there any
3 reference to trash cans on this diagram?

4 A Yes. It states here, but it can't
5 mean it, but it says trash located on Florida
6 Avenue in the back.

7 Q Where does it say?

8 A It can -- here, you can't read it from
9 here. You can't, but that's what it says. The
10 actual entrance that --

11 Q I see scrabbles on the front room, the
12 middle room and the kitchen. Is it the writing
13 that we can't read that's in the kitchen that you
14 say says that?

15 A That's outside between the kitchen and
16 the club itself. If I can play the video again,
17 I can show you where my trash are.

18 (Video played.)

19 BY MS. PHILLIPS:

20 Q All right. What were you saying? I
21 can't hear over the noise of the video?

22 A That's where my -- our trash are.

1 Q Where?

2 A It's -- no, that's the main entrance.

3 Q That's the main entrance, so where on
4 any of these videos does it show where your trash
5 cans are?

6 A It doesn't show here.

7 Q It doesn't show here?

8 A Yeah.

9 Q And you say that it says where,
10 because I don't see a door by the kitchen. I see
11 a door into the --

12 A There is two doors and that's in the
13 middle, that's why we put it. And you can see or
14 ask --

15 Q Show me where the doors are. I see a
16 door leading to the utility room and I see a door
17 leading to the office from the kitchen.

18 A It's outside door. It's outside where
19 we put it. It's not inside. We don't put it
20 inside, but --

21 Q All right. Let me finish my question.

22 A All right.

1 Q But I don't see a door going from the
2 kitchen to the outside on this diagram. Could
3 you tell me and the Board where the door is that
4 is not shown on this diagram or it is shown on
5 this diagram?

6 A There is front door.

7 Q The front door is in the front room?

8 A That's in the kitchen. There is a
9 kitchen door. There is a kitchen door. I can
10 show you.

11 Q All right. I see something that says
12 kitchen. Do you see that?

13 A I have to have the original.

14 Q Well, I mean, just in general.

15 A I can't read it, because I can't say
16 which one is the door, which one is the trash,
17 there is a lot of X's, but I know by practice
18 that my trash are located.

19 Q What I'm asking you is I see something
20 on this diagram that you brought to the attention
21 of the Board that shows a kitchen.

22 A Yes.

1 Q But this diagram, as I look at it,
2 doesn't show a door exiting from the kitchen to
3 the outside. Is that correct? Am I reading this
4 diagram correctly?

5 A Yes. The door is irrelevant. Like
6 the door or not, are we talking about trash right
7 here. Not by the door.

8 Q Okay.

9 MS. PHILLIPS: That's the only
10 question I have.

11 CHAIRPERSON ANDERSON: Mr. Asbeha,
12 where was the trash that we saw, where was that
13 on the video? Where was that -- where were those
14 trash cans located? I'm sorry, not the video --

15 MR. ASBEHA: It's in the --

16 CHAIRPERSON ANDERSON: -- it's from
17 Exhibit --

18 MS. PHILLIPS: 6.

19 CHAIRPERSON ANDERSON: -- 6. Where
20 was this trash -- where are these trash cans
21 located?

22 MR. ASBEHA: It's by the bank.

1 CHAIRPERSON ANDERSON: By where?

2 MR. ASBEHA: Wells Fargo Bank.

3 MEMBER SHORT: Which street is that?

4 MR. ASBEHA: On T Street.

5 MEMBER SHORT: Thank you.

6 MR. ASBEHA: Where Wells Fargo is.

7 CHAIRPERSON ANDERSON: So where they--

8 is this trash located in front of your building

9 or where --

10 MR. ASBEHA: Next to my building,

11 which is -- my building is on like in front.

12 This is all the way to Wells Fargo. This is

13 located there is like street trash everywhere,

14 you can see it.

15 MEMBER SHORT: Mr. Chair, I think I

16 can clarify this. What is the address of the

17 bank? Which street is the bank on?

18 MR. ASBEHA: 1920 -- 1905 7th Street.

19 MEMBER SHORT: Excuse me, speak up.

20 MR. ASBEHA: 1905 7th Street.

21 MEMBER SHORT: So the bank is on 7th

22 Street?

1 MR. ASBEHA: Yes, sir. It comes all
2 the way to -- we have the alley in the middle
3 that separates the bank from the club, which is a
4 small alley, a small alley that's going in --

5 MEMBER SHORT: Your trash is on what
6 street?

7 MR. ASBEHA: On Florida Avenue.

8 MEMBER SHORT: On Florida Avenue?

9 MR. ASBEHA: Yes, sir.

10 MEMBER SHORT: All right. And that's
11 where the picture is, this picture is on Florida
12 Avenue?

13 MR. ASBEHA: This is not -- like I
14 told you, this is by the bank. It's not --

15 CHAIRPERSON ANDERSON: What street is
16 this then? What street is this?

17 MR. ASBEHA: T Street.

18 CHAIRPERSON ANDERSON: T Street.

19 Okay. All right. All right.

20 MR. ASBEHA: If we can show the video?

21 MEMBER SHORT: I guess what I want to
22 get straightened out is is this your trash can?

1 MR. ASBEHA: It's not.

2 MEMBER SHORT: It's not your trash
3 can? What do you -- where do you put your trash?

4 MR. ASBEHA: In the back by Florida
5 Avenue.

6 CHAIRPERSON ANDERSON: You are just
7 taking over my questions.

8 MEMBER SHORT: Okay. I'm sorry, Mr.
9 Chair.

10 CHAIRPERSON ANDERSON: Go ahead, Mr.
11 Short.

12 MEMBER SHORT: Okay. I'm just trying
13 to get for the record still saying the bank,
14 saying my neighbor, where physically, address-
15 wise, are your trash cans located?

16 MR. ASBEHA: 634 and 636, 637 T is
17 actual location of my trash.

18 MEMBER SHORT: Is that the front or
19 the rear of your place?

20 MR. ASBEHA: The rear, the rear.

21 MEMBER SHORT: That's the rear of your
22 business?

1 MR. ASBEHA: On Florida, Florida. By
2 Florida Avenue rear.

3 MEMBER SHORT: Answer my question.

4 MR. ASBEHA: Yes, sir.

5 MEMBER SHORT: So we don't get lost.

6 The front address of your building is which
7 street?

8 MR. ASBEHA: T Street, sir.

9 MEMBER SHORT: Your address is T
10 Street?

11 MR. ASBEHA: Yes, sir.

12 MEMBER SHORT: So the rear of your
13 building would be Florida Avenue?

14 MR. ASBEHA: Yes, sir.

15 MEMBER SHORT: So all your trash cans
16 are on Florida Avenue?

17 MR. ASBEHA: Yes, sir.

18 MEMBER SHORT: Right on the main drag?

19 MR. ASBEHA: Yes, that's what the ANC
20 says. The ANC agreement says I have to put all
21 my trash in Florida Avenue.

22 MEMBER SHORT: Okay. And these trash

1 cans on this picture are where?

2 MR. ASBEHA: On T Street, on the front
3 of the Wells Fargo Bank.

4 MEMBER SHORT: And this is not your --
5 Wells Fargo Bank is on 7th Street facing 7th
6 Street.

7 MR. ASBEHA: Yeah, mine is 7 and T,
8 too.

9 MEMBER SHORT: I understand that.
10 Just answer our questions.

11 MR. ASBEHA: Yes, sir.

12 MEMBER SHORT: The bank's address is
13 on 7th Street?

14 MR. ASBEHA: 1905 7th Street.

15 MEMBER SHORT: Okay. These cans are
16 where?

17 MR. ASBEHA: These cans are right
18 behind it on the side. There is public --

19 MEMBER SHORT: What street is this
20 found on?

21 MR. ASBEHA: T Street.

22 MEMBER SHORT: These cans are on T

1 Street?

2 MR. ASBEHA: Yes, sir.

3 MEMBER SHORT: Which is the rear of
4 your building?

5 MR. ASBEHA: Yes.

6 MEMBER SHORT: The rear of your
7 business.

8 MR. ASBEHA: My address, actual
9 address is T Street.

10 MEMBER SHORT: I understand that. But
11 these trash cans are directly behind your
12 business, correct?

13 MR. ASBEHA: In front of my business,
14 sir.

15 MEMBER SHORT: The front of your
16 building is Florida Avenue?

17 MR. ASBEHA: Nope, it's not. T
18 Street.

19 MEMBER SHORT: T Street, 637 T is your
20 business?

21 MR. ASBEHA: Yes, sir.

22 MEMBER SHORT: Okay. So now, someone

1 -- you are saying these aren't your trash cans.
2 Someone is putting trash cans directly in front
3 of your business. Is that what you are --

4 MR. ASBEHA: Not in front of my
5 business. Like I told you, these trash out on
6 the sidewalk, because when you play the video, he
7 cannot even see the --

8 MEMBER SHORT: I understand that. I
9 think I know the geographics pretty good. I'm
10 just trying to get it for the record.

11 How many businesses are in the 600
12 Block of T Street?

13 MR. ASBEHA: Huh?

14 MEMBER SHORT: How many businesses are
15 in the 600 Block of T Street, N.W.? How many
16 businesses?

17 MR. ASBEHA: One, two, three, four,
18 five, six.

19 MEMBER SHORT: On the 600 Block of T
20 Street?

21 MR. ASBEHA: Yeah, because it's a --
22 when the curve where Wells Fargo is, it's like --

1 and there is --

2 MEMBER SHORT: Your address is 637?

3 MR. ASBEHA: Yes, sir.

4 MEMBER SHORT: What is the next
5 address to you with a business?

6 MR. ASBEHA: 635.

7 MEMBER SHORT: Which -- and that
8 business is what?

9 MR. ASBEHA: It's not a business.
10 It's a house.

11 MEMBER SHORT: It's a house?

12 MR. ASBEHA: Yes. They have the trash
13 over there. And I leave it there, because we
14 have our office over there next door, 635 T
15 Street.

16 MEMBER SHORT: So you have an office
17 at what address?

18 MR. ASBEHA: 635 T Street.

19 MEMBER SHORT: So you have an address
20 at 635 and your business is 637?

21 MR. ASBEHA: Yes, sir.

22 MEMBER SHORT: The trash cans were in

1 front of 635?

2 MR. ASBEHA: No. The trash out by
3 the bank, sir, because you can see on the video.
4 You can see it's not in the front of mine. It's
5 -- do you know where the post office used to be,
6 sir?

7 MEMBER SHORT: For the record, okay,
8 whose trash is this? Do you know?

9 MR. ASBEHA: It's the public, because
10 there was construction going on on the bank's
11 upstairs. You can see a lot of public like
12 clothes and I don't even see what it is.

13 MEMBER SHORT: Okay. Again, I'll ask
14 you whose trash or do you know whose trash this
15 is in this picture in Exhibit 6? Whose trash is
16 this?

17 MR. ASBEHA: It's the next door
18 building. They had construction going on.

19 CHAIRPERSON ANDERSON: All right.
20 Since you have asserted --

21 MEMBER SHORT: Go ahead, Mr. Chair.

22 CHAIRPERSON ANDERSON: All right. Mr.

1 Asbeha, I want you to look at Exhibit 6 again.

2 Do you see that yellow box?

3 MR. ASBEHA: Yes, sir.

4 CHAIRPERSON ANDERSON: What does that
5 yellow box say? What's on that yellow box?

6 MR. ASBEHA: Summer, does it say
7 summer?

8 CHAIRPERSON ANDERSON: Huh?

9 MR. ASBEHA: It says Summer.

10 CHAIRPERSON ANDERSON: What Summer
11 Ale?

12 MR. ASBEHA: Yes, it say Summer Ale,
13 yeah.

14 CHAIRPERSON ANDERSON: All right.
15 What's Summer Ale? Do you know what that is?

16 MR. ASBEHA: We don't have any product
17 that say Summer Ale.

18 CHAIRPERSON ANDERSON: Huh?

19 MR. ASBEHA: We don't have any product
20 that say Summer Ale.

21 CHAIRPERSON ANDERSON: Let me ask you
22 a question. Now, what -- you said this trash --

1 where was this trash again?

2 MR. ASBEHA: On the side of the
3 building. Not mine. On the side of the Wells
4 Fargo.

5 CHAIRPERSON ANDERSON: What building?
6 This is -- all right. So is there any other
7 establishment like a restaurant or bar next to
8 you?

9 MR. ASBEHA: Yeah, like I told you
10 there was construction on the building. Not me.

11 CHAIRPERSON ANDERSON: Sir? So but
12 I'm asking you what other restaurants or bar that
13 is located next to you?

14 MR. ASBEHA: Like Uproar.

15 CHAIRPERSON ANDERSON: How far? Is it
16 next to you?

17 MR. ASBEHA: There is a bank next to
18 me.

19 CHAIRPERSON ANDERSON: What is next to
20 you?

21 MR. ASBEHA: A bank.

22 CHAIRPERSON ANDERSON: And so the bank

1 is on one side of you, what's on the other side?

2 MR. ASBEHA: That's a street. On the
3 street is -

4 CHAIRPERSON ANDERSON: So the only
5 business next to you is a bank?

6 MR. ASBEHA: The bank, Right Proper.

7 CHAIRPERSON ANDERSON: Who?

8 MR. ASBEHA: Right Proper Beer Brewery
9 or something.

10 CHAIRPERSON ANDERSON: So --

11 MR. ASBEHA: They sell beers, food and
12 everything.

13 CHAIRPERSON ANDERSON: -- you are
14 saying this trash belongs to whom?

15 MR. ASBEHA: To the bank.

16 CHAIRPERSON ANDERSON: So you are
17 saying this is the bank's trash?

18 MR. ASBEHA: There is apartment in the
19 -- on the top of the bank. It looks like 60 --
20 you can see the --

21 CHAIRPERSON ANDERSON: So you are
22 saying this trash belongs to either the bank --

1 MR. ASBEHA: Or the brewery.

2 CHAIRPERSON ANDERSON: -- or the beer
3 garden?

4 MR. ASBEHA: No, there is a building
5 there.

6 CHAIRPERSON ANDERSON: Or the
7 apartment?

8 MR. ASBEHA: On the top of the --

9 CHAIRPERSON ANDERSON: So you are
10 saying that this trash belongs to either the bank
11 or the apartment?

12 MR. ASBEHA: Bank or the apartment.

13 CHAIRPERSON ANDERSON: But there is
14 one, two, three. How big is the apartment, sir?

15 MR. ASBEHA: It's big, very big, like
16 60, 70.

17 CHAIRPERSON ANDERSON: So if you have
18 a 60 -- so it's a big apartment. Why would they
19 only have three trash cans for a big apartment?

20 MR. ASBEHA: Listen, I was talking to
21 Ms. Martha yesterday about the situation, because
22 Ms. Martha lives around the area. She knows --

1 CHAIRPERSON ANDERSON: This is not
2 about Ms. Martha.

3 MR. ASBEHA: I know.

4 CHAIRPERSON ANDERSON: I'm asking you
5 this --

6 MR. ASBEHA: I know. I was not --

7 CHAIRPERSON ANDERSON: Ms. Martha is
8 not a party to this.

9 MR. ASBEHA: I understand.

10 CHAIRPERSON ANDERSON: The question
11 I'm asking you, sir, you are saying that this
12 either belongs to the bank or the apartment. And
13 you said -- now, if you told me it was a four-
14 story building, if you -- like the first time, if
15 you told me it was a two-story building or two
16 apartments, there is three trash cans here.
17 Maybe it could belong to them.

18 But if you are saying to me it's a big
19 apartment building, sir, I'm giving -- and it's a
20 Sunday night.

21 MR. ASBEHA: All right.

22 CHAIRPERSON ANDERSON: Why would a big

1 apartment building only have three trash cans?

2 That don't make sense to me.

3 MR. ASBEHA: All right. Can I explain
4 that?

5 CHAIRPERSON ANDERSON: Yeah, explain
6 that to me, please.

7 MR. ASBEHA: Okay. I want to play
8 this music.

9 CHAIRPERSON ANDERSON: Okay.

10 MR. ASBEHA: This video, sorry.

11 CHAIRPERSON ANDERSON: Okay. Play the
12 video. All right.

13 MR. ASBEHA: You can start if you
14 want.

15 (Video played.)

16 MR. ASBEHA: That's the building right
17 there. You see the --

18 CHAIRPERSON ANDERSON: The brick wall?

19 MR. ASBEHA: Excuse me?

20 CHAIRPERSON ANDERSON: Is it a brick
21 wall? You are saying -- so you are saying the
22 building is to -- you are talking about the steps

1 going up? Is that the building you are talking
2 about?

3 MR. ASBEHA: No, no, there's no steps.
4 It's just --

5 CHAIRPERSON ANDERSON: What building
6 are you talking about? I don't know what
7 building you are talking about, sir. Tell me.
8 Describe it to me.

9 MR. ASBEHA: That's where the
10 apartments are.

11 CHAIRPERSON ANDERSON: Explain to me.
12 So you are talking about -- okay. So next to
13 where that VIP rail is, what's that? Is that an
14 alley?

15 MR. ASBEHA: Yeah, that's the alley
16 over there.

17 CHAIRPERSON ANDERSON: That's an
18 alley.

19 MR. ASBEHA: Yeah.

20 CHAIRPERSON ANDERSON: So where the
21 alley is, the --

22 MR. ASBEHA: That's the building.

1 CHAIRPERSON ANDERSON: That's the --
2 so there is an alley and there is a building
3 right there?

4 MR. ASBEHA: That's what I'm trying to
5 explain to you. You see the alley, that --

6 CHAIRPERSON ANDERSON: Right.

7 MR. ASBEHA: -- is where all the 7th
8 Street neighborhood and everything pee and --

9 CHAIRPERSON ANDERSON: Right. So
10 where is this -- so where was this trash?

11 MR. ASBEHA: All the way to the
12 building. Not at my building. It's like we have
13 alley in between the place and the building. And
14 you see, I wash that PC alley every day for the
15 last one year or two years. And I explain to Mr.
16 Hargrave, he even -- I even show him a video that
17 I was -- I powerwash. I clean every day. Even
18 see by -- my settlement agreement says I have to
19 pick up the trash three times.

20 CHAIRPERSON ANDERSON: All right.

21 MR. ASBEHA: I pick up the trash six
22 times.

1 CHAIRPERSON ANDERSON: All right.

2 MR. ASBEHA: I pay extra money just to
3 pick up and make sure it's clean.

4 CHAIRPERSON ANDERSON: All right.

5 MR. ASBEHA: And you can send more
6 Investigators that know where our trash are.

7 CHAIRPERSON ANDERSON: All right.

8 Now, let me ask you another question. This is
9 about this video that you have in front of you.
10 So your settlement agreement says -- you
11 negotiated the settlement agreement with the
12 neighborhood. Is that correct?

13 MR. ASBEHA: Yes, sir.

14 CHAIRPERSON ANDERSON: And when you
15 did this, did you have an attorney or did you do
16 it yourself? You had an attorney?

17 MR. ASBEHA: (No audible answer).

18 CHAIRPERSON ANDERSON: And so on the
19 settlement agreement it says, just let me find
20 the page, "Signage: No flashing sign." What
21 does that mean to you no flashing sign?

22 MR. ASBEHA: It's --

1 CHAIRPERSON ANDERSON: I'm asking what
2 does that mean no flashing sign?

3 MR. ASBEHA: Something that flash.

4 CHAIRPERSON ANDERSON: All right. So
5 I see this ATM sign flashing. We all saw the
6 video. And we saw this other square box
7 flashing. So what does it say -- when it says
8 "Signage: No flashing sign," what does that
9 mean?

10 MR. ASBEHA: Yeah, but I --

11 CHAIRPERSON ANDERSON: But what?

12 MR. ASBEHA: -- tried to explain
13 earlier what my understanding was with Anita
14 Norman and my lawyer when we tried to sign the
15 settlement agreement, she explained to me that I
16 cannot put or it's not only her, I cannot put all
17 those flash lights and signs that goes to the
18 sky, so that other neighbors can see it.

19 So I find out when Mr. Gilliam came to
20 me, he say you cannot put these flash signs. And
21 I told him this what it supposed to be. He came
22 back and told me there is no -- you cannot put

1 any flash lights at all. And I -- because we
2 have an understanding that I talk to him, can you
3 go back and check what it says? It says no more
4 flash signs.

5 And immediately after he talked to me,
6 I trashed in front of him. There was no flash
7 lights right now.

8 CHAIRPERSON ANDERSON: Well, when he
9 came -- but it's correct that when he came to
10 your establishment, the ATM sign was flashing and
11 this whatever the -- this other sign was
12 flashing. Is that correct?

13 MR. ASBEHA: Yes, sir.

14 CHAIRPERSON ANDERSON: All right. I
15 don't have any other questions, sir. Any other
16 questions by any of the Board Members?

17 All right. Hearing none, Ms.
18 Phillips?

19 MS. PHILLIPS: No questions.

20 CHAIRPERSON ANDERSON: Do you have any
21 final - well, no, not really, because - well, I
22 guess - do you need to do any further

1 explanation?

2 MR. ASBEHA: About the whole thing or
3 like general conclusion or settlement statement?

4 CHAIRPERSON ANDERSON: Well, I asked
5 you a lot of questions, so do you need to clear
6 anything up? No?

7 MR. ASBEHA: Yes, like about the trash
8 thing you keep asking me, if that's yours or
9 everybody is asking me if I'm lying or something,
10 this is if I keep my place dirty, who is going
11 to get hurt the most? I'm the one who is going
12 to get most, not the neighborhood or some -
13 nobody wants to come to a place that is full of
14 trash or any like, you know, unwanted stuff or -
15 in front of your premises. And like I said, you
16 can ask the Shaw MainStreet Chairman, Mr. Alex
17 Pedro, we been trying to - I literally spend
18 money on my - just to keep that alley clean.
19 And I put more - I spend like \$10,000 on that
20 alley just to not make sure anybody pee on the
21 street.

22 I put lights, LED lights. I put flash

1 lights on -

2 MS. PHILLIPS: Objection.

3 MR. ASBEHA: - every time they
4 walking and I'm trying to -

5 MS. PHILLIPS: Objection. This goes
6 beyond the scope of your questions and it also
7 goes beyond -

8 CHAIRPERSON ANDERSON: I thought well
9 maybe he was doing a closing argument, because I
10 -

11 MR. ASBEHA: No, no, I am talking about
12 the -

13 MS. PHILLIPS: He hasn't rested yet,
14 Mr. Chair.

15 CHAIRPERSON ANDERSON: Oh, well, all
16 right. All right. Do you have - I had asked
17 you some questions, so I guess you clarified. Do
18 you rest your case on the information that was
19 presented? And I'm still going to give you an
20 opportunity to wrap your case up, okay?

21 MR. ASBEHA: Thank you.

22 CHAIRPERSON ANDERSON: So do you rest?

1 MR. ASBEHA: Yes, sir.

2 CHAIRPERSON ANDERSON: All right. Does
3 the -

4 MS. PHILLIPS: Mr. Chair, do we need
5 the videographer anymore?

6 CHAIRPERSON ANDERSON: I'm sorry. No,
7 thank you, ma'am.

8 MS. PHILLIPS: Thank you very much.

9 PARTICIPANT: No problem.

10 MS. PHILLIPS: You have other tasks,
11 videographer is now your task.

12 CHAIRPERSON ANDERSON: Does the
13 Government want to do rebuttal or do they wish to
14 do a closing?

15 MS. PHILLIPS: I think we should just
16 do a closing.

17 CHAIRPERSON ANDERSON: All right. Go
18 ahead, ma'am.

19 MS. PHILLIPS: Okay. Me?

20 CHAIRPERSON ANDERSON: Yes, go ahead,
21 please.

22 MS. PHILLIPS: With regard to the

1 charges, I think the charges speak for themselves
2 and I think the evidence speaks for itself.

3 We saw the flashing signs. We saw two
4 of them: ATM and I think it is "Yes, We Hookah."
5 Anyway, the video showed them both flashing. The
6 video also showed the noise or the music coming
7 out of the establishment with the door open and
8 the Investigator outside the establishment.

9 I have to admit that, you know, I
10 can't control and neither can Investigators
11 control ambulances or emergency vehicles coming
12 through, but you heard the testimony of when and
13 where the Investigator could hear the music.

14 When he was driving down the street,
15 he heard the music coming definitely out of the
16 establishment in question. And then as he was
17 entering and he showed you on the video where he
18 started hearing the music which was - which
19 shows on the video how far he was from the open
20 door, showed the open door.

21 About the trash, the Investigator said that
22 it was his trash. I noticed that on the picture

1 of the trash you have the trash can says EN and
2 if you look at the regulatory inspection, his
3 trash company is Enviro, or whatever that says,
4 but it's on the regulatory inspection, which is
5 Exhibit 4. That's only part of the word, but the
6 Investigator said it was his trash and I didn't
7 hear anything from the owner proving, other than
8 his word, that the trash was not his.

9 He could have brought pictures. He
10 could have brought anything. He also could have
11 denied it. In the report I don't believe you see
12 anything in the report that says the owner denied
13 that those trash cans were his.

14 So I think the Government has met the
15 burden of proof on all three violations within
16 the settlement agreement and order and the Board
17 should fine the owner \$350, because they are, I
18 believe, all secondary.

19 CHAIRPERSON ANDERSON: All right.

20 MS. PHILLIPS: And I believe this is
21 his first secondary tier violation.

22 CHAIRPERSON ANDERSON: That's it? Mr.

1 Asbeha, do you need to make a closing?

2 MR. ASBEHA: Yes, sir. As I stated
3 earlier, I can start with the ATM sign. And I
4 don't think putting an ATM sign is harmful to
5 anybody, especially the community or any
6 Government or ABRA or any violations that has
7 occurred. ATM is giving a service to the
8 community or to the customers in our
9 establishment or outside our establishment. And
10 the ATM is not even ours. It's not even mine.
11 In the area, though that being considered that
12 you guys should be or I was cooperative in to
13 trash the ATM sign, the hookah sign, any sign
14 that was there.

15 And to my knowledge, I thought it was
16 to be - supposed to be flash light that goes to
17 the sky. It's not - as soon as I found out, I
18 don't want to have any issue with them, because I
19 don't even make money out of it. And I literally
20 trash it in front of the Investigator just not to
21 violate the settlement agreement or any and I
22 don't think I should be fined for that, that's

1 what my understanding is.

2 And the noise, as Mr. - Investigator
3 Gilliam explained to you guys, I was not the only
4 person that was playing music on that area. And
5 the video that was taken is not from my - from
6 across the street. The purpose of the noise is
7 the noise that is coming out of my place is going
8 or disturbing the community on a Sunday. You
9 barely can hear it from across the street. Why
10 the video was taken was at Flash or at Uproar and
11 they have smoke, there is three establishments
12 that have rooftop patio café area and everything.
13 I'm the only - I don't have any of those
14 privilege in my premises in the back.

15 So by the time the video was taken,
16 it's taken from across the street, and when he
17 came towards me, you can even listen those
18 Investigators talking to each other. If there
19 was music or disturbing, they cannot even talk to
20 each other.

21 So by the time he approached inside,
22 of course, you can hear music. It's not like

1 meeting or something, it's a lounge. Without
2 music we cannot do anything.

3 So the place was made soundproof.
4 There was no - any sound that can go out the
5 brick or anything. So as soon as he entered the
6 premises, he found out there was music. And I
7 don't think it's - and after he investigated,
8 DCRA came and they had a machine to measure the
9 noise and they say you guys are good.

10 MS. PHILLIPS: Objection. Goes beyond
11 the evidence.

12 MR. ASBEHA: You can ask the
13 Investigator or report. I can bring it and you
14 can check if you want to.

15 And about the trash, that's like
16 nobody - like I spend my savings, my family
17 savings and I am not that kind of person that
18 have trash in front of my building in order like
19 for more customers to come. In order for
20 customers to come, you should - the place should
21 be clean.

22 The trash was dirty in front of my

1 premises. I'm the first one who can get hurt,
2 not the community or somebody. So with that
3 being said, and the trash was not mine, it's
4 across the street. And there is between us,
5 there is an alley. And I have been cleaning that
6 alley. With the evidence, I even show Mr.
7 Gilliam. Investigator Gilliam, Investigator
8 Hargrave, they have been there for probably 100
9 times. Mr. Gilliam came probably more than 30
10 times. He say 12, it's not true, it's more than
11 30 times. We have a lot of - and Mr. Hargrave
12 came 11 times in a row, every day. He came to
13 visit us. And they saw there is no violations on
14 our premises. And they - he was there to give
15 me the ticket. There was no trash outside. The
16 trash that we put is in the back of the premises,
17 so that - and since none of these are like true
18 to me or anybody like with the evidence that
19 they have, it's not 100 percent proof.

20 So I don't think I should be fined by
21 the Board or somebody is concerned.

22 CHAIRPERSON ANDERSON: All right.

1 Thank you. All right. The record is now closed.
2 Do the parties wish to file proposed findings of
3 fact and conclusions of law? And for your
4 purposes, proposed findings of fact and
5 conclusions of law is basically you listen to the
6 transcript

7 MR. ASBEHA: I can't hear you, sir.

8 CHAIRPERSON ANDERSON: I'm sorry?

9 MR. ASBEHA: I can't hear. I'm sorry.

10 CHAIRPERSON ANDERSON: I'm sorry. You
11 would listen to the transcript and you will say
12 this is what the evidence proves and then you
13 would basically write a legal brief to - but not
14 bringing in any new information in.

15 So do you want to do that or do you
16 want to waive it?

17 MS. PHILLIPS: The Government waives.

18 MR. ASBEHA: I really don't understand
19 what you said, sir. Do you want me - I ask him
20 like that, this evidence or

21 CHAIRPERSON ANDERSON: I'm sorry?

22 MR. ASBEHA: What the question? I

1 don't understand the question.

2 CHAIRPERSON ANDERSON: The question is
3 that after the end of the case, sometimes what
4 folks said that they do is that they will request
5 a transcript. And then they will listen to the
6 transcript and they will say this is what the
7 facts that we proved in the case and this is what
8 the law states. This would not be you bringing
9 in new evidence. This is just saying this is
10 what it is from what was presented.

11 And so you can have that option or you
12 can waive it. The Government waives it. So
13 therefore, the Board could make will make a
14 decision based on the testimony that is here and
15 we are not going to wait on any of the documents.
16 So do you waive it?

17 MR. ASBEHA: Yes, sir.

18 CHAIRPERSON ANDERSON: All right.
19 Fine. So the Board will issue a decision in 90
20 days.

21 As Chairperson of the Alcoholic
22 Beverage Control Board for the District of

1 Columbia and in accordance with Section 405 of
2 the Open Meetings Amendment Act of 2010, I move
3 that the ABC Board hold a closed meeting for the
4 purpose of seeking legal advice from our counsel
5 on Case No. 17-CMP-00569, Kiss Tavern, per
6 Section 405(b)(4) of the Open Meetings Amendment
7 Act of 2010, and deliberating upon Case No. 17-
8 CMP-00569, Kiss Tavern, for the reasons cited in
9 Section 405(b)(13) of the Open Meetings Amendment
10 Acct of 2010.

11 Is there a second?

12 MR. SHORT: Second.

13 CHAIRPERSON ANDERSON: Mr. Short has
14 seconded the motion. I will now take a roll call
15 vote on the motion before us now that it has been
16 seconded.

17 Mr. Cato?

18 MEMBER CATO: I agree.

19 CHAIRPERSON ANDERSON: Mr. Short?

20 MEMBER SHORT: I agree.

21 CHAIRPERSON ANDERSON: Mr. Silverstein?

22 MEMBER SILVERSTEIN: I agree.

1 CHAIRPERSON ANDERSON: Ms. Wahabzadah?

2 MEMBER WAHABZADAH: I agree.

3 CHAIRPERSON ANDERSON: Mr. Anderson?

4 I agree.

5 As it appears that the motion has
6 passed, I hereby give notice that the ABC Board
7 will hold a closed meeting in the ABC Board
8 conference room pursuant to the Open Meetings
9 Amendment Act of 2010 and issue an order within
10 90 days.

11 Thank you very much and we will make
12 a decision and issue it in 90 days. Thank you.

13 MS. PHILLIPS: Thank you, Mr. Chair.

14 MR. ASBEHA: Thank you.

15 CHAIRPERSON ANDERSON: All right.

16 (Whereupon, the above-entitled matter
17 went off the record at 12:06 p.m.)

18

19

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21

22

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This is to certify that the foregoing transcript


In the matter of: Kiss Tavern

Before: DC ABRA

Date: 04-04-18

Place: Washington, DC

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