

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, November 3, 2016.

Transcribed by: Tonya McDade, CSR, RPR, CRC  
CSR Maui, Inc.  
Wells Street Professional Center  
2145 Wells Street, Suite 302  
Wailuku, Hawaii 96793  
(808)244-3376  
reporters@csrmaui.com

1 BOARD MEMBERS PRESENT:

2 Donald Fujii, Chairperson

3 Wayne Pagan, Vice-Chairperson

4 Jerrybeth De Mello, Member

5 Zachary Helm, Member

6 Doris Tanaka, Member

7 Gwen Ueoka, Member

8 Bruce U`u, Member

9 STAFF PRESENT:

10 Edward Kushi, Jr., First Deputy Corporation Counsel

11 Peter Hanano, Deputy Prosecuting Attorney

12 Glenn Mukai, Director

13 Bill Pacheco, Chief Enforcement Officer

14 Sarah Cordeiro, Secretary to Boards/Commissions II

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(Thursday, November 3, 2016, 9:02 a.m.)

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CHAIR FUJII: (Gavel.) Good morning. Meeting of the Liquor Control Adjudication Board is now called to order pursuant to Section 281-91 of the Hawaii Revised Statutes and Section 8-13.3 of the Charter of the County of Maui to consider the matters and issues as posted on today's agenda.

Before we get started, we don't have our recorder here that's always with us. So all of you, when you -- speak up slowly and clearly so we can catch it on the recorder that Sarah's trying to keep minutes on.

At this time we would like the Board Members and staff to introduce themselves, beginning with our Secretary.

MS. CORDEIRO: Sarah Cordeiro, Liquor Control.

MEMBER DE MELLO: Jerrybeth De Mello, Lahaina.

MEMBER HELM: Zach Helm, Molokai.

MEMBER TANAKA: Doris Tanaka, Wailuku.

MR. KUSHI: Ed Kushi, County.

CHAIR FUJII: Donald Fujii, Wailuku.

VICE-CHAIR PAGAN: Wayne Pagan, Upcountry.

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

MEMBER UEOKA: Gwen Ueoka, Wailuku.

DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

MR. HANANO: Peter Hanano, Department of Prosecuting Attorney.

1 MR. PACHECO: And Bill Pacheco, Department of  
2 Liquor Control.

3 CHAIR FUJII: Thank you. Today, two Board  
4 Members, Candace, of course, new mom, is absent but excused,  
5 and -- I guess we had to excuse a new mom -- and Ben  
6 Despina, I think, is still in Alaska bear hunting. So he'll  
7 be back, I'm sure, for the next meeting because it must be  
8 getting cold up there.

9 So we will now hear Complaint and Accusation  
10 Number -- let me get my thing out here -- 2017-2 against  
11 Sandy's Place, Inc. doing business as Asian Star. Will the  
12 Respondent please step forward and state your name and what  
13 capacity you represent the Respondent? Name?

14 MR. CHAU: My name? My name is Jason Chau.

15 CHAIR FUJII: And you represent -- you're the  
16 owner or --

17 MR. CHAU: Yeah, I'm the owner.

18 CHAIR FUJII: How do you spell your last name,  
19 Jason?

20 MR. CHAU: C like catch, H like home, A like union  
21 and U -- A like apple, U like union. Sorry.

22 CHAIR FUJII: Again, just the letters, no need  
23 the -- okay. Just the letters. Okay. Go ahead, start  
24 again, then. Just spell it out.

25 MR. CHAU: C-H-A-U.

1 CHAIR FUJII: Okay. Easier to say Jason than --

2 MR. CHAU: Yeah.

3 CHAIR FUJII: We know you as Jason. You been with  
4 Asian Star for many years.

5 MR. CHAU: Yes.

6 CHAIR FUJII: Okay. At this time, you have to --  
7 Jason -- easier to say your first name -- so you have the  
8 option of having the charges publicly read -- there are  
9 three charges. We can have it publicly read or you can  
10 waive the reading. What is your preference?

11 MR. CHAU: What you mean?

12 CHAIR FUJII: We can have someone read the charges  
13 against you today, there are three charges, we can have  
14 someone read that, or can you waive it and just waive --

15 MR. CHAU: Now? Can, yeah.

16 CHAIR FUJII: You want it read, or you want to  
17 waive the reading, not -- not have it read?

18 MR. CHAU: What you mean? I don't understand.  
19 Waive?

20 CHAIR FUJII: Okay. You have three charges on  
21 the --

22 MR. CHAU: Three charges, yeah.

23 CHAIR FUJII: We can have the charges read by our  
24 secretary --

25 MR. CHAU: Yeah.

1 CHAIR FUJII: -- one, two and three --

2 MR. CHAU: Yes.

3 CHAIR FUJII: -- or you can say, "Waive the  
4 reading."

5 MR. CHAU: No. You can charge, yeah.

6 CHAIR FUJII: You -- we can waive the reading?

7 MR. CHAU: Yeah.

8 CHAIR FUJII: Okay. Okay. So then -- so, again,  
9 Jason, for the record, do you represent the Respondent  
10 involved? Are you the -- like I said, the owner, so --  
11 there will be lot of questions you will answer either yes or  
12 no. Are you -- are you the -- on record, the --  
13 representing -- you are the owner? Are you the owner?  
14 Again --

15 MR. CHAU: Yeah, I'm the owner.

16 CHAIR FUJII: Okay. Do you have legal counsel?  
17 Do you have an attorney?

18 MR. CHAU: No.

19 CHAIR FUJII: Do you understand that you have the  
20 right to have an attorney present?

21 MR. CHAU: I can understand little bit, but just  
22 slowly.

23 CHAIR FUJII: A lot of yes or no answers.

24 MR. CHAU: Okay.

25 CHAIR FUJII: Do you understand that you can have

1 an attorney present?

2 MR. CHAU: Yes.

3 CHAIR FUJII: Do you -- do you understand the  
4 charges against you? There are three charges here. Do you  
5 understand --

6 MR. CHAU: Yes.

7 CHAIR FUJII: -- the charges against you? We will  
8 be going over it, but you read the charges, there's Count 1,  
9 Count 2, Count 3?

10 MR. CHAU: Yes.

11 CHAIR FUJII: Do you understand the charges?

12 MR. CHAU: Yeah.

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

14 That means you're saying no -- not guilty, no contest?

15 What -- what -- what is your plea to each count?

16 MR. CHAU: That's my fault, you know, I'm not  
17 there, but --

18 CHAIR FUJII: Okay. According to our agenda, on  
19 each count -- and I will go over this again with you,  
20 Jason -- it says no contest to Count 1, no contest to Count  
21 2 and no contest to Count 3. So let me go over this. You  
22 agree to that?

23 MR. CHAU: Yes.

24 CHAIR FUJII: Okay. So what -- so you just say  
25 "no contest" when I tell you. Count 1?

1 MR. CHAU: No contest.

2 CHAIR FUJII: Count 2?

3 MR. CHAU: No contest.

4 CHAIR FUJII: And Count 3?

5 MR. CHAU: No contest.

6 CHAIR FUJII: We can move on now, then. Do you  
7 understand the violation the Department of Liquor Control  
8 alleges against you? Do you understand the charges and  
9 violations?

10 MR. CHAU: No.

11 CHAIR FUJII: You don't understand the -- what?

12 MR. CHAU: No. The three one?

13 CHAIR FUJII: Yeah.

14 MR. CHAU: Yes.

15 CHAIR FUJII: You understand that?

16 MR. CHAU: Yeah, I understand that.

17 CHAIR FUJII: So you understand the charges, okay.  
18 Do you understand that you have the right to plead not  
19 guilty? You said no contest, but do you understand that you  
20 have the right to plead not guilty? When you're saying no  
21 contest, you're not challenging. So now then I just wanna  
22 make sure on the record that you understand that you have  
23 the right to plead not guilty.

24 MR. CHAU: Yeah.

25 CHAIR FUJII: Yes?



1 MR. CHAU: Yes.

2 CHAIR FUJII: Do you understand by pleading no  
3 contest, you waive the right to have a hearing in which you  
4 can present evidence and question witnesses on your behalf?  
5 By saying that -- no contest, you are saying you are giving  
6 us the right to not having any witnesses to support you. Do  
7 you understand that?

8 MR. CHAU: Yes.

9 CHAIR FUJII: Okay. Is your plea of no contest  
10 voluntary, and not the result of force, threats or promises  
11 of any plea agreement? When you say "no contest," is that  
12 voluntary?

13 MR. CHAU: Yes.

14 CHAIR FUJII: You have to speak clearly now. We  
15 wanna hear. Do you understand, by pleading no contest to  
16 the three counts, that this is -- your plea of no contest is  
17 voluntary?

18 MR. CHAU: What you mean, voluntary?

19 CHAIR FUJII: Okay. You have a choice of saying  
20 not guilty, guilty or no contest.

21 MR. CHAU: Not guilty.

22 CHAIR FUJII: Yeah. So when -- but you said --  
23 according to our agenda here, it says that you are pleading  
24 no contest. Do you agree to that?

25 MR. CHAU: Yes.

1 CHAIR FUJII: And that's voluntary?

2 MR. CHAU: What you mean, voluntary?

3 CHAIR FUJII: Nobody forced you to say no contest  
4 or --

5 MR. CHAU: Yes.

6 CHAIR FUJII: You can say not guilty, but you're  
7 saying no contest. Is that voluntary? Meaning this came  
8 from you, nobody forced you to say anything else, but --

9 MR. CHAU: Yeah, that's from me, yeah, what I say.

10 CHAIR FUJII: So let me ask you the question  
11 again, then. So is your plea of no contest voluntary? That  
12 means nobody forced you.

13 MR. CHAU: Yeah. No contest. Voluntary, yes.

14 CHAIR FUJII: Voluntary, yes?

15 MR. CHAU: Yeah.

16 CHAIR FUJII: Okay. Do you understand that, on  
17 each count, the Board gonna accept your plea of no contest  
18 and you will be found guilty, and that the Board may issue a  
19 reprimand, that means we will send you a letter, or assess  
20 and collect a penalty of up to \$2,000 on each count, and  
21 there are three counts? Do you understand, by saying no  
22 contest -- we can even take your license away from you,  
23 okay, at any time, or suspend the license, suspending for 30  
24 days or whatever. By saying no contest, these are the three  
25 things that can happen, we can collect a penalty, we can

1 send you a letter, or we can suspend the license. Do you  
2 understand that?

3 MR. CHAU: Yes.

4 CHAIR FUJII: Clearly, now, gotta record it. Do  
5 you understand that?

6 MR. CHAU: Yes.

7 CHAIR FUJII: Okay. Thank you. The Board hereby  
8 finds that the licensee has entered a knowing and voluntary  
9 plea of no contest. The Board accepts your plea and finds  
10 you guilty on Counts 1, 2 and 3 reflected on Complaint and  
11 Accusation Number 2017-2.

12 At this time we will have the Department present a  
13 summary of the case. Mr. Hanano.

14 MR. HANANO: Thank you, Chair. This case involved  
15 a minor decoy operation which took place on Saturday, August  
16 1st, 2015. The Minor Decoy Team was comprised of Liquor  
17 Control Officers Jarrett Kahoochanohano, Trainees Jon Paul  
18 Jacobson, Cielo Molina, and two -- two minor decoys. The  
19 Minor Decoy Checklist was reviewed with the minor decoys  
20 informing them of the requirements and rules pertaining to  
21 minor decoy operations. The minor decoys were instructed to  
22 carry with them only their valid State of Hawaii driver's  
23 license or State of Hawaii identification card.

24 Minor Decoy 1 driver's license was printed in a  
25 vertical format which clearly indicated that Minor Decoy 1

1 became 21 years of age on 10-2-2017. Likewise, Minor 2's  
2 Hawaii identification card was printed in a vertical format  
3 which clearly indicated that Minor Decoy 2 became 21 years  
4 of age on 4-4-2017.

5           Prior to the actual minor decoy operation taking  
6 place, both minor decoys were instructed to answer any  
7 questions about their ages truthfully and to present their  
8 valid Hawaii State driver's license or ID card when asked by  
9 any of the -- any employee of the licensed premises to do  
10 so.

11           Both minor decoys reviewed and signed the Minor  
12 Decoy Checklist indicating they understood what was read to  
13 them.

14           On August 1st, 2015, at about 7:08 p.m., both  
15 minor decoys entered the Asian Star premises located at 1764  
16 Wili Pa Loop in Wailuku, Maui, Hawaii. Upon entry, both  
17 minor decoys were seated at a table. At this time, Liquor  
18 Control Officer Molina remained outside the premises and  
19 observed the entire operation from the front entrance  
20 window.

21           At about 7:17 p.m., the server, Danny -- I don't  
22 know if I'm mispronouncing this -- Quy Ngoc Chau came to the  
23 table and took the minor decoys' orders. Both minor decoys  
24 each ordered a Heineken Light beer. At that time Chau asked  
25 to see their respective identifications. After both minor

1 decoys handed Chau their IDs, Chau looked at them for about  
2 20 seconds, then handed the IDs back to the minor decoys.  
3 Chau did not ask either minor decoy for their age.

4           Following that, Chau left, then returned about two  
5 minutes later with the two Heineken Light bottles of beer.  
6 He then placed them on the table, at which time both minor  
7 decoys picked up the bottles of Heineken beer. And  
8 following that, Liquor Control Officer Molina entered the  
9 premises. She then advised Chau that he had just served  
10 liquor to minors.

11           As part of the investigation, Chau provided a  
12 statement at which time he stated the following: Stated  
13 that he is part owner of Asian Star. Has been working there  
14 for about 20 years. That night, his shift was from 10:00  
15 a.m. to 10:00 p.m. He stated that did he receive training  
16 on properly checking IDs. Stated that he always checks IDs,  
17 and that they hardly ever sell alcohol. Stated that when he  
18 checked the minor decoys' IDs, he thought he read their  
19 birth year as 1994, and stated that his eyesight must be  
20 bad. He also confirmed that he did not ask the minor decoys  
21 for their ages. Chau explained that he thought the minor  
22 decoys looked young and that he knew them, but, after  
23 checking their IDs, he thought they were old enough.

24           Also, as part of the investigation, Officer Molina  
25 asked to see the manager on duty; however, after numerous

1 requests by Officer Molina to speak to someone with an  
2 employee approved by the identification -- by the Director  
3 card, none of the employees could produce their cards.

4 It also should be noted that, throughout the  
5 investigation, licensee was evasive, uncooperative, and had  
6 to be repeatedly asked for information.

7 Nothing further, Chair. Thank you.

8 CHAIR FUJII: Thank you, Mr. Hanano. Any  
9 questions by Members of the Board reporting -- based on the  
10 report by Mr. Hanano regarding this case? Any questions?  
11 Okay. Jason --

12 MR. CHAU: Yes.

13 CHAIR FUJII: -- having no questions by the Board,  
14 it's pretty clear on these three charges, like Count 1 was  
15 furnish liquor to a minor, okay, Count 2 is not checking the  
16 ID properly, and Count 3 is to have an on-duty employee that  
17 been approved by the Director. That's the one he finished  
18 at the end saying there was no one there that was approved  
19 by the Director. So at this time, Jason, you can explain --  
20 opportunity to give your -- make a statement regarding this  
21 case, what you improved or whatever happened since then or  
22 before, or what you may have done since, inform the Board --  
23 you can inform the Board of anything, any circumstances that  
24 may apply to the sentencing. Because after we heard from  
25 him and we hear from you, we will be making a -- whatever

1 the punishment might be. So your chance to explain --

2 MR. CHAU: Yeah.

3 CHAIR FUJII: -- what happened.

4 MR. CHAU: It's okay. I'm sorry. I'm not there  
5 that time. That's why. That my mistake. But, anyway,  
6 (inaudible) employee do that, but he no -- like I just say,  
7 you know, he had the check ID, but he mix up the -- the  
8 year, yeah. That's why. That's why, you know, like -- you  
9 know, he -- I always tell him check ID, yeah, then I have  
10 the -- the calendar -- you know the -- the one put on the  
11 wall, you know, the day, the year. But, you know, if I  
12 don't know that time, you know, he say he checked the ID,  
13 but he told like -- he mix up the year. I don't know.  
14 That's why. But I apologize. That's what I say and what he  
15 say.

16 CHAIR FUJII: Anything else?

17 MR. CHAU: That's it.

18 CHAIR FUJII: Any -- any questions by Members of  
19 the Board regarding this case? I have one. Jason, what --  
20 you know, most licensees, when they come before us, and the  
21 employees fail to do the right thing -- was there any  
22 punishment or any anything? You know, like some owners --  
23 or I understand he's a part owner, that did the serving. So  
24 did you guys get involved in training, retraining or  
25 anything like that?

1 MR. CHAU: Yeah.

2 CHAIR FUJII: What happened after that?

3 MR. CHAU: You know, I always -- you know, I serve  
4 the restaurant 20 year, yeah, never happen, you know, like  
5 when, you know I'm there. But, you know, my mistake, I'm  
6 there, but I know at that time he, you know, busy or  
7 something. I think he mixed up, you know, like, you know,  
8 mistake like that. (Inaudible), you know, sorry.

9 CHAIR FUJII: There are -- there are, what you  
10 call, posters that says this person must be born certain  
11 year to be --

12 MR. CHAU: Yeah.

13 CHAIR FUJII: -- to be allowed to have --

14 MR. CHAU: Yeah.

15 CHAIR FUJII: -- purchase liquor.

16 MR. CHAU: I know. That's what I say, you know, I  
17 20 year, you know, never happened with -- I'm there, you  
18 know, alway, but, you know, he -- he check, but, you know, I  
19 don't know that time what happened on him. That's why.

20 CHAIR FUJII: Okay. Again, this is a, you know,  
21 serious thing. That's why we have these stings, you know,  
22 because -- you know, not to serve minors.

23 MR. CHAU: Yeah.

24 CHAIR FUJII: That's very important.

25 MR. CHAU: Apologize for that.



1 CHAIR FUJII: I think Zach has a question.

2 MEMBER HELM: I have a question, yeah. So this  
3 person that served you -- he's a part owner of the  
4 restaurant as well, that person that served the liquor to  
5 the minor? Is that family to you or relative?

6 MR. CHAU: The -- the relative to me.

7 MEMBER HELM: Oh, he is. And did you talk to him  
8 and explain to him that -- you know, the consequences  
9 that --

10 MR. CHAU: Yeah, I talk to him. I explain. I  
11 teach him anything. I training him, you know, like --

12 MEMBER HELM: So you said you're training him?

13 MR. CHAU: Yeah.

14 MEMBER HELM: Because you said 20 years you been  
15 there, that has never happened, but --

16 MR. CHAU: Yeah.

17 MEMBER HELM: -- he's made that mistake. So --

18 MR. CHAU: Make mistake. I don't know.

19 MEMBER HELM: Thank you.

20 MR. CHAU: Thank you.

21 CHAIR FUJII: Again, Jason, it would have been  
22 better -- not better, but it would have been -- if he was  
23 here, also, to -- you know, because these are serious  
24 things. And, you know, wanna make sure -- I'm sure you --  
25 you -- you explained to him about these -- what's happening

1 today, I'm sure you're gonna go back and explain that to him  
2 again.

3 MR. CHAU: Yes.

4 CHAIR FUJII: But, again, we -- we need to make  
5 sure whatever we explain to you today, not only here, but it  
6 goes back to your employees.

7 MR. CHAU: Yeah.

8 CHAIR FUJII: Okay.

9 MEMBER U`U: Question, Jason. How much employees  
10 do you -- do you employ, including yourself?

11 MR. CHAU: I have five.

12 MEMBER U`U: Five. So this is your first time --

13 MR. CHAU: My first time.

14 MEMBER U`U: -- of being charged with any --

15 MR. CHAU: No, never have happen before.

16 MEMBER U`U: It would be your best interest to  
17 educate all -- all five employees. And the most important  
18 part, which you had a good record for the last 20, is to  
19 educate all five employees. And, granted, there was a  
20 mistake made by your part owner/employer, but you need to  
21 take proactive measures so it doesn't happen again. So if  
22 you could set up some training. Or even get like monthly  
23 meetings with -- with -- with the guys. And, I guess,  
24 Liquor Control can help. We can -- there's ways to educate  
25 your employees so this doesn't happen again.

1 MR. CHAU: Yeah. Please. Yeah.

2 MEMBER UEOKA: I have a question.

3 CHAIR FUJII: Go ahead.

4 MEMBER UEOKA: So how long has this employee  
5 worked for you?

6 MR. CHAU: He work there long time, too, about 20  
7 year.

8 MEMBER UEOKA: Oh, okay. Thank you.

9 CHAIR FUJII: Based on what Bruce has tried to  
10 explain, Jason, that re -- retraining is good, you gotta  
11 retrain them every so often.

12 MR. CHAU: Yeah, please. Yeah, I want to.

13 CHAIR FUJII: We have licensees that come in every  
14 week to talk to their employees about --

15 MR. CHAU: Yeah.

16 CHAIR FUJII: -- again the rules, remind them  
17 about the rules. And not only remind them, but the  
18 consequence, the punishment involved, could lose your  
19 license, they could, you know -- and you -- as a owner, it  
20 gonna be -- reflect on you.

21 MR. CHAU: I know.

22 CHAIR FUJII: They can find another job, but for  
23 you, you know, it's -- it's -- it's gonna hurt you more than  
24 them, I would think.

25 MR. CHAU: Yeah. Thank you.

1 CHAIR FUJII: Any other questions before we ask  
2 for the Director's argument as to penalty? Mr. Hanano,  
3 then.

4 MR. HANANO: Thank you, Chair. Original license  
5 for this licensee was issued back in July of 1995. There  
6 are no prior liquor-related convictions on the licensee's  
7 record. In light of that, we are recommending, in Count 1,  
8 a \$2,000 fine with \$1,000 suspended on the condition that  
9 there are no further convictions of the same offense within  
10 one year, Count 2, a \$500 fine, and Count 3, a \$500 fine.

11 CHAIR FUJII: Thank you, Mr. Hanano. The Board  
12 will take this matter into consideration. At this time I  
13 would like a motion to go into any deliberation.

14 MEMBER TANAKA: I so move.

15 CHAIR FUJII: Okay. Moved by Doris.

16 MEMBER HELM: Second.

17 CHAIR FUJII: And second by Zach. Any discussion?  
18 All in favor of the motion, say "aye."

19 (Response.)

20 CHAIR FUJII: Any opposed?

21 (No response.)

22 CHAIR FUJII: Motion carried. We will -- Jason,  
23 we will be meeting here. Wait outside, and we'll call you  
24 back.

25 (Deliberations, 9:22 a.m. to 9:55 a.m.)

1           CHAIR FUJII: The Board is back in open session.  
2 Jason, we did -- as can you see we did deliberate, we talked  
3 about Count 1, Count 2 and Count 3. We wanna make a fair  
4 decision of each count. So we discussed every one. And  
5 what we have come back -- we decided on Count 1, Jason,  
6 there will be a penalty of \$2,000 of which we will suspend  
7 \$1,000 provided no violation within a period of one year.  
8 If there's a conviction of \$1,000 -- I'm sorry -- penalty of  
9 \$1,000 provided there is no conviction of the same -- you  
10 know, same offense within a period of one year, we'll  
11 suspend the \$1,000. If there is, we'll collect the other  
12 \$1,000. Same violation on the conviction, we'll collect  
13 that. So right now, it's \$1,000, will be the penalty for  
14 Count 1. On Count 2, the Board came up with the penalty of  
15 \$500, but we will suspend the \$500 provided there is no  
16 conviction of that same violation within the period of one  
17 year. So right now, we're saying we're going to fine you a  
18 penalty of \$500. But if there is no conviction within a  
19 year of the same offense, Count 2, we will dismiss that.  
20 Okay. On Count 3, the Board had looked at everything. And  
21 the decision is that we will dismiss the charge. There's no  
22 charge on Count 3.

23           MR. CHAU: Thanks.

24           CHAIR FUJII: So I see you smiling for the first  
25 time. So relax now.

1 MR. CHAU: Yes, I (inaudible) the first one, too.

2 CHAIR FUJII: You can relax.

3 MR. CHAU: Thank you.

4 CHAIR FUJII: The Board will -- the Department  
5 will notify you of any penalty -- when the payment is due on  
6 the -- on the Count 1, okay, and Count 2.

7 So, again, we know there is language barrier, you  
8 know, and that's not your fault, or anything like that,  
9 but -- and you have five employees and we noticed that two  
10 are certified managers, you know, they have manager's card.  
11 At one time, you had three, so, you know, it's better -- so  
12 at least you can take a break and not have to be there, you  
13 know, all day or all night. You can take a vacation, if  
14 there's three, two people can handle when you're not there.  
15 So, again, so if you could get the third person to renew his  
16 card, then they'll help you in the future. Again, the  
17 Department will let you know when penalty is -- when the  
18 payment is due. Thank you for coming. Any questions  
19 by you?

20 MR. CHAU: No.

21 CHAIR FUJII: Okay. Well, we don't want to see  
22 you again except in the restaurant. Okay? Thank you,  
23 Jason. Okay.

24 MR. CHAU: Thank you. Thank you. Thanks.

25 CHAIR FUJII: We'll see you at the restaurant.

1 MR. CHAU: Yeah.

2 CHAIR FUJII: You're done.

3 MR. CHAU: I'm done. Thank you, sir.

4 CHAIR FUJII: Okay. We'll now hear Complaint and  
5 Accusation Number --

6 MEMBER UEOKA: 2017-4.

7 CHAIR FUJII: Okay. 2017-4 against Mulligan's.

8 MR. HANANO: Chair, if I may?

9 CHAIR FUJII: Mr. Hanano.

10 MR. HANANO: You know on -- on the second item --

11 CHAIR FUJII: Uh-huh.

12 MR. HANANO: -- the one that you just mentioned,  
13 that was dismissed at the October hearing pursuant to the  
14 plea agreement.

15 CHAIR FUJII: Oh, okay.

16 MR. HANANO: Yeah. So we won't be --

17 CHAIR FUJII: We won't be taking that up?

18 MR. HANANO: Right.

19 MEMBER UEOKA: Thank you.

20 CHAIR FUJII: For those of you that were not here  
21 on the previous month's meeting, when we had only Mulligan,  
22 I guess, on the agenda, they had 17 counts of which one of  
23 these were on -- on that agenda, I guess. Is that right,  
24 Mr. Hanano?

25 MR. HANANO: I don't know if it was on the agenda,

1 but it was --

2 CHAIR FUJII: Dismissed?

3 MR. HANANO: Right. As part of the plea agreement  
4 in connection with the case that was on the --

5 CHAIR FUJII: Okay.

6 MR. HANANO: -- October --

7 CHAIR FUJII: So -- so we -- there's nothing to do  
8 on --

9 MR. HANANO: That's correct.

10 CHAIR FUJII: -- Accusation Number 2017-4, then?

11 MR. HANANO: Yes.

12 CHAIR FUJII: Okay. We'll move on then to  
13 Complaint and Accusation Number 2017-5 against Fabiani's  
14 Wailea, LLC doing business as Fabiani's Wailea. So will the  
15 Respondent or its representatives please step forward and  
16 state your names and what capacity you represent the  
17 Respondent.

18 MS. FABIANI: My name is Michelle Fabiani. I'm an  
19 owner.

20 MR. FABIANI: My name is Lorenzo Fabiani. I'm a  
21 part owner.

22 CHAIR FUJII: Are you Mr. and Mrs.?

23 MS. FABIANI: Yes.

24 CHAIR FUJII: Easier that way. Thank you.

25 Mr. and Mrs. Fabiani, at this time you have the option of



1 having the charges publicly read -- actually, you have two  
2 charges, yeah, so -- or you can waive the reading. What is  
3 your preference?

4 MS. FABIANI: We can waive it.

5 CHAIR FUJII: Thank you. And again, Mr. and Mrs.  
6 Fabiani, for the record, do you represent the Respondent  
7 involved? Do you represent the own -- the licensee?

8 MS. FABIANI: Yes.

9 CHAIR FUJII: Okay. You -- you are the licensee?

10 MS. FABIANI: Yes.

11 MR. FABIANI: Yes.

12 CHAIR FUJII: Again, we wanna -- like I said, we  
13 don't have a recorder here that normally sits there, so we  
14 wanna make sure all of the verbal thing gets in our  
15 recorder. Okay? Do you have legal counsel?

16 MS. FABIANI: No.

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

19 MS. FABIANI: Yes.

20 CHAIR FUJII: Do you understand the charges  
21 against you?

22 MS. FABIANI: Yes.

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

24 MS. FABIANI: No contest.

25 CHAIR FUJII: No contest. Do you understand the

1 violation -- violations the Department of Liquor Control  
2 alleges against you?

3 MS. FABIANI: Yes.

4 CHAIR FUJII: Do you understand that you have the  
5 right to plead not guilty?

6 MS. FABIANI: Yes.

7 CHAIR FUJII: Do you understand, by pleading no  
8 contest, you waive the right to a hearing in which you could  
9 present evidence and question witnesses on your behalf?

10 MS. FABIANI: Yes.

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

14 MS. FABIANI: Voluntary, yes.

15 CHAIR FUJII: Do you understand that, on each  
16 count, Count 1 and 2, if the Board accepts your plea of no  
17 contest, you will be found guilty, and that the Board may  
18 issue a reprimand or assess and collect a penalty up to  
19 \$2,000, or revoke any license at any time, or suspend the  
20 right of the licensee to use the licensee's license?

21 MS. FABIANI: Yes.

22 CHAIR FUJII: Do you still wish to plead no  
23 contest?

24 MS. FABIANI: Yes.

25 CHAIR FUJII: The Board hereby finds that the

1 licensee has entered a knowing and voluntary plea of no  
2 contest on Counts 1 and 2. The Board accepts your plea and  
3 finds you guilty of Counts 1 and 2 reflected in Complaint  
4 and Accusation Number 2017-5.

5 At this time, Mr. Hanano, may we have a summary of  
6 the case?

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

8 On Thursday, February 18th, 2016, at about 4:20  
9 p.m., Liquor Control Officer Cielo Molina was assigned to  
10 conduct inspections of liquor licensed premises in the  
11 Kihei-Wailea District. That night, at about 8:03 p.m.,  
12 Officer Molina conducted a routine inspection at the  
13 Fabiani's Wailea premises located at 34 Wailea Gateway,  
14 Suite A-101, Wailea, Maui, Hawaii.

15 Officer Molina was familiar with this licensee as  
16 she had previously inspected the premises several times  
17 prior. However, on the night of February 18, 2016, Officer  
18 Molina observed a female server waiting on several tables  
19 that were set up outside the licensed premises serving food  
20 and liquor. This was the first time Officer Molina had  
21 observed the tables set up outside of the restaurant on the  
22 sidewalk fronting the premises. At that time Officer Molina  
23 observed several customers seated at the tables consuming  
24 food and liquor.

25 After inquiring with an employee of Fabiani's --

1 Fabiani's as to whether the licensee had a special permit  
2 for the modified consumption area, the employee replied that  
3 she did not know that they needed one. Officer Molina  
4 advised the employee that a check would be conducted to see  
5 if there was a permit on file which allowed the  
6 modification.

7           Upon her return to the Department of Liquor  
8 Control Enforcement Office that night, at about 11:30 p.m.,  
9 Officer Molina checked the Department's records and  
10 determined that the licensee did not possess a special  
11 permit for the modification of its consumption area to  
12 include the front sidewalk area. According to the original  
13 floor plan of the premises that was filed with the  
14 Department, the front sidewalk area was outside of the  
15 licensed premises.

16           Nothing further, Chair. Thank you.

17           CHAIR FUJII: Thank you, Mr. Hanano. Any  
18 questions by Members of the Board based on Mr. Hanano's  
19 report? Mr. and Mrs. Fabiani, you have an opportunity to  
20 make a statement regarding this case. You may also inform  
21 the Board of any mitigating circumstances which may or may  
22 not apply to sentencing. Go ahead.

23           MS. FABIANI: First, we want to apologize. We  
24 realize that we did do something wrong. The manager that  
25 was there is no longer with us now. And we are no longer

1 serving alcohol outside on the sidewalk. And Lorenzo is  
2 also --

3 MR. FABIANI: I've taken charge now of the  
4 restaurant. So I'm keeping eye on everybody, to don't serve  
5 alcohol any more outside. We have other restaurant in Kihei  
6 and we have the same situation for we cannot serve alcohol  
7 outside and we never have a problem. But, unfortunately,  
8 I'm not there that day, and I have another manager in  
9 charge, who is no longer with us any more. And now I taking  
10 care of the restaurant. So I apologize for the mistake, we  
11 made it. And, obviously, it's not going to happen any more.

12 CHAIR FUJII: Thank you.

13 MR. FABIANI: Thank you.

14 CHAIR FUJII: Any questions by Members of the  
15 Board regarding these two charges against Fabiani's? One  
16 question here. Was this any special occasion or something  
17 that you -- they have -- this service went on outside.  
18 Was there --

19 MR. FABIANI: It's not a special occasion. This  
20 manager I hiring, he tried to do something I never told to  
21 doing. Every time I say, "Don't do that." And what happen  
22 is I'm not there. And, unfortunately, serving alcohol  
23 outside. And that is why he's no longer with us for over a  
24 year.

25 CHAIR FUJII: We would like to know who the

1 manager was at that time.

2 MR. FABIANI: The manager at that time, his -- his  
3 name is Jonathan Polsinelli. He's here for a visa from  
4 Ireland and he stay with us for, I think, six months, eight  
5 months. And after the accident and we decide to let him go.  
6 And he's back in --

7 CHAIR FUJII: What was his position, manager?

8 MR. FABIANI: Manager, yes.

9 CHAIR FUJII: For six to eight months, he was --

10 MR. FABIANI: I believe it is six to eight months.  
11 I believe it, yeah.

12 CHAIR FUJII: Any other questions? Go ahead,  
13 Bruce.

14 MEMBER U`U: Question. So the seats outside --

15 MR. FABIANI: Yes.

16 MEMBER U`U: -- was that in -- do -- did it exceed  
17 the -- the maximum capacity of that room in the interior of  
18 the --

19 MR. FABIANI: (Inaudible) the capacity of the  
20 restaurant, the outside and inside door, it's the same  
21 together. Is -- I think is 74 people, the capacity of the  
22 restaurant, yeah.

23 MEMBER U`U: So did the outside seating surpass  
24 the capacity?

25 MS. FABIANI: Did it go over?

1 MR. FABIANI: I believe so. And that is why we no  
2 have the liquor license for outside, for -- it's a separate,  
3 so --

4 MS. FABIANI: I think -- can I help him? Sorry.  
5 I think they're wondering if the additional seats  
6 outside made the capacity -- was it over the capacity.  
7 Correct?

8 MEMBER U`U: Yeah. Did it add to increasing the  
9 capacity of --

10 MS. FABIANI: Did we have too many seats.

11 MEMBER U`U: -- the maximum that was originally  
12 intended.

13 MR. FABIANI: I -- I believe it is -- is -- maybe  
14 is over the capacity, but, like I say, it's -- it's part of  
15 the -- the -- the lease, we have it, they ask us if we can  
16 put some table outside and no serving alcohol, obviously.

17 MEMBER U`U: Okay. Okay.

18 MR. FABIANI: So it's only for dining with no  
19 alcohol.

20 MEMBER U`U: Okay. Okay. That's it. Thank you.

21 MR. FABIANI: It's no BYB, nobody can bring in  
22 alcohol, too. It's only --

23 CHAIR FUJII: It's alcohol-free there.

24 MEMBER U`U: Okay.

25 MR. FABIANI: Yes.

1 MEMBER HELM: Chair? Excuse me. So are you --  
2 are you saying that you still have the dining out, but no  
3 alcohol?

4 MR. FABIANI: No alcohol.

5 MEMBER HELM: But you still have --

6 MR. FABIANI: The seats.

7 MEMBER HELM: -- seatings outside?

8 MR. FABIANI: Yes, seating outside.

9 MEMBER HELM: Just for --

10 MR. FABIANI: Just for --

11 MEMBER HELM: Dining?

12 MR. FABIANI: You know, dining and -- yes.

13 CHAIR FUJII: No service, no alcohol service?

14 MR. FABIANI: No alcohol. No, no at all. It's  
15 the same I -- I have in the other restaurant.

16 CHAIR FUJII: Okay. Any other questions of the  
17 licensee by the Board? Okay. Go ahead.

18 MEMBER U`U: To your recollection, has there  
19 any -- been any infractions at any of your restaurants?

20 MR. FABIANI: No. This is my first infraction we  
21 have in five years in business with the two restaurant.

22 CHAIR FUJII: Okay. Any other questions? And  
23 you've been in business five years, you said?

24 MR. FABIANI: In Wailea, I think, I believe it is  
25 three years right now, but the other restaurant is five



1 years.

2 CHAIR FUJII: No other questions? Mr. Hanano,  
3 could we have the Director's argument as to penalty for  
4 Count 1 and 2?

5 MR. HANANO: Yes. Thank you, Chair. Original  
6 license for this licensee was issued back in December of  
7 2013. There is no prior history of liquor-related  
8 violations. In light of that, we're recommending the  
9 following: On Count 1, a fine of \$500; and, in Count 2, a  
10 fine of \$250.

11 CHAIR FUJII: Thank you, Mr. Hanano. The Board  
12 will take this matter into consideration so I'd like to  
13 entertain a motion --

14 MEMBER U`U: One last question.

15 CHAIR FUJII: We can keep it open. Go ahead.

16 MEMBER U`U: One more question. Was your  
17 manager -- had -- carrying a manager's license?

18 MR. FABIANI: No.

19 MEMBER U`U: No. Okay. Thank you.

20 CHAIR FUJII: Okay. No.

21 MS. FABIANI: Our current one does, yes, liquor --

22 MR. FABIANI: Yeah, the new one, yes.

23 MEMBER U`U: Okay, the new one.

24 MR. FABIANI: We have a new manager with a new  
25 card.

1 MEMBER U`U: But at the time --

2 MR. FABIANI: At the time, no.

3 MEMBER U`U: -- he didn't have a card?

4 MR. FABIANI: No.

5 MEMBER U`U: Okay.

6 CHAIR FUJII: Okay. Now we'll entertain a motion  
7 to go into deliberation.

8 MEMBER U`U: Motion to deliberate.

9 MEMBER HELM: Second.

10 CHAIR FUJII: Okay. Moved by Bruce, seconded by  
11 Zach that we go into deliberation. All in favor of the  
12 motion say "aye."

13 (Response.)

14 CHAIR FUJII: Any opposed?

15 (No response.)

16 CHAIR FUJII: Motion carried. We will call you  
17 back in a few minutes.

18 (Deliberations, 10:11 a.m. to 10:23 a.m.)

19 CHAIR FUJII: The Board is back in open session.  
20 After deliberating and looking -- reviewing what was said  
21 from both parties, we heard from you folks and we heard from  
22 the prosecutor, the decision, on Count 1, the Board has  
23 decided that the licensee be penalized for -- with a fine of  
24 \$500 of which \$300 will be suspended provided there is no  
25 violation or conviction of the same offense. So, again,

1 fine of \$500, \$300 will be suspended provided, within a  
2 year, we don't see a same conviction.

3 MR. FABIANI: Thank you.

4 MS. FABIANI: Thank you.

5 CHAIR FUJII: On Count 2, the Board had decided  
6 that there is a penalty of \$250, again, provided there is no  
7 penalty -- I'm sorry. Again, the fine -- the penalty is  
8 \$250. That \$250 will be suspended provided there is no  
9 conviction of the same offense within a period of one year.  
10 So, again --

11 MR. FABIANI: Thank you.

12 CHAIR FUJII: -- it's -- I think we -- we think  
13 you people are doing a pretty good job, you know. So,  
14 again --

15 MR. FABIANI: Thank you.

16 MS. FABIANI: Thank you.

17 CHAIR FUJII: Hopefully, something like this  
18 doesn't happen again. Okay. So the Department will notify  
19 you when payment is due.

20 MS. FABIANI: Okay.

21 CHAIR FUJII: Thank you for coming.

22 MR. FABIANI: Thank you so much.

23 MS. FABIANI: Thank you.

24 MR. FABIANI: Thank you. You have a good day,  
25 guys.

1 CHAIR FUJII: Thank you.

2 MR. FABIANI: Thank you. Thank you, Bruce.

3 CHAIR FUJII: Mr. Mukai, I think we had some  
4 questions that we wanted to bring up. One was about -- what  
5 was that?

6 MR. KUSHI: Yeah. You know, regarding this case,  
7 in this kind of situation, can they have non-liquor premises  
8 a part of the restaurant and non-liquor service, just food  
9 only?

10 DIRECTOR MUKAI: Yes.

11 MR. KUSHI: They can?

12 DIRECTOR MUKAI: Because the Commission define the  
13 licensed premises.

14 MR. KUSHI: Isn't the food service that -- that  
15 the dinner only -- dinner only portion, part of the licensed  
16 premises?

17 DIRECTOR MUKAI: They can if it's outside. We  
18 have no control of outside of the premises unless they serve  
19 liquor. But, apparently, when I talked to them outside,  
20 they didn't realize that they could have asked for an  
21 extension of premises so they can serve liquor outside. But  
22 they are doing it at the Kihei one, but not at the Wailea  
23 one. So --

24 MR. KUSHI: So any -- in any restaurant they can  
25 have food service only and food and liquor only, food and --

1           DIRECTOR MUKAI: No. The -- the liquor is  
2 confined to the licensed premises that the Commission  
3 grants. You know, Commission --

4           CHAIR FUJII: When they first come in, yeah.

5           DIRECTOR MUKAI: -- yeah, defines the premises.

6           MEMBER HELM: Through their proposal, right?

7           DIRECTOR MUKAI: Yeah. They show the floor plan,  
8 this is our premises, and that's what the Commission -- if  
9 they wanna extend outside, they can come in for permit to  
10 extend the premises. It's the licensee's choice.

11          MR. KUSHI: But within the premises, can you have  
12 two sections?

13          DIRECTOR MUKAI: Well, whatever in the premises,  
14 you know, we don't control.

15          MR. KUSHI: It's hard for -- hard for Enforcement,  
16 I would think.

17          MEMBER UEOKA: You can take me to dinner tonight,  
18 we can check it out.

19          MR. KUSHI: Hey.

20          MEMBER U`U: Question. The -- the premises to  
21 alcohol, is it based on the square foot cost, or how does it  
22 run?

23          DIRECTOR MUKAI: No, no. It's the licensee that  
24 request what they want. They show the floor plan to the  
25 Commission, the Commission approve it. And the premises

1 gotta be approved. We have to get a CO from the Department  
2 of Public Works and all these regular clearances.

3 MEMBER U`U: Okay. Okay.

4 CHAIR FUJII: Along that same line, Glenn, how do  
5 they decide capacity? Again, not you folks, eh?

6 DIRECTOR MUKAI: Capacity is determined by Fire  
7 Department.

8 CHAIR FUJII: Fire Department. That's another  
9 approval they need, then, yeah?

10 DIRECTOR MUKAI: Yes.

11 CHAIR FUJII: Before they come for the final  
12 approval? Okay. Any other questions for the Director?  
13 And, Glenn, you had anything, business that you want to  
14 conduct with the Board today?

15 DIRECTOR MUKAI: Not at this time. You can  
16 adjourn, then we discuss.

17 CHAIR FUJII: Okay. All right, then. Motion to  
18 adjourn.

19 MEMBER U`U: Motion to adjourn.

20 MEMBER TANAKA: Motion to adjourn.

21 MEMBER U`U: Boy, that was fast.

22 CHAIR FUJII: Okay, we are done. Thank you,  
23 everybody. (Gavel.)

24 (Meeting adjourned, 10:40 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 December, 2016.

/s/ Tonya McDade

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Tonya McDade  
Certified Shorthand Reporter #447  
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Certified Broadcast Reporter