

LIQUOR CONTROL ADJUDICATION BOARD
DEPARTMENT OF LIQUOR CONTROL
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS
REGULAR MEETING

Held at the Department of Liquor Control Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii, commencing at 9:02 a.m., on Thursday, October 6, 2016.

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1 BOARD MEMBERS PRESENT:

2 Donald Fujii, Chairperson

3 Wayne Pagan, Vice-Chairperson

4 Jerrybeth De Mello, Member

5 Zachary Helm, Member

6 Gwen Ueoka, Member

7 Bruce U`u, Member

8 STAFF PRESENT:

9 Edward Kushi, Jr., First Deputy Corporation Counsel

10 Peter Hanano, Deputy Prosecuting Attorney

11 Glenn Mukai, Director

12 Sarah Cordeiro, Secretary to Boards/Commissions II

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1 (Thursday, October 6, 2016, 9:02 a.m.)

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3 CHAIR FUJII: (Gavel.) Good morning.

4 MEMBERS: Good morning.

5 CHAIR FUJII: The meeting of the Liquor Control
6 Adjudication Board is now called to order pursuant to
7 Section 281-91 of the Hawaii Revised Statutes and Section
8 8-13.3 of the Charter of the County of Maui to consider the
9 matters and issues as posted on today's agenda.

10 Before we get started with the introduction of our
11 Board Members and staff, as we normally do, I would like to
12 welcome our newest Board Member here, Mrs. Gwen Ueoka.

13 MEMBER UEOKA: Thank you.

14 CHAIR FUJII: Welcome -- for joining us on your
15 first meeting with us. And this is -- you're gonna find out
16 quite a bit today because of the -- looking at agenda here.

17 Also, I know, before roll call, we normally have
18 our Lanai Board Member Candace Ariaga, who is not present.
19 And maybe Sarah or Jerrybeth could tell us why Candace is
20 not here today.

21 MEMBER DE MELLO: She brought -- she brought in a
22 new life. She had a baby boy. And she had him on Kaahumanu
23 Avenue.

24 MS. CORDEIRO: Yeah. Mom and baby are okay.
25 Aiden-Tokuo Alika Okimoto Ariaga.

1 MR. O'DWYER: Hayden?

2 MEMBER DE MELLO: Aiden.

3 MS. CORDEIRO: Aiden-Tokuo. It's hyphenated.

4 Tokuo is her grandfather's name. He was five pounds, 15
5 ounces, 19 and-a-half inches long. And it was at 4:40 a.m.,
6 driving on Kaahumanu Avenue on Sunday. So --

7 CHAIR FUJII: Okay. It's gonna add to Lanai's
8 population by one.

9 MS. CORDEIRO: Well, that's a lot of names, so
10 maybe two.

11 CHAIR FUJII: Two. All right. Let's get on with
12 the introductions, starting with our secretary.

13 MS. CORDEIRO: Sarah Cordeiro, Liquor Control.

14 MEMBER DE MELLO: Me? Jerrybeth De Mello from
15 Lahaina.

16 MEMBER HELM: Zachary Helm from Molokai.

17 MR. KUSHI: Ed Kushi, Corp Counsel's Office.

18 CHAIR FUJII: Donald Fujii, Wailuku.

19 VICE-CHAIR PAGAN: Wayne Pagan, Upcountry.

20 MEMBER U`U: Bruce U`u, Paia.

21 MEMBER UEOKA: Gwen Ueoka, Wailuku.

22 DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

23 MR. HANANO: Peter Hanano on behalf of Department
24 of Prosecuting Attorney.

25 CHAIR FUJII: Thank you. We will now hear

1 Complaint and Accusation Number 2016-10 against Mulligan's
2 on the Blue, LLC doing business as Mulligan's on the Blue.
3 Will the respondent or its representative please step
4 forward and state your name -- names and in what capacity
5 you are representing the respondent?

6 MR. TODD: Good morning. I'm Jonathan Todd and I
7 am acting in the capacity of consultant to the owner of
8 Mulligan's on entertainment and compliance issues.

9 MR. O'DWYER: Good morning. Michael O'Dwyer is my
10 name. I'm the owner of Mulligan's on the Blue,
11 member-manager.

12 CHAIR FUJII: Thank you. At this time I would
13 like to call on our Prosecutor to kind of explain the
14 changes to our agenda that all of you have before you, Board
15 Members. So pull out your agenda, and Mr. Hanano will
16 explain the latest proceedings regarding the charges.

17 MR. HANANO: Thank you, Chair. As you can see
18 from the agenda, there are, let's see, 15 --

19 CHAIR FUJII: 17.

20 MR. HANANO: -- sorry, 17 counts in the matter
21 before the Board today. We have -- the Department and
22 Mulligan's has reached an agreement in this case. And so I
23 want to put that on the record just to let you guys know
24 what it is.

25 In Complaint and Accusation Number 2016-10,

1 Mulligan's has agreed to enter a no contest plea to Counts
2 4, 6, 7, 8, 9, 11, 12, 13, 16 and 17. I'll say that again.
3 Counts 4, 6, 7, 8, 9, 11, 12, 13, 16 and 17. As far as the
4 remaining counts, that's 1, 2, 3, 5, 10, 14 and 15, the
5 Department will dismiss those counts with prejudice as part
6 of the plea agreement.

7 In addition to that, there is another outstanding
8 Complaint and Accusation, that's Number 2017-4, which I
9 believe is set for the November 3rd hearing, next month.
10 And as part of the plea agreement, that Complaint and
11 Accusation will be dismissed as well.

12 And as part of sentencing, the Department will
13 recommend appropriate fines for each count that Mulligan's
14 has pled no contest to.

15 CHAIR FUJII: Okay.

16 MR. HANANO: So that's the agreement as far as
17 what was agreed to with Mulligan's. That's all I have,
18 Chair. Thank you.

19 CHAIR FUJII: Thank you, Mr. Hanano.

20 Mr. Todd, Mr. O'Dwyer, at this time what
21 Mr. Hanano has stated, is it agreeable to what has
22 transpired? Is this the first time you've heard of these
23 changes?

24 MR. TODD: No. No. I'm aware of it.

25 MR. O'DWYER: Yes.

1 CHAIR FUJII: You have had conversations with
2 the --

3 MR. O'DWYER: We had a letter from Mr. Hanano.

4 CHAIR FUJII: Okay. So, anyway, the -- there are
5 charges that are still going to be no contest that we're
6 going to be dealing with today as far as penalty, and he
7 will advise us after giving us a report on the no contest
8 items again. So we are looking at -- so you are agreeable
9 to the ones that he decided as being dismissed and no
10 contest? Are --

11 MR. O'DWYER: Yes.

12 CHAIR FUJII: -- you agreeable to that?

13 MR. O'DWYER: Yes, we are.

14 CHAIR FUJII: Do you have legal counsel?

15 MR. O'DWYER: I don't.

16 CHAIR FUJII: Do you understand that you have the
17 right to have your legal counsel present?

18 MR. O'DWYER: Yes, I do.

19 CHAIR FUJII: And do you understand the charges
20 that are left on the agenda?

21 MR. O'DWYER: Yes.

22 CHAIR FUJII: What is your plea to each count?

23 MR. O'DWYER: No contest.

24 CHAIR FUJII: Do you understand the violations the
25 Department of Liquor Control alleges against you?

1 MR. O'DWYER: Yes.

2 CHAIR FUJII: Do you understand that you have the
3 right to plead not guilty?

4 MR. O'DWYER: I do.

5 CHAIR FUJII: Do you understand that, by pleading
6 no contest on those remaining items, you waive the right to
7 a hearing in which you could -- you could present evidence
8 and question witnesses on your behalf?

9 MR. O'DWYER: I do.

10 CHAIR FUJII: Is your plea of no contest on those
11 items voluntary and not the result of force, threats or
12 promises apart from any plea agreement?

13 MR. O'DWYER: Yes.

14 CHAIR FUJII: Do you understand that, in each
15 count that's remaining, if the Board accepts your plea of no
16 contest, you will be found guilty and that the Board may
17 issue a reprimand or assess and collect a penalty of up to
18 \$2,000 on each count, or revoke any license at any time, or
19 suspend the right of the licensee to use his license?

20 MR. O'DWYER: Yes.

21 CHAIR FUJII: Do you still wish to plead no
22 contest --

23 MR. O'DWYER: Yes.

24 CHAIR FUJII: -- of the remaining items? The
25 Board hereby finds that the licensee has entered a knowing

1 and voluntary plea of no contest on the items that was
2 presented earlier by the Prosecutor. The Board accepts your
3 plea and finds you guilty of -- again, Mr. Prosecutor, if
4 you will repeat those no contest pleas.

5 MR. HANANO: Yes. It Counts 4, 6, 7, 8, 9, 11,
6 12, 13, 16 and 17.

7 VICE-CHAIR PAGAN: Say that one more time.

8 MR. HANANO: 4, 6, 7, 8, 9, 11, 12, 13, 16, 17.

9 MEMBER HELM: Did you say 14?

10 MR. HANANO: Let me say that again.

11 CHAIR FUJII: Slower.

12 MR. HANANO: Okay. 4, 6, 7, 8, 9, 11, 12, 13, 16,
13 17.

14 MR. KUSHI: Mr. Chair, if I may, before we proceed
15 any further. To the licensee, Mr. O'Dwyer, I know what the
16 Prosecutor said and what you replied. Have you seen the
17 September 22nd, 2016 letter from -- it's from the Department
18 of Prosecuting Attorneys to yourself?

19 MR. O'DWYER: Yes.

20 MR. KUSHI: Do you agree with the contents?

21 MR. O'DWYER: Yes, sir. Sorry. I --

22 CHAIR FUJII: So we're back to the counts that are
23 no contest as referenced by the Prosecutor. The Board
24 accepts your plea and finds you guilty of those counts that
25 Mr. Hanano has stated just previously reflected in Complaint

1 and Accusation Number 2016-10. Again, at this time, then,
2 we are ready to proceed to the no contest counts.

3 Mr. Hanano, you would like to take them up with us?

4 MR. HANANO: Yes. Thank you, Chair.

5 CHAIR FUJII: The summary.

6 MR. HANANO: As you can see from the Complaint and
7 Accusation, there are charges stemming from two different
8 dates. In Counts 1 through 11, incidents occurred on
9 November 7, 2015; in Counts 12 through 17, incidents
10 occurred on March 17th, 2016.

11 On November 7, 2015, at approximately 10:47 p.m.,
12 Liquor Control Officer Cullen Kawano arrived at the premises
13 of Mulligan's on the Blue, located at 100 Kaukahi Street,
14 Wailea, Maui, Hawaii to conduct an inspection. At that
15 time, there was a special event entitled "Maui's Finest:
16 Sly Dog, Ekolu, Maoli & Malino." Officer Kawano observed
17 approximately 450-plus patrons within the premises. During
18 the inspection, Officer Kawano observed the premises to be
19 very busy and noticed that there were no clear aisles and
20 walkways. Patrons as well as Officer Kawano himself were
21 having difficulty moving through the crowd.

22 At about 11:11 p.m., while on the side of the
23 premises, Officer Kawano observed that the men's restroom
24 was being utilized as a women's restroom, and there was a
25 now a row of portable toilets along the wall. At that time,

1 Officer Kawano noticed multiple patrons walking into and out
2 of the portable toilets with bottles of beer or cups of
3 drinks.

4 At about 11:23 p.m., Officer Kawano also observed
5 that within the areas which were permitted for dancing, some
6 patrons were consuming their drinks while dancing.

7 At about 11:51 p.m., while walking down the stairs
8 to the parking lot, Officer Kawano observed a patron holding
9 and drinking from a bottle of Bud Light beer. Additionally,
10 Officer Kawano also observed a cup containing a brown
11 liquid, which he later determined to contain liquor, sitting
12 on top of a chair at the bottom of the stairs.

13 On March 17th, 2016, Officer Kawano conducted
14 another inspection of Mulligan's on the Blue. At that time,
15 it was observed that the men's restroom was changed to a
16 women's restroom. In addition, portable restrooms were also
17 added along the walkway -- outside walkway. None of these
18 changes were listed in the licensee's permit.

19 Furthermore, pursuant to the inspection, Officer
20 Kawano noticed that the stage area was larger than listed in
21 the permit to the point that patrons were utilizing areas
22 not designated as dance floors, and using walkways fronting
23 the doors which blocked access to the back area. Patrons
24 were also observed entering the restrooms with drinks.

25 That's all I have, Chair.

1 CHAIR FUJII: Any questions by Members of the
2 Board as been presented by Mr. -- by the Prosecutor
3 regarding those counts that he reviewed for us? Any
4 questions by Members of the Board? If no questions, at this
5 time, Mr. O'Dwyer and Mr. Todd, you now have an opportunity
6 to make a statement regarding this case. You may also
7 inform the Board of any mitigating circumstances which may
8 or may not apply to sentencing on those counts.

9 MR. TODD: Thank you. I'll start here because I
10 was before the Commission recently. And the Commission was
11 ridiculously fair in light of these issues in granting
12 Mulligan's the right to have Zeptember extended on their
13 property. It's an annual -- this was the seventh version of
14 that concert. And we went through that with the -- the
15 Commission's okay and had no violations, no problems,
16 nothing. And we promised -- the Commission was tough. They
17 asked for extra managers, extra -- extra work.

18 And I came today -- I've talked to Mike. And I've
19 known him for years and years.

20 And for those of you who don't know me, I created
21 Fleetwood's on Front Street for Mick. I've been with
22 Fleetwood for 22 years. I really understand the -- the laws
23 and what the County is trying to accomplish with 'em and
24 respect them.

25 And Mike has had a really tough time. His -- he's

1 got restraints on him because of sound violations that
2 happened 14, 13 years ago. And so since those restraints
3 have come in, he has not had another sound violation. But
4 in this set of circumstances that he's looking at now, the
5 Commission has felt that he was ignoring the charges.

6 And I knew that he had a brother who passed away.
7 He was off island, in Ireland, dealing with family. And I
8 couldn't even get him for weeks on end sometimes. So he had
9 to leave the restaurant in the hands of other people.

10 And some of these infractions, a couple of them,
11 when I look at them, are really serious. Some of them --
12 the Federal Government is allowing us to identify what we
13 are to go into a bathroom right now. So I have some issues
14 about some of those things.

15 What he tries to do is the right thing. For
16 years, he was allowed to have toilets, portable toilets,
17 brought in. If you put one name on it and then you change
18 it because there's too many women, so you put in -- you say,
19 women, come over here. Yes, he should have had a sign, but
20 the -- the seriousness of the complaints is in safety issues
21 more than anything, to me, when I look at it.

22 And he was not personally capable of overseeing
23 that during this period when he was off island more than he
24 was on. And he had changing employees.

25 And we brought a number of his employees -- all

1 but one have a liquor card. One is getting a liquor card
2 tomorrow.

3 I've tried to consult with him since these have
4 come out and explain the gravity of how serious this is and
5 how you have to run this business. And he's agreed now to
6 have fewer concerts, which will impact him dramatically.
7 He's going to get approval for any of the concerts, which
8 will impact his sales and his revenue during tough times.

9 So I'm here to say, one, in the future, I believe
10 that he's on the right track now, two, he wasn't looking the
11 Commission in the eye and spitting. Okay. He was not being
12 rude or not complying; he was simply not present mentally.
13 And I think that he has had a tremendous punitive damage
14 already based on the changes he's agreed to for his future.

15 And I hope that the Adjudication Board will take
16 some of that into consideration on -- on the fines.

17 Mike?

18 CHAIR FUJIII: Thank you. Mr. O'Dwyer.

19 MR. O'DWYER: Thanks, Jonathan.

20 I appreciate everything that Jonathan has said for
21 me, but, at the end of the day, I'm fully responsible, and
22 should be, for my business no matter what the personal
23 circumstances.

24 MR. TODD: Just take a second.

25 CHAIR FUJIII: Take your time.

1 MR. TODD: Dealing with a guy who has a really
2 hard time knowing that he's actually done wrong. And --

3 MR. O'DWYER: Sorry. So I brought my crew here
4 today as well to -- so they can see how serious these
5 charges are. And because of the restrictions imposed upon
6 us now, we know what to expect.

7 In the past, we've been allowed to have
8 porta-potties, never questioned, for 15 years. We've always
9 changed the toilets to male and female, never questioned for
10 15 years. And, suddenly, maybe there's a new sheriff in
11 town, different rules, or everything is transparent now,
12 which I understand, so we know exactly where we are and what
13 we have to do.

14 I've already gone ahead and got a proper floor
15 plan, proper dance floor, a full-size stage, as big as it
16 can be. If you would like to pass that around. And
17 approved by the Director, so in future, even if it's a small
18 band, a duo, the stage is the biggest it can be and the
19 dance floor is the biggest it can be. So that would alleviate
20 [sic] the problem of different areas where we have stages
21 and people on the dance floor overcrowding it or it being
22 too big.

23 Also, in the last concert, the last two concerts
24 we've done, we've decided, it's a in-house decision, that we
25 wouldn't allow any alcohol into the restaurant itself. The

1 dance floor and the stage are in the restaurant. And we've
2 decided that the only way to stop people bringing drinks
3 into the restaurant or onto the dance floor is not letting
4 any alcohol whatsoever -- which is not a liquor decision,
5 it's a management decision, that there's no alcohol inside
6 the restaurant whatsoever. So everybody's drink is left on
7 a table, and then they take it on their way out.

8 Also, with the porta-potties, there's a table.
9 And that area is no liquor consumption as well. Kind of
10 like what they do on the MACC at a smaller scale.

11 And it has taken these 17 violations, maybe, to
12 hit home to us how serious these -- these are. And like I
13 said, it doesn't matter whether I was there or not, the
14 responsibility does rest with me. And I just ask that you
15 don't fine us too much, please.

16 CHAIR FUJII: Thank you. Any questions by Members
17 of the Board regarding the presentation by Mr. Todd or
18 Mr. O'Dwyer?

19 MEMBER HELM: I do, Donald. Sir --

20 MR. O'DWYER: Yeah.

21 MEMBER HELM: -- I understand you quite well,
22 that's what you had to go through, but I have several
23 questions for you. While you were gone, those people that
24 you put in charge, are they still with you now or are they
25 terminated or --

1 MR. O'DWYER: The general manager is no longer
2 with us.

3 MEMBER HELM: Thank you.

4 CHAIR FUJII: Okay. Any other questions?

5 MEMBER U`U: Yeah.

6 CHAIR FUJII: Bruce.

7 MEMBER U`U: Question: Is this an indoor/outdoor
8 event or --

9 MR. O'DWYER: It's both. At Mulligan's, when we
10 do special functions, which probably looks like we won't be
11 doing many anymore, because we have to go before the
12 Commission if we're to hold these special functions, we have
13 a permit for -- to hold 800 people. We've never reached
14 that max. But the stage and the music has to be inside,
15 contained inside. We don't do any concerts after 10:00
16 anymore because of noise -- noise restrictions, but people
17 come in and come out. But there's no music outside. The
18 music is inside and the dance floor is inside and the stage
19 is inside. But it's a big open space. We're permitted to
20 hold 999 people if we do the special event, crowd control
21 barriers.

22 And there's one thing I didn't add. At the last
23 concert we did, we set up those crowd control barriers along
24 the lanai in the walkway, the whole way around the
25 restaurant. And I wish I had taken pictures, but it worked

1 really well as well. So we've definitely addressed all the
2 situations that have come up here.

3 And like I said, I don't think there's going to be
4 many more concerts. At the Commission hearing that I wasn't
5 in town for, what came up was the fact that somebody said,
6 "Well, maybe Mike doesn't care, he's been on a
7 month-to-month lease for years." I have signed a letter of
8 agreement for three more years to stay in that property.
9 It's a -- it's a -- Wailea Golf owned the resort, they're
10 building condos on the first hole. So we're not gonna be
11 there forever. They moved the clubhouse, the golf
12 clubhouse, a year ago, so we lost some business there. So
13 maybe in the back of my mind, I was trying to make up for
14 that business with holding extra concerts.

15 We had to cancel three this summer because we
16 didn't know that we wouldn't be allowed to have them. We
17 had already put deposits down. Was one was a Willy K
18 concert, another was Morgan Heritage, it was a band from the
19 mainland that their flights had already been booked. So
20 they had to cancel them. And now they're going to be
21 playing at the MACC. And I'm not saying that we're a venue
22 that would hold big crowds of people, but it has financially
23 cost us this summer.

24 I do intend to run the business properly. We've
25 signed up to do an Elvis show on Saturday nights, kind of

1 like we do a Willy K dinner show on Wednesday nights. And
2 we're trying to diversify our business element because we're
3 on a golf course, we have no golfers anymore. We're a
4 little bit off the beaten path, so it's hard enough to get
5 people to come into the venue as it is.

6 MR. TODD: Just for clarification on shows,
7 when -- when Mike is saying we've signed up to do the Willy
8 K dinner show or the Elvis shows, these are within the
9 complete confines, normal business, and they're not -- they
10 don't require any permitting. They're a small dinner show,
11 not the larger shows.

12 I would like to add that Mike has been personally
13 involved with many of the big shows in the past. And, to
14 me, it's a little bit -- I'm a producer, so I -- I err on
15 that side, but Zeptember raised a couple thousand dollars
16 for Cancer Society and for Trucker, who is local.

17 MR. O'DWYER: Trucker Dukes.

18 MR. TODD: You know, Team Trucker. You can't
19 really raise \$2,000 for charities doing little dinner show
20 things. And he has always been, who are you raising the
21 money for, where is it going. There -- there is a community
22 spirit that Mulligan's has shown in bringing in high quality
23 entertainment which serves both the local and the tourist
24 population. And a lot of that goes away now because of the
25 restriction. He just can't run these concerts. It's months

1 of planning in advance, and not knowing, but you have to get
2 airline tickets and stuff for people, then you lose it when
3 you don't get it. He's -- he's taken a hurt on that. So
4 he's accepting that, but it feels punitive to him.

5 CHAIR FUJII: Okay. Thank you, Mr. Todd and
6 Mr. O'Dwyer. I have a question. I know March 17, of
7 course, is St. Patrick's Day. What's the significance of
8 November 7th?

9 MR. O'DWYER: There was none whatsoever. It was a
10 concert, a local concert.

11 CHAIR FUJII: Just that you had booking for a
12 major concert?

13 MR. O'DWYER: A promotor came to me -- I don't go
14 looking. They come to me. There's no venues on Maui
15 anymore to hold music events. And so I get phone calls
16 every week. And they came to me with three local bands, and
17 that was the date that they were available to play. So
18 there wasn't any significance whatsoever.

19 CHAIR FUJII: Okay. Any other questions? Bruce.

20 MEMBER U`U: Yeah, one more question. Again, on
21 the difference in dates of November 7th, and some of the
22 infractions on March 17, 2016, were both approved by the
23 Liquor Commission prior? Or is we -- are we grouping this
24 as one? I'm asking you guys because you guys said you went
25 before the LC, the LC agreed to certain terms and --

1 MR. O'DWYER: No. This only came in, these new
2 rules for me. I didn't know anything about it until I went
3 and applied for a permit for a concert in June. Normally,
4 you have to give 10 days, business days. So two weeks in
5 advance, I sent in the application, and, suddenly, I got
6 knocked back and said, "You're not doing any more concerts."
7 So that was the first I had heard of it.

8 So in the past, the liquor permit -- permits went
9 to Lahaina and they were approved by Layne in Lahaina. But
10 I think there's a new structure now and everything has
11 changed, and Lahaina has moved back to Wailuku. Is that
12 correct? And all the applications go through Kari now, not
13 through Layne.

14 So the porta-potties, in the past, and little
15 things like that, have been not questioned, it's been
16 accepted. So all this came up in June. So along with the
17 17 violations, suddenly I couldn't do any more concerts.
18 And then it -- it steamrolled from there. So -- so that's
19 when it started, I think, first week in June.

20 MEMBER U`U: And that will be for what event, the
21 November 7th?

22 MR. O'DWYER: November 7th was last year.

23 MEMBER U`U: Right.

24 MR. O'DWYER: So we put in our normal -- we put in
25 the normal procedure to get a permit and it got approved,

1 but there was no mention of porta-potties, I didn't draw
2 porta-potties on the application. And I didn't realize it
3 was an issue until we got the violations, to be honest.

4 It is embarrassing to say that we have a violation
5 on the 7th of November and it was repeated on St. Patrick's
6 Day. And I -- I put my hands up for that. I have to point
7 it out, it's in black and white. If we're told something
8 and we don't adhere to it, then it's -- it's my
9 responsibility 100 percent.

10 MR. TODD: But as -- as Mr. Helm has -- has said,
11 that person responsible for that is not the GM anymore.

12 MR. O'DWYER: Yeah. She doesn't work for us
13 anymore. That doesn't -- I'm not cold-hearted or --

14 MR. TODD: You're responsible, but --

15 MR. O'DWYER: Yeah.

16 CHAIR FUJII: From what I see here on the
17 complaints here, I think six of the first 12 that was -- I
18 mean the first 11 that were on November 7 were repeated
19 on -- again, the six --

20 MR. O'DWYER: Right.

21 CHAIR FUJII: -- violations were repeated. And
22 that's, I think, a major red flag for the Board here this
23 morning.

24 MR. O'DWYER: I can't deny it. And I just put my
25 hands up and say I understand, and I brought it up because

1 I'm not gonna hide from it. Yeah, it's embarrassing --

2 CHAIR FUJII: What's the --

3 MR. O'DWYER: -- at the least.

4 CHAIR FUJII: What's your status with the
5 Commission as far as having concerts at this current --
6 right now?

7 MR. O'DWYER: The Director of the Liquor
8 Department has decided that I can't have any more concerts
9 unless I go before the Commission.

10 DIRECTOR MUKAI: Point of clarification. It's a
11 condition on their license when they were first issued; it's
12 not the Director.

13 MR. TODD: It's not --

14 MR. O'DWYER: Sorry. Excuse me.

15 DIRECTOR MUKAI: It's a Commission condition --

16 CHAIR FUJII: So regardless of --

17 DIRECTOR MUKAI: -- on the license.

18 CHAIR FUJII: What our penalty is going to be
19 today has no bearing as to what the Commission -- the
20 license can do, Glenn?

21 DIRECTOR MUKAI: Well, if they want another
22 concert or special event, the condition on the license, when
23 it was first granted, they were limited to certain things
24 they can do. Anything other than that, they would have to
25 appear before the Commission and have Commission approval.

1 MR. O'DWYER: May I interject? And that's
2 correct, but, for 15 years, it didn't happen. Now we know.
3 So for 15 years, we were putting in an application that was
4 being approved in the Department. And I'm not saying
5 anything about anything. Now I know exactly, it's black and
6 white and it is transparent. And everybody, I think, who
7 has a liquor license knows exactly what the rules are and
8 how they are. And it's black and white.

9 MR. TODD: There was a transition period. And,
10 you know, you felt, like a lot of people, that the new
11 Director was targeting you. And that's not what happened.
12 But you did get --

13 MR. O'DWYER: I took it personally for a while,
14 and then I --

15 MR. TODD: You know, he --

16 MR. O'DWYER: -- looked around and then I realized
17 that it's -- the systems are in place and maybe --

18 MR. TODD: This group is doing its job properly.

19 MR. O'DWYER: But the minutes were brought up and
20 it was dated back to 2003, where it said to do this. And --

21 MR. TODD: You have to say "I'm sorry" to Director
22 Mukai.

23 MR. O'DWYER: Sorry, Director, it wasn't personal.

24 DIRECTOR MUKAI: Nothing personal.

25 MR. O'DWYER: But at the time, you can imagine, a

1 new Director takes over, one week into the reign, I get 17
2 violations. I've never -- we've had one over-service --

3 MR. TODD: He's served million --

4 MR. O'DWYER: -- in 15 --

5 MR. TODD: -- of people over 15 years, you know.

6 MR. O'DWYER: We haven't had a sound complaint,
7 which is where all this started from, in 10 years. And the
8 people who reported me for the noise were at my wedding
9 seven years ago, sitting in the front row, which is a
10 personal achievement for Wailea people. So this -- this --
11 no. This hit me like a -- like a ton of bricks, 17
12 violations. I mean, you know, my guys asked me was I
13 nervous yesterday. I said, yeah, I am. I mean --

14 CHAIR FUJII: I'm surprised. I've been sitting
15 back here for X number of years and I remember the sound
16 violations. And looking at this 17 violations, no nothing
17 about sound. It kind of threw me, you know, because --

18 MR. O'DWYER: Can we put that in the minutes?

19 MR. TODD: It's in the minutes.

20 CHAIR FUJII: Again, because --

21 MR. TODD: Doesn't matter.

22 CHAIR FUJII: -- I sat here when you were here for
23 sound violations previously. And --

24 MR. O'DWYER: And it was --

25 CHAIR FUJII: With 17, I was expecting --

1 MR. O'DWYER: It was Bryan Kanegai, you know, who
2 was the instigator. And he was perfectly right. But now
3 we're probably best friends, Christmas cards and things like
4 that. So I can work with the community.

5 MR. TODD: What he is saying is, and what I'm
6 saying is, there were problems that came from his
7 inattention because of a family issue where he was off the
8 island, a manager that went a bit amuck. He has real
9 community support and appreciation. He's made changes. The
10 manager isn't there any more. He's back and in the saddle.
11 His people are backing him and supporting him. He's made an
12 agreement with the Prosecuting Attorney saying that he's
13 pleading no contest, which is guilt. And that's why he's
14 crying. He can't stand being guilty of trying to bring
15 bathrooms in to serve people and then finding out that he
16 couldn't do that. Nonetheless, it's a violation. So he
17 must accept it. And he's now saying the way he handled
18 Director Mukai was wrong. It wasn't personal. It is the
19 way things should be. And he's brought on people like me
20 and training his own people through me and others so that
21 this doesn't happen again.

22 I just want to stress that the punitive nature of
23 the way that the system is now already fines him. This is
24 a -- a hearing about the guilt, where he goes with his
25 license and what he has to pay. And his business is hurt

1 because he really just can't do those big concerts.
2 He'll -- he'll make the effort for a few, but when you do
3 one and you get a "no" and you've already bought the airline
4 tickets for a group, it -- it can't work that way because
5 the timelines aren't there. So he's going to be hurt as a
6 result of -- of following the letter to the law. And -- and
7 if you take that into consideration when fining him, the
8 company would be grateful and it can still serve the -- the
9 community as best it can.

10 CHAIR FUJII: I think -- Mr. Todd, I think we're
11 ready for -- to get the Prosecutor's recommendation as to
12 penalty. Mr. Kushi.

13 MR. KUSHI: Yeah, Mr. Chairman, if I may.
14 Question for the Department. On Counts 4 and 16, can you
15 explain for the Commission Members what the violations are?
16 Seems to be kind of vague.

17 MR. HANANO: As far as Count 4, my understanding
18 is that that one deals with the use of the porta-potties
19 without approval from the Commission. And I think -- is
20 that your understanding, Mike?

21 MR. O'DWYER: Yes. And 16 is the bathrooms. When
22 we had bigger events, we normally convert the men's bathroom
23 into ladies and we use the porta-potties for the males.

24 MR. TODD: But they didn't put a sign there. They
25 just had a security person.

1 MR. O'DWYER: We did put a sign there, but we
2 didn't apply to the Department for a permit to do that.
3 That's what happened.

4 MR. HANANO: That -- that's the Department's
5 understanding.

6 MR. O'DWYER: I didn't know I had to, but,
7 obviously, I do now.

8 CHAIR FUJII: Any other questions pertaining to
9 the accusation before you get the recommendations from the
10 Prosecutor?

11 MEMBER HELM: Yes, I -- I got one.

12 CHAIR FUJII: Go ahead.

13 MEMBER DE MELLO: I got one, too.

14 CHAIR FUJII: Zach.

15 MEMBER HELM: Chair. How many people do you
16 employ?

17 MR. O'DWYER: In Maui?

18 MEMBER HELM: Yeah, at this Wailea --

19 MR. O'DWYER: I have two restaurants.

20 MEMBER HELM: Okay. The three. So just for this
21 restaurant.

22 MR. O'DWYER: Full-time employees is 26. All
23 told, 38. That's without security or additional contract
24 staff, cleaners and stuff like that. So any given time, I
25 have 40 people, give or take, without security.

1 MEMBER HELM: Okay.

2 CHAIR FUJII: Jerrybeth.

3 MEMBER DE MELLO: You're saying without security?

4 MR. O'DWYER: Without security.

5 MR. TODD: Not including security.

6 MEMBER DE MELLO: Yeah.

7 MR. O'DWYER: We bring security in for all these
8 functions --

9 MEMBER DE MELLO: Okay.

10 MR. O'DWYER: -- and maybe extra managers.

11 MEMBER DE MELLO: So you have, a given time, is 26
12 people plus the security. So how many securities do you
13 have?

14 MR. O'DWYER: The last concert, we had 14 members
15 of security and we had roughly 480 people attend the
16 concert. And we brought in two extra managers from the
17 other restaurant with liquor cards.

18 MEMBER DE MELLO: And that's including your
19 bartenders?

20 MR. O'DWYER: Yes, it is.

21 MEMBER DE MELLO: Okay.

22 CHAIR FUJII: Any further questions by Members of
23 the Board? If not, Mr. Hanano, would you support your
24 argument as to penalty?

25 MR. HANANO: Yes. Thank you, Chair.

1 I will say that I have been in contact with Mike
2 over the past couple months. And I did meet with him
3 personally to discuss his case and try to work something
4 that, you know, was fair to both sides. And these fines
5 are, you know, based on, basically, taking everything into
6 consideration. The fact that he's been doing it for a
7 number of years, then, all of a sudden, oh, now you can't do
8 that. And I think that, you know, has to be taken into
9 consideration. There are a large number of counts that
10 normally, you know, we recommend \$500 per count for -- for
11 first offense. And some of these -- and I'll say it right
12 now, in Count 6 and 12, those have -- those counts involve
13 the congestion of aisles and stuff like that, which, you
14 know, there are prior convictions for those violations on
15 the record. So in those counts, we're going to recommend
16 \$1,500 fine in each count, and then the rest, that's 4, 7,
17 8, 9, 11, 13, 16 and 17, a \$250 fine for each count. The
18 license was issued back in October of 2001. And like I
19 said, there are, you know, prior liquor-related convictions,
20 with the most recent in 2013.

21 CHAIR FUJII: Mr. Hanano, will you go slowly on
22 those first ones again?

23 MR. HANANO: Okay. I will -- I will go down each
24 count.

25 CHAIR FUJII: Okay.

1 MR. HANANO: In Count 4, \$250 fine.

2 CHAIR FUJII: Okay.

3 MR. HANANO: In Count 6, \$1,500 fine.

4 CHAIR FUJII: 1,500?

5 MR. HANANO: 1,500, \$1,500. Count 7, \$250 fine.

6 Count 8, \$250 fine. Count 9, \$250 fine. Count 11, \$250

7 fine. Count 12, \$1,500 fine. Count 13, \$250 fine. Count

8 16, \$250 fine. And Count 17, \$250 fine.

9 MEMBER HELM: What was that for 13?

10 MR. HANANO: 13 was 250.

11 MEMBER HELM: And what is -- what is after 13?

12 MEMBER DE MELLO: The number, the count.

13 MR. HANANO: 16.

14 MEMBER HELM: And that was 250?

15 MR. HANANO: 250. And 17, 250.

16 MEMBER HELM: Thank you.

17 MR. HANANO: Any other -- any other clarification?

18 CHAIR FUJII: I think we have it all, your

19 recommendations in hand. Any Board Members missed any of

20 those numbers? Everybody's got those numbers? All right.

21 Then, again, the Board will be taking all these matters that

22 we've heard from both sides here into consideration and we

23 will try to make the best decision from gathering all the

24 facts that we got today. So I'll entertain a motion to go

25 into deliberation.

1 MEMBER U`U: Motion to deliberate.

2 MEMBER HELM: Second.

3 CHAIR FUJII: Moved by Bruce, seconded by Zach
4 that we go into deliberation. All in favor, say "aye."

5 (Response.)

6 CHAIR FUJII: Any opposed?

7 (No response.)

8 CHAIR FUJII: Motion carried. We will call you
9 back after our deliberations.

10 MR. TODD: Thank you so much.

11 (Deliberations, 9:41 a.m. to 10:07 a.m.)

12 CHAIR FUJII: The Board is back in open session.

13 We did work -- by the way, Mr. O'Dwyer and Mr. Todd, it did
14 take some doing to go through all of this and -- and to be
15 fair and looking at each item, the Board deliberated, not
16 100 percent with the Prosecutor's recommendation, but, you
17 know, making some adjustments. And we will go through this.
18 If you have a copy of this, you can -- we'll take it in the
19 order that it's -- it's listed there. So you can leave here
20 with the penalties that are being issued. On Count -- let's
21 see, the first one would be Count 4, the Board has assessed
22 a penalty of \$100. On Count 6, the Board has taken -- has
23 come to the decision of fining the licensee, on Count 6,
24 \$2,000 of which \$1,000 will be suspended provided there is
25 no reoccurrence of the same violation within a period of one

1 year. That's Count 6, \$2,000 of which 1,000 will be
2 suspended. On Count 7, the Board has -- is issuing a fine
3 of \$100. On Count 8 and 9, we'll do both 8 and 9, the Board
4 has issued a penalty of \$100 on Count 8 and \$100 on Count 9.
5 Count 11, the Board has issued a penalty of \$100. On Count
6 12, the Board has issued a penalty of \$2,000 of which \$1,000
7 will be suspended provided there is no reoccurrence of the
8 same violation within a period of one year. Count 13, the
9 Board is issuing a penalty of \$100. On Count 16 and 17,
10 Count 16, the penalty will be \$100, and, Count 17, the
11 penalty will be \$100.

12 Again, you know, we have -- I have never seen
13 counts -- 17 counts ever for any licensee, against any
14 licensee. So, you know, it -- I think we did take it
15 seriously. I hope you do. That --

16 MR. O'DWYER: 100 percent.

17 CHAIR FUJIII: That these reoccurrences -- these
18 violations do not reoccur. And we thank you for coming.
19 And the Department will notify you when payment is due. So,
20 again, you will be getting a notice when payment is due in
21 due time. So, again, hope we don't see you soon.

22 MR. O'DWYER: Thank you very much. Myself and my
23 crew are going to ensure that, hopefully, you won't see us
24 in -- in the near future or for a long time again. And I
25 appreciate the fairness of it.

1 I apologize, again, to the Director, for doing his
2 job, and it's black and white. No. It is. And now I -- we
3 know where we're at. And if you see me back here, then
4 there's -- it's on --

5 CHAIR FUJII: Yeah.

6 MR. O'DWYER: -- me. So --

7 CHAIR FUJII: I think I might state what -- what
8 transpired back here in the deliberations, that you -- you
9 were allowed to do certain things under a different
10 director, maybe. And, again, there's a new sheriff in town.
11 So, again, you should comply and make sure the Commission
12 gets to see whatever you're planning, your plans are, okay.
13 And that means the commission and the Department itself.
14 Okay?

15 MR. O'DWYER: Thank you.

16 CHAIR FUJII: Yeah. Thank you for coming.

17 MR. TODD: Thank you very much.

18 CHAIR FUJII: Is there any other business for
19 today, then, before Administration Affairs? You're excused.

20 MR. TODD: Thank you.

21 MR. O'DWYER: Thank you.

22 DIRECTOR MUKAI: Director's Monthly Report.

23 It's -- the state conference will be held November 27
24 through the 30th at the Grand Wailea Hotel. I believe all
25 of you were given the information. And the Department will

1 register you, so you don't have to turn in your
2 registration, and we will pay your registration fee.

3 And we also have to thank Jerrybeth for the
4 porterage fee. She noted it was a 11.50 porterage fee
5 mandatory would have automatically been charged to you, but,
6 through her influence, it was waived.

7 And information on the upcoming conference will be
8 provided to you on the November 3rd meeting. But now on the
9 meeting room, the registration and parking, because the
10 hotel still has not returned that information to us.

11 CHAIR FUJII: Yeah, there were some cost that, you
12 know -- it was something that they should waive, you know.
13 You guys use them every three years or four years, yeah,
14 and --

15 MEMBER DE MELLO: What is that, the resort fee?

16 CHAIR FUJII: Yeah, the resort fee.

17 MEMBER DE MELLO: Oh, that's cheeky, yeah.

18 CHAIR FUJII: Kamaainas get a little break.

19 DIRECTOR MUKAI: Well, Jerrybeth is the union rep
20 down there.

21 CHAIR FUJII: But, anyway, Glenn said he will be
22 reporting on the November 3rd meeting. So whatever --

23 DIRECTOR MUKAI: Yeah, all the information and,
24 also, the golf information, hopefully.

25 CHAIR FUJII: Okay. Anything else, Glenn, today?

1 Glenn, nothing else?

2 DIRECTOR MUKAI: Nothing else.

3 CHAIR FUJII: Anybody get any announcements,
4 anybody else? Okay. If not, someone make a motion to
5 adjourn.

6 VICE-CHAIR PAGAN: I move.

7 MEMBER DE MELLO: Second.

8 CHAIR FUJII: We are adjourned. (Gavel.)

9 (Meeting adjourned, 10:14 a.m.)

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CERTIFICATE

I, TONYA MCDADE, Certified Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney nor an employee of any of the parties hereto, nor in any way concerned with the cause.

DATED this ___ day of November, 2016.

/s/ Tonya McDade

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