

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF: :
 :
 Kiss, LLC, :
 t/a Kiss Tavern :
 637 T Street NW, : Show Cause
 Retailer CT - ANC 1B : Hearing
 License No. 104710 :
 Case #18-CMP-00020 :
 :
 (Violation of Settlement :
 Agreement) :

Wednesday
 August 1, 2018

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

PRESENT:

DONOVAN W. ANDERSON, Chairperson
 NICK ALBERTI, Member
 BOBBY CATO, JR., Member
 DONALD ISAAC, SR., Member
 MIKE SILVERSTEIN, Member
 JAMES SHORT, Member
 REMA WAHABZADAH, Member

ALSO PRESENT:

LOUISE PHILLIPS, DC OAG

EYOB ASBEHA, Licensee

FELICIA DANTZLER, ABRA Investigator

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

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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LICENSEE

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

2 10:00 a.m.

3 CHAIRPERSON ANDERSON: All right. Our
4 next case on our calendar is a Show Cause, Case
5 No. 18-CMP-00020, Kiss Tavern, License No.
6 104710.

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

9 MS. PHILLIPS: Good morning, Mr. Chair
10 and Board Members, Louise Phillips, Assistant
11 Attorney General for the District of Columbia.

12 CHAIRPERSON ANDERSON: Good morning,
13 Ms. Phillips.

14 I see that the licensee is not here.
15 I'll give him 15 minutes and I'll recall this
16 case in 15 minutes. If he is not here in 15
17 minutes -- well, I'll recall this case in 15
18 minutes and then we can decide where do we go
19 from there.

20 MS. PHILLIPS: Thank you.

21 CHAIRPERSON ANDERSON: Thank you. So
22 we are in recess until 10:15.

1 (Whereupon, the above-entitled matter
2 went off the record at 10:01 a.m. and resumed at
3 10:21 a.m.)

4 CHAIRPERSON ANDERSON: All right.
5 We're back on the record. Our next case is Case
6 No. 18-CMP-00020, Kiss Tavern, License No.
7 104710.

8 Would the parties, please, approach
9 and identify themselves for the record, please?

10 MS. PHILLIPS: Louise Phillips,
11 Assistant Attorney General for the District of
12 Columbia.

13 CHAIRPERSON ANDERSON: Good morning,
14 Ms. Phillips.

15 MR. ASBEHA: Eyob Asbeha from Kiss
16 Tavern.

17 CHAIRPERSON ANDERSON: Mr. Asbeha.
18 This matter -- I just wanted the parties to be
19 aware that this matter was scheduled for a 10:00
20 hearing. At 10:00 I did call the case. Ms.
21 Phillips was here at 10:00. I did decide to give
22 the licensee 15 minutes to show up. It is 10:22.

1 The licensee did show up within the amount of
2 time. I just wanted to put that on the record.

3 All right. Are there any preliminary
4 matters in this case?

5 MS. PHILLIPS: Not from the District
6 of Columbia, Mr. Chair.

7 CHAIRPERSON ANDERSON: Mr. Asbeha, any
8 preliminary matters in your case? Any
9 preliminary matters you have, you want to raise?

10 MR. ASBEHA: Yes, sir.

11 CHAIRPERSON ANDERSON: What is the
12 preliminary matter? Not arguing the case, just
13 is there something preliminary that you want to
14 raise?

15 MR. ASBEHA: Yes, this case been like
16 -- I just paid like two weeks ago the same case
17 and a fine of \$250 for that. And it's a
18 different Investigator, but it's the same case.
19 And I have been dealing with that.

20 (Telephonic interference)

21 MS. PHILLIPS: Sorry, that's me.

22 CHAIRPERSON ANDERSON: Are you talking

1 -- well, it's not the same. We have these on
2 different violations. And so it might be the
3 same issue, but it could be a different day and I
4 don't know. So I -- all I can say, sir, is that
5 this case is a violation of settlement agreement.
6 And there is a -- if you sign a settlement
7 agreement and the settlement agreement says that
8 there are certain things that needs to be done
9 and unfortunately if an Investigator goes there
10 every day and if you are not complying with the
11 settlement agreement, then the Investigator has a
12 right to issue a violation.

13 So whether -- all I can say is that if
14 you have a settlement agreement and so -- and
15 I'll give the analogy, if you are supposed to --
16 you are supposed to drive with your driver's
17 license every day. And if the police officer
18 pull you over today and you don't have your
19 driver's license, he can give you a ticket or a
20 warning if he or she so desires.

21 The next day the same police officer
22 sees you again and pulls you over and you don't

1 have your driver's license, he can give you a
2 ticket or a warning and that can just go on ad
3 nauseam, because you are -- when you drive, you
4 are supposed to have a driver's license.

5 So I know you are saying it's the same
6 case, you just paid a violation, but,
7 unfortunately, there is a settlement agreement
8 and your each -- if you sign a settlement
9 agreement, you have to comply with the terms of
10 the agreement. And even if the Agency goes
11 there, at any point the Agency goes there, then
12 if you, in theory, are not complying with the
13 terms of your settlement agreement, they are
14 going to fine you, sir.

15 And that's just the way it is. Okay?
16 Any other preliminary matters? No?

17 MR. ASBEHA: Like I'm going to raise
18 my argument.

19 CHAIRPERSON ANDERSON: Okay. Then you
20 can do that for us as part of the argument.

21 All right. Is the Government ready to
22 move forward?

1 MS. PHILLIPS: Yes, Mr. Chair, the
2 Government is. This is a matter that is another
3 violation of the settlement agreement. And it is
4 for a noise violation, there are many things
5 contained in the settlement agreement, but in
6 this case, it is the noise violation that was
7 breached. And the Government is ready to go
8 forward after Mr. -- the owner has an opening
9 statement, if he wishes.

10 CHAIRPERSON ANDERSON: Do you wish,
11 sir, to make an opening statement at this
12 juncture or do you wish to make an opening
13 statement when you present your case? As you
14 know, you have done this before, you don't have
15 to say anything at this juncture. You can let
16 the Government present their case and then you
17 can present your case.

18 But you tell me the way you want to do
19 it, sir.

20 MR. ASBEHA: Yes, as you can see on my
21 security plan, I have two doors where you come
22 in. So when you get in, we always keep the door

1 open, that's the main exit and the main entrance
2 to the establishment. But we have another door
3 that comes in, we always close it. Probably you
4 might remember that on the video before, I
5 remember kicking that door on that night.

6 But I know on my security plan of the
7 place, there is a second door. That's normally
8 where the noise come out here. And we always
9 keep the door open and then closed.

10 The first main gate is always open.
11 Any Investigator you ask anyone can come in any
12 time and it's always open, the main gate. But
13 when you pass the main gate, there is another
14 door, like the middle gate, like to hold the
15 noise of the air conditioner and everything. So
16 we always keep the door open -- I mean, closed,
17 the second door.

18 So I can give it to you, the plans I
19 have with me, the security plan. I can present
20 that to you.

21 CHAIRPERSON ANDERSON: All right.
22 Well, you can do that as part of your

1 presentation, sir. All right. So does the
2 Government have -- you can -- as part of your
3 case, you can present that.

4 All right. Does the Government have
5 a witness that it wishes to call?

6 MS. PHILLIPS: Yes, Mr. Chair. The
7 Government calls the Investigator, Felicia
8 Dantzler.

9 CHAIRPERSON ANDERSON: Ms. Dantzler.
10 Can you raise your right hand, please?

11 Whereupon,

12 INVESTIGATOR FELICIA DANTZLER
13 was called as a witness by Counsel for the
14 Government, and having been first duly sworn,
15 assumed the witness stand and was examined and
16 testified as follows:

17 INVESTIGATOR DANTZLER: I do.

18 CHAIRPERSON ANDERSON: Thank you.

19 Have a seat. Your witness.

20 MS. PHILLIPS: May I approach with the
21 investigative report?

22 CHAIRPERSON ANDERSON: Yes.

1 (Whereupon, the above-
2 referred to document was
3 marked as Government Exhibit
4 No. 1 for identification.)

5 MS. PHILLIPS: Actually, it looks like
6 my copy is missing some pages. Are you missing
7 pages also?

8 DIRECT EXAMINATION

9 BY MS. PHILLIPS:

10 Q Would you state your name for the
11 record, please?

12 A Felicia Dantzler.

13 Q And what is your occupation?

14 A Investigator.

15 Q And for what Agency?

16 A The Alcoholic Beverage Regulation
17 Administration.

18 Q And have you always been an
19 Investigator with, I'm going to call it, ABRA, to
20 shorten it right up?

21 A Okay.

22 Q Yes or no?

1 A Yes.

2 Q And how long have you been an
3 Investigator for ABRA?

4 A 11 years.

5 Q And did there come a time when you
6 went to Kiss Tavern late last year?

7 A Yes.

8 Q What date did you go?

9 A The early morning hours of Saturday,
10 November 18.

11 Q Okay.

12 A 2017.

13 Q All right. And why did you go there?

14 A My supervisor, Keith Gethers,
15 instructed me to respond to the establishment to
16 ensure that they were in compliance with their
17 settlement agreement. In particular, for smoking
18 and signage.

19 Q Okay. After your investigation, did
20 you return to the office and write up a report?

21 A Yes.

22 Q And is that the report that I handed

1 you moments ago?

2 A Yes.

3 Q And is your signature on page no. 3 of
4 the report?

5 A Yes.

6 Q And you attached some exhibits, I see?

7 A Yes.

8 Q And who -- what is the other
9 signature?

10 A Johnnie Jackson.

11 Q And who is he?

12 A He was the super -- correction, the
13 Chief of Enforcement.

14 Q And I assume that at some point in
15 time you got to the establishment. What
16 happened?

17 A Yes. I had parked my vehicle at 7th
18 and T Street, north by west, and I walked up to
19 Kiss Tavern.

20 Q Did you notice anything as you were
21 walking toward the establishment?

22 A Yes. I noticed two police officers

1 standing in front of the establishment and I
2 could hear music emanating from the
3 establishment.

4 Q From inside the establishment or do
5 they have a loudspeaker outside?

6 A No, from within.

7 Q All right. And so what did you do as
8 you -- I assume you finally got to the
9 establishment, then what did you do?

10 A I identified myself to the police
11 officers who were standing out there and asked if
12 the ABC Manager or owner were present.

13 Q Okay. And what happened next?

14 A They instructed me to speak to an
15 employee to get that answer to which I did and
16 asked the unidentified male employee if I could
17 speak to the owner or the ABC Manager.

18 Q Did you go inside the establishment or
19 did you wait outside for the owner to come to you
20 outside?

21 A I actually did both. I went inside to
22 see if there were any smoking. The employee did

1 enter the establishment to get the owner or the
2 ABC Manager.

3 Q Okay. And so you looked for smoking
4 and I take it you didn't see any?

5 A Correct.

6 Q All right. At that point in time did
7 you check for the signage, which was the other
8 reason for you being there?

9 A Yes, that was -- the signage that I
10 was looking for on the windows on doors which to
11 where I was standing and I saw no signage issues.

12 Q Okay. All right. And what happened
13 next?

14 A Shortly thereafter, the licensee who
15 is here today appeared and he recognized me and I
16 explained to him the reason for my visit.

17 Q And what did you tell him?

18 A I told him that I was there for the
19 smoking and the signage and I had already read
20 the settlement agreement and I was -- I knew
21 about the music should not be heard.

22 Q Okay.

1 A So at that time, I asked the licensee
2 if he could -- if he had a copy of his settlement
3 agreement to which he replied yes. And I asked
4 him if he could retrieve it.

5 Q Okay. And did he do that?

6 A He did.

7 Q And did you look at it together for
8 the section regarding noise?

9 A Yes, that was the purpose of me really
10 asking him to get the settlement agreement,
11 because I wanted him to see it in writing and
12 read along with me that portion where it required
13 that his music not be heard at the curbside.

14 Q Okay. So I see that in your
15 investigation report you actually put that
16 section from the settlement agreement in the
17 report. Is that the section that you used,
18 Section 3?

19 A Yes.

20 Q And that says he can have the windows
21 open seasonally?

22 A Yes.

1 Q And what does it say about what noise
2 could be audible?

3 A It stated that the music cannot be
4 audible beyond the curbside.

5 Q And how far away from you -- how far
6 away were you when you first heard the music
7 emanating from the establishment?

8 A I was actually at the corner of 7th and
9 T Street, north by west, when I heard the music.

10 Q Right. And can you give an estimate
11 for about how many feet, yards, football fields?

12 A Maybe about 70 feet.

13 Q Okay. All right. And when you got to
14 the establishment after you talked to the police
15 officers, the two police officers, did you notice
16 whether the door was open or not?

17 A I did notice that the door to --
18 leading to the establishment was being held open
19 by either a string or some type of wire.

20 Q And did you take a picture of that
21 door open and being held open by a string or a
22 wire?

1 A Yes.

2 Q And did you attach it to your report?

3 A Yes.

4 Q And is it Exhibit, what, No. 2?

5 A Yes, it is.

6 Q Okay.

7 (Whereupon, the above-
8 referred to document was
9 marked as Government Exhibit
10 No. 2 for identification.)

11 BY MS. PHILLIPS:

12 Q And that's the one with the lovely red
13 car in front?

14 A Yes.

15 Q All right. And I see the door open
16 and is that the wire that looks like it's
17 attached to the brick and also attached to the
18 door handle right there on the left sort of a
19 third of the way down from the top?

20 A Yes.

21 Q All right. Now, what else did you do?

22 A Well, when the licensee retrieved his

1 settlement agreement, I actually had him walk
2 with me to the curb and I showed him or explained
3 to him how like listen, I can hear your music
4 from the curbside and that's not supposed to be.
5 Your settlement agreement states that we should
6 not be able to hear your music from the curbside.

7 Q Now, when you look at (3) of the
8 settlement agreement, which is replicated in your
9 case report, I actually heard an opening
10 statement that the owner admitted that one door
11 is closed and one door is always open. Does the
12 settlement agreement under the noise section say
13 anything about allowing one door to be open and
14 one door to be closed?

15 A No.

16 Q And does it talk about only one door
17 or does it talk about multiple doors?

18 A It talks about doors.

19 Q Like with an S on the end?

20 A Correct.

21 Q All right. All right. Did you do
22 anything else?

1 A No.

2 Q All right. And I did get you to tell
3 me this was your report, correct?

4 A Yes.

5 Q Okay.

6 MS. PHILLIPS: The Government would
7 just like to admit the case report and the
8 attached exhibits noting that there appears to be
9 pages missing of the settlement agreement in all
10 the copies that I have in my file.

11 CHAIRPERSON ANDERSON: All right. Any
12 objection, sir?

13 MR. ASBEHA: No, sir.

14 CHAIRPERSON ANDERSON: No, no, no, she
15 wants to -- she wants us to admit. Well, I know
16 it's still part of the Agency's records, but she
17 is asking to move the case report in the record.
18 Do you want -- do you have any objection to that?

19 MR. ASBEHA: No.

20 CHAIRPERSON ANDERSON: All right. Do
21 you have any questions for -- do you have any
22 other questions, Ms. Phillips, for the witness?

1 MS. PHILLIPS: I do not.

2 CHAIRPERSON ANDERSON: Okay. Do you
3 have any questions for the witness, sir?
4 Remember I know you are not an attorney, but you
5 have done this now for a number of times, so it's
6 -- you need to ask a question to her based on the
7 testimony that she just gave, sir.

8 MR. ASBEHA: Okay, yes.

9 CHAIRPERSON ANDERSON: But phrase it
10 in a question.

11 MR. ASBEHA: I will.

12 CHAIRPERSON ANDERSON: All right.

13 CROSS-EXAMINATION

14 BY MR. ASBEHA:

15 Q Good morning.

16 A Good morning.

17 Q I hate to ask you, because you have a
18 good nature and smile, do you see -- you didn't
19 see the other door, the second door?

20 A Yes, sir.

21 Q And that door is always closed.

22 A It was closed on that night, yes, sir.

1 Q So when you come out, as you -- have
2 you ever had a case before like before -- you
3 visit to Kiss before?

4 A Yes.

5 Q I mean, the doors -- were the doors
6 always closed?

7 A No.

8 Q How about the -- when you got outside,
9 the other doors closed, so there is no way there
10 is music. Do you have any evidence that the
11 music or any video that says you can see the sign
12 or hear the noise?

13 A No video, no, sir.

14 MR. ASBEHA: No further questions.

15 CHAIRPERSON ANDERSON: Do you have any
16 questions? I want to ask a question, Ms.
17 Dantzler, and I want you to go through the case
18 report you have in front of you.

19 Can you -- there is what is -- I think
20 there is an exhibit, isn't there an exhibit?

21 MR. ASBEHA: Yes.

22 CHAIRPERSON ANDERSON: Yeah. This --

1 the one with the red car.

2 MR. ASBEHA: Right.

3 CHAIRPERSON ANDERSON: He -- yeah, can
4 you explain, tell me what this is, sir.

5 MR. ASBEHA: What?

6 CHAIRPERSON ANDERSON: Tell me, what
7 is this? What am I looking at?

8 MR. ASBEHA: This is the main
9 entrance.

10 CHAIRPERSON ANDERSON: Yes.

11 MR. ASBEHA: To the front which say
12 637.

13 CHAIRPERSON ANDERSON: Right.

14 MR. ASBEHA: Which is the main
15 entrance. When you go inside --

16 CHAIRPERSON ANDERSON: Right.

17 MR. ASBEHA: -- there is another door.

18 CHAIRPERSON ANDERSON: Right.

19 MR. ASBEHA: We always open this door.

20 CHAIRPERSON ANDERSON: But --

21 MR. ASBEHA: Because that's the main
22 entrance. We don't want to --

1 CHAIRPERSON ANDERSON: But what do you
2 mean open the door? This looks like, sir, that--
3 it looks like there is a string that is keeping
4 the door open.

5 MR. ASBEHA: Yes.

6 CHAIRPERSON ANDERSON: Why is that,
7 sir?

8 MR. ASBEHA: Because like when -- it's
9 not the second door inside. So it would be
10 difficult for us to close this door --

11 CHAIRPERSON ANDERSON: Why?

12 MR. ASBEHA: -- because you can't --
13 when the people come inside and out, they can't
14 see each other. So when you going to push inside
15 it's going to hit. So the reason we did it is,
16 first of all, when we designed the place, we
17 designed it to have another door to hold the
18 music and noise down and every time we open, we
19 don't want the A/C to go out and up.

20 So there is always some other door and
21 there is no way that can --

22 CHAIRPERSON ANDERSON: All right.

1 MR. ASBEHA: -- music can come out.

2 CHAIRPERSON ANDERSON: All right.

3 MR. ASBEHA: There is no noise in the
4 open.

5 CHAIRPERSON ANDERSON: All right.

6 MR. ASBEHA: Because if you open and
7 close it, there is no noise.

8 CHAIRPERSON ANDERSON: All right.

9 Well, you started by saying, you know, you just
10 had this. You were just here, that's what you
11 just stated. And you stated you have two doors
12 and this door is open.

13 And so if the Investigator continues
14 to say that they can hear the noise from the
15 outside, why don't you close this door?

16 MR. ASBEHA: You can't hear the noise
17 from outside.

18 CHAIRPERSON ANDERSON: I'm not asking
19 you whether or not they can, sir. This is what
20 I'm trying to say to you. If you are saying you
21 are coming here every time and for noise
22 violation, you are saying that they can't hear,

1 but they are -- listen. Listen to me, sir.

2 The Agency is saying that when this
3 door that you intentionally keep open is open,
4 they can hear the noise. And you are saying that
5 they can't hear the noise.

6 Who am I supposed to believe? You are
7 keeping your door open and you have a settlement
8 agreement that says your door needs to be closed.

9 MR. ASBEHA: The door needs to be
10 closed, but then if the music is --

11 CHAIRPERSON ANDERSON: But the
12 settlement agreement says the door needs to be
13 closed. Isn't that correct, sir?

14 MR. ASBEHA: It says that.

15 CHAIRPERSON ANDERSON: And you signed
16 a settlement agreement. Isn't that correct, sir?

17 MR. ASBEHA: Yes, sir.

18 CHAIRPERSON ANDERSON: So if you have
19 a settlement agreement that says your door needs
20 to be closed, the Investigator comes there and
21 says I can hear noise. Why do you -- and I'm
22 asking you, why is this door propped open with a

1 string to keep it open?

2 MR. ASBEHA: Like I told you it will
3 be hard for us to let people in and out, because
4 there is another door, so they bump to each
5 other. So the reason why it would be easy for
6 them to come and go when they have another door,
7 that's why we do.

8 And the second reason is no noise.

9 CHAIRPERSON ANDERSON: So why can't
10 you have somebody else redesign the door? It
11 doesn't matter if -- it's not what you have --
12 let me say to you, sir, you have -- I'm asking a
13 question, I'm sorry, but you have a settlement
14 agreement that say your door needs to be closed.
15 Isn't that correct?

16 MR. ASBEHA: Yes, sir, when the music
17 is on.

18 CHAIRPERSON ANDERSON: And you have a
19 settlement agreement that says that your door
20 needs to be closed. Is that correct?

21 MR. ASBEHA: Yes, sir.

22 CHAIRPERSON ANDERSON: You have

1 identified in the picture here, sir, that the
2 door is open and it is propped open, because
3 there is a permanent structure keeping the door
4 open. Is that correct?

5 MR. ASBEHA: Yes, sir.

6 CHAIRPERSON ANDERSON: And isn't it
7 correct that your settlement agreement says that
8 your door needs to be closed?

9 MR. ASBEHA: Yes, sir.

10 CHAIRPERSON ANDERSON: All right. Any
11 other -- any Board Members that have any
12 questions? Yes, Mr. Alberti?

13 MEMBER ALBERTI: I do. This will be
14 on the record. I guess I'm not sure if that was
15 on the record, because -- or we can use it,
16 because the witness wasn't under oath.

17 CHAIRPERSON ANDERSON: What witness?

18 MEMBER ALBERTI: But I'm just pointing
19 that out.

20 CHAIRPERSON ANDERSON: What witness
21 wasn't under oath?

22 MEMBER ALBERTI: And that may lead to

1 my abstention from this, but I will ask my
2 questions.

3 CHAIRPERSON ANDERSON: Hold on a
4 minute. Hold on a minute. What wasn't --

5 MEMBER ALBERTI: Let me finish, I have
6 the floor.

7 CHAIRPERSON ANDERSON: Hold on a
8 minute.

9 MEMBER ALBERTI: So I would like to
10 ask some questions.

11 CHAIRPERSON ANDERSON: What witness --
12 hold on, Mr. Alberti. What witness was not under
13 oath? What witness was not under oath? I'm
14 asking, what witness was not under oath?

15 MEMBER ALBERTI: Well, I mean,
16 obviously, the witness you just spoke to. He
17 wasn't sworn in.

18 CHAIRPERSON ANDERSON: All right. You
19 know what --

20 MS. PHILLIPS: That's the problem with
21 pro se is we don't swear them in immediately.

22 CHAIRPERSON ANDERSON: All right.

1 MR. ASBEHA: I don't have to swear.
2 I can tell you --

3 MS. PHILLIPS: Whatever they say it's
4 not under oath until they take the stand.

5 CHAIRPERSON ANDERSON: All right.

6 MEMBER ALBERTI: So I just --

7 CHAIRPERSON ANDERSON: All right.

8 MEMBER ALBERTI: -- you know, I just--

9 MR. ASBEHA: Mr. Chairman, I --

10 CHAIRPERSON ANDERSON: All right. No,
11 I apologize.

12 (Simultaneous speaking)

13 MR. ASBEHA: I don't have to swear to
14 tell the truth.

15 CHAIRPERSON ANDERSON: I was out of
16 order, so I apologize. All right. My apologies.
17 Hold on. I apologize. I was out of order. I
18 was not supposed to have asked questions to you,
19 Mr. Asbeha. So I apologize. So I was out of
20 order, because the witness was that -- so right.
21 So I apologize. But rather than me asking the
22 witness questions, I was asking the licensee and

1 I apologize, that's my error. And maybe miss --
2 I'll ask you Ms. Phillips, next time, please,
3 help me to help myself.

4 So I do apologize. And I apologize,
5 Mr. Alberti. I just didn't understand. Yes, I
6 made an error. The questions that I just asked
7 was to have asked of the Investigator and not of
8 the -- so, no. So you are correct, Mr. Alberti.
9 Go ahead, Mr. Alberti.

10 MEMBER ALBERTI: So Investigator
11 Dantzler --

12 THE WITNESS: Yes, sir.

13 MEMBER ALBERTI: I may have missed
14 this and I apologize, did you talk about having
15 heard -- about whether or not you heard music
16 emanating from this establishment on that
17 evening?

18 THE WITNESS: Yes, sir, I did speak on
19 it and yes, I did hear music emanating from the
20 establishment.

21 MEMBER ALBERTI: And where were you
22 when you first were aware that you could hear

1 music?

2 THE WITNESS: I first heard it when I
3 was at the corner of T at 7th Street, N.W.

4 MEMBER ALBERTI: Oh, so you were
5 beyond -- is it correct that you were beyond the
6 curb?

7 THE WITNESS: Yes, I was beyond the
8 curb.

9 MEMBER ALBERTI: Okay. Thank you. I
10 have no further questions.

11 CHAIRPERSON ANDERSON: All right. Any
12 other questions by any other Board Members?

13 And again, I apologize. Mr. Asbeha,
14 do you have any questions of the witness based on
15 the questions that was asked by Mr. Alberti? It
16 has to be based on the questions that were asked
17 by Mr. Alberti.

18 MR. ASBEHA: Yes.

19 RECROSS-EXAMINATION

20 BY MR. ASBEHA:

21 Q When you were at 7 and T when you say
22 you listened to the music, do you have any

1 evidence or video that you can hear from 7 and T?

2 A No. No video, no, sir.

3 MR. ASBEHA: No further questions.

4 CHAIRPERSON ANDERSON: Ms. Phillips,
5 any questions of the witness based on -- and I do
6 -- again, I apologize for my error.

7 Do you have any questions of the
8 witness based on the questions that were asked?

9 MS. PHILLIPS: I have a question for
10 clarity, based on the questions that you asked
11 the owner.

12 CHAIRPERSON ANDERSON: I'm going to
13 ask -- when he -- when the owner is under oath,
14 when he -- if he decides to put himself, then I
15 will go back and re-ask those questions. That
16 was my error in asking him questions.

17 MS. PHILLIPS: Well, I understand
18 that, but I have maybe a question that maybe
19 Investigator Dantzler --

20 CHAIRPERSON ANDERSON: Sure. Go
21 ahead.

22 MS. PHILLIPS: -- can clear up.

1 CHAIRPERSON ANDERSON: Sure.

2 MS. PHILLIPS: Based on what he said.

3 CHAIRPERSON ANDERSON: Sure.

4 MS. PHILLIPS: If you will allow that.

5 CHAIRPERSON ANDERSON: Go ahead.

6 MS. PHILLIPS: Okay.

7 REDIRECT EXAMINATION

8 BY MS. PHILLIPS:

9 Q I know in your direct testimony you
10 said you entered the establishment at least part
11 way. Is that correct?

12 A Yes.

13 Q When you entered the establishment,
14 based on what you heard, is there like a little
15 foyer area where there is an outside door and
16 then a foyer and then an inside door?

17 A Yes.

18 Q Okay. And was the inside door, I'll
19 call it the one that is further into the
20 establishment, was it closed?

21 A Yes.

22 Q And you could still hear music, I

1 think, you said 70 feet --

2 A Yeah, yes.

3 Q -- away from the establishment?

4 A Yes.

5 Q And the 70 feet away from the
6 establishment when you heard the music, that's
7 further away than curbside, which is what is the
8 prerequisite in the settlement agreement. Is
9 that a fair summary?

10 A Yes.

11 Q Okay.

12 CHAIRPERSON ANDERSON: All right.

13 Thank you.

14 MS. PHILLIPS: Now, I'm clear on what
15 is in there.

16 CHAIRPERSON ANDERSON: All right.

17 Thank you.

18 MS. PHILLIPS: The District rests and
19 I have no more questions unless the Board has
20 questions based on my questions.

21 MEMBER SILVERSTEIN: I do.

22 CHAIRPERSON ANDERSON: Go ahead, Mr.

1 Silverstein.

2 MEMBER SILVERSTEIN: One very brief
3 question. Was the music that you heard when you
4 entered the establishment exactly the same music
5 that you heard on the outside?

6 THE WITNESS: Yes.

7 MEMBER SILVERSTEIN: No further
8 questions.

9 CHAIRPERSON ANDERSON: Sir, do you
10 have any questions of Ms. Dantzler based on the
11 question that Mr. Silverstein just asked?

12 RE-CROSS-EXAMINATION

13 BY MR. ASBEHA:

14 Q So the door was closed, how was it the
15 same inside and outside? The music itself by
16 nature, you know, when the door is closed, it can
17 never be the same. How is it the same?

18 A The music was the same, it was the
19 same music I heard as I was approaching your
20 establishment. And when you came out and we got
21 to the area of the settlement agreement where I
22 asked of you to walk with me to the curb, it was

1 still the same music.

2 Q Yes, I am going to ask you again. Do
3 you have any evidence that the music inside and
4 outside was the same?

5 A Your questions prior were the evidence
6 that I had was surrounding your questions of
7 video. I have no video, just my testimony today
8 that I discussed with you on the -- at your
9 establishment that I could hear music and brought
10 that to your attention.

11 CHAIRPERSON ANDERSON: Ms. Phillips?

12 MS. PHILLIPS: No further questions.

13 CHAIRPERSON ANDERSON: All right.

14 Thank you. Ms. Dantzler, thank you for your
15 testimony.

16 INVESTIGATOR DANTZLER: Okay. Thank
17 you.

18 CHAIRPERSON ANDERSON: You can step
19 down.

20 (Whereupon, the witness was excused.)

21 MS. PHILLIPS: The District rests.

22 CHAIRPERSON ANDERSON: All right.

1 Thank you. Do you have any witnesses you plan to
2 call, sir?

3 MR. ASBEHA: No witnesses.

4 CHAIRPERSON ANDERSON: Do you have any
5 statements that you wish to make?

6 MR. ASBEHA: Can I do this, because --

7 CHAIRPERSON ANDERSON: But you have --

8 MS. PHILLIPS: Under oath, please?

9 CHAIRPERSON ANDERSON: Yes, I'm --

10 MS. PHILLIPS: Okay.

11 CHAIRPERSON ANDERSON: -- trying to
12 figure --

13 MR. ASBEHA: Yes.

14 CHAIRPERSON ANDERSON: -- this time I
15 remember. But before I put him under oath, I
16 need to figure out what is it that he is going to
17 do.

18 So do you have any statements that you
19 wish to make?

20 MR. ASBEHA: Yes, sir.

21 CHAIRPERSON ANDERSON: Can you raise
22 your right hand, please?

1 Whereupon,

2 EYOB ASBEHA

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

6 MR. ASBEHA: Yes.

7 CHAIRPERSON ANDERSON: All right.

8 Thank you. Go ahead, sir.

9 DIRECT EXAMINATION

10 BY MR. ASBEHA:

11 Q Yes. Of course, you have my -- I can
12 give you one.

13 CHAIRPERSON ANDERSON: What documents
14 do you have, sir? Show them to --

15 THE WITNESS: My security plan.

16 CHAIRPERSON ANDERSON: All right.

17 Hold on.

18 THE WITNESS: I have --

19 CHAIRPERSON ANDERSON: Show the
20 document to Ms. Phillips and then --

21 THE WITNESS: Okay.

22 CHAIRPERSON ANDERSON: -- you can show

1 the -- give the Board a copy of the document.

2 THE WITNESS: The first one.

3 MS. PHILLIPS: All right. Well, you
4 can explain once you --

5 CHAIRPERSON ANDERSON: All right.

6 MS. PHILLIPS: I'll look at it. You
7 need to give the Board some though.

8 THE WITNESS: Yes.

9 CHAIRPERSON ANDERSON: You can give
10 it. She will come and pick it up, sir. All
11 right. Go ahead, sir.

12 THE WITNESS: Yes. I would like to
13 say before I've been -- like I was and
14 everything, but I'm serious --

15 CHAIRPERSON ANDERSON: I'm not
16 following you. I'm not following you, sir.
17 Start over, please.

18 THE WITNESS: Yes. We -- I've been
19 here every month, as the Agency can tell, and
20 there is nothing to describe or explain about it.
21 But this case is like different from the other
22 cases, because the way we plan it, the way we did

1 construct the place, cannot move the doors the
2 way we want to, unless we design it inside.

3 So when we design it, we know this is
4 going to happen. We don't have experience like
5 six, seven years. So we design inside that the
6 door can be open and the second door in the back
7 stay closed at all times.

8 And like she say, the door was closed
9 at all times. And we had said before, I have
10 many Investigators come to my place. DCRA come
11 to my place. And they measure the music a couple
12 of times, more than 10, 20 times. And I have the
13 curse of that.

14 There is no violations from DCRA,
15 noise complaint at all at my place. The only
16 place I got one is when Mr. Hargrave was here
17 during the daytime and it was seasonal. I can
18 open the door when it is seasonal. And I still
19 get fined for that. And I'm still disappointed
20 about it, because when it -- the settlement
21 agreement says you can open the door seasonal and
22 when I open it, still I get fined for that.

1 And again now, that's the way I
2 designed the place is and I was -- it's for
3 economy-wise because I don't want to lose the A/C
4 and the other thing is I want to -- the noise to
5 be inside.

6 So I don't know how to understand it.
7 Ms. Felicia say that there is no way any music
8 can be the same as the inside or outside when the
9 door is closed. I don't think this -- and this
10 business like value to me. So I would like the
11 Board like always think that to be genuine about
12 it, because it's not fair for me.

13 Like because I'm not lying about it.
14 I really don't have to swear about this, because
15 I say the door is open. It's always open 24/7,
16 because it's dark tinted and everything, so when
17 you go back and forth, I don't want people to
18 bump into each other, so we always keep it open.

19 But the main -- the second door is
20 always closed to facilitate for the security to
21 check the ID and everything. The security check
22 ID inside and outside. They search them and

1 everything.

2 So I won't give -- and every time you
3 close it, you're going to open and close the door
4 100 times, because there is like 100 people, 200
5 people coming in during the whole night. So
6 every time you open and close the door, there is
7 going to be -- like give trouble to the
8 customers.

9 So we -- the main thing we did was to
10 remain the second door closed, so the noise or
11 anything, you can see it, so we never had any
12 issue and we never had any issue with DCRA. They
13 have been there. They have a meter to measure
14 the noise and I've never had any violation from
15 them.

16 And Investigator Nicole came back to
17 check and she said like you have another door and
18 I can't hear it. There is always something about
19 the noise when the next establishment is doing
20 whatever they want. She goes -- she came. You
21 can ask Investigator Nicole, she came to -- she
22 think that my noise was loud and she end up going

1 to the other establishment and she found out she
2 give them a ticket. The same thing.

3 I have all the Investigators that you
4 have, all of them, the one you fired, the one
5 that is still there, they still, all of them,
6 come to my establishment. None of them -- I know
7 each of them like personally and I have each case
8 with them. And it shows like it is not fair.
9 And like I don't know what to do about it.

10 Most people, most business in DC fail
11 because they don't have customers, they don't
12 have business to run. But I'm going to fail this
13 business, because of ABRA Investigators same,
14 different case and everything. So it's hard for
15 me. Like I invest all my money in DC and I pay
16 all my taxes and to be treated like this, this is
17 really not fair. And it's not -- it's only me,
18 it's nobody else.

19 You can ask, probably 10, 20 times
20 difference, more than times, tell the
21 establishment that you have. I'm the number one
22 on the list, that I have been visited in this

1 business. And I like -- I feel like I want the
2 Board to think about it and help me with this. I
3 don't know who is doing this. I don't know if
4 it's coming from the Board. I don't know if the
5 Administrative Board. I don't -- I really don't
6 understand. And I have never had this case
7 before.

8 I was managing businesses four or five
9 years and some reason none of the Investigators
10 came to me. They knew I was there. None of them
11 came. I have never had any violations. Not a
12 single ticket in four years. Then when I had my
13 own name, when I have my own establishment, that
14 I did like work for like six, seven years, and
15 end up having tickets. And I end up having 280
16 something times ABRA Investigators visited me,
17 that's been in two years.

18 And you can see the record that you
19 have. And I did my own research, nobody in
20 history of ABRA have been investigated like me.
21 And it's like I'm so sorry to say about it. Like
22 I was going to settle with the prosecutor, it was

1 going to be \$380. The only thing out of -- I
2 don't mind paying it and I don't have to come
3 talk to you like in front of you all the time I
4 come here, because I hate that.

5 But I still have to prove something
6 that I have not been fairly treated by the Board,
7 by the Administrative Board and everything. And
8 I have been here -- everybody knows when I will
9 come. And I have all the Investigators come to
10 me and like give me tickets. And I paying for it
11 every fine he gave me, I pay. Everything I have,
12 I'm paying for it.

13 If Investigator going to fine me, I
14 don't have a choice. I have a business to run.
15 I have a family to support. I'm going to pay for
16 it and move on as soon as it in comes. That's
17 the only thing I can say and I still like to do
18 some business when I'm like -- I'm lucky enough
19 to have the most successful business in D.C. You
20 can ask anybody, out of all the Investigators,
21 all the celebrities, out of all officials come to
22 my place as the number one destination in D.C.

1 But still I'm the one who is doing it.
2 But it's all good, I can't say nothing. I have
3 no power to say anything. I feel so bad to do
4 that. That's all I can say.

5 CHAIRPERSON ANDERSON: That's it?

6 THE WITNESS: Yes, sir.

7 CHAIRPERSON ANDERSON: Ms. Phillips,
8 do you have any questions for him?

9 MS. PHILLIPS: Well, just a little
10 clean-up.

11 CROSS-EXAMINATION

12 BY MS. PHILLIPS:

13 Q Do you want this exhibit to be part of
14 the record?

15 A Yes, if you could.

16 Q Okay.

17 MS. PHILLIPS: I'm going to label this
18 Establishment Exhibit 1, so I can talk about it.

19 MR. ASBEHA: Since you could.

20 CHAIRPERSON ANDERSON: So moved. It's
21 the security plan.

22 MS. PHILLIPS: No, it's the -- no,

1 just it's this, not the security plan.

2 CHAIRPERSON ANDERSON: Oh, I'm sorry.

3 MS. PHILLIPS: It's the floor plan.

4 CHAIRPERSON ANDERSON: The floor plan.

5 Okay.

6 (Whereupon, the above-
7 referred to document was
8 marked as Licensee Exhibit
9 No. 1 for identification.)

10 BY MS. PHILLIPS:

11 Q Now, I'm holding the floor plan so I
12 can read the writing inside, so that's what I'm
13 calling right side up, if everybody has a picture
14 of that. And so in the lower left hand corner is
15 that the door that is under --

16 A That's the one with the string.

17 Q -- yes, with the red car in front of
18 it in the picture?

19 A Yes, ma'am.

20 Q And so there is a little door right
21 here at the bottom?

22 A There's only one door.

1 Q You said there were two doors.

2 A When you go in to the right, there is
3 another door.

4 Q Well, I'm asking the questions now,
5 because I'm trying to establish what this shows.
6 Okay?

7 A Yes.

8 Q So right here is the door that Ms.
9 Dantzler said was hold open at the very bottom.
10 Is that correct?

11 A Which one?

12 Q This one right here.

13 A Yes.

14 Q All right. So that's the very door.
15 And it says door.

16 A Exit door, yes.

17 Q Door. All right. And then you go --
18 it looks like you go inside that door and you go
19 to the right and that says exit. Is that where
20 the other door that you were talking about that
21 is always closed is?

22 A Yes, ma'am, yes, ma'am.

1 Q Okay. And the rest of that little,
2 I'm going to call it a foyer, because that's all
3 I know to describe it, that's wall, it's glass?
4 What is it?

5 A It's tinted glass and waterproof --
6 it's like what do you call it, soundproof. You
7 can't hear no music in there.

8 Q Okay. So it is tinted glass. And
9 there is a little --

10 A It's all glass.

11 Q -- this --

12 A It's all closed.

13 Q -- right here on the top of what I'm
14 going to call the foyer, there is some writing I
15 can't read. Maybe somebody else can.

16 A It says frame. It's a door. It's not
17 a door. It's a frame wall.

18 Q It's a framed --

19 A Yes, a half.

20 Q It's a half wall?

21 A It's a half wall. It's not -- it's
22 like the glass window thing frame, so you can see

1 it from the outside/inside.

2 Q Okay. So

3 A It's not a door. You can leave open.

4 Q Right. So let me try to describe it,
5 so I can understand what you are saying, because
6 you are talking very quickly.

7 A It's like this. All like this, but
8 it's glass.

9 Q Let me ask you. So if I get it right
10 in my words, then we know everybody has it right.

11 A Okay.

12 Q All right. So what you are telling me
13 is as you go straight through the door that is
14 always open, that is described in Exhibit 2 with
15 the red car in front of it from the investigation
16 report, and you go straight back, you say there
17 is a little half wall with the top of it as glass
18 and the other is wall like --

19 A Yes.

20 Q -- stone?

21 A Like a wall. Drywall.

22 Q Drywall. Okay. And these little

1 marks here, is that just the window is just part
2 of that and the rest of it is wall?

3 A It's like this window, it has glass.
4 It has glass inside. You can go -- you can see
5 people from the inside and outside.

6 Q So let me describe it. So actually it
7 is sort of like the little alcove in which the
8 court reporter is sitting? It has got wall on
9 either side and a glass window --

10 A Yes.

11 Q -- at the top?

12 A Yes.

13 Q Okay. And you are telling me that
14 that is soundproof glass?

15 A Totally soundproof.

16 Q Okay. But I'm asking about this
17 window.

18 A Everything is soundproof now in the
19 house.

20 Q Okay. And so the far wall here that
21 is showing here, just to the left of the door,
22 that's actually the brick wall of the

1 establishment?

2 A Right.

3 Q Correct?

4 A Correct.

5 Q And then you go right, you've got lots
6 of windows in the front of the establishment
7 outside, right?

8 A That's windows.

9 Q And that shows in the picture, Exhibit
10 2, of the investigation report?

11 A Yes.

12 Q And you say that is soundproofed, too?

13 A Yes.

14 Q And do those windows open and close?

15 A No.

16 Q Okay. Because I know it says in the
17 settlement agreement --

18 A I can't open and close it, yes.

19 Q -- that applicant may open its window
20 panels. So is the front part of your
21 establishment that is glass to the right --

22 A That's not -- you can open --

1 Q Just a second. Let me get the
2 question out. To the right of the door that is
3 always open, those are glass panels which you say
4 cannot be opened?

5 A Yes.

6 Q They -- you can't open them?

7 A You can't open at all.

8 Q Okay. All right. All right. Since
9 you brought up other cases, you know there is an
10 investigation history that is attached to your
11 report, correct? And on this particular report
12 it is kind of short.

13 A Yes.

14 Q Have you ever asked for another one?

15 A That's because it's not right. I
16 mean, I have seen and I was going to mention at
17 the end of the hearing.

18 Q Right. So have you asked for an
19 investigation report that shows all the
20 violations that you have?

21 A No, they only show three violations --

22 Q Right.

1 A -- when Ms. Felicia give me the
2 report. I only have three.

3 Q All right. Let me stop and have you
4 listen to the question.

5 A Yes.

6 Q Have you requested an investigation
7 report that is more complete than the one
8 attached to this investigation report?

9 A No, on my -- all my reports -- I have
10 three reports.

11 Q Right. But the question I asked you
12 was have you asked ABRA for an Investigative
13 History Report that is more recent than the one--

14 A It was given me in ABRA case.

15 CHAIRPERSON ANDERSON: Mr. --

16 THE WITNESS: I understand.

17 CHAIRPERSON ANDERSON: No, hold on.

18 Are you listening?

19 THE WITNESS: I'm listening.

20 CHAIRPERSON ANDERSON: No. Are you
21 listening to the question? Listen to the
22 question she asked you.

1 THE WITNESS: Yes.

2 CHAIRPERSON ANDERSON: Okay.

3 THE WITNESS: Okay.

4 CHAIRPERSON ANDERSON: All right. She
5 is asking you a specific question. This is the
6 question she is asking you.

7 THE WITNESS: All right.

8 CHAIRPERSON ANDERSON: Have you
9 requested from the -- from ABRA for a more
10 complete history of whatever violations for your
11 property? That's -- she just --

12 THE WITNESS: No, because I --

13 CHAIRPERSON ANDERSON: -- listen,
14 that's the question she is asking you, sir.

15 THE WITNESS: I did not because I have
16 it.

17 CHAIRPERSON ANDERSON: All right. He
18 has answered the question.

19 MS. PHILLIPS: Okay.

20 CHAIRPERSON ANDERSON: No, he has not
21 asked because he has it. Go ahead, ma'am.

22 MS. PHILLIPS: That's it.

1 CHAIRPERSON ANDERSON: Okay.

2 MS. PHILLIPS: No more questions.

3 CHAIRPERSON ANDERSON: Any questions?

4 Yes, Mr. Short?

5 MEMBER SHORT: Good afternoon, Mr.

6 Asbeha.

7 THE WITNESS: Good afternoon. How are
8 you?

9 MEMBER SHORT: It's still morning,
10 forgive me. I'm looking at the exhibit attached
11 to the report, can you look at it with me?

12 THE WITNESS: Yes, I know.

13 MEMBER SHORT: The door that is held
14 open on your establishment, if you look at the
15 top corner you've got a light. Can you tell me
16 what that is?

17 THE WITNESS: Yes.

18 MEMBER SHORT: What's that on the
19 door?

20 THE WITNESS: The door holder.

21 MEMBER SHORT: No, not the holder.

22 That's -- I thought it might be a closer. That's

1 what -- that is required by law.

2 THE WITNESS: Yes, sir.

3 MEMBER SHORT: On all places of public
4 assembly, which your place is, correct?

5 THE WITNESS: Yes, sir.

6 MEMBER SHORT: Well, why is that
7 required?

8 THE WITNESS: Excuse me?

9 MEMBER SHORT: Why is that required by
10 law to be on all fire doors exiting places of
11 public assembly?

12 THE WITNESS: Because it would be easy
13 to --

14 MEMBER SHORT: No, no, no, no, no.
15 Why is that automatic door closer on all doors,
16 churches? To keep the door closed, sir, so if
17 there is a fire on the outside.

18 Say for instance, these two vehicles
19 that are parked by your exit door, do you own
20 that space that those cars are on?

21 THE WITNESS: Excuse me?

22 MEMBER SHORT: Do you own that space

1 that the cars are parked on?

2 THE WITNESS: No.

3 MEMBER SHORT: Who do they belong to?

4 THE WITNESS: The customers.

5 MEMBER SHORT: Who do the spaces that
6 the cars are parked on belong to?

7 THE WITNESS: Excuse me?

8 MEMBER SHORT: Is that public space?

9 Does that belong to the city?

10 THE WITNESS: Yes, sir.

11 MEMBER SHORT: Did you get permission
12 to park cars in front of your place?

13 THE WITNESS: I'm an outside cafe. I
14 have a permit to have the seats.

15 MEMBER SHORT: No, no, no. Do you
16 have permission to park cars beside an exit door?

17 THE WITNESS: That's not my car, so I
18 -- anybody should.

19 MEMBER SHORT: Okay. Are those cars
20 associated with your business?

21 THE WITNESS: No, sir.

22 MEMBER SHORT: You are allowing them

1 to be parked there though, correct?

2 THE WITNESS: They did it on --

3 MEMBER SHORT: I asked you a question.

4 Do you allow them to be parked there?

5 THE WITNESS: No.

6 MEMBER SHORT: You don't?

7 THE WITNESS: No.

8 MEMBER SHORT: Okay. Let me ask you
9 this question. If those cars would happen to be
10 on fire, unfortunately, how would anybody get out
11 of that exit door? And that fire wouldn't be
12 contained on the outside, because your door is
13 propped open with the automatic door closer on
14 the outside, which is required by law not to be
15 propped open.

16 THE WITNESS: Right.

17 MEMBER SHORT: You have been in
18 business how long in Washington, D.C.?

19 THE WITNESS: Seven years.

20 MEMBER SHORT: Seven years. Do you
21 know anything about the Building Code for your
22 building, your business?

1 THE WITNESS: (No audible answer.)

2 MEMBER SHORT: You do?

3 THE WITNESS: (No audible answer.)

4 MEMBER SHORT: So again, I'll ask you
5 what does that door closer on that door, that's
6 the door to your establishment, why is that
7 required by law?

8 THE WITNESS: I mean, it makes it easy
9 to -- from the door to --

10 MEMBER SHORT: No, no, no, no. Why is
11 the door closer on the door? Why is it required
12 by law?

13 THE WITNESS: (No audible answer.)

14 MEMBER SHORT: Well, I'll help you if
15 you don't know. It's to keep the door closed so
16 you don't have things like fire coming from cars
17 into your establishment.

18 I'll just say this, as a business
19 owner, I know -- I don't expect you to know all
20 of the Building Code, but for you to have a place
21 of public assembly with cars parked on public
22 space in front of your place, you are creating a

1 hazard for the community and all those people
2 that are coming to your business.

3 THE WITNESS: We will -- the ANC told
4 about us, nobody -- we can ask the police. There
5 was a police there, because the customer say like
6 they didn't give me a ticket, so we park close.
7 We tell them we always beg them to leave, but no,
8 no, because the ANC -- the Howard Theatre had
9 incident, had a big incident.

10 They didn't -- have RDO. And there
11 was like three, four police officers.

12 MEMBER SHORT: On the night this
13 picture was taken, was there anything at Howard
14 University going on?

15 THE WITNESS: There was RDO there.

16 MEMBER SHORT: Excuse me?

17 THE WITNESS: I don't know what's over
18 there, Howard or something, but there was a
19 police officer there.

20 MEMBER SHORT: I understand that.

21 THE WITNESS: So there was --

22 MEMBER SHORT: Police officers don't

1 enforce the Building Code, that's up to the
2 business.

3 THE WITNESS: Yes, sir.

4 MEMBER SHORT: And your insurance
5 company. That's for you to do. But I'll get off
6 of that, but I'll simply say this, sir, you are
7 asking for a major catastrophe in your place for
8 propping that door open like that. And if it is
9 referred to the DC Fire Department, you will be
10 getting more tickets from the city, because you
11 cannot do that with a fire door.

12 That's all I have, Mr. Chair. Thank
13 you very much.

14 CHAIRPERSON ANDERSON: Let me ask you
15 a question, Mr. Asbeha.

16 All right. You have the case report
17 in front of you. Is that correct?

18 THE WITNESS: Yes, sir.

19 CHAIRPERSON ANDERSON: And can you
20 look at the bottom of it where it says "Noise?"
21 It says No. 3, a part of your settlement where it
22 says noise. Not -- no, the front page of the

1 case report. This, yeah, the front page. No, go
2 back to the front page.

3 MS. PHILLIPS: Right there.

4 THE WITNESS: Oh.

5 CHAIRPERSON ANDERSON: And it says
6 noise.

7 THE WITNESS: Yes.

8 CHAIRPERSON ANDERSON: Can you read
9 that for me, please, sir? What does it say?

10 THE WITNESS: "Applicant is to keep
11 its doors and windows closed when music is being
12 played at the establishment. The applicant may
13 open his window panels seasonally" --

14 CHAIRPERSON ANDERSON: The applicant
15 may open what?

16 THE WITNESS: May open its windows,
17 it's window panels seasonally.

18 CHAIRPERSON ANDERSON: All right.

19 THE WITNESS: "Provided that the music
20 is not audible beyond the street curbside."

21 CHAIRPERSON ANDERSON: All right.

22 Now, let's go back to this picture with the red

1 car. All right. What kind of door is that? Is
2 this door open, sir?

3 THE WITNESS: Yes, sir.

4 CHAIRPERSON ANDERSON: This is a door?

5 THE WITNESS: That's a door, sir.

6 CHAIRPERSON ANDERSON: Or is this a
7 window?

8 THE WITNESS: It's a door.

9 CHAIRPERSON ANDERSON: It's a door.

10 THE WITNESS: Yes, sir.

11 CHAIRPERSON ANDERSON: And is this
12 door permanently open? Is there something
13 keeping this door open?

14 THE WITNESS: Like I told you three,
15 four times, it's open.

16 CHAIRPERSON ANDERSON: It's open.

17 THE WITNESS: It's always open. I'm
18 not going to lie to you.

19 CHAIRPERSON ANDERSON: All right. And
20 so if this door is open, sir, what does that
21 mean? Doesn't No. 3 say that you agreed to keep
22 your doors and windows -- is there anything here

1 in this agreement that says, in your settlement
2 agreement, you can keep those doors open, sir?

3 Based -- now, I'm talking about you
4 just read the provision, right?

5 THE WITNESS: Yes.

6 CHAIRPERSON ANDERSON: Is there
7 anything in this provision that says that you can
8 keep your doors open?

9 THE WITNESS: No.

10 CHAIRPERSON ANDERSON: So if the
11 settlement agreement says that you need to keep
12 your door closed, why am I looking at this
13 picture and you are telling me that you are
14 keeping this door open?

15 THE WITNESS: Because I have -- like
16 I have been clear to you guys. I'm not lying
17 about it. Because this is easy access for people
18 to come in and out, that's why we open, but the
19 noise is always towards up -- like two weeks ago,
20 I have a DCRA person came and measure the noise
21 and they didn't find anything.

22 CHAIRPERSON ANDERSON: I'm not talking

1 about the noise, sir. You have a settlement
2 agreement that says that you are going to keep
3 your doors closed. And I have a picture here and
4 this door is open and you are telling me that you
5 always keep the door open.

6 So who signed the settlement
7 agreement?

8 THE WITNESS: My lawyer.

9 CHAIRPERSON ANDERSON: You and your
10 lawyer, right? So if you have a settlement
11 agreement that says that your door needs to be
12 closed, and you are showing me here that your
13 door is -- that you are propping the door open,
14 aren't you not violating the -- your own
15 agreement?

16 THE WITNESS: Yes, but the door -- but
17 I can say the door and windows are -- remain to
18 be closed. I understand that. But only the
19 music or the noise not coming out.

20 CHAIRPERSON ANDERSON: No. All right.
21 One more time, sir.

22 THE WITNESS: That's the only point

1 that you got.

2 CHAIRPERSON ANDERSON: No. I mean --

3 THE WITNESS: It's easy coming out.

4 CHAIRPERSON ANDERSON: No. 3, go back.

5 THE WITNESS: Yes, I read it.

6 CHAIRPERSON ANDERSON: What does it
7 say? Does it say that you agree to keep its
8 doors and windows closed when music is being
9 played? Isn't that what it says?

10 THE WITNESS: Yes, sir.

11 CHAIRPERSON ANDERSON: So if it says
12 that and you signed it, why are you telling me
13 that when I look at this picture that you are
14 intentionally keeping it open?

15 THE WITNESS: I explained it to you
16 why I open it, so that's it, because I just told
17 you it's easy access to come in and back and
18 forth, because I have another door. If I open
19 and close the doors, it would be hard for me to
20 keep track of the customers and everything. And
21 it would create another danger, because they
22 can't see and when you open it, you're going to

1 bump people.

2 CHAIRPERSON ANDERSON: But you have a
3 settlement agreement saying that you need to keep
4 it closed.

5 THE WITNESS: I understand.

6 CHAIRPERSON ANDERSON: So if you have
7 a settlement agreement to keep it closed, are you
8 not violating your settlement agreement when you
9 keep it open?

10 THE WITNESS: Like I say, like I'm not
11 considering it a violation, because any noise is
12 not coming out.

13 CHAIRPERSON ANDERSON: I'm sorry, you
14 said what, sir?

15 THE WITNESS: None of the noise is
16 coming out.

17 CHAIRPERSON ANDERSON: I'm not talking
18 about noise, sir.

19 THE WITNESS: If you --

20 CHAIRPERSON ANDERSON: Let's not --

21 THE WITNESS: I understand, but
22 listen, if you want to run a business, when you

1 are running a business, like it's hard for any
2 person - as well as I'm not harming anything. As
3 long as I'm not doing anything illegal things, I
4 -- you guys telling me it's open. Okay. It's
5 open. So I not lying about it. I keep it open
6 because it facilitates and it keep me safe for
7 customers to go back and forth.

8 If you think, ABRA, that a violation,
9 if it's wrong, I'm wrong. I'm fine with it. I'm
10 done with it. I'll pay for it.

11 CHAIRPERSON ANDERSON: But you signed
12 a settlement agreement saying that you are going
13 to keep your doors closed. This is not ABRA.

14 THE WITNESS: I understand. I
15 understand.

16 CHAIRPERSON ANDERSON: You --

17 THE WITNESS: My statement was --

18 CHAIRPERSON ANDERSON: Listen, sir.

19 THE WITNESS: I know to --

20 CHAIRPERSON ANDERSON: You signed a
21 settlement agreement that you just read that said
22 you were going to keep your doors closed.

1 THE WITNESS: I said I understand what
2 you are saying.

3 CHAIRPERSON ANDERSON: You said you
4 signed a settlement agreement with your lawyer.

5 THE WITNESS: I understand what you
6 are saying and I understand. I read it, but I
7 open the door. And I admitted that. The
8 violation of the settlement agreement, because
9 the settlement agreement is not like the same
10 time. My settlement agreement is not right,
11 because they -- I'm talking about the ANC, too.

12 CHAIRPERSON ANDERSON: Okay.

13 THE WITNESS: Where to go through --

14 CHAIRPERSON ANDERSON: So then you
15 need to go -- so you have a settlement agreement,
16 sir. You need to comply with your settlement
17 agreement. Okay?

18 THE WITNESS: I understand.

19 CHAIRPERSON ANDERSON: All right. Any
20 other questions by any other Board Members? All
21 right. Ms. Phillips, are there any questions you
22 want to ask him based on the questions that the

1 Board asked?

2 MS. PHILLIPS: No questions, Mr.
3 Chair.

4 CHAIRPERSON ANDERSON: Mr. Asbeha, are
5 there any -- do you need to clarify anything,
6 based on the questions that were just asked?

7 THE WITNESS: No, sir.

8 (Whereupon, the witness was excused.)

9 CHAIRPERSON ANDERSON: Ms. Phillips,
10 do you need -- do you wish to make a closing
11 statement?

12 MS. PHILLIPS: I do. We have an
13 admission of the owner that he keeps the door
14 open all the time. So we have an admission of a
15 party opponent, which ends the question, but not
16 only that, we have a picture of the door being
17 open.

18 In this particular case, we are
19 charging a noise violation. But clearly, we
20 could charge a violation, even if there were no
21 noise, because the settlement agreement says that
22 the door -- it doesn't say he can open the doors

1 seasonally. It says he can open windows
2 seasonally.

3 And Mr. Short makes a very good point
4 that perhaps the owner needs to acquaint himself
5 with some of the Fire Regulations, because if
6 this door should be closed because of danger to
7 his customers, rather than convenience for his
8 customers, then perhaps he needs to check those
9 regulations.

10 Since I don't know about them and
11 since that's not part of this case, I just
12 mention it in closing, because that should be
13 something that he should be reminded that he
14 should do, because an ABRA Investigator could be
15 in the area and could stop and could stop every
16 day and fine and we could have a report and come
17 here every day for violations of keeping the door
18 open, because in the settlement agreement, which
19 he signed, it says he will not keep them open.

20 So I think the Government has proven
21 its case by picture, by testimony of its
22 Investigator and by admission of party opponent

1 and the Board can fine him as it sees fit looking
2 at the investigative history.

3 CHAIRPERSON ANDERSON: Thank you. Any
4 closing statements, sir? And what is it you want
5 the Board to do?

6 MR. ASBEHA: Yes. Like I said, I'm
7 not here to argue about it, but I'm not here to
8 lie or something, because if I did it, I always
9 admit in my life and I have lived that way, tell
10 the truth. And I opened the door, because like I
11 told you, it facilitates my business. And for
12 the noise, I always keep it like the second door
13 closed, no matter what, because I understand the
14 noise has not -- or shouldn't be going further
15 out. So I always keep the door open -- I mean,
16 closed.

17 And the second thing is like, okay, I
18 paid for this two weeks ago. Like they fine me
19 for the door, Investigator Hargrave. There is no
20 noise comes out, there is no proof or video that
21 says the noise is outside or there is no people
22 that says the noise emanating.

1 I mean, Investigator like 10, 20 times
2 measuring and like they know I would never do
3 anything. And I don't know if you can see the
4 report, the case report it says Investigator has
5 been -- the Investigator still is now right,
6 because I was not even open at that time to get a
7 \$500 fine, \$500 fine, \$1,250 fine. I wasn't even
8 open at that time.

9 None of the investigative history is
10 right here, because I wasn't even open. Like 16,
11 16, I opened March 30th. So I don't know where
12 this is coming from. I paid some of the fines,
13 not that month, this. And I should -- I want
14 that to be reviewed or something.

15 And I want to be -- make a closing
16 about this. Like Whiskey is -- I mean, Kiss
17 Tavern like new. Like I said before, I had a --
18 I did work at the uptown, I worked some other
19 places and all the Investigators knew that I was
20 working there.

21 And I was doing the same type, the
22 same system that I'm using right now. And I

1 never had a case, because I was managing those
2 places 100 percent. No manger was ever involved
3 except me. And for the last four case, all
4 Investigators, you named them, they were there.

5 And now, when I have my own business
6 under my name, I'm going to find out when they --
7 who is this and I want the Board to help me out
8 to figure out who is behind this, because no
9 establishment in D.C. history or in ABRA history
10 have been visited like me, like being harassed
11 like me. And I'm -- I will do anything, because
12 this is my life. I'll do anything for my
13 business.

14 I just help my family, my children and
15 everything for this. So it's being regular like
16 Donnell came, Brashears came and give me four
17 statements and everything, like that's in
18 addition they try to hurt my business.

19 And way before I call complaining
20 because ABRA Investigators told me if you hear
21 any music outside establishment, you should call
22 ABRA and I called. And the lieutenant out front

1 is it Kiss Lounge? And I told the Investigator
2 it's like this is me, Kiss Tavern is calling you
3 on behalf of Kiss Tavern.

4 We found out that neighbor's business
5 had noise and they didn't even told us, no, it
6 was Kiss Tavern. And it's -- some of the
7 Investigators are trying to harass the business.

8 I have RDO. We have been going back
9 and forth with you guys about the RDO. I had RDO
10 and I had a problem with the RDO and we get back,
11 all the RDOs are back now. Whether the RDO is
12 there, the Investigators came accusing I don't
13 have RDO.

14 Investigator Brashears came again
15 telling me you don't have RDO.

16 MS. PHILLIPS: I would object to
17 relevance.

18 This is going way beyond this case.

19 MR. ASBEHA: I'm trying statement to
20 close it, which is the reason I came here is
21 because I'm not trying to fight with the open
22 door and everything, I just want to make my

1 statement, because I'm feeling being harassed by
2 the ABRA Investigators or by the Administration,
3 that's what I feel.

4 I'm not coming here to argue.

5 MS. PHILLIPS: What?

6 MR. ASBEHA: I'm not here to argue
7 about this. So I want the Board to help me out
8 or with this, who is behind it and I want to -- I
9 couldn't find it, because I'm not a Government
10 official. I'm going to hire a lawyer for this
11 particular thing. Ms. Jessica Abana is going to
12 help me, Ina and Emily, so I would like the Board
13 to help me like keep my business.

14 And I will do my best to not -- to
15 keep the regulations and rules of ABRA and I
16 would like the ANC, I'm going to go and change
17 all the ANC agreements that I have, because the
18 agreement is not right or is not fair for me as a
19 business, because it's a new business and I'll
20 lay out any issues and just all these ANC
21 agreement that I have is not right and I feel
22 it's not right.

1 And I know I have made my mistakes.
2 If you follow fining, I would like -- I will be
3 like paying for that. So that's what I wanted to
4 say. I'm ready like I apologize for my mistakes.
5 I'll move forward, that's what I say.

6 CHAIRPERSON ANDERSON: All right. All
7 right. The record is now closed. And I'm going
8 to ask this question and do the parties wish to
9 file proposed findings of fact and conclusions of
10 law or waive their right to do so?

11 MS. PHILLIPS: The District waives.

12 CHAIRPERSON ANDERSON: All right. Are
13 you waiving, too? All right.

14 The Board will issue a decision within
15 90 days.

16 As Chairperson of the Alcoholic
17 Beverage Control Board for the District of
18 Columbia and in accordance with Section 405 of
19 the Open Meetings Amendment Act of 2010, I move
20 that the ABC Board hold a closed meeting for the
21 purpose of seeking legal advice from our counsel
22 on Case No. 18-CMP-00020, Kiss Tavern, per

1 Section 405(b)(4) of the Open Meetings Amendment
2 Act of 2010, and deliberating upon Case No. 18-
3 CMP-00020, Kiss Tavern, for the reasons cited in
4 Section 405(b)(13) of the Open Meetings Amendment
5 Act of 2010.

6 Is there a second?

7 MEMBER SHORT: Second.

8 CHAIRPERSON ANDERSON: Mr. Short
9 seconded the motion. I will now take a roll call
10 vote on the motion before us now that it has been
11 seconded.

12 Mr. Silverstein?

13 MEMBER SILVERSTEIN: I agree.

14 CHAIRPERSON ANDERSON: Mr. Short?

15 MEMBER SHORT: I agree.

16 CHAIRPERSON ANDERSON: Mr. Alberti?

17 MEMBER ALBERTI: I agree.

18 CHAIRPERSON ANDERSON: Mr. Cato?

19 MEMBER CATO: I agree.

20 CHAIRPERSON ANDERSON: Mr. Isaac?

21 MEMBER ISAAC: I agree.

22 CHAIRPERSON ANDERSON: As it appears

1 that the motion has passed, I hereby give notice
2 that the ABC Board will hold a closed meeting in
3 the ABC Board conference room pursuant to the
4 Open Meetings Amendment Act of 2010 and issue an
5 order within 90 days.

6 I want to thank the parties for their
7 presentation today. And this case is submitted.
8 Thank you very much.

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

10 CHAIRPERSON ANDERSON: The Board is
11 now --

12 (Whereupon, the Show Cause Hearing was
13 concluded at 11:22 a.m.)

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Before: DC ABRA

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