

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
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 #17-CMP-00683 :
:
(Violation of Settlement :
Agreement) :

Wednesday
March 28, 2018

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

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

ALSO PRESENT:
EYOB ASBEAJ, Licensee
INVESTIGATOR MARK BRASHEARS, ABRA
LOUISE PHILLIPS, OAG
BRENDA SMITH, MPD

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Mark Brashears	7	18		
Brenda Smith	42	64	87	
Eyob Asbeaj	120	126		

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

2 11:11 a.m.

3 CHAIRPERSON ANDERSON: We are back on
4 the record. We are calling now Case No. 17-CMP-
5 00683, Kiss Tavern, License No. 104710.

6 Will the parties, please, identify
7 themselves for the record, please?

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

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

13 MR. ASBEAJ: Good morning. My name is
14 Eyob Asbeaj.

15 CHAIRPERSON ANDERSON: I did not hear
16 your last name, sir.

17 MR. ASBEAJ: My name is Eyob Asbeaj
18 from Kiss Tavern.

19 CHAIRPERSON ANDERSON: Good morning,
20 Mr. Asbeaj. Have you done -- have you signed-in?
21 Have you signed your name in on the sign-in
22 sheet, please?

1 Okay. So this is a Show Cause
2 Hearing. Are there any preliminary matters in
3 this case?

4 MS. PHILLIPS: No, Mr. Chair, there
5 are not.

6 CHAIRPERSON ANDERSON: Does the
7 Government wish to make an opening statement?

8 MS. PHILLIPS: This matter is brought
9 before the Board on one count notice that charges
10 the establishment with failure to comply with the
11 settlement agreement or its order regarding an
12 RDO.

13 CHAIRPERSON ANDERSON: I can't hear
14 you, Ms. Phillips. I know -- it appears that
15 your voice is raspy, but I can't hear.

16 MS. PHILLIPS: I think raspy is a
17 little beyond the pale, but, all right, I'll try
18 a little harder. This is a one charge notice
19 which alleges a failure to comply with the
20 settlement agreement and the Board's order
21 regarding a mandatory RDO.

22 The evidence will show that this

1 establishment did not have an RDO when required
2 and had not had for several months before the
3 Investigators determined that they were not
4 following the settlement agreement and the
5 Board's order.

6 CHAIRPERSON ANDERSON: All right. Mr.
7 Asbeaj, do you wish to make an opening statement
8 or do you wish to make an opening statement when
9 you present your case?

10 MR. ASBEAJ: Yeah, I want to make my
11 opening statement.

12 CHAIRPERSON ANDERSON: You want? I'm
13 sorry; you are going to do it now?

14 MR. ASBEAJ: I want to make a
15 statement, right.

16 CHAIRPERSON ANDERSON: Go ahead, sir.

17 MR. ASBEAJ: Yeah. By the time the
18 Investigator came to the place, we had ordered
19 amount and everything were not suspended. It
20 just MPD or the RDO would not be able to assign
21 police officers on that night. But when he comes
22 over there, all the payment was made and it was

1 like any significant payment.

2 CHAIRPERSON ANDERSON: Well, let me
3 ask you a question, sir. I mean, how do you --
4 are you -- in presenting your case today, do you
5 have witnesses you are going to have testify?

6 MR. ASBEAJ: Excuse me.

7 CHAIRPERSON ANDERSON: I'm sorry? Are
8 you going to have -- are you calling witnesses to
9 testify today?

10 MR. ASBEAJ: Yes.

11 CHAIRPERSON ANDERSON: Oh, you have
12 witnesses to testify?

13 MR. ASBEAJ: No, I don't have witness,
14 but I may present myself.

15 CHAIRPERSON ANDERSON: Just you are
16 the only person?

17 MR. ASBEAJ: Yes.

18 CHAIRPERSON ANDERSON: All right. So
19 that's it? That takes care of your opening
20 statement?

21 MR. ASBEAJ: Right.

22 CHAIRPERSON ANDERSON: All right.

1 Does the Government wish to call its first
2 witness?

3 MS. PHILLIPS: Yes, Mr. Chair. The
4 Government calls Investigator Brashears.

5 CHAIRPERSON ANDERSON: Mr. Brashears,
6 would you raise your right hand, please?
7 Whereupon,

8 INVESTIGATOR MARK BRASHEARS
9 was called as a witness by Counsel for the
10 Government, and after having been first duly
11 sworn, was examined and testified as follows:

12 THE WITNESS: I do.

13 CHAIRPERSON ANDERSON: Good morning.
14 Your witness.

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

16 DIRECT EXAMINATION

17 BY MS. PHILLIPS:

18 Q Will you, please, state and spell your
19 name for the record, sir?

20 A Investigator Mark Brashears. That's
21 M-A-R-K the last name is B-R-A-S-H-E-A-R-S.

22 Q And, Mr. Brashears, what is your

1 occupation?

2 A I'm an Investigator with the Alcoholic
3 Beverage Regulation Administration.

4 Q And briefly, what does your job entail
5 as an Investigator for ABRA?

6 A I conduct inspections and
7 investigations of ABC-licensed establishments
8 throughout the District of Columbia.

9 Q And how long have you been in that
10 position?

11 A Approximately, four and a half years.

12 Q And prior to the position as an
13 Investigator at ABRA, did you hold any other
14 occupation at ABRA?

15 A No, I did not.

16 Q Prior to your work with ABRA, did you
17 hold any other positions in which you
18 investigated matters and wrote investigative
19 reports?

20 A Yes, I was a Special Agent for the
21 Department of Defense and retired in that
22 capacity in 2013.

1 Q And in that capacity, am I to assume,
2 since you didn't answer the second part of the
3 question, that you also did investigations and
4 wrote reports?

5 A Yes, ma'am, that is correct.

6 Q Okay. And could you tell me how long
7 you did that?

8 A 15 years.

9 Q Okay. All right. At this point in
10 time, did you have an occasion to visit Kiss
11 Tavern in October of 2017?

12 A I did.

13 Q Do you recall how you got to go to
14 that establishment?

15 A I was notified that the establishment
16 was required to have an RDO due to the settlement
17 agreement and Board order. And I was informed
18 that they had not utilized the RDO.

19 Q And subsequent to your investigation,
20 did you write an investigation report?

21 A I did.

22 MS. PHILLIPS: May I approach the

1 witness, Mr. Chair?

2 CHAIRPERSON ANDERSON: Go ahead,
3 please.

4 BY MS. PHILLIPS:

5 Q I'm handing you a copy of what I
6 believe is your investigative report. I have
7 also given a copy prior to this hearing this
8 morning to the establishment owner.

9 Is that your investigative report,
10 sir?

11 A Yes, ma'am, it is.

12 Q What was the date of the occurrence of
13 this investigation report?

14 A October 4, 2017.

15 Q And you went to Kiss Tavern. Is that
16 correct?

17 A Yes, ma'am, I did.

18 Q Would you look at page 4 and tell me
19 if that is your signature on the back of that
20 page?

21 A Yes, ma'am, it is.

22 Q And there is a second signature there.

1 Whose signature is that?

2 A That would be Chief Jackson.

3 Q And when you finish your report, you
4 are required to sign them. Is that fair?

5 A Yes, ma'am.

6 Q And then Mr. Jackson reviews them. Is
7 that fair?

8 A Yes, ma'am.

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

13 BY MS. PHILLIPS:

14 Q Okay. In brief, will you tell me how
15 you came to investigate Kiss Tavern and what you
16 did once you started your investigation?

17 A I was notified by our Adjudication
18 Section that Kiss Tavern had fallen delinquent on
19 paying for their RDO as required by the
20 settlement agreement. I reached out to Ms.
21 Brenda Smith, who is the coordinator for the RDO
22 program and learned that the establishment, in

1 fact, had fallen behind on its payments and
2 during the period from June through October 12th
3 were suspended for non-payment.

4 Q After you found out that information--
5 in fact, what date did you contact Ms. Smith at
6 MPD?

7 A It would have been 4 October 2017.

8 Q And she provided you the information
9 contained in paragraph 1 about the delinquency in
10 the RDO?

11 A Yes, ma'am.

12 Q Remind me what RDO stands for.

13 A Reimbursable Detail.

14 Q And what exactly is that from ABRA's
15 perspective?

16 A From ABRA's perspective, that is a
17 situation where law enforcement goes out and is
18 at an ABRA establishment to help maintain, you
19 know, peace, law and order.

20 Q Okay. Thank you. Did you conduct any
21 subsequent investigation?

22 A I did visit the establishment. I

1 visited the establishment on October 14, 2017 at
2 approximately 9:55 p.m.

3 Q And what did you determine at your
4 visit?

5 A I spoke with the ABC manager, a Mr.
6 Sampson, who stated that all of the fees and the
7 outstanding issues had been resolved and that the
8 RDO would resume. But according to him, the RDO
9 would not be there that evening, but would be
10 there the following weekend, October 20th.

11 Q Did you do any subsequent
12 investigation after October 14th?

13 A I did follow-up with Ms. Smith, the
14 RDO Coordinator, on October 26th and, basically,
15 she had informed me that she was going to resume
16 the RDO for the establishment.

17 Q Did you investigate or review the
18 settlement agreement and Board order?

19 A Yes, ma'am, I did.

20 Q And I see that it is attached as
21 Exhibit 1 to your investigative report. Is that
22 fair?

1 A Yes, ma'am.

2 Q What section did you cite?

3 A Under Section 6, Security (b).

4 Q Okay. And that informs you that the
5 Board ordered an RDO for certain days of the
6 week? Is that fair?

7 A Yes, ma'am.

8 Q Would that be Friday and Saturday?

9 A Yes, ma'am, that would be Friday and
10 Saturday nights from 11:30 p.m. to 3:30 a.m.

11 Q Were there any other stipulations with
12 regard to the RDO for this establishment
13 contained in the security agreement, which was
14 then later moved into a Board order?

15 A Yes, ma'am, there was.

16 Q And what was that?

17 A In the instance that the licensee
18 decided to discontinue the RDO, they were
19 required to give the ANC 60 days advance written
20 notice of such intention.

21 Q Were you able to discern whether the
22 establishment had given the 60-day notice?

1 A Yes, ma'am, I was.

2 Q And what did you determine from that?

3 A Well, on October 26th, I spoke with
4 the ANC Commissioner from 1B who stated that she
5 had not been made aware of the cancellation of
6 the RDO by the establishment.

7 Q And I see that this investigation has
8 one more exhibit. What is that?

9 A That would be a regulatory inspection.

10 Q And were there any other ABRA
11 violations that you found on your regulatory
12 inspection that you charged in this
13 investigation?

14 A No, ma'am.

15 Q Okay.

16 MS. PHILLIPS: If the investigation
17 report is not part of the record as of yet, I
18 would like to move the investigation report into
19 the record as exhibit -- as an exhibit.

20 CHAIRPERSON ANDERSON: Do you have any
21 objection, sir?

22 MR. ASBEAJ: Yes, sir.

1 CHAIRPERSON ANDERSON: No, no, no. Do
2 you have any objection to her moving this
3 document into the record?

4 MR. ASBEAJ: Oh, no.

5 CHAIRPERSON ANDERSON: All right. So
6 moved. So the Investigation -- the case report
7 will officially become Exhibit 1.

8 (Whereupon, the above-
9 referred to document was
10 received into evidence as
11 Government Exhibit No. C.)

12 MS. PHILLIPS: Could it become Exhibit
13 C?

14 CHAIRPERSON ANDERSON: I'm sorry,
15 Exhibit C.

16 MS. PHILLIPS: Okay. Because I have
17 labeled my other exhibits already.

18 CHAIRPERSON ANDERSON: Okay. I didn't
19 know you had -- I thought -- I didn't know there
20 were other documents.

21 MS. PHILLIPS: That's right.
22 Sometimes the investigative report is part of the

1 record already. I just want to make sure it's in
2 there if we need it.

3 CHAIRPERSON ANDERSON: Well, I'm
4 hoping that shortly then I will be provided a
5 copy of all the exhibits, so I know, because I
6 didn't know there were exhibits in this case. So
7 go ahead.

8 MS. PHILLIPS: I'm sure that you will,
9 but I did not make a copy of the investigative
10 report for the Board. I apologize.

11 CHAIRPERSON ANDERSON: No, no.

12 MS. PHILLIPS: Usually that is part of
13 what you have in front of you.

14 CHAIRPERSON ANDERSON: Okay. That's
15 fine.

16 BY MS. PHILLIPS:

17 Q Have we covered all of the facts that
18 you have discerned in your investigation into
19 this matter?

20 A Yes, ma'am.

21 Q Thank you.

22 CHAIRPERSON ANDERSON: This is your

1 opportunity, sir, to cross-examine him on the
2 testimony that he just gave.

3 MR. ASBEAJ: Okay.

4 CROSS-EXAMINATION

5 BY MR. ASBEAJ:

6 Q Many time you come to business and you
7 found out that we were not in violation. And
8 what happened is my explanation for that is --

9 CHAIRPERSON ANDERSON: No, no. You
10 have to ask him. He just testified about his
11 report. So I need you to ask him a question, ask
12 him questions about what he did testify to. So
13 say for example, she asked him a lot of questions
14 about his report, are there any of the testimony
15 that he gave that you disagree with? So are you
16 -- you will want to ask him a question to clarify
17 what is in -- what he just testified to.

18 MR. ASBEAJ: Yes.

19 BY MR. ASBEAJ:

20 Q On October 14 you came to Kiss Tavern?

21 A Yes.

22 Q And you found out we are not -- we

1 paid all the payments. And --

2 CHAIRPERSON ANDERSON: I know you are
3 not an attorney, so --

4 MR. ASBEAJ: I'm just trying to --

5 CHAIRPERSON ANDERSON: -- I --

6 MR. ASBEAJ: -- explain to him. I
7 have a question, but I'm trying to explain what
8 happened.

9 CHAIRPERSON ANDERSON: No. When you
10 present your case, you can explain. But at this
11 juncture, the way it works is that you have to
12 ask him questions. So he just testified. Do you
13 have a copy of the case report in front of you?

14 MR. ASBEAJ: Yes, yes.

15 CHAIRPERSON ANDERSON: Is there
16 anything in this report that he testified to that
17 you believe that is incorrect, so you can ask him
18 questions or to confirm with -- to support your
19 contention?

20 MR. ASBEAJ: Yes.

21 BY MR. ASBEAJ:

22 Q Like by the time you got there, we are

1 not in violation. There was no violation made
2 that day. But you didn't come and ask me or ask
3 what happened, because there was no payment that
4 day. So for me, the investigation is invalid,
5 that's what I think. So --

6 MS. PHILLIPS: I'm going to move to
7 strike. It's not a question.

8 CHAIRPERSON ANDERSON: Well, I want
9 you to take a couple of minutes, think about what
10 is it that you want to ask him and ask him in the
11 form of a question. I know you have to watch TV.
12 I know you have to watch these police shows that
13 are --

14 MR. ASBEAJ: No, I don't.

15 CHAIRPERSON ANDERSON: -- on the TV.

16 MR. ASBEAJ: I don't watch TV.

17 CHAIRPERSON ANDERSON: This is your
18 opportunity to be a lawyer. So you are the
19 lawyer and you have -- he is the witness that you
20 are cross-examining him. So just take an
21 opportunity to formulate a question.

22 So if -- you can ask him what you want

1 to ask him, but try to ask him in the form of a
2 question.

3 MR. ASBEAJ: Okay.

4 CHAIRPERSON ANDERSON: And the
5 question you are trying to ask him, you want to
6 make sure that he is going to answer the question
7 the way you want him to answer it, okay? So you
8 need to put him in a box --

9 MR. ASBEAJ: Okay.

10 CHAIRPERSON ANDERSON: -- by asking
11 him a question. Asking him a question. And if
12 you don't have a question, you don't have to ask.
13 I mean, if you want to make a statement when you
14 present your case, you can. So you don't
15 necessarily need to cross-examine him if you --

16 MR. ASBEAJ: Yeah.

17 CHAIRPERSON ANDERSON: -- would
18 rather --

19 MR. ASBEAJ: I just want to make my
20 statements. Yeah, I don't want to ask.

21 CHAIRPERSON ANDERSON: Are you sure?

22 MR. ASBEAJ: Yeah.

1 CHAIRPERSON ANDERSON: I don't want to
2 dissuade you. I --

3 MR. ASBEAJ: I understand what you are
4 saying.

5 CHAIRPERSON ANDERSON: Yes.

6 MR. ASBEAJ: But I'm not aware what I
7 can say, but I'm here to make a statement,
8 because this investigation is not valid --

9 CHAIRPERSON ANDERSON: All right.

10 MR. ASBEAJ: -- to me. It's what I
11 see.

12 CHAIRPERSON ANDERSON: All right.

13 Well, but as I said before, because you are
14 saying it's not valid, then he is the one who
15 took the report. So you could try to weave
16 questions into him by asking the questions to
17 prove that it's not valid based on the questions
18 you ask him.

19 But so maybe you can take a couple of
20 more minutes, before -- I just want to make sure
21 that --

22 MR. ASBEAJ: I understand.

1 CHAIRPERSON ANDERSON: -- I don't want
2 to change your mind in asking the questions.
3 Maybe you can just take a couple more -- think
4 about what you want to ask him, because you're
5 saying it's not valid. So try to ask -- think
6 about a question to ask him to bring that out, if
7 that's what you want to do.

8 BY MR. ASBEAJ:

9 Q But by the time I make the payment and
10 do you have any understanding that once I paid
11 the MPD is going to resume the services. So by
12 the time I come here, I -- or I came and asked
13 Ms. Brenda that she told you that the services is
14 going to continue the 20th. So I don't
15 understand why violations on the settlement
16 agreement on this case.

17 MS. PHILLIPS: The same objection.

18 CHAIRPERSON ANDERSON: I know it's not
19 in the form of a question.

20 MS. PHILLIPS: I'm objecting because
21 I don't want my witness to speculate as to what
22 he is asking.

1 CHAIRPERSON ANDERSON: Right. And I
2 know. That's -- I know. That's what I'm trying
3 to figure out how to do it.

4 Why don't you ask him if he knows when
5 the --

6 MR. ASBEAJ: Yes, sir.

7 CHAIRPERSON ANDERSON: -- when was the
8 payment done. When did you make your payment?

9 MR. ASBEAJ: I make the payment on
10 October --

11 CHAIRPERSON ANDERSON: No, ask him.
12 No.

13 MR. ASBEAJ: Okay.

14 CHAIRPERSON ANDERSON: Ask him.

15 MR. ASBEAJ: Well --

16 CHAIRPERSON ANDERSON: Ask him does he
17 know what date the payment was made for the RDO.

18 BY MR. ASBEAJ:

19 Q So by the time you come to -- no, I'm
20 asking.

21 CHAIRPERSON ANDERSON: No.

22 MR. ASBEAJ: I'm going to ask him.

1 CHAIRPERSON ANDERSON: The question
2 that I just asked you. Ask him the question I
3 just asked you. Ask it to him that way.

4 BY MR. ASBEAJ:

5 Q Well, when you find out that we paid
6 that delinquent payment that we had?

7 A On October 26th, I contacted Ms.
8 Brenda Smith, the RDO Coordinator, who stated
9 that the outstanding balance that was owed by
10 Kiss Tavern was paid in full October 12, 2017.

11 CHAIRPERSON ANDERSON: Okay. What
12 other -- so ask him -- then ask him a question.
13 Then when was it that the RDO was supposed to
14 start.

15 MR. ASBEAJ: Okay.

16 CHAIRPERSON ANDERSON: I know and I'm
17 -- that's -- so ask him, yes.

18 BY MR. ASBEAJ:

19 Q Now, when you come to the premises,
20 you ask -- when you asked my manager?

21 A I asked him if there was an RDO that
22 evening and what the situation with the RDO was.

1 Q And he stated what? What did he show?

2 A Mr. Sampson stated that it was his
3 understanding that all of the outstanding fees
4 concerning the RDO were paid and that the RDO
5 would resume the following weekend, October 20th
6 and October 21st.

7 Q Did he show you the receipt that it
8 was paid in full?

9 A I believe he may have.

10 Q As well as that was on October 12th,
11 but he make his visit on October 26th, so how was
12 it in violation while I paid in full the -- on
13 October 12 and he went back there on October
14 26th, that is still -- because we already know
15 that the amount is not in violation, because you
16 already know it was paid for and everything. And
17 how can you just write a paper that I was in
18 violation. That's what I don't understand.

19 You came on October 12th and you
20 stated again that you came on October 26th. You
21 already know that we are not in violation, but
22 you came back on October 26th and then asking me

1 or I got a violation. I don't understand that.

2 MS. PHILLIPS: I object. That
3 misstates the facts in evidence.

4 CHAIRPERSON ANDERSON: All right.

5 MS. PHILLIPS: According to the facts
6 in evidence, I believe Investigator Brashears did
7 not come back to the establishment on October
8 26th, but contacted two other persons on October
9 26th to complete the circle of his investigation.
10 I believe that's what the testimony on direct
11 shows.

12 CHAIRPERSON ANDERSON: What is the
13 question you were trying to ask, sir?

14 BY MR. ASBEAJ:

15 Q I want to -- by the time -- on October
16 26th you say you made further investigations, but
17 you already knew on October 12th that I paid in
18 full and there is no -- any subsequent or any
19 delinquent invoices, so there was no way it was
20 invalid at that time, in violation of the
21 settlement agreement.

22 The only problem we had is to -- my

1 explanation is we don't have any problem with
2 having an RDO at our premises.

3 CHAIRPERSON ANDERSON: All right. All
4 right. All right. You are going in your
5 explanation, so I think that --

6 MR. ASBEAJ: It's two different dates
7 that he had.

8 CHAIRPERSON ANDERSON: All right. But
9 so why --

10 MR. ASBEAJ: He came on October 12.

11 CHAIRPERSON ANDERSON: All right. So
12 but when you cross-examine him, ask him about the
13 dates. Ask him. Don't -- you ask him specific
14 questions about the dates, which I think you --
15 the first question you asked him about --

16 MR. ASBEAJ: Was he was there on
17 October 12th.

18 CHAIRPERSON ANDERSON: Right.

19 MR. ASBEAJ: And you know -- he told
20 me that he --

21 CHAIRPERSON ANDERSON: Right.

22 MR. ASBEAJ: -- saw the invoices.

1 There was no delinquent.

2 CHAIRPERSON ANDERSON: Right.

3 MR. ASBEAJ: The payment is made.

4 CHAIRPERSON ANDERSON: Right.

5 MR. ASBEAJ: And he came in. There is
6 no need to do further investigation on October
7 26th for the --

8 CHAIRPERSON ANDERSON: So why don't
9 you ask him why did he do -- if you are saying he
10 did an investigation on October 26th, why don't
11 you ask him then why did he do an investigation
12 on October 26th. Ask him that question.

13 MR. ASBEAJ: Okay. So why did you do
14 on October 26th? After you understand --

15 CHAIRPERSON ANDERSON: There is a
16 question, Mr. -- I think he is asking why -- the
17 claim is that you did further investigation on
18 October 26. Are you able to answer that
19 question?

20 THE WITNESS: Yes. Basically, I
21 reached out to the RDO Coordinator and to the ANC
22 on October 26th to ensure that the fees had been

1 paid and that the RDO was going to be resuming.

2 CHAIRPERSON ANDERSON: Okay. Thank
3 you. Do you have another question that you want
4 to ask him, sir?

5 BY MR. ASBEAJ:

6 Q So on October 12th after you knew that
7 I was in violation, what makes you think I was --
8 and Ms. Smith told you on October 26th that I
9 don't have any like violation on settlement
10 agreement and the police or MPD RDO was
11 continued. And there was no outstanding
12 payments, then what makes you think I'm in
13 violation at that time?

14 MS. PHILLIPS: Objection. It calls
15 for speculation.

16 BY MR. ASBEAJ:

17 Q At the time you get there, I'm not in
18 violation.

19 MS. PHILLIPS: He is asking a legal
20 question.

21 CHAIRPERSON ANDERSON: Okay.

22 MR. ASBEAJ: No legal question here.

1 MS. PHILLIPS: And --

2 CHAIRPERSON ANDERSON: And I'm --

3 MS. PHILLIPS: I'm objecting.

4 CHAIRPERSON ANDERSON: -- going to --
5 yeah, no, and I'm -- what's the word, I'm not
6 overruling the word out.

7 MS. PHILLIPS: Sustaining?

8 CHAIRPERSON ANDERSON: I'm sustaining
9 your objection.

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

11 CHAIRPERSON ANDERSON: Therefore, you
12 can't ask that question, because just -- is there
13 another question that you want to ask him?

14 BY MR. ASBEAJ:

15 Q Do you know when the RDO starts, what
16 date he starts, what night, what time it starts
17 at Kiss Tavern?

18 MS. PHILLIPS: I'm objecting as to
19 time.

20 CHAIRPERSON ANDERSON: Well, why don't
21 you --

22 MS. PHILLIPS: On what date and what--

1 MR. ASBEAJ: On October 12.

2 CHAIRPERSON ANDERSON: Yes, why don't
3 you --

4 MR. ASBEAJ: On October 12 when the
5 RDO thinks or you think is going to start.

6 MS. PHILLIPS: Objection to the date.
7 It misstates the testimony. It's October 14th.

8 MR. ASBEAJ: He came October 14th.

9 MS. PHILLIPS: Thank you.

10 CHAIRPERSON ANDERSON: All right.

11 MR. ASBEAJ: Excuse me.

12 CHAIRPERSON ANDERSON: Yes, go ahead.
13 Ask him. Okay.

14 THE WITNESS: So on October 14th, it
15 was my understanding that the RDO would be in
16 place from 11:30 p.m. until 3:30 a.m.

17 BY MR. ASBEAJ:

18 Q And what time did you get there?

19 A 9:55 p.m.

20 Q So there is no way you can figure out
21 if there is RDO or not at that time, because you
22 came early. The RDO starts at 11:30. If you

1 want to investigate at that time, you should have
2 came at 11:30 like any Investigators that show up
3 at that time. Whether I have it or not, for you
4 to come at 9:30, it doesn't make sense to me.

5 And I object, because if you are
6 investigating the time or if we have RDO and
7 everything, you should have came at 11:30 instead
8 of 9:30. By the time you come at 9:30 --

9 CHAIRPERSON ANDERSON: Just stop right
10 there and let him answer the question. So the
11 question that you are asking him is if your --
12 why did he come at 9:30 --

13 MR. ASBEAJ: If he knows that it's
14 going to be 11:30.

15 CHAIRPERSON ANDERSON: So ask him that
16 question. Just ask him the question, sir.

17 BY MR. ASBEAJ:

18 Q Like why will you come at 9:30 if you
19 knew that --

20 CHAIRPERSON ANDERSON: Just ask him.

21 BY MR. ASBEAJ:

22 Q -- it was 11:30.

1 CHAIRPERSON ANDERSON: No, don't --
2 just ask him. Yeah, ask him a question why did
3 he come at 9:30.

4 MR. ASBEAJ: At 9:30.

5 THE WITNESS: Well, I actually came at
6 9:55 p.m. and I spoke with your ABC Manager.
7 Your ABC Manager is in charge of the
8 establishment. He is authorized to superintend
9 the sale, service and consumption of alcohol in
10 your absence. He informed me that there would be
11 no RDO that evening. The RDO would start the
12 following week, which would place you in
13 violation. And then the continuing violations
14 for --

15 MR. ASBEAJ: Objection.

16 THE WITNESS: -- three months without
17 an RDO. That's why I was there.

18 CHAIRPERSON ANDERSON: All right.
19 Then ask the second part of your question then.
20 Why did he not come at 11:30? Ask him that
21 question.

22 BY MR. ASBEAJ:

1 Q Okay. Why would you come --

2 CHAIRPERSON ANDERSON: Why did you not
3 come at 11:30?

4 BY MR. ASBEAJ:

5 Q Why wouldn't you come at 11:30?

6 THE WITNESS: Because I had already
7 been informed by the RDO Coordinator that you
8 would not have an RDO that evening, because it
9 takes two business days to set up. So I went out
10 and spoke with your ABC Manager concerning the
11 situation.

12 BY MR. ASBEAJ:

13 Q And my ABC -- because my ABC Manager
14 told you that we don't have RDO that night?

15 A That's correct.

16 Q That's not true, sir. My manager
17 doesn't know about anything about RDO.

18 CHAIRPERSON ANDERSON: Well, all
19 right.

20 MR. ASBEAJ: I know.

21 CHAIRPERSON ANDERSON: All right. As
22 I said, you are arguing, so you are fine where

1 you -- the first questions you asked, what you
2 are stating now, you can leave that to closing.
3 You can do that as part of your closing.

4 Is there another question specifically
5 that you want to ask him about what's in the
6 report when he testified to that?

7 BY MR. ASBEAJ:

8 Q It says here on the investigation on
9 Thursday, October 26, you visited ANC Norman and
10 everything, that's an argument. And you found
11 out that my outstanding balance is paid and
12 everything. What makes you think I'm like in
13 violation after you write this investigation?
14 You knew already that I paid everything. There
15 was no -- the RDO is going to continue and Ms.
16 Brenda Smith told you that the RDO is going to
17 continue.

18 So what makes you think I'm in
19 violation after October 26th, if you know I paid
20 on October 14th?

21 MS. PHILLIPS: I'm going to object to
22 the prolonged predicate, because that's a

1 multiply compound question.

2 CHAIRPERSON ANDERSON: Well, I know.

3 MS. PHILLIPS: And any answer he
4 gives --

5 CHAIRPERSON ANDERSON: I know.

6 MS. PHILLIPS: -- can be parsed out to
7 one of the many --

8 CHAIRPERSON ANDERSON: I know.

9 MS. PHILLIPS: -- clauses.

10 CHAIRPERSON ANDERSON: So all right.

11 MR. ASBEAJ: I have a question.

12 CHAIRPERSON ANDERSON: Yeah.

13 BY MR. ASBEAJ:

14 Q Do you ask Ms. Brenda or Ms. Brenda
15 why would we stop paying? Why we would stop
16 paying at that time? We you have any --

17 CHAIRPERSON ANDERSON: Just stop there
18 and let him -- give him a chance to answer the
19 question. And if you can answer the question, if
20 you can answer it.

21 THE WITNESS: No. I mean, my
22 understanding, sir, was that the RDO was

1 suspended for, approximately, three months due to
2 non-payment and the fact that the RDO Coordinator
3 could not get in touch with you or your
4 establishment. She didn't allude to why. The
5 fact that it -- the only thing I was informed,
6 payments were not received and contact was not
7 made.

8 CHAIRPERSON ANDERSON: All right. Do
9 you have another question that you want to ask?

10 MR. ASBEAJ: I have an explanation
11 about that why we stopped the --

12 CHAIRPERSON ANDERSON: Well, then when
13 you present your case, you can --

14 MR. ASBEAJ: Okay.

15 CHAIRPERSON ANDERSON: -- give an
16 explanation for that.

17 MR. ASBEAJ: I don't have any further
18 questions.

19 CHAIRPERSON ANDERSON: All right.
20 Does the Board have any questions that they want
21 to ask Mr. Brashears? Yes, Mr. Alberti?

22 MEMBER ALBERTI: Thank you, Mr.

1 Brashears, for your report. I'm going to be very
2 quick. I apologize if I'm going over stuff that
3 you have already told us. I just want to make
4 clear in my mind.

5 So on October 26 you visited -- you
6 spoke with Ms. Brenda Smith. And she -- and Ms.
7 Brenda Smith is the RDO Coordinator for the
8 Metropolitan Police Department. Is that correct?

9 THE WITNESS: Yes, sir.

10 MEMBER ALBERTI: Okay. So to your
11 knowledge, she has all -- she has full knowledge
12 of who has scheduled and who has made payments
13 and who is in good standing with their payments
14 for the RDO program?

15 THE WITNESS: Yes, sir.

16 MEMBER ALBERTI: Okay. Thank you.
17 Did she tell you when the RDO was suspended for
18 non-payment for this license?

19 THE WITNESS: Ms. Smith informed me
20 that Kiss Tavern was suspended from the RDO for
21 non-payment of services on June 12, 2017 and
22 remained suspended through October 12, 2017.

1 MEMBER ALBERTI: Thank you. All
2 right. Did she tell you whether or not Kiss
3 Tavern had scheduled RDO or requested RDO for
4 future dates past October 12th or on or past
5 October 12th?

6 THE WITNESS: She informed me that
7 once she had become aware that it was part of the
8 settlement agreement to have the RDO, that she
9 would schedule the RDO services beginning
10 November 3, 2017.

11 MEMBER ALBERTI: Okay. Do you know
12 from your conversation with her whether or not
13 Kiss Tavern had requested RDO for the dates
14 between October 12th and November 3rd?

15 THE WITNESS: According to Ms. Smith,
16 although they had paid the outstanding balance as
17 of October 12th, they had yet to request or
18 utilize the RDO.

19 MEMBER ALBERTI: Okay. And that was
20 on October 26th, correct?

21 THE WITNESS: That's correct, sir.

22 MEMBER ALBERTI: Okay. I have no

1 further questions.

2 CHAIRPERSON ANDERSON: Any other
3 questions by any of the Board Members? Do you
4 have any specific questions that you want to ask
5 the Investigator based on the specific questions
6 that were just asked by Mr. Alberti? It has to
7 be based on the questions that Mr. Alberti just
8 asked. If it's not, then you can't ask the
9 question.

10 MR. ASBEAJ: I have no questions.

11 CHAIRPERSON ANDERSON: No?

12 MR. ASBEAJ: I don't have any
13 questions.

14 CHAIRPERSON ANDERSON: All right.

15 MS. PHILLIPS: No, thank you, Mr.
16 Chair.

17 CHAIRPERSON ANDERSON: All right.
18 Thank you. Mr. Brashears, thank you for your
19 testimony. You can step down.

20 THE WITNESS: Okay.

21 CHAIRPERSON ANDERSON: Does the
22 Government have another witness?

1 MS. PHILLIPS: The Government does,
2 indeed, Mr. Chair. The Government calls Brenda
3 Smith, Reimbursable Detail Coordinator for MPD.

4 CHAIRPERSON ANDERSON: All right. Can
5 you raise your right hand, please?

6 Whereupon,

7 BRENDA SMITH
8 was called as a witness by Counsel for the
9 Government, and after having been first duly
10 sworn, was examined and testified as follows:

11 THE WITNESS: Yes, I do.

12 CHAIRPERSON ANDERSON: All right.
13 Your witness.

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

15 DIRECT EXAMINATION

16 BY MS. PHILLIPS:

17 Q Good morning.

18 A Hello.

19 Q Would you state and spell your name
20 for the record, please?

21 A Sure. Brenda Smith, B-R-E-N-D-A S-M-
22 I-T-H.

1 Q And what is your occupation, Ms.
2 Smith?

3 A I am the Metropolitan Police
4 Department RDO Coordinator.

5 Q Is that a civilian position or a
6 uniform position?

7 A Civilian.

8 Q How long have you had that job?

9 A 18 months.

10 Q And tell me briefly and the Board and
11 the record what your responsibilities are in that
12 capacity as, I'm just going to call it, RDO
13 Coordinator. Is that fair?

14 A Yes.

15 Q Okay. Responsibilities?

16 A Well, I coordinate with the
17 establishments' request to obtain police presence
18 along with working with the Office of the Chief
19 Financial Officer to coordinate the financial
20 part of the request. And then the other part of
21 the request goes to the District office.

22 Q The District office of what?

1 A Well, each club is in a police
2 district and that district is responsible for
3 obtaining officers to work the clubs.

4 Q Okay. And tell me in general, how
5 does the District person, which I assume is
6 uniformed, that you contract --

7 A Yes.

8 Q -- how does that person find officers
9 to staff an RDO request?

10 A Okay. RDO requests are volunteer
11 officers that are off-duty. So once they get the
12 request from me to fill a detail for an
13 establishment, they send out a notice, a public
14 notice that there are openings for officers to
15 work.

16 Q Are officers allowed to work an RDO
17 detail during their business hours?

18 A No, they are not. They must be off-
19 duty.

20 Q And are they uniformed when they do
21 this RDO?

22 A Yes, they are.

1 Q Okay. Prior to your job as an RDO
2 Coordinator, did you have any other jobs that
3 required this kind of compliance, quality
4 assurance investigation-type work?

5 A Yes. My previous job was a grants
6 manager for Children's Hospital and I create --
7 helped doctors create grants, research grants or
8 other types of grants. Of course with that,
9 because it was federally-funded, I had to ensure
10 that everything that was written in the grant was
11 being complied with.

12 Q Is that one of those jobs where you
13 have to account for every single grant dollar?

14 A Yes, it is.

15 Q And that it is going to the
16 appropriate --

17 A Yes.

18 Q -- source?

19 A Yes.

20 Q Okay. And prior to that, did you have
21 any other job that --

22 A Prior to that, I was with D.C.

1 Government. I worked with OSSE, Office of State
2 Superintendent of Education. And I also worked
3 with Office of Victim Services and Justice Grants
4 Administration. Both -- well, with OSSE, I was
5 the compliance monitor for all public and private
6 -- public and charter schools in the District.

7 And with the grants management
8 position with OVS, Office of Victim Services, and
9 Just Grants Administration, I was the grants
10 manager with that. And one of my grants was
11 actually with ABRA for their underage drinking.

12 Q Okay. So is it fair for me to
13 conclude that you had all the experience you
14 needed to coordinate and assimilate and provide
15 these RDO services with the establishments?

16 A Yes, ma'am.

17 Q All right. When an establishment --
18 does the establishment come to you to request RDO
19 services?

20 A Yes, they do.

21 Q And how do they usually contact you?

22 A We prefer that it's done through

1 emails. In some cases, they will call. Once
2 they call, I will give them my email address and
3 have them put their request in writing.

4 Q Okay. Do you recall a history with
5 Kiss Tavern and an RDO service request?

6 A I do recall that a call came in to me
7 from Kiss. I'm not sure how they received my
8 phone number, but the call did come to me. I
9 spoke with the owner and I told him that he
10 needed to fill out an ABC Agreement, that's an
11 agreement between MPD and the establishment.

12 Q And did he fill out such an agreement?

13 A Yes, he did.

14 MS. PHILLIPS: I'm going to hand you
15 what I have marked as Exhibit A. I have provided
16 that to the establishment and I have two copies
17 for the Board.

18 CHAIRPERSON ANDERSON: I don't have a
19 copy, so I need to see it, yes.

20 MS. PHILLIPS: So I have two copies
21 for the Board. I hope that's enough. Thank you.

22 BY MS. PHILLIPS:

1 Q I have handed you a document which I
2 have marked Exhibit A. Can you identify that
3 document for me, Ms. Smith?

4 A Sure. This is our standard ABC
5 Establishment Reimbursable Program Agreement that
6 we provide to all those that want to obtain RDO
7 services.

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

12 BY MS. PHILLIPS:

13 Q And I'll refer you to page 5. Whose
14 signature is that?

15 A That is the owner's signature.

16 Q Okay. Did he come to your office to
17 sign this agreement?

18 A Yes. Normally, we -- because we are
19 an administrative office, we normally don't allow
20 anyone outside the sworn members to come into the
21 building, but he insisted that he couldn't scan
22 and send it to me and he would love to bring it

1 by. And I allowed him to bring it to me and he
2 brought it to my office and we discussed the
3 agreement.

4 Q Okay. Did -- at any time during your
5 discussion, did he say that he did not understand
6 the agreement that he was signing?

7 A No, he didn't.

8 Q On what date did he sign the
9 agreement?

10 A He signed the agreement on March 30th.

11 Q Of?

12 A I'm sorry, 2017.

13 Q Okay. I know it hasn't gotten to be
14 March 30th yet. All right. Now, with regard --
15 you know, you said this is a standard agreement
16 and really the only issue here is payment, non-
17 payment, suspension of RDO services and
18 resumption of RDO services. Could you explain to
19 me and the Board sort of how all that works
20 starting with -- starting an RDO Unit.

21 A All right. So we have establishments
22 that have alcohol licenses that either they can

1 voluntarily request reimbursable service or they
2 are mandated by the Board to have it. They come
3 to me. I give them the application. I give them
4 some other points on the cost, the time of
5 service, the time and ABRA's subsidy rates.

6 Then they decide what date and the
7 time that they want to have the services. Once
8 that is established, I complete a form that
9 states all that information. It goes to the
10 District. It also goes to the Accounting
11 Department of OCFO.

12 Once the District receives the notice,
13 as mentioned earlier, they obtain officers to
14 work those details. When an officer goes to the
15 establishment, he takes along an overtime sheet
16 that is to be signed in and out by the ABC
17 Manager or the owner of the club. That officer
18 takes that form back to the District, then he
19 submits his overtime for the time he worked the
20 establishment and then he is paid.

21 Once he is paid, his pay is in the
22 system, it generates to the OCFO's office and

1 from that creates an invoice. The invoice goes
2 to the establishment. They have 30 days to pay
3 it. On a weekly basis, the OCFO sends me an open
4 payables list. I scrub the report because the
5 report has other department open payables in it,
6 so I just narrow it down to just the RDO
7 services.

8 I go through and I mark what is
9 current, what is over 31 days old and so forth
10 and so on. When a club is 31 days over, I send
11 out delinquency notices and I list each invoice
12 that is overdue. I send it to the club owners or
13 their designated people and let them know it's
14 delinquent and I give them an additional three
15 days to pay the invoice.

16 And in the email I let them know if
17 it's not paid by that date, they will be
18 suspended.

19 Q All right. So if they are suspended
20 and you have provided them notice, do you
21 continue to contact them to see if they still
22 want RDO services or no?

1 A I don't.

2 Q All right. And in this particular
3 case, did -- do you have any recollection of how
4 often you contacted the owner or somebody from
5 that establishment?

6 A Well, I keep a file, electronic file
7 on all contacts between establishments, whether
8 they decide to take RDO or not. And I do have my
9 records show that there were several times that I
10 did during the -- June 12th through October, I
11 had sent reminders to the owner that they were
12 suspended. I did not hear any response, so I
13 sent a welfare email, just trying to find out,
14 you know, if he was all right. Was there
15 something that I could do to assist him?

16 Q Things like that, yeah.

17 A Yes.

18 Q Well, did you prepare for me an
19 outline of all your contacts with regard to RDO
20 services for this establishment from when you
21 first had contact with the owner until --

22 A Yes, I did.

1 Q All right. I'm going to hand you what
2 is marked Exhibit B.

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

7 MS. PHILLIPS: I have one copy for the
8 Board.

9 BY MS. PHILLIPS:

10 Q Is that the list you prepared of
11 contacts?

12 A Yes, I did prepare this.

13 Q And that's the list you prepared that
14 you sent to me?

15 A Yes.

16 Q All right. I see that it is entitled
17 "MPD and Kiss Tavern History, March 8, 2017
18 through February 26, 2018," is that fair?

19 A Yes, it is.

20 Q Does it contain a list of all of your
21 contacts with this establishment?

22 A Yes.

1 Q Because I see -- didn't he sign this
2 agreement? Let me check again what you told me.
3 On March 30th, so your first contact with him,
4 according to this, was March 8th. Is that the
5 telephone call you referenced?

6 A Yes.

7 Q Okay. So rather than go through each
8 of these dates, because that's -- it's too --
9 it's one and a half pages, single spaced, 54
10 items, can you tell me the basis about when it
11 started the first time, when it was suspended,
12 when it was started again, if it was started
13 again, when it was suspended again, if it was
14 ever suspended again, sort of give me that
15 history. Not the whole 54 --

16 A Okay.

17 Q -- items.

18 A So on March 30, 2017, the owner signed
19 the agreement and he wanted detail to start on
20 March 31st. While we only do two business days'
21 notice, I still -- because he was new, I tried to
22 get him detail services for that Friday and

1 Saturday night.

2 Our officers had been assigned and it
3 was just too late to ask officers to work detail
4 for that club.

5 Q Before you go further on that point,
6 let's follow-up. Was Mr. -- was the owner aware
7 that you had this two business day minimum before
8 you could provide services? Was he on notice
9 about that?

10 A It is in the contract agreement on
11 page 2, Section 2, Requesting a Detail. Along in
12 the middle it says "Request for detail shall be
13 made as far in advance as possible, but shall be
14 made a minimum of two business days in advance.
15 Requests made less than two business days in
16 advance will not be considered under any
17 circumstances. MPD needs the appropriate amount
18 of time to find off-duty volunteers to fill the
19 detail."

20 Q So if he -- so your attempts to
21 provide him an RDO in less than 24 hours was just
22 sort of citizen courtesy?

1 A Courtesy, yes.

2 Q Okay. And I don't mean to put words
3 in your mouth, so if that wasn't what it was, you
4 tell me.

5 A Courtesy.

6 Q All right. But you were unable to do
7 so and you are backed up by the contract which he
8 had signed. Is that fair?

9 A That is.

10 Q So when was the RDO started
11 officially?

12 A The RDO officially started the first
13 weekend in April. I'm sorry I don't have that
14 date.

15 Q That's all right. When was it first
16 suspended?

17 A The first suspension, let's see, was
18 June 12th.

19 Q And was that for lack of payment?

20 A Yes.

21 Q And the -- you sent the appropriate
22 notices to the --

1 A I sent --

2 Q -- establishment?

3 A -- I'm sorry. I sent them a
4 delinquency notice on May 22nd.

5 Q And was the RDO reinstated?

6 A It was reinstated not until October
7 12. Well, the payment came in on October 12th.

8 Q So on October 3rd, No. 25, it says
9 "Kiss Tavern remains suspended." So he had not
10 paid as of that date.

11 A Right.

12 Q Is that fair?

13 A That is so.

14 Q And this is all 2017, correct?

15 A Yes.

16 Q All right. And so October 12 is when
17 he provided the payment. When -- what day is
18 that?

19 A It was most likely a Thursday.

20 MR. ASBEAJ: Thursday.

21 MS. PHILLIPS: Okay, good we seem to
22 have agreement here.

1 BY MS. PHILLIPS:

2 Q And he wanted the detail for when?

3 A The very next day, Friday and
4 Saturday.

5 Q And you were unable to do that by
6 contract. Did you try?

7 A I did actually send an email to the
8 Club Zone Coordinator, which is the District
9 Office, and I asked them, I knew it was short
10 notice, was it possible to get him detail
11 services.

12 Q And you were unable to do so?

13 A Correct.

14 Q Okay. Was there a subsequent time
15 when the RDO services were suspended again?

16 A They were suspended again on January
17 10th.

18 Q And this --

19 A I'm sorry, January 9, 2018.

20 Q Okay. All right. And the rest of
21 this information is subsequent to the events that
22 we are here to talk about today. Is that

1 correct?

2 A Yes.

3 Q Does the contract that you have with
4 establishments require that your office be
5 informed if the RDO is canceled for any reason?

6 A No, but what I have done, because that
7 is an issue, it's a concern, so I have asked the
8 Districts that when they cannot fill a detail
9 that they provide me notice of such.

10 Q Is the establishment required to
11 notify you as time certain when they no longer
12 require an RDO detail?

13 A They are.

14 Q And what time period does that --

15 A We asked as far in advance as
16 possible, but we require a minimum of two days'
17 notice.

18 Q And is that in the contract? I assume
19 it is.

20 A Yes, it is.

21 Q I see it on page 2. Is that correct?

22 A That is correct.

1 Q All right. There is some writing on
2 the very last page.

3 A Yes.

4 Q Whose writing is that?

5 A That is my writing.

6 Q And why is that writing there?

7 A When the owner came to me, I had to
8 ask him --

9 CHAIRPERSON ANDERSON: What document
10 are you referring to?

11 MS. PHILLIPS: I have been on Exhibit
12 A. I'm sorry. Now, I have gone back to Exhibit
13 B. I'm going back and forth between B and A.
14 One is the chronology, the other is the contract.

15 CHAIRPERSON ANDERSON: I don't --
16 well, what writing are you -- what writing on
17 Exhibit A are you talking about? Oh, you mean
18 the -- that writing on the back of --

19 MS. PHILLIPS: Yes, the last page. I
20 thought I referenced it. I apologize if I did
21 not.

22 CHAIRPERSON ANDERSON: Yes, I saw --

1 I wasn't sure I saw writing that I didn't see.
2 Go ahead.

3 MS. PHILLIPS: Well, I called out
4 writing and the rest is the contract, so -- all
5 right. So I think she was explaining.

6 CHAIRPERSON ANDERSON: Okay. All
7 right. I didn't know. I couldn't see the
8 writing, but now I do, so I apologize.

9 MS. PHILLIPS: No worries.

10 CHAIRPERSON ANDERSON: Right.

11 THE WITNESS: So in order to provide
12 detail services, we need to know how many
13 officers the owner wants, the dates and the time
14 that he wants to have detail.

15 So he wanted to have two officers on
16 Friday and Saturday nights from 11:30 to 2:30.

17 BY MS. PHILLIPS:

18 Q And so you wrote that down so that you
19 would have a written reminder?

20 A Yes.

21 Q Is that fair?

22 A That's fair.

1 Q Did you know at the time this contract
2 shown in Exhibit A signed by the owner, whether
3 or not this was an ABRA Board Order, an ABRA
4 requirement or a voluntary request?

5 A No. He never told me. He never
6 informed me that it was an ABRA mandate.

7 Q Okay. So do you -- did you ever learn
8 that?

9 A I didn't learn it until October 2017
10 that it was an ABRA mandate. And when I learned
11 it, I sent him an email letting him know that I
12 had discovered that and he hadn't informed me of
13 it. And so we would make sure that he had detail
14 according to the mandate.

15 Q And was that the contact with
16 Investigator Brashears that he --

17 A Yes.

18 Q -- stated in his testimony?

19 A Yes.

20 Q Okay.

21 MS. PHILLIPS: I have no further
22 questions of this witness, Mr. Chair.

1 CHAIRPERSON ANDERSON: Do you have any
2 questions?

3 MS. PHILLIPS: But I would like to
4 move Exhibit A and Exhibit B into evidence.

5 CHAIRPERSON ANDERSON: Do you have any
6 objection, sir?

7 MR. ASBEAJ: Is this --

8 CHAIRPERSON ANDERSON: No, they are
9 two different. I'm going to give you an
10 opportunity to ask, to cross-examine her. The
11 question that I'm asking you now is that the
12 Government wants to move --

13 MR. ASBEAJ: No objection, sir.

14 CHAIRPERSON ANDERSON: Huh?

15 MR. ASBEAJ: No objection.

16 CHAIRPERSON ANDERSON: Okay. So
17 moved.

18 (Whereupon, the above-
19 referred to documents were
20 received into evidence as
21 Government Exhibit Nos. A
22 and B.)

1 CHAIRPERSON ANDERSON: Go ahead, sir,
2 you can ask her questions now based on the
3 testimony she just gave.

4 MR. ASBEAJ: Yeah.

5 CROSS-EXAMINATION

6 BY MR. ASBEAJ:

7 Q On March 30th, what happened? Can you
8 tell me what happened on March 30th when I come
9 to your office?

10 A On March 30th you brought me the ABC
11 agreement and we talked and then I asked you,
12 before you left, what time and days that you
13 wanted your detail services. And that was when I
14 wrote them on the last page or the back of the
15 page.

16 Q And on March 30 is when I approach you
17 and when did the service start with the RDO at
18 Kiss Tavern?

19 A So you came to me in the middle of the
20 week, if not -- I'm sorry, I don't -- I can't
21 recall when March 30th, what day, that is. But
22 you wanted detail to start on March 31st, so that

1 makes me think that the 30th was a Thursday. And
2 so that was absolutely too late to get detail for
3 that weekend.

4 Q On April 22nd, what happened in the
5 report that says Kiss Tavern incident?

6 A You called me. First, you sent me an
7 email stating that you didn't have any reason to
8 have RDO services, because MPD wasn't taking care
9 of you. And I asked you what happened. And I
10 believe later on we had a telephone communication
11 on what happened.

12 Q Can you explain what happened?

13 A You told me --

14 MS. PHILLIPS: I'm going to object to
15 relevance.

16 CHAIRPERSON ANDERSON: Why is it
17 relevant, sir?

18 MR. ASBEAJ: It's relevant because it
19 will explain why for me not to pay the RDO that
20 night. I was suspended.

21 CHAIRPERSON ANDERSON: I'll overrule
22 the objection. Just answer the question, ma'am,

1 if you can.

2 THE WITNESS: You had informed me that
3 there was a patron inside your establishment that
4 was insisting your DJ play his music. And when
5 the DJ told him he couldn't accommodate him the
6 entire night, that the patron got upset, punched
7 the DJ in the nose and, I believe, punched you in
8 the nose.

9 You and your security sent the man
10 outside. You had escorted him outside to MPD.
11 There was a conversation. MPD whether the guy
12 ran off on his own or if MPD allowed him to walk
13 off, he left the scene.

14 The patron then returned, was allowed
15 back in your establishment.

16 MR. ASBEAJ: No, was outside.

17 CHAIRPERSON ANDERSON: Let her, she
18 has to --

19 THE WITNESS: My recalling is that he
20 got back inside and MPD did not do anything about
21 it. I asked you to let me investigate what
22 happened. I talked with the lieutenant that was

1 responsible for sending out officers to locations
2 for RDO. I told him what your concern was. He
3 investigated and the officers both were
4 reprimanded for derelict of duties and what we
5 call an IS Investigation.

6 And as I said, both officers were
7 reprimanded and the charge is in their personnel
8 folders.

9 BY MR. ASBEAJ:

10 Q And do you charge me for that, two
11 police officers?

12 A We did charge you, because two
13 officers did show and two officers did work and
14 you signed there on the time agreement that they
15 worked.

16 Q I signed it? When did I sign it?

17 A I don't have that in front of me.

18 Q We always sign it before.

19 MS. PHILLIPS: Objection.

20 CHAIRPERSON ANDERSON: Remember you
21 are asking her questions, sir.

22 MR. ASBEAJ: And she said I don't

1 know, so I have to explain it.

2 CHAIRPERSON ANDERSON: No. You can't
3 explain.

4 MR. ASBEAJ: All right.

5 CHAIRPERSON ANDERSON: So you can't --
6 remember, this is cross-examination. You are
7 asking questions, so if you can ask her like you
8 asked her why --

9 BY MR. ASBEAJ:

10 Q So usually when we sign the paper --

11 MS. PHILLIPS: Objection.

12 BY MR. ASBEAJ:

13 Q -- you know for MPD counts.

14 MS. PHILLIPS: Objection to the extent
15 it calls for speculation on her part.

16 THE WITNESS: Well, actually --

17 CHAIRPERSON ANDERSON: Hold on.

18 MR. ASBEAJ: That's because she told
19 me she signed it.

20 CHAIRPERSON ANDERSON: Hold on, hold
21 on. All right.

22 MR. ASBEAJ: I have to object.

1 CHAIRPERSON ANDERSON: When the
2 lawyers and your lawyer -- when the lawyers are
3 objecting, then the witness has to be quiet. So
4 the witness can't answer the question until I
5 tell the witness to answer the question.

6 The objection is that it is asking for
7 speculation and I'm going to overrule the
8 objection. And the reason I'm going to overrule
9 the objection is it appears that the witness is
10 able to answer it and she was about to.

11 MS. PHILLIPS: Right. And that's why
12 I said to the extent it calls for.

13 CHAIRPERSON ANDERSON: All right. So
14 answer the -- if you can answer the question,
15 ma'am, answer the question. If you can't, then
16 you just say I can't give you an answer. So ask
17 her again.

18 THE WITNESS: Well, I actually did
19 print out the overtime sheet and you signed the
20 officer in at 11:30 and out at 2:30.

21 MR. ASBEAJ: So when you --

22 CHAIRPERSON ANDERSON: Hold on. I

1 think -- do you have an objection?

2 MS. PHILLIPS: No, I don't have an
3 objection to that. She is just reading from a
4 document that has not been identified in the
5 record and perhaps we need to make a copy of it
6 and make it an exhibit.

7 CHAIRPERSON ANDERSON: All right. And
8 I will ask, ma'am, that I do not need you to read
9 from any document. If it's -- if the document is
10 not in the record, you cannot testify. You have
11 to testify from your personal knowledge.

12 THE WITNESS: Okay.

13 CHAIRPERSON ANDERSON: If you need
14 something to refresh your recollection, then your
15 attorney needs to provide that to you. All
16 right. So moving right along. So now if at some
17 point that, Ms. Phillips, you need to identify
18 this document and move it into the record, then
19 you can. But so all right, so let's move on from
20 there.

21 Do you have another question that you
22 want to ask?

1 MR. ASBEAJ: I want to ask her again,
2 because she didn't answer the question.

3 CHAIRPERSON ANDERSON: What was the
4 question that she did not answer, sir?

5 BY MR. ASBEAJ:

6 Q You say I signed the paper.

7 A Well, I'm confused.

8 Q Because you told me --

9 A Am I supposed to answer that?

10 CHAIRPERSON ANDERSON: All right. If
11 you -- you have to answer it from your
12 recollection. So if you don't have any personal
13 recollection, then you answer the question you
14 don't know.

15 THE WITNESS: I don't know.

16 CHAIRPERSON ANDERSON: All right.

17 BY MR. ASBEAJ:

18 Q When you say that, you say I asked you
19 if I paid those officers that night and you said
20 yes.

21 A Yes, you did pay the officers.

22 Q Because I --

1 A The invoice.

2 Q -- you said you signed the paper.

3 Because I signed the paper that's what you told
4 me. Because I signed it first, then they got
5 paid. That's what the process is.

6 A Yes.

7 Q Well, every -- well, when did they
8 come? When the others they come, when did they
9 give out the paper when they approach us every
10 night?

11 MS. PHILLIPS: Objection. Asked and
12 answered.

13 MR. ASBEAJ: She didn't answer that.
14 She didn't answer.

15 CHAIRPERSON ANDERSON: I'll overrule
16 the objection. If you can answer the question --

17 BY MR. ASBEAJ:

18 Q Every night when they approach us,
19 that's when -- when do we sign the paper, that's
20 what I'm asking you. They bring a paper every
21 night like you said to clock in.

22 A The process --

1 Q Yeah.

2 A -- is that when the officer comes to
3 your location, he brings an overtime sheet with
4 all the club information on it, including his
5 name. At the top it states the time that he is
6 supposed to start and end. There is a section in
7 -- on the form that the ABC Manager and/or the
8 owner of the club signs the time the officer came
9 in and the time the officer leaves.

10 Q So when do they usually come?

11 A At the scheduled time.

12 Q What is it? What time is it?

13 A Your time is 11:30 to 2:00.

14 Q So when did -- on April 22nd, when did
15 the incident -- what time did this incident
16 happen?

17 A You didn't tell me what time the
18 incident happened.

19 Q It's in the report. You stated you
20 saw the report --

21 A I'm not looking at it.

22 Q -- on Kiss Tavern.

1 CHAIRPERSON ANDERSON: Sir, sir, all
2 right.

3 MS. PHILLIPS: I'm going to have to
4 have a continual objection to relevance.

5 MR. ASBEAJ: This is relevant.

6 MS. PHILLIPS: Discuss the incident;
7 she is giving the information --

8 MR. ASBEAJ: If you give me time, I
9 can come to that.

10 MS. PHILLIPS: Excuse me, excuse me.

11 CHAIRPERSON ANDERSON: Well, hold on.
12 Go ahead. Hold on. Go ahead, Ms. Phillips.

13 MS. PHILLIPS: She is giving the
14 information about something I have objected to as
15 irrelevant. You have overruled me. And now he
16 is continuing to go down a path when she is
17 giving the generalization about what she knows
18 from him and from her investigation happened.
19 She didn't say she saw any documents. And that's
20 where we should leave it --

21 CHAIRPERSON ANDERSON: All right. And
22 I'm going to --

1 MS. PHILLIPS: -- pointing to second
2 objection.

3 CHAIRPERSON ANDERSON: -- all right.
4 And I'm going to sustain the objection.

5 MR. ASBEAJ: She did say --

6 CHAIRPERSON ANDERSON: Well, let's --
7 all right. I did give you some leeway. Okay?
8 You are --

9 MR. ASBEAJ: I'm coming to the point,
10 that's why it's going to take --

11 CHAIRPERSON ANDERSON: No, no. Okay.
12 When we do -- when you cross-examine, you are
13 supposed to cross-examine a witness based on the
14 testimony that they just testified to.

15 I gave you some leeway to -- which I
16 probably in retrospect should not, because, as
17 Ms. Phillips said, it was not relevant.

18 Now, you are going down a road which
19 is not -- it is not relevant to the point for
20 what -- for why you are now here, for why you are
21 here today.

22 MR. ASBEAJ: It is relevant, sir,

1 because just give me one time. It's very
2 relevant.

3 CHAIRPERSON ANDERSON: No. Why is it
4 relevant?

5 MR. ASBEAJ: Because we're talking
6 about payments that have been relevant and have
7 been valid, the settlement agreement has been --
8 that's what I was told. So the payment was not
9 paid, because of that incident. That incident
10 happened. I did -- they didn't give me service.

11 CHAIRPERSON ANDERSON: All right.

12 MR. ASBEAJ: They still charge me for
13 that incident.

14 CHAIRPERSON ANDERSON: All right.

15 MR. ASBEAJ: So I was telling the --
16 Ms. Brenda I was not supposed to be paying that
17 day, that night. And I have many questions, sir,
18 if you give me some time, because I've been
19 emailing her and we have been contacting her.

20 CHAIRPERSON ANDERSON: All right. But
21 -- okay. If you have been email -- do you have
22 those documents that you are going to rely on? I

1 mean, are these documents that you have?

2 MR. ASBEAJ: She just stated made a
3 phone call. I was going to ask her.

4 CHAIRPERSON ANDERSON: No, you just
5 said you have been emailing her. So if you have
6 been emailing her, did you bring these documents
7 to use as -- to present your case?

8 MR. ASBEAJ: I don't bring it. I'm
9 sure she would deny it like, because --

10 CHAIRPERSON ANDERSON: No. That's not
11 what she did. You are making allegations. You
12 said you have been emailing someone. And so you
13 know when you come to Court, if you have
14 documents that support your case, you bring them.
15 So therefore, you would print the emails out and
16 bring them and then you would present this as
17 part of -- when you are presenting your case to
18 say these are emails that I'm having, that I have
19 these emails. These are the correspondence that
20 I have had with her.

21 The same way the Government just gave
22 -- as you see that Ms. -- the Government

1 presented Exhibit B. And as Exhibit B has all
2 these dates that contacts were made.

3 You could have done the same thing in
4 the sense of bringing and presenting your case.
5 You bring these, because when you have a hearing,
6 you bring all documents and witnesses that you
7 are going to rely on to support your case.

8 And so that's one of the reasons why
9 I'm asking, since you said you have emails,
10 because you can say you have emails, she doesn't
11 know -- they are not in the record.

12 MR. ASBEAJ: She --

13 CHAIRPERSON ANDERSON: So she can say
14 I've never receive an email from you. And you
15 can say, but I did. And then I'm going to say
16 she said she never got an email. You didn't --
17 you don't have it. She doesn't have it, so it's
18 not in the record. So it doesn't exist.

19 MR. ASBEAJ: Only she say she got it.

20 CHAIRPERSON ANDERSON: But where?

21 MR. ASBEAJ: We have emails.

22 CHAIRPERSON ANDERSON: We have to move

1 on from this, sir. We have -- this is --

2 MR. ASBEAJ: I'm not a lawyer, that's
3 why.

4 CHAIRPERSON ANDERSON: I know that you
5 are not a lawyer.

6 MR. ASBEAJ: I'm just representing
7 myself.

8 CHAIRPERSON ANDERSON: And I've given
9 you a lot of leeway.

10 MR. ASBEAJ: I understand.

11 CHAIRPERSON ANDERSON: If you were a
12 lawyer --

13 MR. ASBEAJ: I understand. I
14 appreciate it, yes.

15 CHAIRPERSON ANDERSON: -- we would not
16 have been having all these conversations. Ms.
17 Phillips would have objected. I would have
18 sustained most of her objections and we would
19 have moved on.

20 So if you were a lawyer, we would not
21 be having this conversation, because I'm a lawyer
22 and there are expectations that I have of

1 lawyers. And so I'm not going to allow you to
2 learn the craft here. So you are not a lawyer.
3 Both myself and Ms. Phillips, she has been very
4 understanding, because she has not made a whole
5 lot of objections, which she could. She has only
6 made objections that she thinks that okay, I need
7 to object for the record.

8 But there are a lot of objections she
9 could have made and she has not made it.

10 MR. ASBEAJ: Okay.

11 CHAIRPERSON ANDERSON: So as she is
12 made a continuing objection that this line of
13 questioning is irrelevant and I am sustaining her
14 objection that it's not -- that we are not going
15 to go down this road. So if you have a different
16 question to ask on a different issue, you can
17 ask. But I'm not -- you cannot ask -- you have
18 to move away from this subject, sir.

19 MR. ASBEAJ: I'll make sure.

20 BY MR. ASBEAJ:

21 Q Do you think those police officers
22 should be paid that night?

1 MS. PHILLIPS: Objection.

2 CHAIRPERSON ANDERSON: I'm sustaining
3 the objection, sir. It's the same line. So you
4 have to move on to a different -- if you have
5 another question on another issue, then you can
6 ask. And again, the questions that I told you
7 that you need to ask her are questions that came
8 up during direct examination. And that was not a
9 question that came up during the direct
10 examination.

11 BY MR. ASBEAJ:

12 Q What -- on April 22nd, while we talked
13 and incident had happened and what was like the
14 report from the RDO, because it says here RDO
15 called and notified 3D Club Zone Coordinator of
16 incident. And on the April 26, it says here 3D
17 opened an investigation of officers. And what
18 was the result?

19 MS. PHILLIPS: Objection. Asked and
20 answered.

21 MR. ASBEAJ: This is the evidence that
22 we --

1 CHAIRPERSON ANDERSON: I agree with
2 you and the question was appropriate and she
3 answered the question to say that they did an
4 investigation and there is -- they were charged
5 with dereliction of duty.

6 MS. PHILLIPS: Dereliction of duty.

7 CHAIRPERSON ANDERSON: And their
8 personal file -- that is in their personal file.
9 So she has answered the question already. So
10 move on. If there is something else you want to
11 ask about this, on this chronology, you're fine.
12 But that question was already asked and answered,
13 so I am sustaining the objection.

14 MR. ASBEAJ: I don't think it's the
15 same question.

16 CHAIRPERSON ANDERSON: I don't want to
17 get frustrated, so you can ask other -- the
18 objection she just made was asked and answered.
19 Meaning that you asked the question already and
20 she already answered it. So that's why I'm --
21 she doesn't need to answer it again.

22 If there are other questions that you

1 need to ask on this chronology, you can ask them,
2 sir.

3 BY MR. ASBEAJ:

4 Q When did Mr. Brashears contacted you?

5 A Pardon?

6 MS. PHILLIPS: I'm sorry, I didn't
7 understand.

8 BY MR. ASBEAJ:

9 Q When did Investigator contacted you
10 about Kiss Tavern?

11 A Let's see here.

12 CHAIRPERSON ANDERSON: What document
13 are you looking at, Ms. Smith? You can only look
14 at -- if there is -- there is A and B or C that
15 is in the record, so if that's not the document
16 you are looking at, please, do not look at any
17 document in front of you.

18 THE WITNESS: It is -- I'm looking at
19 the second one.

20 MS. PHILLIPS: What exhibit is that?

21 CHAIRPERSON ANDERSON: What exhibit --

22 THE WITNESS: Exhibit B.

1 CHAIRPERSON ANDERSON: You're looking
2 at Exhibit B.

3 THE WITNESS: Yes.

4 CHAIRPERSON ANDERSON: Okay.

5 THE WITNESS: On October 4th.

6 BY MR. ASBEAJ:

7 Q And what did he say?

8 CHAIRPERSON ANDERSON: What's the
9 question, sir?

10 MR. ASBEAJ: What did he say?

11 CHAIRPERSON ANDERSON: All right.

12 THE WITNESS: I don't recall the
13 detail, but it was most likely was Kiss having
14 RDO services?

15 BY MR. ASBEAJ:

16 Q And your answer was?

17 A That Kiss was suspended for non-
18 payment.

19 Q That was on the 4th?

20 A October 4, 2017.

21 Q And when did he come back to you?

22 A Oh, let's see here, I contacted him on

1 October 12th to let him know that Kiss had paid
2 in full. However, MPD did not have enough time
3 to provide Kiss detail services.

4 Q So October 12th was Thursday?

5 A Yes.

6 Q So you had 48 hours to accommodate the
7 service.

8 A Two business days' notice.

9 Q Which is Thursday and Friday.

10 A No, that's not.

11 Q It is Thursday and Friday. You just
12 told me.

13 MS. PHILLIPS: Objection to arguing
14 with the witness.

15 CHAIRPERSON ANDERSON: Yes, sir, just
16 ask her -- if you want to ask her a question,
17 just ask her a question and move on.

18 MR. ASBEAJ: I did ask her a question,
19 but she doesn't -- say I don't know.

20 CHAIRPERSON ANDERSON: Okay. So move
21 on.

22 BY MR. ASBEAJ:

1 Q On October 12 --

2 CHAIRPERSON ANDERSON: Okay. Let --
3 all right. When you ask --

4 MR. ASBEAJ: I'll ask again.

5 CHAIRPERSON ANDERSON: No. When you
6 ask the witness a question, you ask a question.
7 If they don't answer the way that you want them
8 to answer it, that's your fault.

9 MR. ASBEAJ: Okay.

10 CHAIRPERSON ANDERSON: That's because
11 you didn't ask it to them properly.

12 MR. ASBEAJ: All right.

13 CHAIRPERSON ANDERSON: And so but you
14 can't keep on asking the same question because
15 she didn't answer it the way -- it's your fault
16 because you didn't ask the question the way --
17 you need to frame the question that you put her
18 in a box so she can only answer it like normally
19 when you do cross-examination and you want people
20 to give yes or no. You don't want -- you want to
21 put them in a box, so they don't have a whole lot
22 of explanations to give. Okay?

1 BY MR. ASBEAJ:

2 Q On October 12th did you tell Mr.
3 Brashears that all the delinquent payment was
4 made?

5 A Yes.

6 Q No more questions.

7 CHAIRPERSON ANDERSON: Do you have any
8 other questions to ask?

9 MR. ASBEAJ: No, sir.

10 CHAIRPERSON ANDERSON: All right.
11 Thank you. Ms. Phillips?

12 REDIRECT EXAMINATION

13 BY MS. PHILLIPS:

14 Q How long --

15 MEMBER ALBERTI: Does the Board get to
16 ask questions?

17 CHAIRPERSON ANDERSON: Hold on, hold
18 on, hold on, hold on. This has been going on so
19 long, so all right. The Board never asked Ms.
20 Phillips questions. All right.

21 MS. PHILLIPS: The Board has not asked
22 Ms. Smith any questions.

1 CHAIRPERSON ANDERSON: All right. So

2 --

3 MS. PHILLIPS: You have asked me a lot
4 of questions, but you haven't asked Ms. Smith any
5 questions.

6 CHAIRPERSON ANDERSON: Okay. So I
7 apologize. It's the Board's opportunity to ask
8 her questions and then I'll go back through to
9 counsel. I apologize. It has been so long that
10 I forgot where we were in the proceeding. So are
11 there any questions by the Board? Yes, Mr.
12 Alberti?

13 MEMBER ALBERTI: Okay. So whew, I'll
14 try to be quick here. So October 12th --

15 CHAIRPERSON ANDERSON: You are reading
16 from where?

17 MEMBER ALBERTI: I am from Exhibit B.

18 CHAIRPERSON ANDERSON: All right.

19 MEMBER ALBERTI: It doesn't matter, it
20 was testified to.

21 CHAIRPERSON ANDERSON: No, but I
22 wanted to make sure that everybody knows where

1 this question is coming from.

2 MEMBER ALBERTI: All right. So on
3 October 12th, you received an email from Kiss
4 stating that the payment was made in full,
5 correct?

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: Do you verify that?
8 Did you verify that? I mean, do you know when
9 the payment was made yourself? Do you -- have
10 you personal knowledge of when the payment was
11 made?

12 THE WITNESS: The process is that when
13 the establishment is paying the invoice, they
14 have to go to, at the time, 300 Indiana Avenue.
15 They can either mail it or hand-deliver it. So
16 they deliver or they take it to the Accounting
17 Department. The Accounting Department allows
18 them to take a copy of the check and they stamp
19 the date that the payment came through.

20 When that happens, we normally, my
21 office, does not get notification of that until
22 the next business day. So as a courtesy to the

1 establishment, we tell them when you go and make
2 the payment and the stamp is on the paper, email
3 it to us. Do a snapshot of it and send it to us
4 and then we will note your account and we will
5 move forward from that.

6 And that is what the owner provided me
7 was a copy of that in the email.

8 MEMBER ALBERTI: Great, great, I just
9 wanted to make sure. Okay. On May 20th when you
10 notified Kiss Tavern of the delinquency of unpaid
11 invoices, much was made of not paying for this
12 one day when there was an incident, of which was
13 owed, how much was delinquent? What was the
14 amount of delinquent fees on May 2nd when you
15 sent the notice to Kiss Tavern?

16 THE WITNESS: I don't recall offhand,
17 but it -- I don't recall.

18 MEMBER ALBERTI: Okay.

19 MS. PHILLIPS: Excuse me, just to
20 correct the record; I think it is May 22nd.

21 MEMBER ALBERTI: May 22nd, yes. I'm
22 sorry.

1 MS. PHILLIPS: Okay.

2 MEMBER ALBERTI: Thank you.

3 MS. PHILLIPS: No worries.

4 MEMBER ALBERTI: Do you know whether
5 it would have been an amount for more than one
6 day or just one day?

7 THE WITNESS: So invoices are based on
8 actual time the officers worked. So it could
9 have been one officer on several different dates,
10 within a two week period, because officers are
11 paid every two weeks. So it's really hard to say
12 if it was just one date and two officers or
13 several dates, one officer or several dates and
14 two officers.

15 MEMBER ALBERTI: Okay. Boy, so do you
16 know how many -- oh, do they -- you're talking
17 about one officer. Do they normally assign just
18 one officer for RDO?

19 THE WITNESS: No. They normally
20 assign a minimum of two officers. However,
21 sometimes an officer will submit his overtime
22 late.

1 MEMBER ALBERTI: Okay.

2 THE WITNESS: And it --

3 MEMBER ALBERTI: Yes, all right. So
4 okay. So you don't remember the amount of
5 delinquent -- you don't remember by how much it
6 was delinquent, correct?

7 THE WITNESS: That is correct.

8 MEMBER ALBERTI: Between May -- March
9 30th and April 22nd, do you remember whether Kiss
10 had paid -- had made any payments?

11 THE WITNESS: I can't recall.

12 MEMBER ALBERTI: Okay. Thank you. Do
13 you know when the first date of the RDO was for--
14 they signed the agreement on March 30th. Do you
15 know when the first dates of RDO were assigned to
16 Kiss?

17 THE WITNESS: I don't have the date,
18 but I'm pretty sure it was the first weekend in
19 April that they were provided RDO service.

20 MEMBER ALBERTI: Okay. So that would
21 have been the first weekend that would have given
22 you two days' notice?

1 THE WITNESS: Correct.

2 MEMBER ALBERTI: After the 30th?

3 THE WITNESS: Yes.

4 MEMBER ALBERTI: Thank you. I have no
5 further questions.

6 CHAIRPERSON ANDERSON: Any other
7 questions by any other Board Members? All right.
8 Hearing none, all right, sir, now you now can go
9 and ask her a question based on, solely, the
10 questions that Mr. Alberti asked. Do you have
11 any questions?

12 MR. ASBEAJ: No.

13 CHAIRPERSON ANDERSON: Ms. Phillips?

14 MS. PHILLIPS: Now, my understanding
15 of my duty is that I get to ask questions based
16 on his questions and based on your questions.

17 CHAIRPERSON ANDERSON: Well --

18 MS. PHILLIPS: I want to make sure
19 before I start doing what I believe I'm supposed
20 to be doing that you agree with me.

21 CHAIRPERSON ANDERSON: I mean, well,
22 it's your re -- well, I mean, I guess --

1 MS. PHILLIPS: It's called redirect,
2 I think.

3 CHAIRPERSON ANDERSON: -- I mean, but
4 that's recross of -- I'm sorry, redirect, so yes,
5 yes.

6 MS. PHILLIPS: It's my witness. I get
7 to redirect him after he crosses him.

8 CHAIRPERSON ANDERSON: Yes, yeah, so
9 you are doing redirect of the questions that he
10 had asked and I guess now that we have also asked
11 questions, too, so, yeah.

12 MS. PHILLIPS: So I get to do for
13 both?

14 CHAIRPERSON ANDERSON: Do you have a
15 twofer, so you could ask questions that he asked
16 and --

17 MS. PHILLIPS: I said for both. I
18 didn't say twofer.

19 CHAIRPERSON ANDERSON: And the one
20 question that Mr. Albert asked, yes.

21 MEMBER ALBERTI: Are you being greedy?
22 No, I'm just kidding.

1 MS. PHILLIPS: Yes.

2 BY MS. PHILLIPS:

3 Q Ms. Smith --

4 A Yes, ma'am.

5 Q -- you identified -- well, I'm sorry.

6 Give me a minute, please.

7 MEMBER ALBERTI: Ms. Phillips, if you
8 need more water than you have, just let us know.

9 MS. PHILLIPS: I think I just need a
10 break.

11 MEMBER ALBERTI: Okay. We can supply
12 you with a cup.

13 MS. PHILLIPS: I still have water.

14 CHAIRPERSON ANDERSON: What?

15 MS. PHILLIPS: I just need a break.

16 CHAIRPERSON ANDERSON: Okay. We are
17 going to be in recess for 10 minutes. It's
18 12:30, so be back at 12:42.

19 MS. PHILLIPS: Thank you.

20 CHAIRPERSON ANDERSON: All right.

21 (Whereupon, the above-entitled matter
22 went off the record at 12:31 p.m. and resumed at

1 12:44 p.m.)

2 CHAIRPERSON ANDERSON: We are back on
3 the record. Go ahead, Ms. Phillips.

4 MS. PHILLIPS: Thank you for your
5 indulgence.

6 BY MS. PHILLIPS:

7 Q You referred to a page of your record,
8 I assume, that is not in the record. What page
9 were you referring to, so I can put it in the
10 record?

11 A It was --

12 CHAIRPERSON ANDERSON: You have to
13 speak up. We can't hear you.

14 THE WITNESS: I'm sorry. It's a page
15 of officer's --

16 CHAIRPERSON ANDERSON: No. Pull the
17 microphone closer to you, yes, please.

18 THE WITNESS: It's a page of an
19 officer's overtime at Kiss.

20 BY MS. PHILLIPS:

21 Q Is this the page you were referring to
22 when you were told not to look at any documents

1 that weren't in the record?

2 A Yes.

3 Q Would you hand me that page, please,
4 out of your file?

5 MR. ASBEAJ: Excuse me, what page was
6 it?

7 CHAIRPERSON ANDERSON: We are all
8 going to find out.

9 MS. PHILLIPS: We are all going to
10 find out.

11 CHAIRPERSON ANDERSON: You are going
12 to get a copy of it in a couple of minutes. All
13 right.

14 MR. ASBEAJ: Okay.

15 BY MS. PHILLIPS:

16 Q Thank you very much.

17 A You're welcome.

18 MS. PHILLIPS: May I have copies of
19 this?

20 CHAIRPERSON ANDERSON: Well, yes.
21 Yes, Ms. Randall will copy it and then you will
22 get a copy and then we will --

1 MS. PHILLIPS: Thank you.

2 CHAIRPERSON ANDERSON: -- move on it.

3 MS. PHILLIPS: Okay.

4 BY MS. PHILLIPS:

5 Q And before we talk about that
6 document, now, you pulled that document out of a
7 stack of papers. Is that correct?

8 A Yes.

9 Q And in general, what does that stack
10 of papers consist of?

11 A It is the supporting documents for the
12 chronological document.

13 Q So in other words, when you made what
14 turned out to be Exhibit B, you were referring to
15 documents in your file when you made this
16 chronology. Is that fair?

17 A That is fair.

18 Q That is?

19 A Yes.

20 Q Okay.

21 A Yes.

22 Q All right. And so the page we pulled

1 out is a page you were referencing to find out an
2 entry on this summary page, which was Exhibit B.
3 Is that fair?

4 A That is so.

5 MS. PHILLIPS: Thank you very much.

6 MS. RANDALL: You're welcome.

7 MS. PHILLIPS: One for the witness,
8 because we took her original. Thank you very
9 much.

10 MS. RANDALL: Um-hum, sure.

11 MS. PHILLIPS: I'm going to label this
12 Exhibit C.

13 CHAIRPERSON ANDERSON: D?

14 MS. PHILLIPS: C.

15 CHAIRPERSON ANDERSON: D? We already
16 have a C.

17 MS. PHILLIPS: D. I'm sorry, yes.

18 CHAIRPERSON ANDERSON: D.

19 MS. PHILLIPS: I couldn't hear what
20 you were saying.

21 CHAIRPERSON ANDERSON: You scolded me
22 earlier to label something C, okay?

1 MS. PHILLIPS: Yes. Yeah, all right.
2 I don't think it was a scold, Mr. Chair. I mean,
3 I wouldn't do that. It's always good to keep
4 track of the exhibit numbers.

5 CHAIRPERSON ANDERSON: All right.

6 BY MS. PHILLIPS:

7 Q And so I'm handing you what -- a copy
8 of what you handed me, which has now been labeled
9 Exhibit D. Would you describe for the record
10 what that is?

11 CHAIRPERSON ANDERSON: Do you have a
12 copy, Mr. Asbeaj?

13 MR. ASBEAJ: Yes, I think so.

14 CHAIRPERSON ANDERSON: All right.

15 MR. ASBEAJ: This must be it.

16 THE WITNESS: This is the standard
17 form each officer that reports to establishment
18 must have with them. And this is overtime, which
19 as you can see, it has the club name, the date,
20 the time, the officer's name and then the area
21 where the ABC Manager signs off on it, puts down
22 the start and the end time and at the very

1 bottom, it's just a more internal information
2 which has the officer's name, the officer that
3 signed off for the detail and the date.

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

8 BY MS. PHILLIPS:

9 Q And this is the document you were
10 referring to when you were asked questions about
11 this information by the owner. Is that correct?

12 A Yes.

13 Q Does it tell you when it is signed?

14 A Yes.

15 Q What does it tell you?

16 A It tells me when the establishment
17 signed it and it also tells me when the officer
18 that worked and his officer that signs off on the
19 detail signed it.

20 Q And so there are two -- there is an
21 arrival time and there is a departure time. Is
22 that fair?

1 A Yes.

2 Q And what was the arrival time for this
3 particular officer?

4 A 11:30, which is 23:00.

5 Q Okay. Mine says 23:30.

6 A I'm sorry, 23:30.

7 Q Okay. I just wanted to make sure I
8 was reading --

9 A Correct.

10 Q -- it correctly. And when is it
11 signed off?

12 A At 2:30.

13 Q And that's in the morning of the next
14 day? Would that be fair?

15 A Yes.

16 Q So the date went from April 22nd to
17 April 23rd?

18 A Correct.

19 Q When you review paperwork, do you have
20 any idea when the owner signs this document?

21 A No, I don't.

22 Q Okay. And so you just know the hours

1 that the officers are supposed to be there and
2 that they must be signed off on each arrival time
3 and exiting time?

4 A Correct.

5 Q Is that fair? That's fair. And that
6 is what you were referring to when the Board
7 asked you or I asked you questions about --

8 A Yes.

9 Q -- this information, correct?

10 A Yes.

11 Q And so from your referral to Exhibit
12 B, can you tell how many times the detail went to
13 the establishment after the initial request time
14 and until you suspended or it was suspended on
15 June 12th, I think?

16 A I'm sorry, I left my glasses over --
17 may I have -- may I go get them?

18 Q I think the Board would indulge you if
19 you have to read something, if you don't have
20 your glasses.

21 MS. PHILLIPS: Will the Board?

22 THE WITNESS: May I go get my glasses?

1 I left them --

2 CHAIRPERSON ANDERSON: Yes, ma'am. I
3 heard you.

4 MS. PHILLIPS: I didn't hear a
5 response though. I thought that maybe you were
6 going to restrict her.

7 CHAIRPERSON ANDERSON: She said she
8 needs her glasses, so I would tell her to go get
9 her glasses.

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

11 CHAIRPERSON ANDERSON: I apologize.
12 Go ahead.

13 THE WITNESS: All right. So would
14 you, please, repeat your question?

15 MS. PHILLIPS: Will you repeat the
16 question I asked, Madam Court Reporter?

17 COURT REPORTER: Do you want me to
18 play it back or do you want me to read it aloud?

19 CHAIRPERSON ANDERSON: You can read it
20 aloud.

21 COURT REPORTER: Okay.

22 (Whereupon, the record was read back.)

1 MR. ASBEAJ: Objection, sir. I think
2 the --

3 CHAIRPERSON ANDERSON: Hold on, hold
4 on, hold on a minute. Are you back to where you
5 need to be at?

6 COURT REPORTER: Yes.

7 CHAIRPERSON ANDERSON: Okay.

8 COURT REPORTER: Did everybody hear
9 what the question is?

10 MS. PHILLIPS: I heard. Did you hear?

11 THE WITNESS: Yes.

12 CHAIRPERSON ANDERSON: Yes.

13 MS. PHILLIPS: Okay.

14 COURT REPORTER: Okay.

15 CHAIRPERSON ANDERSON: All right. Why
16 don't you --

17 MR. ASBEAJ: My objection to the
18 question is because --

19 CHAIRPERSON ANDERSON: I'm sorry,
20 what's your objection?

21 MR. ASBEAJ: I object to the question
22 because the investigation was made on October

1 14th, so there is no way going back to April or
2 June back, because the investigation was made on
3 24th, October 24.

4 CHAIRPERSON ANDERSON: Yeah, but --
5 well, this is cross-examination. This is -- I'm
6 sorry, she -- this is redirect and the question
7 that she is asking him, she is trying to clarify
8 the record, based on the questions that you asked
9 her and the questions that the Board asked her.
10 So I'm going to sustain -- I'm sorry, I'm going
11 to overrule the objection.

12 And so the question, she can answer
13 the question. But when we do -- when she is
14 doing redirect, it's based on the questions that
15 were already asked. So she is just trying to
16 clarify the record.

17 Go ahead ma'am, and answer the
18 question.

19 THE WITNESS: Okay. Kiss was provided
20 detail every Friday and Saturday from 11:30 to
21 2:30 from the first week in April and through
22 June 12th when they were suspended.

1 BY MS. PHILLIPS:

2 Q So am I to understand during those
3 dates two officers were present for each time
4 they showed up at the establishment?

5 A To my knowledge, yes.

6 Q Okay. That's what was requested. Is
7 that fair?

8 A Yes.

9 MR. ASBEAJ: So I object, it's
10 incorrect, because the hours are from 11:30 to
11 3:30.

12 CHAIRPERSON ANDERSON: Excuse me, you
13 can't object to an answer. You can only object
14 to the question that is asked by the attorney.
15 And so there is no pending objection.

16 BY MS. PHILLIPS:

17 Q And if I understand this chronology
18 that is Exhibit B, Kiss Tavern was suspended RDO
19 services on June 12th. Is that fair?

20 A Yes.

21 Q Well, and they resumed subsequently?

22 A Yes.

1 Q When was that?

2 A October 12, 2017.

3 Q Is that when they were requested --
4 when they requested to have services resumed or
5 was that actually when people went out there?

6 A That -- I'm sorry, October 12th is
7 when Kiss paid the outstanding invoices and
8 wanted detail services to start for the 13th and
9 14th.

10 Q So does No. 33 explain when Kiss might
11 have gotten a detail assigned after that payment
12 was made and you verified it?

13 A You said Item No. 33?

14 Q Yes.

15 A Right. That was on the same day,
16 October 12th, that I notified Inspector Brashears
17 that Kiss had paid in full, but because it was so
18 late, so we were not able to provide them detail
19 for the 13th and 14th.

20 Q And that's pursuant to the signed
21 agreement, which I believe is Exhibit A. Is that
22 fair?

1 A Yes.

2 Q So when was the next time do you have
3 any information about when an RDO was able to go
4 out?

5 A Well --

6 Q Can you tell from Exhibit B?

7 A Yes. On October 12th, we were not in
8 the knowledge that Kiss was mandated to have RDO.
9 And so after that, we did not bother about --
10 after the 12th -- after we missed the 13th and
11 14th detail, we were concerned about detail,
12 because we thought he would request it when he
13 was ready.

14 It was not until the 27th of October
15 that I realized that he was mandated. And once I
16 found that out, I sent him an email and told him
17 we would start detail on the very first -- next
18 weekend.

19 Q Okay. So in other words, you were not
20 provided with information with regard to an ABRA-
21 mandated RDO detail. Is that fair to say?

22 A That is fair.

1 Q Who usually informs you that an RDO
2 detail has been mandated by ABRA?

3 A The establishment usually tells me.

4 Q Okay. And that's the procedure that
5 you followed for the -- how many months did you
6 say you worked in this position?

7 A 18 months. Well, some of the things
8 that I have learned to do is that if an
9 establishment comes to me for the first time,
10 what I'll do is I'll send ABRA notification and
11 ask is the license number correct? Are there any
12 issues with the establishment? And then I'll get
13 a response back whether -- I'm provided their
14 history or if everything is okay.

15 Q And you said that's what you learned
16 to do. And I take from this fact that you said
17 that's what I learned to do, that perhaps it was
18 from experience that you learned that you needed
19 to do that. Would that be a fair summary?

20 A Yes, it is.

21 Q Okay. So when did you learn that
22 perhaps you needed to do that in this instance?

1 A I learned after this instance to do
2 that.

3 Q Okay. On-the-job-training, is that
4 what you are telling me?

5 A Yes, ma'am.

6 Q But that sort of knowledge is not
7 required of you under the contract in Exhibit A.
8 Would that be fair?

9 A Yes.

10 Q It's not required?

11 A That's correct.

12 Q So you were asked some questions about
13 an incident that apparently occurred on the 22nd
14 of April, which you described upon questioning by
15 the owner. Is that fair?

16 A Yes.

17 Q That was just concerning one date. Is
18 that a fair assessment on my part?

19 A Yes, it is.

20 Q And was an RDO detail provided on all
21 the other dates?

22 A Yes.

1 MS. PHILLIPS: I think that's all the
2 questions I have of this witness. I would like
3 to move for the admission of Exhibits A, B, C and
4 D.

5 CHAIRPERSON ANDERSON: The only
6 question I have, do you have an objection, sir,
7 to Exhibit D, which was the last document given
8 to you. Do you have any objection to that
9 document being admitted into evidence?

10 MR. ASBEAJ: Yes.

11 CHAIRPERSON ANDERSON: Huh?

12 MR. ASBEAJ: Yes.

13 CHAIRPERSON ANDERSON: Yes, you do?

14 MR. ASBEAJ: No.

15 CHAIRPERSON ANDERSON: What's the --
16 why do you object to this document?

17 MR. ASBEAJ: I'm not objecting
18 document.

19 CHAIRPERSON ANDERSON: Huh?

20 MR. ASBEAJ: I'm not objecting
21 document. I'm objecting to the one she asked
22 from him.

1 CHAIRPERSON ANDERSON: No, no, no. So
2 do you have any objection to Exhibit D --

3 MR. ASBEAJ: No.

4 CHAIRPERSON ANDERSON: -- being moved
5 into evidence?

6 MR. ASBEAJ: No objection to this,
7 because the date and hours are not the same. It
8 says 02:30 and the investigation says -- it says
9 3:30.

10 CHAIRPERSON ANDERSON: No, I'm sorry.
11 It says what?

12 MR. ASBEAJ: It says here 2:30 and
13 Investigation Brashears say 3:30. So the
14 documents are now conflicting here.

15 CHAIRPERSON ANDERSON: Well, this is
16 specific. This is on April 22nd.

17 MR. ASBEAJ: Yeah, this is always the
18 same from day one.

19 CHAIRPERSON ANDERSON: So but on April
20 22nd, you signed off -- all right. Let me ask a
21 question. Is this a document that you signed off
22 on, sir?

1 MR. ASBEAJ: Yes, sir.

2 CHAIRPERSON ANDERSON: So you signed
3 off on the document that the detail was there
4 from 11:30 to 2:30. Is that correct?

5 MR. ASBEAJ: Yes.

6 CHAIRPERSON ANDERSON: And this is
7 your signature on this paper?

8 MR. ASBEAJ: Yes, sir. Yes, sir.

9 CHAIRPERSON ANDERSON: All right. So
10 I'm going to all this -- I'm going to move this
11 in, because you are not objecting to the
12 authenticity of this document. So I'm going to
13 move this document into evidence. So we are
14 moving Exhibit A, B, C and D into evidence.

15 (Whereupon, the above-
16 referred to document was
17 received into evidence as
18 Government Exhibit No. D.)

19 CHAIRPERSON ANDERSON: All right.
20 Thank you. You can step down, Ms. Smith. Thank
21 you for your testimony.

22 MR. ASBEAJ: I have a question.

1 CHAIRPERSON ANDERSON: Huh?

2 MR. ASBEAJ: I have no questions.

3 CHAIRPERSON ANDERSON: No, you don't
4 have any more questions for her. Remember,
5 before she asked, you asked. So remember how we
6 started all of this?

7 MR. ASBEAJ: But I was trying to
8 object to it and you stated I can't object.

9 CHAIRPERSON ANDERSON: No. All right.
10 This is how we started this off. She called her
11 witnesses, right? Then after she calls a
12 witness, I gave you an opportunity to cross-
13 examine her, which you did. Then the Board asked
14 questions. Then I again gave you an opportunity
15 to cross-examine her based on the questions that
16 the Board asked. So because it's Ms. Phillips'
17 witness, she gets the last say. So that's why
18 she was the last person to ask questions.

19 So there are no more questions that
20 can be asked of her, because if you go and ask
21 her questions, then I have to ask Ms. Phillips
22 again -- I will have to give Ms. Phillips an

1 opportunity to ask questions again. So you have
2 had -- that's one of the reasons why we say did
3 you have any questions, because her job in
4 redirecting is to clarify all the testimony that
5 she gave based on the questions that we asked and
6 based on the questions that you asked.

7 And so because it's her witness, she
8 has the last say.

9 MR. ASBEAJ: So if I'm objecting, then
10 you interrupted because Investigator was like --

11 CHAIRPERSON ANDERSON: But you can't
12 object to an answer she gave. You can only
13 object to the question that is asked by the
14 attorney.

15 MR. ASBEAJ: Yeah, I did object and
16 you say no.

17 CHAIRPERSON ANDERSON: And what did I
18 say?

19 MR. ASBEAJ: And you say you can't
20 object to it.

21 CHAIRPERSON ANDERSON: I'm sorry? I
22 said you couldn't object to the answer, not the

1 question, because you objected to the answer that
2 was given. You can't object to the answer. You
3 have to object to the question that was asked by
4 the lawyer.

5 MR. ASBEAJ: Can I ask the Board,
6 please, if I can ask a question?

7 CHAIRPERSON ANDERSON: I'm sorry, sir?

8 MR. ASBEAJ: Can I ask the Board if I
9 can ask any questions, because --

10 CHAIRPERSON ANDERSON: No, you --

11 MR. ASBEAJ: -- I don't have any
12 experience in this myself.

13 CHAIRPERSON ANDERSON: But you still
14 -- you are going to present your case now. So
15 you can now -- once the Government has done, this
16 is your opportunity to give whatever explanation
17 however way you want to give it.

18 But however, be careful that Ms.
19 Phillips is going to have an opportunity to
20 cross-examine you.

21 MR. ASBEAJ: Yes.

22 CHAIRPERSON ANDERSON: And then the

1 Board is going to cross-examine you.

2 MR. ASBEAJ: Okay.

3 CHAIRPERSON ANDERSON: So I just want
4 to let you know that.

5 MR. ASBEAJ: Okay.

6 CHAIRPERSON ANDERSON: All right. So
7 does the Government rest? Does the Government
8 have any other witnesses?

9 MS. PHILLIPS: The Government has no
10 other witnesses and moves for the admission of
11 Exhibits A through D if --

12 CHAIRPERSON ANDERSON: And all of the
13 documents have been moved. You can step down,
14 Ms. Martin.

15 All the documents have been moved into
16 evidence.

17 MS. PHILLIPS: Thank you.

18 CHAIRPERSON ANDERSON: Does the
19 Government rest?

20 MS. PHILLIPS: The Government rests.

21 CHAIRPERSON ANDERSON: Do you wish --
22 so you have a case, you want to present your side

1 of this case now, sir?

2 MR. ASBEAJ: Yes, sir.

3 CHAIRPERSON ANDERSON: And you are
4 calling yourself as a -- you are going to give an
5 explanation and call yourself as a witness?

6 MR. ASBEAJ: Yes, sir.

7 CHAIRPERSON ANDERSON: Can you raise
8 your right hand, please?

9 MR. ASBEAJ: Yes, sir.

10 Whereupon,

11 EYOB ASBEAJ
12 was called as a witness for the Licensee, and
13 after having been first duly sworn, was examined
14 and testified as follows:

15 THE WITNESS: I swear.

16 CHAIRPERSON ANDERSON: All right. You
17 can now present your case, but remember that Ms.
18 Phillips -- I'm making notice because I don't
19 want you to say well, I don't want to answer.

20 THE WITNESS: I understand.

21 CHAIRPERSON ANDERSON: So now because
22 you are an attorney and you are also testifying,

1 she has an opportunity to cross-examine you on
2 everything that you say and you have to answer
3 the question.

4 THE WITNESS: Okay.

5 CHAIRPERSON ANDERSON: So you can go
6 ahead, sir.

7 DIRECT EXAMINATION

8 THE WITNESS: On October 14th,
9 Investigator Brashears visited my business, which
10 is on Saturday, as he told us at 10:55. And he
11 told the manager and I was in violation of not
12 having MPD detail on my premises. And he say --
13 he spoke to the -- Ms. Smith, who stated I was
14 delinquent on payments and subsequently the 30th
15 suspended from the program. And was told that I
16 actually paid the bill and that the service would
17 resume on the 20th of October.

18 And my explanation to her not paying
19 was due to several instance where altercations
20 had happened at my place and MPD refused to
21 assist and help on every incident that happened.
22 After a while, I feel like I've been, you know,

1 wasting my money paying for MPD service because
2 my staff and my security staff and I was the only
3 one taking care of the -- any altercations that
4 happened there.

5 MS. PHILLIPS: Objection to relevance.

6 THE WITNESS: Can I finish my
7 statement, because I didn't get the chance to
8 talk.

9 CHAIRPERSON ANDERSON: I'm going to
10 overrule the objection. Go ahead, sir.

11 THE WITNESS: And I complained to Ms.
12 Smith about this issue. However, it keep going
13 and going. They keep coming late and everything.
14 And I keep telling her most of them are coming
15 late and they don't do nothing, sitting in their
16 car and any incident happen, I had like four or
17 five incidents, it's not the only one. I had
18 three, four walkouts and I literally, me and my
19 security present those people to the MPD and they
20 let them go.

21 I literally have lost two of my teeth.
22 My DJ lost seven teeth. And with this, so

1 everybody was leaving and we give them to the
2 MPD, hand like this and they let them go and they
3 came back. They let them come back again. And
4 that's why we like -- I realize and I feel like
5 I've been mistreated by and robbed by MPD. I
6 don't understand me employing the detail. It's
7 in my settlement agreement and that's what I paid
8 an amount, after I paid it, because I have to pay
9 to -- in order to agree to settlement agreement.

10 And I was also under the impression
11 that once you pay, the services were there and
12 would keep going on October 22nd. That by that
13 time, it was -- the validity of Investigator
14 Brashears insistence of being, me, in violation
15 for multiple visits.

16 Also, you don't see a notification
17 from Ms. Brenda Smith indicating that I had a
18 delinquent bill and was suspended from the
19 program. And I -- really when he approached me
20 and I assured him that I paid all the delinquent
21 and all the payments and he spoke to my manager
22 and we explained everything that we paid and he

1 left without telling anything.

2 And after that, I talked to Ms. Brenda
3 on October 12th and I send her a copy of the
4 receipt this date, which is -- she always tell me
5 it take 48 hours. So on the 12th, I send a copy
6 right from Indiana 300, a copy I have email and
7 everything. I can show the receipt, too. And
8 she say still have to pay, we will give you the
9 service.

10 And Investigator Brashears came on
11 October 14th why I was not in suspension. I paid
12 mine on the 12th and Ms. Brenda and I, we talked
13 about it and she told me I was not on suspension.
14 And when Mr. -- when Investigator Brashears came
15 and talked to the manager, he show him
16 everything, the invoices were paid in full. I
17 don't have any delinquent payments.

18 Additionally, I always told my
19 managers, and other ABC Managers and other
20 Investigators that the infraction has been
21 firsthand before one can just -- before writing a
22 case or issue of it to give to a business owner.

1 And I felt like if Investigator Brashears had
2 taken time to speak to me instead of the manager,
3 I could have answered his question and I could
4 have presented my case to him and this couldn't
5 happen.

6 So my thought is I was not in
7 violation, because this -- my incident that I had
8 told you, I was paying -- I was okay with having
9 MPD they come to my place Monday-to-Monday. You
10 see 3rd District Police Officers every day,
11 probably, you see seven, six inside every day.

12 And all the Investigators have been
13 coming to my premises like probably every week
14 like I've been visited 126 times in a year by
15 every single Investigators. Every time they come
16 there, I always have MPD from 3rd District. They
17 all my friends. We are always have no problems
18 with any police officers.

19 And once I found out I have to, they--
20 in order to obey the settlement agreement, I went
21 and paid for it. And after I paid for it and all
22 the suspicion was taken off from me from by Ms.

1 Brenda and Investigator came and asked me you are
2 in violation.

3 And on -- when I said Ms. Smith told
4 me that she didn't have any notice that Kiss
5 Tavern has mandatory to MPD.

6 But on March 30th, I present the whole
7 document, settlement agreement and I give it to
8 her. She has the settlement agreement. It's up
9 to her to read the settlement agreement and
10 understand what it says. So whether I told her
11 or not, it's not up to me as long as I presented
12 the ANC settlement agreement, it's up to her to
13 read and like understand the situation.

14 There is no way I have to tell her
15 when I go over there, because it was my first
16 time doing this, so there is no way I have to
17 tell her or not. I didn't I had to tell her,
18 because everything was written on the settlement
19 agreement. So for her to keep going after I paid
20 my payment, it's up to her to render the service
21 or not, because I cannot force her.

22 She said she couldn't do it within 48

1 hours. So I don't see it's my problem from this
2 end if she is not going to present me in the time
3 frame after I paid, I don't think it's my fault
4 on this side.

5 When Investigator Brashears came to me
6 and give me the ticket, I wasn't in violation,
7 because the deed -- the time was not valid.
8 That's what I say. That's the only thing I have
9 to say.

10 CHAIRPERSON ANDERSON: All right.
11 That's all you have to say?

12 THE WITNESS: That's all I have to
13 say, sir.

14 CHAIRPERSON ANDERSON: Ms. Phillips,
15 do you have any questions for him?

16 MS. PHILLIPS: Yes.

17 CROSS-EXAMINATION

18 BY MS. PHILLIPS:

19 Q If you could turn to Exhibit A, that's
20 the document on page 5. Is that your signature?

21 A Yes, ma'am.

22 Q I'm sorry?

1 A Yes.

2 Q Yes. And you signed that on March 30,
3 2017. Is that fair?

4 A Yes.

5 Q And you understood that, on page 2,
6 having these ABC details, that you were ordered
7 by the Board to have, may take a minimum of two
8 business days in advance to provide you?

9 A Yes.

10 Q That is on page 2 of 5, first
11 paragraph. Are you aware of that and you
12 understood that?

13 A Yes.

14 Q And this is your signature on the last
15 page, isn't it?

16 A I said yes.

17 Q And you were only to have a detail on
18 Friday and Saturday nights. Is that fair?

19 A Yes.

20 Q So you weren't going to have a detail
21 seven days a week. Is that fair?

22 A Excuse me?

1 Q So you weren't going to have an RDO
2 detail seven days a week, only two days a week?

3 A Yes, that's what the settlement
4 agreement says.

5 Q Yes. And you understood that while
6 the RDO Coordinator might try to get you an RDO
7 detail sooner than required under Section 2 of
8 this paragraph, she was going to try --

9 A Yes.

10 Q -- but she was not obligated under
11 this contract to do so? Is that fair?

12 A Yes.

13 Q So you were informed that when you
14 finally paid for the detail, your back payments,
15 that the RDO Coordinator was not going to be able
16 to provide you with a detail on such short
17 notice. Is that fair?

18 A No.

19 Q So you disagree with the testimony --

20 A At least I mean --

21 Q -- let me finish the question, because
22 this lady right here is taking all this down and

1 I have to have a complete question.

2 A Okay.

3 Q And if we talk at the same time, we
4 get nothing but garbage.

5 So you understood, pursuant to Exhibit
6 A, that the RDO Coordinator would not -- may not
7 be able to provide you with an RDO detail on a
8 moment's notice. Under the contract, they were
9 allowed, I think it said in the paragraph that we
10 just agreed that you read and understood a
11 minimum of two business days.

12 A Which is Thursday, Friday, which is 48
13 hours. And she don't know if she can do it,
14 because you have to ask her. It's not my job if
15 she do it or not.

16 Q So it's your thought that the day you
17 asked counts.

18 (No audible response.)

19 Q So --

20 CHAIRPERSON ANDERSON: You have to --

21 MS. PHILLIPS: Say yes.

22 CHAIRPERSON ANDERSON: -- answer. You

1 can't shake your head. You have to say.

2 THE WITNESS: I thought she didn't
3 finish.

4 CHAIRPERSON ANDERSON: I saw you shake
5 your head, sir, but then she moved on. But I
6 want to make sure that --

7 THE WITNESS: All right.

8 CHAIRPERSON ANDERSON: -- you answer
9 yes or no.

10 THE WITNESS: Can we move on?

11 MS. PHILLIPS: I can.

12 BY MS. PHILLIPS:

13 Q So it's your understanding that a
14 minimum of two days means the minute you ask. Is
15 that fair?

16 A Yes.

17 Q Okay. So do you have any idea when
18 you asked --

19 A On the 12th.

20 Q -- the RDO Coordinator? What time?

21 A October -- in the morning.

22 Q In the morning?

1 A Yes.

2 Q Do you have verification that you
3 asked her that in the morning?

4 A I did ask her. She knows. We always
5 talk in the morning.

6 Q But you didn't ask her. So --

7 A She told you she called me on October
8 12 when she -- when you asked her. She literally
9 told you that I called her and I emailed her a
10 copy.

11 Q All right. Did you bring a copy of
12 that email?

13 A I can show you. Oh, no, I have a
14 receipt that I paid.

15 Q I'm not interested in the receipt.
16 What I'm asking you is you know, because you
17 signed this contract, which is Exhibit A, that it
18 says that you must request -- detail should be
19 made in as far in advance as possible. Do you
20 agree to that?

21 (No audible response.)

22 Q Is that a yes?

1 A Are you asking?

2 Q All right. Just look at page 2 of
3 Exhibit A, because I'm reading right from that.

4 A All right.

5 Q "Request for detail should be made as
6 far in advance as possible." Do you agree to
7 that, that that's what that says?

8 A Where are you at?

9 Q I'm reading on Section 2.

10 A Okay.

11 Q Paragraph 1.

12 A Okay.

13 Q In the middle. I mean, it's actually
14 the second sentence.

15 A Yeah.

16 Q So you are supposed to ask as far in
17 advance as possible. Is that fair?

18 A Yes.

19 Q That's what it says?

20 A That's fair, yes.

21 Q And that's what you signed in Exhibit

22 A?

1 A Yes.

2 Q Is that fair?

3 A Yes.

4 Q All right. And then it says "But
5 shall be a minimum of two business days in
6 advance." Is that correct?

7 A Yes.

8 Q So that's the minimum time you can
9 ask. So it's your understanding that if you ask
10 MPD, they are supposed to respond just like that?

11 A Well, by the time we like -- I mean,
12 I don't --

13 Q Is that your understanding that they
14 are supposed to respond immediately?

15 A They always respond immediately.

16 Q No, but under the contract do they
17 have to respond immediately?

18 A Yes.

19 Q No, that's not what it says here.

20 A But they always do.

21 Q We just -- well --

22 A They always --

1 Q -- the difference --

2 A -- talk and come to me.

3 Q -- between why I'm asking you what the
4 contract says and what you are saying that you
5 were lucky enough to have the RDO Coordinator do
6 for you are two different things.

7 I'm asking you about the contract. So
8 it says that you shall be made -- that you shall
9 -- but shall be made a minimum of two business
10 days in advance. Is that what that contract
11 which you signed says?

12 A Yes.

13 Q So in other words, MPD is not
14 obligated to provide you RDO assistance under the
15 contract the minute you ask. Is that fair?

16 A No.

17 Q So you don't think it's fair?

18 A It's not fair.

19 Q Okay. But you did understand that you
20 signed this contract and that's what it said?

21 A Yes. Yes.

22 Q Okay. It's my understanding, from

1 your testimony and the testimony of the witness
2 concerning the RDO detail, that you requested and
3 paid in full on October 12th the back invoices
4 with regard to having an RDO assigned to your
5 establishment. Is that fair? Because that's
6 what this Exhibit B says. And you agreed with
7 that, correct?

8 A I agree with what?

9 Q That you provided on the 12th evidence
10 that you paid for the RDO on the 12th?

11 A Yes.

12 Q And it says on Exhibit B that's the
13 date. Is that correct?

14 A Yes.

15 Q And you were also told in the contract
16 that MPD might not be able to provide you with an
17 RDO detail on the day you request it. Is that
18 correct?

19 A And if I say it's most of the time,
20 but they do coordinate with us.

21 Q I didn't ask you if they coordinated
22 with you. I asked you if you understood --

1 A Yes.

2 Q -- pursuant to the contract --

3 A Yes.

4 Q -- that MPD could not instantaneously
5 provide you an RDO upon request, but only upon
6 availability pursuant to A. Is that correct?

7 A No.

8 Q So you didn't understand this
9 contract. Is that what --

10 A No.

11 Q -- you are telling me?

12 A Because every time --

13 Q Are you telling me that you didn't
14 understand this contract?

15 A I understand it. It says that because
16 what it says and when we do the practices, it's
17 totally different. What's in the contract and
18 what's in real life is different, because once we
19 asked them, once we paid, Brenda, herself, told
20 me that my service is going to be rendered,
21 that's what I ask. And I had this one.

22 Sorry, I'm worried, I didn't bring my

1 stuff, but if you give me a chance, I can print
2 it out all my emails that was sent to Ms.-- from
3 Ms. Brenda that as soon as I paid this payment,
4 that she will render the service.

5 CHAIRPERSON ANDERSON: Ms. Phillips,
6 why don't we move on? The Board -- I think I got
7 where you are. You are trying to point out that
8 the contract says two business days and he is
9 saying that the practice is as soon as I ask,
10 they provide the services. And you are trying to
11 point out that the contract says that you need to
12 provide as soon as possible. However, they need
13 at least two business days to do the services.

14 So I get your point and he is saying
15 that the practice is that as soon as I ask, they
16 do it, so although the contract said this, that's
17 irrelevant. So we got your point. At least I
18 got your point.

19 MS. PHILLIPS: Thank you.

20 BY MS. PHILLIPS:

21 Q On Exhibit C, this big thick one,
22 toward the end because I'm not seeing page

1 numbers, but it's the third to last page in that
2 exhibit that I have. It looks like this. Is
3 that your signature?

4 A Yes.

5 Q And that was signed on it looks like
6 3/10/17?

7 A Yes.

8 Q And that was a copy of the --

9 A The settlement agreement.

10 Q -- settlement agreement?

11 A Yeah.

12 Q Okay. So I don't have to say that was
13 the order of the settlement agreement and
14 withdrawal of ANC protest. That's your
15 signature?

16 A Yes, ma'am.

17 Q Okay. And on Exhibit D --

18 A Which one is that?

19 Q -- that's the one that --

20 A This?

21 Q -- this little page right here. These
22 are your signatures on each of these lines. Is

1 that fair?

2 A Which one? Yes, ma'am.

3 Q It's the little one.

4 A Yes, ma'am.

5 Q But you are looking at the wrong
6 document, so I want to make sure you are looking
7 at the right document.

8 A No, I did. I'm looking at this.

9 Q Okay. So that's your signature on MPD
10 arrival and MPD departure? That's your
11 signature.

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q Okay.

16 MS. PHILLIPS: Okay. I have no --

17 CHAIRPERSON ANDERSON: No more
18 questions?

19 MS. PHILLIPS: -- further questions.

20 Thank you.

21 CHAIRPERSON ANDERSON: Any questions
22 by any of the Board Members? Mr. Alberti?

1 MEMBER ALBERTI: It's still afternoon,
2 not evening yet. Mr. Asbeaj, okay, so you
3 started with RDO the first weekend in April of
4 2017, correct?

5 THE WITNESS: Yes, sir.

6 MEMBER ALBERTI: What was the process
7 for you -- what process did you follow to request
8 RDO?

9 THE WITNESS: When -- as soon as the
10 ANC settlement and I signed agreement and I was
11 told by my lawyer that I have to talk to the RDO
12 Coordinator and talk to her, so when I have the
13 settlement agreement and what I have I couldn't
14 fax it, so I personally went to her and talked to
15 her.

16 MEMBER ALBERTI: Went to whom?

17 THE WITNESS: To Ms. Smith.

18 MEMBER ALBERTI: Okay.

19 THE WITNESS: And we were -- we have
20 good communication all the time. And I talked to
21 her this what happened and I give her the ANC
22 settlement agreement and we moved on and she said

1 as soon as I get it, I'll get you the MPD. And
2 she said this only one -- she told me I have to
3 get a minimum of two police officers all the
4 time.

5 MEMBER ALBERTI: Okay. Okay. That's
6 part of the process, but how did she know -- I
7 mean, what process should you follow to make her
8 aware that you need it for -- you needed it for
9 weekends after that first week in April? How did
10 you communicate that to her? What process did
11 you use to communicate?

12 THE WITNESS: Yeah, like I said, I
13 went there personally to her office and I ask her
14 I need MPD, because the settlement agreement says
15 that I have to have.

16 MEMBER ALBERTI: So you went to her
17 only that one time in April?

18 THE WITNESS: Yes, that's it.

19 MEMBER ALBERTI: And said I need RDO?

20 THE WITNESS: Yes.

21 MEMBER ALBERTI: And did you tell her
22 when you needed it?

1 THE WITNESS: Yeah, I asked -- she
2 said -- I don't -- because it was my first time
3 that I have business on this.

4 MEMBER ALBERTI: No, answer my
5 question. Did you tell her when you needed it?

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: Okay. And what did
8 you tell her?

9 THE WITNESS: Because I'm opening in
10 March 30th and if you can give me police officers
11 or RDO.

12 MEMBER ALBERTI: For when? When did
13 you ask her for officers?

14 THE WITNESS: As soon as I signed the

15 --

16 MEMBER ALBERTI: No, no, no. For what
17 dates?

18 THE WITNESS: On the weekends, Friday,
19 Saturday.

20 MEMBER ALBERTI: Okay. Are you
21 telling me that you told Ms. Smith that you
22 needed it every weekend?

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: For the future?

3 THE WITNESS: Yes.

4 MEMBER ALBERTI: All right. And so
5 for those two days, Fridays and Saturdays. Okay.

6 THE WITNESS: She always send me MPD.

7 MEMBER ALBERTI: And that's what you
8 believed you told her back in March?

9 THE WITNESS: Yes.

10 MEMBER ALBERTI: All right. So it
11 wasn't just calling the next day and telling them
12 you needed the RDO. You told them in advance
13 that you needed RDO. Is that correct?

14 THE WITNESS: Yes.

15 MEMBER ALBERTI: Okay. Thank you.
16 When did you make your first payment for the RDO
17 services?

18 THE WITNESS: It was like before the
19 20th I paid. And we started in March and I start
20 paying on --

21 MEMBER ALBERTI: That's not my
22 question. When did you make your first payment?

1 THE WITNESS: I believe on -- I don't
2 remember the exact date, but it was from before
3 April, that's for the first payment I make.

4 MEMBER ALBERTI: Like 4 April?

5 THE WITNESS: Because she saw March,
6 she had the whole month because like June, around
7 June --

8 MEMBER ALBERTI: No, no. You started
9 in the first week of April.

10 THE WITNESS: March, March. Yeah,
11 which is --

12 MEMBER ALBERTI: All right.

13 THE WITNESS: -- the 30th.

14 MEMBER ALBERTI: The first week of
15 April you started.

16 THE WITNESS: Yes, yes.

17 MEMBER ALBERTI: Did you pay in
18 advance?

19 THE WITNESS: No, I didn't pay in
20 advance.

21 MEMBER ALBERTI: Okay. So you didn't
22 -- just answer my question.

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: You didn't pay in
3 advance.

4 THE WITNESS: And I don't --

5 MEMBER ALBERTI: When did you make
6 your first payment? Was it in April or May or
7 when would you -- when did you make your first
8 payment?

9 THE WITNESS: I don't remember exact
10 date. I think it was around August or something.
11 There is no --

12 MEMBER ALBERTI: Around August?

13 THE WITNESS: -- exact date.

14 MEMBER ALBERTI: You were delinquent.
15 You got a notice --

16 THE WITNESS: I was not delinquent,
17 because --

18 MEMBER ALBERTI: -- of delinquency in
19 June and you didn't pay that delinquent date
20 until October 12th, according to Exhibit B. So
21 I'm not sure what you mean by you paid in August.

22 THE WITNESS: Well, no. What happened

1 is like I told you earlier, we started like on
2 April and we had an incident on the 21st that to-
3 - it was not --

4 MEMBER ALBERTI: Okay.

5 THE WITNESS: -- you didn't get a
6 report.

7 MEMBER ALBERTI: Okay.

8 THE WITNESS: And it was not explained
9 to you.

10 MEMBER ALBERTI: All right.

11 THE WITNESS: Then after that, I went
12 to -- they made an investigation and everything.
13 And I had like lost two of my teeth and my DJ got
14 seven stitches and I told them I'm not going to
15 pay you for these dates while I have incident.
16 I'm not paying these officers, because they
17 didn't do nothing.

18 So nobody respond to me. And I even
19 asked the lieutenant in the theater that has -- I
20 was asking him what's the report on the April
21 21st?

22 MEMBER ALBERTI: So --

1 THE WITNESS: He couldn't tell me.
2 Nobody answered. Nobody know -- nobody answer me
3 the question.

4 MEMBER ALBERTI: All right. So I
5 understand all of that, Mr. Asbeaj. And you can
6 really hurry this up by not telling that story to
7 us for the sixth time. All right? You keep
8 telling us that same story, so just, please,
9 answer my questions.

10 Did you make any payments before June
11 12th of 2017?

12 THE WITNESS: Yes. I don't know
13 exactly, but I did.

14 MEMBER ALBERTI: Okay. When was the
15 first date? Do you remember the first date that
16 you made payments?

17 THE WITNESS: I don't remember, sir.

18 MEMBER ALBERTI: Do you remember the
19 last date that you made payments?

20 THE WITNESS: October, the last date
21 I paid, October 12th.

22 MEMBER ALBERTI: Okay. How many

1 payments did you make?

2 THE WITNESS: Three or four.

3 MEMBER ALBERTI: Pardon?

4 THE WITNESS: Three or four.

5 MEMBER ALBERTI: Three or four?

6 THE WITNESS: Because she always send
7 me email for a month, for three days, so I have
8 to pay it off every month.

9 MEMBER ALBERTI: Every month, all
10 right.

11 THE WITNESS: Yes.

12 MEMBER ALBERTI: But there were only
13 two months between when you were delinquent and
14 when you started, so how did you pay three or
15 four times? I'm not getting that.

16 So there is April and there is May and
17 then you were delinquent in June. So you -- if
18 you paid -- if she billed you every month, how
19 did you may three or four payments?

20 THE WITNESS: Because we are here now,
21 so --

22 MEMBER ALBERTI: No, no, no, no. I'm

1 just talking back in -- let's talk before October
2 12, just so we are clear. I'm only talking about
3 the period before October 12th. So how did you
4 make three or four payments before June 12th and
5 why would you?

6 THE WITNESS: I don't understand what
7 the question is, but --

8 MEMBER ALBERTI: Okay.

9 (Simultaneous speaking.)

10 MEMBER ALBERTI: Okay. Sir, again,
11 how many --

12 THE WITNESS: The reason I paid --

13 MEMBER ALBERTI: Let me rephrase my
14 question.

15 THE WITNESS: Yes.

16 MEMBER ALBERTI: How many payments did
17 you make between the first weekend in April and
18 the -- and June 12th? How many payments did you
19 make to MPD Reimbursable Detail?

20 THE WITNESS: I don't know exactly a
21 number, because like I told you I don't know
22 exact, but I paid.

1 MEMBER ALBERTI: How many times? You
2 said three or four.

3 THE WITNESS: Yeah, because it's like
4 two weeks, every two weeks, every two weeks the
5 send me, so the whole month is like --

6 MEMBER ALBERTI: You told me they
7 billed you every month.

8 THE WITNESS: Like when they send the
9 email, that's what it says, but they -- if you
10 want to pay, you can pay every week. It's up to
11 you to make a payment.

12 MEMBER ALBERTI: Do you know on
13 October -- when you were told you were delinquent
14 on June 12th, do you remember the amount that you
15 were delinquent?

16 THE WITNESS: Yes, yes.

17 MEMBER ALBERTI: And what was that
18 amount?

19 THE WITNESS: It was \$1,714.

20 MEMBER ALBERTI: \$1,714. Okay. So--

21 THE WITNESS: That's like five or six
22 that she send me.

1 MEMBER ALBERTI: -- all right. So
2 \$1,714. All right. Just give me a moment,
3 please. Do you know how much you paid for each
4 weekend? Let's see --

5 THE WITNESS: I have those numbers,
6 but I don't --

7 MEMBER ALBERTI: -- do you know how
8 much you paid for each weekend generally?

9 THE WITNESS: You can divide them to
10 six, seven, it might be \$300 or \$400.

11 MEMBER ALBERTI: \$300 or \$400. So
12 this would have been for at least four weekends,
13 right?

14 THE WITNESS: Friday, Saturday, yes.

15 MEMBER ALBERTI: So at least four
16 weekends. So that means that, by my calculation,
17 you didn't pay for the -- at the very least, from
18 the middle of May until to the middle of June,
19 you made no payments, correct?

20 THE WITNESS: Like I said, I don't
21 know, really remember, but this would -- the last
22 payment I made.

1 MEMBER ALBERTI: Fine. You don't
2 remember, that's fine.

3 THE WITNESS: The last payment --

4 MEMBER ALBERTI: Is it reasonable to
5 conclude from the amount that you owed that you
6 owed for more than one weekend?

7 THE WITNESS: Yes, sir.

8 MEMBER ALBERTI: Okay. So you owed
9 more than just that one night where you had a
10 beef with or you had a disagreement about how the
11 officers provided service, right?

12 THE WITNESS: Yes, sir.

13 MEMBER ALBERTI: Thank you. I just
14 want to make sure I'm clear on that. All right.
15 Let's go back to October 12th. You got an email
16 from Ms. Smith, according to Exhibit B, look at
17 the chronology, please.

18 THE WITNESS: Yes, sir.

19 MEMBER ALBERTI: If I'm wrong on any
20 of this, let me know. So on October 12th, you
21 got an email from Ms. Smith listing the unpaid
22 invoices to Kiss. Is that correct?

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: Do you remember what
3 time you got that email?

4 THE WITNESS: I don't remember. I
5 remember I went there exactly and paid for it.

6 MEMBER ALBERTI: Okay. Got it. All
7 right. Did you pay the invoices on October 12th?

8 THE WITNESS: Yes, sir.

9 MEMBER ALBERTI: Okay. After you got
10 the email from Ms. Smith?

11 THE WITNESS: Yes, sir.

12 MEMBER ALBERTI: Okay. So you got the
13 email from Ms. Smith. You read it. You went --
14 what did you do?

15 THE WITNESS: I went to 300 Indiana.

16 MEMBER ALBERTI: All right. Where
17 were you when you started off to go? Where you
18 home?

19 THE WITNESS: Went to do what?

20 MEMBER ALBERTI: So when you got the
21 email and you wrote the check, were you home?

22 THE WITNESS: Yes, I was home in

1 Virginia.

2 MEMBER ALBERTI: In Virginia?

3 THE WITNESS: Yeah.

4 MEMBER ALBERTI: Whereabouts in
5 Virginia? You don't have to give me an exact
6 address, but give me an approximation.
7 Whereabouts?

8 THE WITNESS: It's in Alexandria.

9 MEMBER ALBERTI: Alexandria. Okay.
10 So you came down and you made payment.

11 THE WITNESS: Yes.

12 MEMBER ALBERTI: All right. And then
13 you provided evidence. Did you go home to send
14 her an email? Where did you go to send her an
15 email?

16 THE WITNESS: Actually, I send it
17 through my phone to her email.

18 MEMBER ALBERTI: Okay. Okay.

19 THE WITNESS: And she -- and I called
20 her and she said just send it to me.

21 MEMBER ALBERTI: Okay.

22 THE WITNESS: I emailed her. We were

1 talking.

2 MEMBER ALBERTI: So it was your
3 testimony that all this happened in the morning.
4 You would have us believe that this all happened
5 in the morning and you gave Ms. Smith notice
6 before 12:00 noon that you needed RDO before the
7 next day?

8 THE WITNESS: I didn't say I needed
9 RDO. I just state she will ask me to pay for it.
10 And I paid for it.

11 MEMBER ALBERTI: I got it. But you
12 said earlier that you made the request in the
13 morning of October 12th.

14 THE WITNESS: No, I didn't say that.
15 I said I paid the -- March.

16 MEMBER ALBERTI: So if you want to
17 retract your testimony, that's fine. I have no
18 more -- no further questions.

19 CHAIRPERSON ANDERSON: All right. Any
20 other questions by any other Board Members? I
21 don't remember the question I wanted to ask, so
22 I'll move on. No other questions by any Board

1 Members?

2 Ms. Phillips, do you have any
3 questions to ask based on the questions that was
4 asked by Mr. Alberti?

5 MS. PHILLIPS: No, Mr. Chair.

6 CHAIRPERSON ANDERSON: All right. Do
7 you need to clarify the record, sir, before --
8 normally, what happens is that if you had a
9 lawyer, the lawyer would ask questions of the
10 witness based on the questions. Mr. Alberti
11 asked you some questions. Do you need to
12 clarify? Is there anything you need to do? Do
13 you need to clarify the record or you are fine
14 with the testimony you have given so far?

15 THE WITNESS: Yes, like when
16 Investigator come to my place --

17 CHAIRPERSON ANDERSON: No, no, no.

18 THE WITNESS: You want a question?

19 CHAIRPERSON ANDERSON: It has to be
20 specifically to what the questions Mr. Alberti
21 asked you.

22 THE WITNESS: Yes.

1 CHAIRPERSON ANDERSON: So do you need
2 to clarify anything based on the answers you gave
3 him?

4 THE WITNESS: Yeah, like Ms. Brenda
5 and I have a good relationship before and every
6 time I paid or every time I talked to her, she
7 respond immediately. So that's what I took on my
8 end as soon as I paid, that she is going to send
9 me like she always coordinate, that's what I
10 expected.

11 CHAIRPERSON ANDERSON: All right.

12 THE WITNESS: And when the
13 Investigator come, this why I'm like I end up
14 paying a violation when I paid everything in full
15 and the Investigator knows that I always paid in
16 full. And when he ask her, that was not a
17 suspension. On October 12th and 14th, I was not
18 on suspension.

19 CHAIRPERSON ANDERSON: All right.

20 THE WITNESS: There was no suspension,
21 at that time.

22 CHAIRPERSON ANDERSON: All right.

1 Well, we are moving far afield, so I mean I'm
2 just asking you to -- all right. So you are just
3 responding to the -- you are clarifying the
4 record. So do you rest your case, based on the
5 presentation that you made?

6 MS. ASBEAJ: Yes, sir.

7 CHAIRPERSON ANDERSON: All right. All
8 right. Does the Government wish to make a
9 closing argument, a closing statement? I'm
10 sorry. And one of the things I would like you to
11 answer in your closing, I mean, what's the charge
12 and what is it that you want the Board to do.

13 MS. PHILLIPS: The charge in this
14 particular case, according to the notice, which
15 was signed by the Chairperson and delivered to
16 the owner of the establishment, states that you
17 failed to comply with the settlement agreement
18 and the Board's order in violation of DC Official
19 Code Sections 25-446, 25-446.010 and 9, 25-
20 823(a)(6) and we can take any proposed action
21 designated by the statute.

22 The Government has shown, based on the

1 testimony of all of the witnesses, its witnesses
2 and also the owner, Mr. Asbeaj, that he was not
3 in compliance with the settlement agreement
4 ordered by the Board for long periods of time,
5 mainly for failure to make payment.

6 We have a chronology on Exhibit B
7 listing all of the interaction that MPD and the
8 Detail Coordinator had with the owner and exactly
9 what happened in shorthand and she testified to
10 the same.

11 Despite the fact that Mr. -- that the
12 owner paid on a certain date, it was like one day
13 before he requested renewal of services, is
14 really irrelevant because the contract that he
15 signed says that ABRA has at least -- or I mean,
16 the MPD has at least two full business days, at
17 least at a minimum to provide an RDO.

18 And when they are unable to do so,
19 that is what governs the contract that he signed.
20 So when they were unable to provide it on less
21 than 24 hours' notice, that's his problem not
22 either MPD's or ABRA's.

1 And therefore, he was not in
2 compliance really with the order by the Board
3 really at all, given the testimony we have had
4 from the Government witnesses. And the
5 chronology we have will show, basically, that.

6 We have admitted Exhibits A, B, C and
7 D. And you have the notice which is always part
8 of the record. And his admissions that even
9 though he paid on one day, it isn't under the
10 contract that anybody has to respond in less than
11 two business days and that does not start
12 counting until the next day.

13 So he was notified that ABRA -- that
14 MPD could not fill his request for reimbursable
15 detail because of his delinquencies, which are
16 documented in Exhibit D.

17 The fact that he paid up two days
18 before, I believe it was two days before, the
19 Investigator went out is really not at all part
20 of this issue. So he paid, according to this,
21 October 12th and you know by the fact that the
22 case report that the Investigator didn't go out

1 until October 14th.

2 So at that particular time, yes, he
3 paid up, but we are not talking about what
4 happened after he paid. We are talking about
5 what happened before he paid up and all the
6 delinquencies prior to that time.

7 So the notice and the evidence -- the
8 evidence has proved the notice and I leave it to
9 the Board to decide what sort of penalty they
10 want him to pay.

11 CHAIRPERSON ANDERSON: I just have a
12 question that the RDO is supposed to start at
13 11:30. RDO is supposed to start at 11:30 and the
14 Investigator went there at 9:55. And there was
15 no RDO. There was no requirement for RDO to be
16 there at 9:55. So okay.

17 MS. PHILLIPS: So the Investigator was
18 not just investigating what happened on the date
19 that he went out there. He was investigating a
20 complaint of complete delinquencies, almost
21 totally since the RDO was put in place.

22 MS. ASBEAJ: No, it is on the --

1 CHAIRPERSON ANDERSON: Sir, sir, sir.

2 MS. PHILLIPS: You have a --

3 CHAIRPERSON ANDERSON: It's just not
4 your --

5 MS. PHILLIPS: -- chronology here.

6 CHAIRPERSON ANDERSON: Hold on.

7 MS. ASBEAJ: I'm sorry.

8 CHAIRPERSON ANDERSON: This is not
9 your --

10 MS. ASBEAJ: I'm sorry.

11 CHAIRPERSON ANDERSON: All right. Go
12 ahead, Ms. Phillips.

13 MS. PHILLIPS: You have a chronology
14 here and it explains it. And if I'm overstating
15 or understating, the chronology is admitted in
16 Exhibit B and you have the testimony of the
17 coordinator of the RDO Program as to how it went,
18 when he paid, when he didn't pay, how many
19 chances he was given, etcetera.

20 So the fact that he went out early on
21 the day of the investigation has very little
22 relationship to what we are charging as the

1 delinquencies. That's just when we've got it all
2 put together as evidence, that's when somebody
3 was finally able to go out based on the
4 information that was provided.

5 And as you heard the testimony of the
6 RDO Coordinator, she didn't even realize that
7 this was an order required by the ABRA Board
8 until the date on this chronology. So she didn't
9 know that, even though it's not her job, she
10 didn't have to go back to ABRA and say just
11 exactly what did you order, because she didn't
12 know that ABRA had ordered it, that's what I take
13 from the testimony.

14 So we are looking at several levels of
15 delinquency. And so ABRA issued an order. Mr. -
16 - the owner went and tried to get an RDO, but I
17 don't hear any testimony by him or anyone else
18 that he told the RDO Coordinator that he was
19 ordered by the ABRA Board to have this detail,
20 which apparently, according to somewhat of her
21 testimony, opens up a whole different level of
22 inquiry.

1 She was not aware of that. You have
2 on her chronology to her testimony when she
3 became aware that this was not something that
4 just an alcohol establishment wanted to have in
5 place for their own protection or whatever, that
6 this was ordered by the Board to provide him the
7 license. And she didn't find that out until, I
8 believe she testified, after he paid up on
9 October 12th. You have the chronology in Exhibit
10 B.

11 CHAIRPERSON ANDERSON: All right.
12 Yes, sir, your closing?

13 MS. ASBEAJ: Yes. It says here on the
14 Exhibit B, it says -- I made another payment,
15 thank God I found it here, on August 14th, 19, it
16 says I made a payment on August, the 21st of
17 October, August 4th, verify partial payment. I
18 made a payment before October 12th, which states
19 that the whole month before it happened.

20 What happened is like the Investigator
21 said, I understand the contract. I needed to go
22 in there and give to Ms. Smith the ANC agreement,

1 which my lawyer say to me you have to give it to
2 her, so she can understand it.

3 So my understanding is she is the only
4 person that can read and understand on their
5 side. I cannot tell her to read it or I cannot
6 tell -- she signed it. I give it to her. This
7 my settlement agreement and she understands it,
8 that's why she send me the RDO the next day.

9 And Investigator said I didn't make
10 any payment before October 12th, but on Exhibit B
11 it does show -- it says on the 21st I make a
12 payment. So on my hand, like I don't have any
13 intentions to lie to the settlement agreement and
14 I've been following the settlement agreement.
15 And that's why I paid. Even though the police
16 officers are not giving me the exact service that
17 I wanted, I have to obey the settlement
18 agreement. I go in there and pay for it.

19 So by the time the Investigator came,
20 which is October 12, and I'm -- I remember on
21 August, what is this, 4th I paid almost \$2,000,
22 which is the whole month that had been there.

1 Then after August 4th, the service that she gave
2 me is until October and I paid \$1,700, which
3 makes it all close to \$5,000, the total.

4 So on my end, I -- this Exhibit B you
5 can see it, it's on the 22nd. It says I made a
6 payment on that one. So I don't feel like I've
7 been violating the settlement agreement. But on
8 my end, I'm hurting both sides. I'm not getting
9 the service from the MPD the way I was supposed
10 to and the settlement agreement is forcing me to
11 pay for something that I didn't get the service.

12 So and ABC Board is going to fine me,
13 because I didn't obey the settlement agreement or
14 the settlement agreement I make, that's why I pay
15 for it. I understand I have to pay and I pay for
16 it. And I have never had any delinquent since
17 October 12th. Then I found out that date,
18 October 14th, that I had a report that I
19 violated. And I say then if I pay, I'm getting
20 violated. I'm getting violation. That's why if
21 I don't pay, I'm getting violation.

22 And I don't really understand what the

1 difference is, because I'm like, like I say, this
2 -- they are hurting me on both sides. Like he
3 asked me to pay, make payment. I make a payment
4 on the 21st and on October 12, which is the whole
5 amount. And after Investigator Brashears came,
6 after I pay all the delinquencies, I'm still in
7 violation.

8 When I pay, I'm in violation. When I
9 don't pay, I'm still in violation. So I don't
10 understand what the punishment is here towards
11 Kiss Tavern. It's not fair. That's what I feel.

12 CHAIRPERSON ANDERSON: So you are
13 saying that we should not -- we should dismiss
14 the charge and so we shouldn't find you of
15 committing any violations? Is that what you are
16 asking the Board to do?

17 MS. ASBEAJ: Yes, sir.

18 CHAIRPERSON ANDERSON: All right. The
19 record is now closed. Do the parties wish to
20 file proposed findings of fact and conclusions of
21 law or waive their right to do so? Meaning that
22 you want the Board to make its decision on the

1 presentation today or do you want to write some
2 legal arguments to say that, okay, all right,
3 this is what -- do you want to write, basically,
4 a legal brief or do you just want to rest on the
5 record that is presented today?

6 MS. ASBEAJ: Can I write more, so I
7 can present it to the Board?

8 CHAIRPERSON ANDERSON: It's not -- you
9 can't bring in new stuff. It's --

10 MS. ASBEAJ: No, no, no, the same.

11 CHAIRPERSON ANDERSON: Huh?

12 MS. ASBEAJ: You mean, you're talking
13 about today or --

14 CHAIRPERSON ANDERSON: I'm sorry?

15 MS. ASBEAJ: Are you --

16 CHAIRPERSON ANDERSON: It wouldn't --
17 what I'm asking is it's not that you are putting
18 in new information.

19 MS. ASBEAJ: No.

20 CHAIRPERSON ANDERSON: It would be
21 that you listen to the transcript and this is
22 what you say that you proved today. So you would

1 render a legal brief. So this is not giving you
2 an opportunity to bring in evidence and new
3 evidence that was not presented today.

4 I mean, most parties waive it and just
5 leave it to the Board to make the decision on
6 what was presented today.

7 MS. ASBEAJ: Like I say, like, you
8 know, I never had any experience, that's why I
9 don't have any copies. It's my first time here
10 present myself.

11 CHAIRPERSON ANDERSON: Well, and you
12 don't have the copy. You won't be able to bring
13 it in. So I would suggest that you would -- ask
14 that you say that you would waive it and we will
15 make the decision based on the arguments and the
16 testimony that was made today.

17 Do you agree with that?

18 MS. ASBEAJ: Yes.

19 CHAIRPERSON ANDERSON: Ms. Phillips?

20 MS. PHILLIPS: Yes, Mr. Chair.

21 CHAIRPERSON ANDERSON: All right. The
22 record is now closed. All right.

1 As Chairperson of the Alcoholic
2 Beverage Control Board for the District of
3 Columbia and in accordance with Section 405 of
4 the Open Meetings Amendment Act of 2010, I move
5 that the ABC Board hold a closed meeting for the
6 purpose of seeking legal advice from our counsel
7 on Case No. 17-CMP-00683, Kiss Tavern, per
8 Section 405(b)(4) of the Open Meetings Amendment
9 Act of 2010, and deliberating upon Case No. 17-
10 CMP-00683, Kiss Tavern, for the reasons cited in
11 Section 405(b)(13) of the Open Meetings Amendment
12 Act of 2010. Is there a second?

13 MEMBER SHORT: Second.

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

18 Mr. Isaac?

19 MEMBER ISAAC: I agree.

20 CHAIRPERSON ANDERSON: Mr. Cato?

21 MEMBER CATO: I agree.

22 CHAIRPERSON ANDERSON: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON ANDERSON: Mr. Short?

3 MEMBER SHORT: I agree.

4 CHAIRPERSON ANDERSON: Mr.

5 Silverstein?

6 MEMBER SILVERSTEIN: I agree.

7 CHAIRPERSON ANDERSON: Mr. Anderson?

8 I agree.

9 As it appears that the motion has
10 passed, I hereby give notice that the ABC Board
11 will hold a closed meeting in the ABC Board
12 conference room pursuant to the Open Meetings
13 Amendment Act of 2010 to deliberate on this case.
14 And we will issue an order within 90 days.

15 We will issue an order within 90 days,
16 sir. And thank both parties for their
17 presentation today.

18 MS. PHILLIPS: Do you have copies of
19 all the exhibits?

20 CHAIRPERSON ANDERSON: Yes, I have
21 your exhibits that I will provide.

22 MS. PHILLIPS: Thank you.

1 CHAIRPERSON ANDERSON: Thank you very
2 much.

3 I want to apologize to the parties
4 that are sitting here. It is now 2:00. The
5 Board will be in recess until 3:00, so I do
6 apologize to the parties. I do apologize to the
7 parties who are here for the, I think, 2:00
8 hearing.

9 All right. So we will be in recess
10 until 3:00. I do apologize. We have to have a
11 lunch break and it's going to take us to get
12 lunch. So I do apologize, so we will come back
13 here at 3:00 to do our 1:30 hearing. All right.
14 Thank you.

15 (Whereupon, the above-entitled matter
16 went off the record at 1:57 p.m.)
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This is to certify that the foregoing transcript


In the matter of: Kiss, LLC

Before: DC ABRA

Date: 03-28-18

Place: Washington, DC

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