

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 9:00 a.m., on Thursday, April 5, 2018.

Reported by: Tonya McDade, CSR, RPR, CRR, CRC
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April 5, 2018

1 BOARD MEMBERS PRESENT:

2 Bruce U`u, Chairperson

3 Gwen Ueoka, Vice-Chairperson

4 Lahela Aiwohi, Member (In, 9:25 a.m.)

5 Richard Bergson, Member

6 Jerrybeth De Mello, Member

7 Zachary Helm, Member

8 Herman Nascimento, Member

9 Jason Williams, Member (In, 9:00 a.m.)

10 STAFF PRESENT:

11 Gary Murai, Deputy Corporation Counsel

12 Peter Hanano, Deputy Prosecuting Attorney

13 Renee Ishikawa-Delizo, Deputy Prosecuting Attorney,

14 (Item C) (In, 10:21 a.m.; out 10:35 a.m.)

15 Glenn Mukai, Director

16 Georgette Tyau, Deputy Director

17 Bill Pacheco, Liquor Control Officer IV

18 Karilee Yoshizawa, Liquor Control Officer IV

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1 (Thursday, April 5, 2018, 9:00 a.m.)

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3 CHAIR U`U: (Gavel.) Good morning, everyone.
4 The meeting of the Liquor Control Adjudication Board is
5 now called to order. Would the Board Members and staff
6 please introduce yourself starting with at my far left.

7 MEMBER DE MELLO: Jerrybeth De Mello from
8 Lahaina.

9 MEMBER BERGSON: Richard Bergson, also known as
10 Chuck, from Lahaina.

11 MR. MURAI: Deputy Corporation Counsel Gary
12 Murai.

13 CHAIR U`U: Bruce U`u, Paia.

14 VICE-CHAIR UEOKA: Gwen Ueoka, Wailuku.

15 MEMBER NASCIMENTO: Herman Nascimento, Makawao.

16 DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

17 DEPUTY DIRECTOR TYAU: Georgette Tyau, Liquor
18 Control.

19 MR. HANANO: Peter Hanano, Deputy Prosecuting
20 Attorney.

21 MR. PACHECO: And Bill Pacheco, Department of
22 Liquor Control.

23 MS. YOSHIZAWA: Kari Yoshizawa, Liquor Control.

24 CHAIR U`U: Thank you, everyone. We will now
25 hear Complaint and Accusation Number 28-06 [sic] against

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1 Haolepinos of Maui doing business as 7 Pools Lounge.

2 Thank you.

3 MR. JORGENSEN: Good morning. Good morning,
4 Chair U`u and Members of the Board and staff. My name's
5 Dave Jorgensen. I'm the attorney appearing on behalf of
6 the licensee Haolepinos of Maui, Inc. dba 7 Pools Lounge.
7 With me this morning is Unchin Vaughn, who is the
8 principal of the licensee.

9 CHAIR U`U: Thank you for stepping forward.
10 And, also, thank you for stating your name, Mr. Jorgensen.

11 At this time, you have the option of having your
12 charges publicly read or you can waive the reading.

13 MR. JORGENSEN: We'll waive the reading.

14 CHAIR U`U: Mr. Jorgensen, for the record, do
15 you represent the Respondent involved?

16 MR. JORGENSEN: Yes, I do.

17 CHAIR U`U: So you are legal counsel?

18 MR. JORGENSEN: Yes, I am.

19 CHAIR U`U: Do you understand the charges
20 against you?

21 MR. JORGENSEN: My client does understand those
22 charges.

23 CHAIR U`U: Okay. What is your plea to each
24 count?

25 MR. JORGENSEN: No contest.

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1 CHAIR U`U: Do you understand the violations the
2 Department of Liquor Control alleges against you or your
3 client?

4 MR. JORGENSEN: Yes, my client does.

5 CHAIR U`U: Do you understand that you have the
6 right to plead not guilty?

7 MR. JORGENSEN: Yes, sir.

8 CHAIR U`U: Do you understand that, by pleading
9 not guilty -- no contest, you have -- by pleading no
10 contest, you have the right to a hearing in which you
11 could present evidence and question witnesses on your
12 behalf? Let me state this again.

13 MR. JORGENSEN: Technically, I don't think
14 that's -- we're pleading no contest. We're not going to
15 present evidence or call witnesses.

16 CHAIR U`U: Okay. Right. Right.

17 MR. JORGENSEN: We understand that.

18 CHAIR U`U: Do you understand that you have the
19 right to plead not guilty?

20 MR. JORGENSEN: Right.

21 CHAIR U`U: Okay. Do you understand that by
22 pleading -- do you understand by pleading not guilty, you
23 have the right to waive a hearing in which you present
24 evidence and question witnesses on your behalf?

25 MR. JORGENSEN: Yes, sir.

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1 CHAIR U`U: Is your plea of no contest voluntary
2 and the result of force, threats or of promises apart from
3 any plea agreement?

4 MR. JORGENSEN: The plea is voluntary and not
5 the result of any of those things.

6 CHAIR U`U: Do you understand that -- do you
7 understand that, on each count, if the Board accepts your
8 plea of no contest, you will be found guilty, and that the
9 Board may issue a reprimand or assess any collect --
10 assess or collect a penalty of up to \$2,000, or revoke any
11 license at any time, or suspend the right of the licensee
12 to use the licensee's license?

13 MR. JORGENSEN: Yes, sir.

14 CHAIR U`U: Do you still wish to plead no
15 contest?

16 MR. JORGENSEN: Yes, sir.

17 CHAIR U`U: The Board hereby finds that the
18 licensee has entered a knowing and voluntary plea of no
19 contest. The Board accepts your plea and finds you guilty
20 of Counts 1, 2 and 3 as reflected in Complaint and
21 Accusation Number 28-16 -- 06. Will the Department
22 present a summary of the case?

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

24 On June 7th, 2017, Liquor Control Officers
25 Cullen Kawano and Andrew Carbonel conducted an inspection

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1 of the 7 Pools Lounge located at 331 Hookahi Street,
2 Wailuku, Maui, Hawaii. The purpose of their inspection of
3 the premises was to verify whether or not an ongoing
4 modification of the premises was in compliance with the
5 Rules of the Liquor Commission.

6 While conducting their inspection, Liquor
7 Control Officers observed that the construction
8 modification was close to being completed. Part of the
9 modification included the construction of a wall to
10 separate the adjoining room, the creation of additional
11 booths, and the installation of a new door. Checks with
12 the Department of Liquor Control's Licensing Division
13 revealed that the licensee provided incomplete floor plans
14 and had not filed any current permits for the
15 modification.

16 On June 12, 2017, Liquor Control Officers
17 conducted a follow-up inspection with the licensee. This
18 time, Liquor Control Officers observed two video game
19 machines available for customer use in the back lounge
20 area. Two patrons were observed playing on the machines.

21 While Liquor Control Officers inquired if they
22 had a permit for the modifications or the video game
23 machines, an employee of the licensee was unable to
24 produce any permits. A search of the records with the
25 Department of Liquor again revealed that no permits were

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1 issued for the modifications and/or the installation of
2 the gaming devices.

3 Nothing further, Chair. Thank you.

4 CHAIR U`U: Thank you. Any questions by the
5 Members of the Board? Seeing none, Mr. Jorgensen, you
6 have -- now have the opportunity to make a statement
7 regarding this case. You may, also, inform the Board of
8 any mitigating circumstances which may or may not apply to
9 the sentencing.

10 MR. JORGENSEN: Yes. Thank you, sir. Just one
11 clarification. I might have misheard, but I -- I believe
12 Mr. Hanano said June 12th for the second --

13 MR. HANANO: Oh.

14 MR. JORGENSEN: It was August 12.

15 MR. HANANO: August 12, yeah. I stand
16 corrected.

17 MR. JORGENSEN: Just for the record. Other than
18 that, the -- my client had dropped off plans at the
19 Department for the modification of the premises. She
20 understood that's what she needed to do. And the plans --
21 it had never been a complete application, admittedly. And
22 the rules of the Department, you have to have a completed
23 application. You can't just drop off the plans, but
24 that's what she had been told to do, so she did it. And
25 they had moved -- installed a wall -- were installing a

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1 wall and had moved the wall.

2 The -- the one wall separating the premises was
3 taken down almost immediately after the issue arose. On
4 the wall of the kitchen, because it was a little more -- I
5 mean, it was the wall to the kitchen, we did submit -- my
6 client did submit to the County for a building permit.
7 And we submitted -- on August 15th and August 17th, we had
8 submitted applications for permits after the fact, again
9 admittedly.

10 The application for the building permit is --
11 has been mired in the County system for quite some time.
12 And, actually, it's -- they're gonna require the landlord
13 to put in a whole new like drain -- sewer line out in the
14 street. And the landlord/owner of the property is --
15 they're in negotiations about doing that, but they don't
16 know if that's ever going to happen.

17 So as far as the video games, they were there.
18 We had submitted that application for a game permit on,
19 again, August 17, to the Liquor Department, but because
20 the floor plan wasn't approved by the Department with the
21 modifications, they could not approve the game permit. So
22 the games were there and they weren't turned on.

23 Ms. Vaughn had to go on an emergency trip to
24 Oregon. Her son had a serious problem up there and she
25 was up in Oregon. And that -- just so happened while she

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1 was gone, the employees, couple of the employees turned on
2 the machines.

3 And so the -- as I said, the one wall is gone,
4 the machines are gone, and the wall to the kitchen is
5 still pending a permit. And, actually, my client is
6 looking for some direction on that, but, at some point,
7 you know, if the landlord isn't going to cooperate, that
8 permit is not going to be obtained. That's just the
9 reality. But other than that, we're available for any
10 questions the Board may have.

11 CHAIR U`U: Any questions by the Board? Having
12 seen none, can we have the Director's argument as to
13 penalty?

14 MR. HANANO: Yes. Thank you, Chair. The
15 original license for this licensee was issued back in
16 September of 1994. There is one prior conviction in
17 2013 -- actually, 2014, for -- involving selling liquor to
18 a minor. And I'm looking at the -- kind of the conviction
19 history for the licensee. And I just wanted to note for
20 the Board that there was an issue. I don't know if the
21 Board recalls from the last time -- I mean the last
22 hearing that the licensee was in front of the Board. And
23 it got continued for clarification from the Commission
24 because there is a condition that was imposed -- one of
25 the conditions imposed by the Liquor Commission was that

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1 license shall terminate immediately upon any conviction of
2 the licensee of any of the Rules of the Liquor Commission.
3 I've been informed that, since then, the matter came up in
4 front of the Commission, and it's been clarified to
5 include -- or, actually, clarified to be specific as to
6 any rules regarding that there shall be no liquor service
7 on the premises between 2:00 a.m. and 4:00 a.m. I don't
8 know if -- I don't know if that's an accurate
9 representation of --

10 MR. JORGENSEN: If -- if I may, and the Director
11 can certainly correct me. We came to the Commission. And
12 our -- our position was that when that condition was
13 put -- a request had been made by my client to be open
14 from 2:00 -- 2:00 a.m. to 4:00 a.m. with no liquor
15 service. As part of that approval, there was a condition
16 that if any violations of the liquor laws happened during
17 that time period, 2:00 to 4:00, that the license would be
18 automatically terminated. The way the condition went
19 through the process, and that was, if nothing else, due to
20 my oversight, the condition that was typed onto the
21 license stated, and certainly implied, that any violation
22 anytime of any rules of the Liquor Department would result
23 in immediately termination of the license, not limited to
24 the 2:00 to 4:00 gap. At the Commission meeting last
25 month, I think it was March, maybe February, that was

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1 clarified by the Commission that they meant any violations
2 of liquor laws that might occur during that 2:00 to 4:00
3 non-service hours. So I believe that's -- that's correct.

4 MR. HANANO: Okay. So in light of that, for
5 Count 1, we're recommending a letter of reprimand for the
6 failure by the licensee to seek the proper permits despite
7 being notified by the Liquor Control Officers to do so.
8 In Count 2, we're recommending a \$500 fine. And Count 3,
9 a \$1,000 fine.

10 MR. JORGENSEN: And if I may, for what it's
11 worth, I mean, we appreciate the recommendation on Count
12 1, and we would ask for -- well, we'd, obviously, ask for
13 a letter of reprimand on all three, but we would ask for
14 the fines to be less than -- you know, to be less than
15 that. The -- you know, the building permit application
16 has been in, but it's -- there's a high hurdle that she
17 can't get over. But, obviously, we defer to the
18 discretion of the Board. And we appreciate your time.

19 CHAIR U`U: Counsel.

20 MR. MURAI: Mr. Hanano --

21 MR. HANANO: Yes.

22 MR. MURAI: -- do any of these violations carry
23 mandatory minimum penalties?

24 MR. HANANO: Not that I'm aware of, no.

25 CHAIR U`U: Any more questions? Seeing none,

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1 the Board will take the matter into this action or
2 entertain a motion to go into deliberation. Can I have a
3 motion?

4 MEMBER WILLIAMS: Motion.

5 MEMBER DE MELLO: Second.

6 CHAIR U`U: Second. Motion to deliberate.

7 (Executive Session, 9:11 a.m. to 9:25 a.m.)

8 CHAIR U`U: The Board is now back in session.
9 We'll read to you your fines. For Count 1, there will be
10 a letter of reprimand; for Count 2, there will be a \$400
11 fine; and, for Count 3, there will be \$1,000 fine. Did we
12 discuss about the --

13 MEMBER UEOKA: Yeah, because no suspension. We
14 are just going forward.

15 CHAIR U`U: Do you have any questions?

16 MR. JORGENSEN: No. Thank you very much.

17 CHAIR U`U: The -- the Department will notify
18 you when payment is due. Thank you.

19 MR. JORGENSEN: Okay. Thank you.

20 MS. VAUGHN: Thank you.

21 CHAIR U`U: Now we'll hear Complaint and
22 Accusation Number 2018-08 against Westin Host,
23 Incorporated doing business as the Westin Maui Resort &
24 Spa, Hotel License Number 236. At this time there is some
25 changes, so I'm going to turn over to Peter Hanano.

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1 MR. MURAI: I'm sorry, Mr. Chair. I just want
2 to interrupt you for a second and note for the record that
3 Board Member Aiwohi has joined us.

4 MEMBER AIWOHI: Thank you.

5 CHAIR U`U: Good morning.

6 MEMBER AIWOHI: Good morning. Sorry.

7 CHAIR U`U: I'm gonna turn 'em over to Pete.

8 MR. HANANO: Yeah. I'm gonna -- I'm gonna let
9 them make their appearances on the -- for the record.

10 MR. UEOKA: Good morning, Mr. Chair, Members of
11 the Board, Mr. Mukai. Robert Ueoka on behalf the Westin
12 Maui Resort & Spa. Present to my right, Mr. Thomas Foti,
13 he is the General Manager.

14 MR. FOTI: Aloha.

15 CHAIR U`U: Thank you. Have a seat.

16 MR. HANANO: Okay. Chair, just for preliminary
17 matters, there was a plea agreement in this matter. I
18 know the calendar represents Counts 1 through 7; however,
19 we did arrive at a plea agreement in this matter, so some
20 of the counts would be dismissed. And I'll go through
21 each count separately. So in Count 1, licensee has agreed
22 to plead no contest; Count 2 will be dismissed; Count 3
23 will be dismissed; Count 4, no contest; Count 5, no
24 contest; Count 6, dismissed; and Count 7, no contest.

25 CHAIR U`U: Any questions by the Board?

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1 VICE-CHAIR UEOKA: All right. Thanks.

2 CHAIR U`U: Again, thank you for stepping
3 forward, but could you please state your name and in what
4 capacity you represent the Respondent?

5 MR. UEOKA: Robert Ueoka, I am the attorney for
6 the Westin Maui Resort & Spa. Present to my right,
7 Mr. Thomas Foti, the General Manager.

8 CHAIR U`U: At this time you have the option of
9 having the charges publicly read to you or you can waive
10 the reading.

11 MR. UEOKA: Like to waive reading of the
12 charges.

13 CHAIR U`U: Thank you. Mr. Ueoka, for the
14 record, do you represent the Respondent involved?

15 MR. UEOKA: I do.

16 CHAIR U`U: So you are legal counsel?

17 MR. UEOKA: Yes.

18 CHAIR U`U: Do you understand the charges
19 against your client?

20 MR. UEOKA: We do understand the charges.

21 CHAIR U`U: What is your plea to each count?

22 MR. UEOKA: No contest.

23 CHAIR U`U: Do you understand the violations the
24 Department of Liquor Control alleges against you?

25 MR. UEOKA: Yes, we do.

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1 CHAIR U`U: Do you understand that you have the
2 right to plead not guilty?

3 MR. UEOKA: Yes, we do.

4 CHAIR U`U: Do you understand that, by pleading
5 no contest, you waive the right to a hearing in which you
6 could present evidence and question witnesses on your
7 behalf?

8 MR. UEOKA: Yes.

9 CHAIR U`U: Is your plea of no contest
10 voluntary, and not the result of force, threats or of
11 promises apart from any plea agreement?

12 MR. UEOKA: Yes.

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

19 MR. UEOKA: Yes, we understand that.

20 CHAIR U`U: Do you still wish to plead no
21 contest?

22 MR. UEOKA: Yes.

23 CHAIR U`U: The Board hereby finds that the
24 licensee has entered a knowing and voluntary plea of no
25 contest. The Board accepts your plea and finds you guilty

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1 of Counts 1, 4, 5 and 7 reflected in Complaint and
2 Accusation Number 2018-08. Will the Department present a
3 summary of the case?

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

5 On June 5th, 2017, police were called to the
6 Westin Maui Resort & Spa, located at 2365 Kaanapali
7 Parkway Drive, Kaanapali, Maui, Hawaii, regarding a report
8 involving an intoxicated male, later identified as Daniel
9 Conroy, refusing to leave the hotel property. Initially,
10 the hotel security officer, Dario Dy, responded to the
11 hotel's Beach Bar and advised Conroy to pay his bill,
12 which Conroy did. However, Conroy became agitated and
13 verbally abusive towards hotel patrons and employees.

14 Police responded to the hotel and were able to
15 make contact with Conroy. At that time, police were able
16 to smell the odor of liquor emanating from Conroy's breath
17 and body as Conroy argued and swore at police. Conroy
18 refused to leave the property. Conroy resisted police
19 attempts to place Conroy under arrest, and police had to
20 utilize physical force to arrest him.

21 Conroy was transported to the Lahaina Police
22 Station, but he was unable to be processed until he
23 sobered up several hours later.

24 Conroy was subsequently charged with Disorderly
25 Conduct and Criminal Trespass in the First Degree in the

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1 Lahaina District Court. And he was subsequently sentenced
2 to a \$500 fine on this Disorderly Conduct charge. The
3 Criminal Trespass charge was dismissed pursuant to the
4 plea agreement.

5 On June 29, 2017, Liquor Control Officer Robert
6 Shiigi initiated an investigation at the Westin Maui
7 Resort & Spa regarding a possible overservice of Conroy.
8 As part of the investigation, Officer Shiigi intended to
9 interview witnesses and obtain all relevant documents,
10 including any videotapes of the incident.

11 After arriving at the hotel on June 29th, 2017,
12 Officer Shiigi met with Hotel Security Supervisor Eddie
13 Ferreria. At that time, Officer Shiigi informed Ferreria
14 of his purpose and specifically requested to speak to
15 Security Officer Dario Dy. In response, Ferreria advised
16 Officer Shiigi that he would need to speak to Tim
17 Poindexter, who was the Director of Safety & Security for
18 the Westin.

19 While waiting outside of Poindexter's office,
20 Officer Shiigi came into contact with hotel Security
21 Officer Dario Dy, who was, apparently, summoned to
22 Poindexter's office. Officer Shiigi identified himself to
23 Dy and advised Dy that he needed to speak with Dy. In
24 turn, Dy related that Poindexter wanted to speak to Dy
25 first before Officer Shiigi could speak to Dy. However,

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1 after speaking to Ferreria, Dy left the area.

2 Shortly after that encounter with hotel Security
3 Officer Dy, Officer Shiigi met with Poindexter and advised
4 Poindexter that he was there to request video surveillance
5 for the incident that occurred on June 5th, 2017,
6 involving Conroy. At that time, Poindexter advised
7 Officer Shiigi that he could not see any video, have any
8 copies of any documents or speak with any of the employees
9 about the incident without some sort of subpoena or
10 warrant, as per corporate policy. In response, Officer
11 Shiigi advised Poindexter that the Rules of the Liquor
12 Commission require the licensee to provide documents when
13 requested by the Department. However, Poindexter
14 continued to cite corporate policy and refused to provide
15 any information, documents or videos to Officer Shiigi.

16 The following day, June 30, Officer Shiigi
17 continued his investigation at the Westin and spoke to the
18 Hotel Manager Tracy Stoltz. Officer Shiigi explained to
19 Stoltz that he needed to see certain documents and video
20 footage relating to the June 5th, 2017 incident involving
21 Conroy. Officer Shiigi also advised Stoltz of what
22 Poindexter told him regarding the corporate policy. At
23 that time, Stoltz stated that employees also have rights
24 and that -- and at the time Officer Shiigi requested to
25 interview hotel security officer Dy, there were no HR

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1 personnel available to sit in with Dy during the
2 interview. Officer Shiigi noted that Poindexter never
3 mentioned anything about this when he spoke to Poindexter.

4 After various communication with the licensee's
5 attorney, Robert Ueoka, the Department received a manila
6 envelope which contained a flash drive, employee time
7 sheets, a sales receipt and other documents. Upon review
8 of the flash drive, it was determined that the video
9 provided on the flash drive for the Beach Bar and Relish
10 Burger Bistro did not show anything in regards to the
11 investigation; however, there were missing periods of time
12 on the surveillance video for the Beach Bar. Also, the
13 video for the Relish Oceanside Restaurant was not included
14 as it was represented that the camera was not operational.

15 Also as part of the investigation, Officer
16 Shiigi interviewed Daniel Conroy. At that time, Conroy
17 provided a statement, which provided, in pertinent part,
18 as follows: Conroy stated that he arrived at the Westin
19 at about 8:30 a.m. and had a business meeting with some
20 clients; according to Conroy, he arrived subsequently at
21 the hotel's Beach Bar at about 4:15 p.m.; while there, he
22 had three unknown type of mixed drinks, he felt coherent,
23 but did not feel like himself and was acting like "an
24 asshole", which is not the way he acts; Conroy surmised
25 that the antidepressant medication that he was taking

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1 mixed with the liquor had an effect on him; on a -- Conroy
2 described his level of intoxication as a four on a scale
3 of one to 10, with 10 being the most intoxicated; Conroy
4 related that he was confused while at the bar and thought
5 that his business clients had picked up the tab, but, when
6 he tried to leave, hotel security escorted him back to the
7 bar to pay the tab; Conroy couldn't remember if he paid
8 cash or credit.

9 Subsequent to that, Officer Shiigi was able to
10 get the credit card receipt for the liquor purchase.

11 Finally, through Officer Shiigi's investigation,
12 it was revealed that the on-duty Food and Beverage
13 Manager, Austin Flores, at the time did not have an
14 employee approved by the Director card.

15 Nothing further, Chair. Thank you.

16 CHAIR U`U: Thank you. Any questions by the
17 Members of the Board?

18 MEMBER WILLIAMS: I didn't hear the last line.
19 What was the last nine?

20 MR. HANANO: Last line is that the Food and
21 Beverage Manager, Austin Flores, did not have a liquor
22 card, employee approved by the Director.

23 MEMBER WILLIAMS: Gotcha.

24 MR. HANANO: That's in -- that's in relation to,
25 I think, Count 7.

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1 MEMBER WILLIAMS: Okay.

2 CHAIR U`U: Any more questions by the Board?

3 VICE-CHAIR UEOKA: We've got to hear their
4 explanation, though, yeah. (Inaudible).

5 CHAIR U`U: Mr. Ueoka, you now have the
6 opportunity to make a statement regarding this case. You
7 may, also, inform the Board of any mitigating
8 circumstances which may or may not apply to sentencing.

9 MR. UEOKA: Thank you, Mr. Chair. As to the
10 charges, the main charges are that -- are the subsequent
11 investigation that -- that June -- June 29th, when they
12 came over, when our Director of Security said that there
13 was a subpoena or warrant needed to provide the materials,
14 that's inaccurate, inconsistent with the liquor rules.
15 And we acknowledge that.

16 Just to -- just to give more information to the
17 Board, that Director of Security is no longer employed by
18 the Westin. At that time, we did not have a General
19 Manager. Fortunately, right now, we have Mr. -- Mr. Foti,
20 who is here, who came in after the fact. But we're glad
21 to have him as a General Manager. He was formerly with
22 the Wailea Marriott. Very experienced, he's a great guy.
23 So we're happy to have him. We liked him at the Wailea
24 Marriott, but it's great that he's with Westin.

25 As a result of the incident, we did develop a

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1 policy. A policy just to educate employees, that,
2 basically, it's inaccurate to say you need a warrant or
3 subpoena. It's inaccurate to say you need counsel, a
4 right to counsel. So we developed the policy that, in
5 summary, it basically says, number one, to verify the
6 identity of the officer. So ID or business card. And if
7 the officer is -- a liquor officer's ID is verified, to
8 reasonably comply with the request. I mean, you don't
9 want -- you only want to give what you have personal
10 knowledge with or you have access to, but to reasonably
11 comply. Not to say no or you need a subpoena.

12 So we have met with management. Management has
13 educated employees and just explaining to them how
14 important it is to comply. And if you do it -- if you do
15 this kind of thing, we're gonna lose our liquor license,
16 which is devastating. So it's, basically, drawing the
17 distinction between a liquor investigation and a more
18 criminal investigation. A liquor investigation is an
19 administrative process which has wider discretion, so we
20 have to comply and be reasonably compliant. Just be
21 friendly and be reasonable.

22 In addition to that, we did do training. We
23 recently had training last month of our managers on site,
24 Westin managers -- training and testing, Westin managers
25 and Sheraton managers, in the general liquor licensing

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1 laws. And just so they are -- they are -- kind of backed
2 up additional information.

3 MR. FOTI: Yeah.

4 MR. UEOKA: And card testing as well. We are
5 confident that we -- that such an incident is not gonna
6 happen again. We have Mr. Foti here to train employees
7 and talk to his management team. So we've done as much as
8 we possibly can to prevent such a violation. We apologize
9 for the incident.

10 CHAIR U`U: Mr. Foti, did you want to say
11 anything?

12 MR. FOTI: Just that you have my apologies and
13 assurance that this won't happen again. I'm grateful to
14 be in the position that I'm in today. And this is a bit
15 of an embarrassing moment for us, how this was handled. I
16 recognize it was handled very poorly. And, again,
17 training is taking place. And you won't ever run into
18 this with us again. Sorry. Thank you.

19 CHAIR U`U: Thank you. Any questions by Members
20 of the Board?

21 MEMBER WILLIAMS: Did you guys mention anything
22 regarding Count 7?

23 MR. UEOKA: On Count 7, the manager, that's the
24 one that Mr. Hanano mentioned at the end that, on the
25 subsequent investigation, that -- you know, when they did

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1 the follow-up investigation, that they checked the
2 manager, we didn't have a manager on duty at the time. So
3 it's not really related to the non -- I guess the charges
4 about the -- the not providing the information. And just
5 to, also, I wanted to say that we did provide the
6 materials two business day -- within two business days
7 after any available materials. So as soon as we heard
8 about it, we got right on it. It was over kind of the 4th
9 of July weekend, but we did provide it within two business
10 days after that initial visit.

11 CHAIR U`U: Any more questions by the Board?
12 Seeing none, Director's argument to -- as to penalty.

13 MR. HANANO: Yes. Thank you, Chair. Original
14 license for this licensee was issued back in November of
15 1998. There are no prior convictions of any kind. So
16 we've taken that into consideration, as well as the fact
17 that they are admitting to, you know, the substantial --
18 or a substantial amount of charges. In Count 1, we'll be
19 recommending a \$2,000 fine with \$1,000 suspended on the
20 condition that there is no further convictions for the
21 same offense within a one-year period; Count 4, a \$1,000
22 fine; Count 5, a \$1,500 fine; and Count 7, a \$500 fine.

23 CHAIR U`U: The Board will take this matter into
24 consideration. I will entertain a motion to go into
25 deliberation.

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1 VICE-CHAIR UEOKA: So moved.

2 MEMBER DE MELLO: Second.

3 CHAIR U`U: Motion carried.

4 (Executive Session 9:41 a.m. to 10:12 a.m.)

5 CHAIR U`U: After long hard deliberation, for
6 Count Number 1, the Board has assessed a penalty of \$1,500
7 fine, for Count 1, with a \$500 suspension provided there
8 be no conviction of the same offense for a period of one
9 year; for Count 4, the Board assesses the penalty of
10 \$1,000; for Count 5, the Board imposes a fine of \$1,000,
11 \$500 of that to be suspended if the same violation
12 would -- there's no conviction for the same offense in the
13 period of one year, so \$1,000 fine, \$500 suspension; and
14 for Count 7, \$500 fine. The Department will notify you
15 when payment is due.

16 At this time we'll take a 10-minute recess.

17 MR. UEOKA: Thank you so much.

18 MR. FOTI: Thank you.

19 (Recess, 10:13 a.m. to 10:21 a.m.)

20 CHAIR U`U: Liquor is back in session. We will
21 now hear Complaint and Accusation Number 2018-10 against
22 Kaya, Incorporated doing business as Mimi's Lounge,
23 Dispenser General License Number 013.

24 MR. JORGENSEN: Good morning again, Chairman
25 U`u, Members of the Board and staff. My name is Dave

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1 Jorgensen. I'm the attorney for licensee Kaya, Inc. dba
2 Mimi's Lounge. With me this morning is Kioki Kaya who is
3 the principal of the company.

4 CHAIR U`U: Thank you. Thank you. Again, for
5 the record, in what capacity you represent the Respondent?

6 MR. JORGENSEN: I'm the attorney for licensee.

7 CHAIR U`U: Okay. At this time you have the
8 option of having the charges publicly read or you can
9 waive the reading. What's your preference?

10 MR. JORGENSEN: Waive the reading.

11 CHAIR U`U: Thank you. Mr. Jorgensen, for the
12 record, do you represent the Respondent involved?

13 MR. JORGENSEN: Yes.

14 CHAIR U`U: So you are legal counsel?

15 MR. JORGENSEN: Yes, sir.

16 CHAIR U`U: Do you understand the charges
17 against you?

18 MR. JORGENSEN: Yes.

19 CHAIR U`U: What is your plea to each count --
20 count 1?

21 MR. JORGENSEN: No contest.

22 CHAIR U`U: Do you understand the violations the
23 Department of Liquor Control alleges against you?

24 MR. JORGENSEN: Yes, sir.

25 CHAIR U`U: Do you understand that you have the

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1 right to plead not guilty?

2 MR. JORGENSEN: Yes, sir.

3 CHAIR U`U: Do you understand that, by pleading
4 no contest, you waive the right to a hearing in which you
5 could present evidence and question witnesses on your
6 behalf?

7 MR. JORGENSEN: Yes, sir.

8 CHAIR U`U: Is your plea of no contest
9 voluntary, and not the result of force, threats or of
10 promises apart from any plea agreement?

11 MR. JORGENSEN: Yes, sir.

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

18 MR. JORGENSEN: Yes, sir.

19 CHAIR U`U: Do you still wish to plead no
20 contest?

21 MR. JORGENSEN: Yes, sir.

22 CHAIR U`U: The Board hereby finds that the
23 licensee has entered a knowing and voluntary plea of
24 not -- of no contest. The Board accepts your plea and
25 finds you guilty of Count 1 reflected in the Complaint and

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1 Accusation Number 2018-10.

2 Will the Department present a summary of the
3 case?

4 MS. ISHIKAWA-DELIZO: Yes. Good morning. My
5 name is Renee Ishikawa-Delizo. I'm a Deputy Prosecuting
6 Attorney. I'm standing in on this case.

7 This case involves a violation of permit issued
8 November 5, 2013, to Kaya, Inc. dba Mimi's Lounge at --
9 located at 1063 Lower Main Street, Wailuku, during the
10 period of September 20, 2017 through October 14th of 2017.
11 The permit issued allowed Mimi's Lounge to install two
12 Megatouch game devices, one coin push game and one Fish
13 Hunter game device on the premises. When Mimi's Lounge,
14 through Ms. Kaya, applied for the permit on July 8 of
15 2013, which was signed November 4 of 2013, it specifically
16 requested to install a Fish Hunter game device.

17 The violation was discovered on September 20 of
18 2017 when Liquor Control Officer Cielo Molina was
19 inspecting the licensed liquor premises in Wailuku. At
20 Mimi's Lounge, she discovered that the electronic gaming
21 device labeled Fish Hunter Plus was actually running a
22 gaming -- a different video game called King of Treasures
23 Plus. In researching the matter, LCO Molina discovered
24 that the King of Treasures game was not listed on the
25 permit. She issued a citation the next day to Ms. Kaya

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1 for not having a permit to operate the King's Treasures
2 game and notifying the Department of the change. When
3 Ms. Kaya asked what to do, LCO Molina recommended
4 switching back to Fish Hunter game and applying for a
5 permit for the King's Treasure game.

6 Subsequently, LCO Molina went back to Mimi's
7 Lounge three times later; September 23 of 2017, October 3
8 of 2017 and October 14 of 2017. On each date, she
9 observed the device was still running the King's Treasures
10 games. Each time, LCO Molina issued a citation and she
11 warned Ms. Kaya of continuing to operate the King
12 Treasures game was a violation of the permit and to switch
13 back to Fish Hunter Plus, the original game permitted to
14 be played on the device.

15 On November 4, 2017, Liquor Control Officers
16 discovered that the game device had been confiscated by
17 the police.

18 CHAIR U`U: Any questions by Members of the
19 Board? Opening it up for questioning. Seeing none,
20 Mr. Jorgensen, you now have the opportunity to make a
21 statement regarding this case. You may, also, inform the
22 Board of any mitigating circumstances which may or may not
23 apply to sentencing.

24 MR. JORGENSEN: Thank you. This is -- this is
25 kind of a weird case because these games, it's the same

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1 cabinet, it's the same machine, it's just the software was
2 different. And it's no -- it's no excuse, but, I mean,
3 that -- that distinction was a little bit lost on my
4 client. They had a permit -- she had her permit for --
5 since 2013 to have that. And the permit is, at least in
6 my packet, Page 13. And it clearly says Fish Hunter game
7 device. And device is the machine. But the software --
8 if you change out the software, you have to -- according
9 to the Department, you have to get a new permit, even if
10 it's the same mechanism.

11 That was -- that was not done. The reason it
12 wasn't done -- and -- and LCO Molina did recommend that
13 they put the Fish Hunter software back in the game. The
14 guy who had the Fish Hunter software was on Oahu and had
15 to come back to do it. And while they're waiting for him
16 to come back, they -- she -- the King of Treasures game
17 software was still being used.

18 You know, Ms. Kaya knows -- obviously knows,
19 certainly knows now, that that was -- that you have to
20 have a permit for any different -- there's no game there
21 now, but I believe -- you still have the Megatouch? No.
22 So there's no -- there's no video games there right now,
23 anyway. But if there is, and even if that device is
24 approved, that if the software is changed, then -- you
25 know, nowadays, everything is software, so you can change

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1 it pretty quick and have a different -- a different game
2 to play. But she clearly knows that that -- that any
3 change in the software of the game would have to get a
4 separate permit. So, you know, she's sorry for the
5 confusion. And she certainly knows that she should have
6 taken Ms. Molina's advice and either find a way to get the
7 Fish Hunter software back to the game or not have the
8 machine there.

9 But other than that, we -- we are available for
10 any questions.

11 CHAIR U`U: At this time we'll take questions
12 from the Board. Any questions from the Board?

13 VICE-CHAIR UEOKA: Can you speak to why it was
14 that somebody went back and checked on the 23rd of
15 September, again on the 3rd of October, and again on the
16 14th, and the same problem was existing? Why it
17 wasn't --

18 MR. JORGENSEN: Again, she understood that she
19 had to switch the software back, and she didn't have the
20 software. So while she's waiting for the guy to bring the
21 software back -- the guy who maintains the machine was on
22 Oahu. And he didn't come back.

23 VICE-CHAIR UEOKA: Is it possible to turn off
24 the machine?

25 MR. JORGENSEN: Yes.

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1 VICE-CHAIR UEOKA: Thank you.

2 MR. JORGENSEN: It would have been possible to
3 turn off the machine.

4 CHAIR U`U: Any other questions? Seeing none,
5 can we have the Director's argument as to penalty?

6 MS. ISHIKAWA-DELIZO: Yes. Thank you. We're
7 looking at the license was received via transfer October
8 16 of 2001, the permit was issued for November 5 of 2013.
9 We're looking at the ongoing violation of the permit
10 continued for several weeks despite being warned to
11 desist. And we argue it possibly could have continued
12 even longer had the police not taken the device out of the
13 premises. And when you look at Mimi's Lounge having a
14 record, which is two violations in regards to liquor to a
15 minor, which was imposed January of 2016. So at this time
16 we're asking for \$1,500 fine.

17 Thank you.

18 CHAIR U`U: The Board will take this matter into
19 consideration. I would entertain a motion to go into
20 deliberation. All those in favor?

21 MEMBER WILLIAMS: Motion.

22 VICE-CHAIR UEOKA: So moved -- second.

23 CHAIR U`U: Second. All those in favor?

24 (Response.)

25 (Executive Session, 10:30 a.m. to 10:33 a.m.)

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1 CHAIR U`U: The Board is now back in session.
2 The Board has assessed a penalty of \$1,500 for Count 1.
3 The Department will notify you when payment is due. Thank
4 you.

5 MR. JORGENSEN: Thank you very much.

6 MS. KAYA: Thank you.

7 CHAIR U`U: We will now hear Complaint and
8 Accusation Number 2018-11 against J'ouvert, Incorporated
9 doing business as Polli's Mexican Restaurant & Cantina.
10 Will the Respondent or its representative please step
11 forward and state your name and in what capacity your
12 represent the Respondent?

13 MR. ELLISON: Good morning. My name is Timothy
14 Ellison. I'm the President/Owner/Busboy of Polli's
15 Mexican Restaurant.

16 CHAIR U`U: Have a seat, Mr. Ellison. At this
17 time you have the option of having the charges publicly
18 read or you can waive the reading. What will be your
19 preference?

20 MR. ELLISON: I'll waive the reading.

21 CHAIR U`U: Mr. Ellison, for the record, do you
22 represent the Respondent involved?

23 MR. ELLISON: Yes.

24 CHAIR U`U: Do you have legal counsel?

25 MR. ELLISON: No.

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1 CHAIR U`U: Do you understand that you have the
2 right to have your legal counsel present?

3 MR. ELLISON: Yes.

4 CHAIR U`U: Do you understand the charges
5 against you?

6 MR. ELLISON: Yes.

7 CHAIR U`U: What is your plea to each count?

8 MR. ELLISON: No contest.

9 CHAIR U`U: Do you understand the violations the
10 Department of Liquor Control alleges against you?

11 MR. ELLISON: Yes.

12 CHAIR U`U: Do you understand that you have the
13 right to plead not guilty?

14 MR. ELLISON: Yes.

15 CHAIR U`U: Do you understand that, by pleading
16 no contest, you waive the right to a hearing in which you
17 could present evidence and question witnesses on your
18 behalf?

19 MR. ELLISON: Yes.

20 CHAIR U`U: Is your plea of no contest
21 voluntary, and not the result of force, threats or of
22 promises apart from any plea agreement?

23 MR. ELLISON: Voluntary.

24 CHAIR U`U: Do you understand that, on each
25 count, if the Board accepts your plea of no contest, you

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1 will be found guilty, and that the Board may issue a
2 reprimand, or assess and collect a penalty of up to
3 \$2,000, or revoke any license at any time, or suspend the
4 right of the licensee to use the licensee's license?

5 MR. ELLISON: Yes.

6 CHAIR U`U: Do you still wish to plead no
7 contest?

8 MR. ELLISON: Yes.

9 CHAIR U`U: The Board hereby finds the licensee
10 has entered a knowing and voluntary plea of no contest.

11 The Board accepts your plea and finds you guilty of Count
12 1 reflected in Complaint and Accusation Number 2018-11.

13 Will the Department present a summary of the case?

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

15 This case involved a minor decoy operation which
16 took place on Thursday, February 1st, 2018. The Minor
17 Decoy Team was comprised of Liquor Control Officers Kayle
18 Matsushima, Andrew Carbonel, Trainees Salika
19 Khangsengsing, Marc Velasquez, and Maui Police Department
20 Officers Brandon Phillips and Andrew Cabral, and, also, a
21 male minor decoy.

22 The minor decoy list was reviewed with the minor
23 decoy informing him of the requirements of the rules
24 pertaining to minor decoy operations. The rules required,
25 among other things, that the minor decoy carry his valid

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1 Hawaii license card on his person at all times, that he
2 answer any questions about his age truthfully, and that he
3 present his valid Hawaii driver's license card when asked
4 by any employee of the license premises to do so. The
5 minor decoy reviewed and signed the Minor Decoy Checklist
6 indicating he understood what was read to him.

7 The minor decoy's Hawaii driver's license card
8 was printed in a vertical format which clearly indicated
9 that the minor decoy became 21 years of age on 11-21-2020.

10 As part of the operation, the minor decoy was
11 provided with a \$20 bill to use as buy money.

12 On February 1st, 2018, at about 9:32 p.m.,
13 Officer Cabral entered the Polli's Mexican Restaurant,
14 located at 1202 Makawao Avenue, Makawao, Maui, Hawaii.
15 The minor decoy entered about a minute later. While
16 inside, the minor decoy walked directly to a table which
17 was situated directly in front of the bar. The minor
18 decoy then ordered a Heineken beer from the female server
19 later identified was Amanda Christine Larson. After
20 ordering the Heineken beer from Larson, Larson did not ask
21 for -- the minor decoy for his ID or his age. Larson then
22 placed the order for the Heineken beer with the bartender,
23 and subsequently retrieved a 12-ounce bottle of Heineken
24 beer and gave it to Larson. In turn, Larson served the
25 Heineken bottle of beer to the minor decoy by placing it

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1 on the tabletop. After Larson served the Heineken bottle
2 of beer to the minor decoy, Larson walked away to attend
3 to other patrons. Following that, the minor decoy took
4 possession of the Heineken bottle of beer and looked at
5 Officer Cabral. Officer Cabral then walked over to the
6 minor decoy and took possession of the Heineken beer as
7 evidence.

8 As part of the investigation, Amanda Christine
9 Larson was interviewed, at which time she provided the
10 following statement, in pertinent part: Stated that she
11 had worked for the licensee for about seven years; stated
12 that there is no regular training for employees on
13 checking IDs given by the licensee, but that she did
14 receive ID checking instruction from Polli's seven years
15 ago when she first started working for them; Larson
16 acknowledged that she did not check the minor decoy's ID
17 or ask him for his age before serving him the Heineken
18 beer.

19 Also, as part of the investigation, the manager
20 on duty that night Joseph Hoffman was interviewed, at
21 which time he provided the following statement: Stated
22 that their employees meet annually to review ID checking
23 procedures.

24 Nothing further, Chair.

25 CHAIR U`U: Thank you. Is there any questions

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1 of the Members of the Board? Seeing none, Mr. Ellison,
2 you now have the opportunity to make a statement regarding
3 this case. You may, also, inform the Board of any
4 mitigating circumstances which may or not be -- apply to
5 sentencing.

6 MR. ELLISON: Well, first, thank you for hearing
7 me. I'm extremely disappointed that I'm here.

8 And he didn't mention, but I bought Polli's in
9 1991. We haven't had one violation in 27 years. And I'm
10 proud of that fact. I kind of feel like I had a no-hitter
11 going on in the World Series and someone just hit a home
12 run on me.

13 I had made a lot of changes at Polli's over the
14 years. When I bought Polli's, the liquor sales were very
15 high compared to food. And over the years, we've,
16 actually, changed that to where we become more of a
17 restaurant.

18 I have a 2:00 in the morning license. I close
19 at 10:00. We have live entertainment. We do not -- I
20 mean, we could have live entertainment, we don't have live
21 entertainment.

22 And we do have meetings at least annually.
23 Everybody has worked there a long time and they know to
24 check IDs. And if anybody here said, "Tim, we're going to
25 go up there and do a sting operation, do you want to put a

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1 bet on it," I would have gone 10 to one and said, "There's
2 no way."

3 I can see what was going on in her mind. And
4 it's -- unfortunately, she was closing down, so her mind
5 was closing. And so somebody comes in, orders food to go,
6 sits at a table. And she's really more concerned about
7 getting out of there quicker than doing her job properly.

8 I, actually, have a nonprofit. I left that day
9 and I was in Cambodia. It seems like every year I leave,
10 something happens. So when I came back, found out, you
11 know, that this had happened, I had to let Amanda go,
12 which I felt really bad about because she had been with us
13 for a long time.

14 She has gone to the court, has a year's
15 probation, had to pay a fine. So she's gone through the
16 wringer.

17 It's been a shock system to the whole restaurant
18 because it was like, wow, they can't believe -- I mean, I
19 asked the other waitresses, I said, "Well, do you ever ID
20 this person." They said, "Absolutely."

21 You know, she just was more concerned about
22 leaving and rushing than doing her job properly. It's not
23 an excuse.

24 And I have rehired her. I tend to do that. You
25 know, she's -- she's paid her dues, she's very remorseful,

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1 you know.

2 I personally talked to every employee, had them
3 sign a statement that they knew the importance of
4 over-serving and checking for IDs.

5 And for an example just how strict I am and how
6 worried I am about violations, we have Cinco de Mayo
7 coming up, I'm probably the only Mexican restaurant in the
8 United States that does not even have a special. We do
9 nothing. And I do this because it's like amateur night,
10 people are coming out, they just want to have a lot of
11 margaritas. And so we just open up, it's like a busy
12 Friday night and we close at 10:00.

13 You know, a few years ago, we had -- more than a
14 few years ago, there was a girl that was drinking there.
15 And she had what looked like a valid ID, but I knew -- I
16 just had a gut feeling she wasn't 21. And I asked the
17 waitress, go back and ask for her if she has any other ID,
18 a license -- I mean, a Social Security card, a credit
19 card, anything. Of course, she didn't. So we didn't
20 serve her. And I had -- well, show and tell here. I had
21 this sign put up in the restaurant, "No ID, we can ask for
22 two IDs." Because I don't want somebody coming in with
23 one ID thinking it's, you know, a solid fake-looking ID.
24 So I take it very seriously.

25 And, normally, our waitresses take it very

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1 seriously -- or our servers take it very seriously. And
2 we've had sting operations in the past and have not had a
3 problem.

4 All I can say, she dropped the ball. And I'm
5 bummed out, you know. It's -- it's -- 27 years is a long
6 time. And I just take it seriously.

7 It's interesting being here today and listening
8 to other deals that I'm not even aware of, (inaudible) and
9 different situations, because the two big ones to me,
10 really, that really are pertinent to us is over-serving
11 and serving to a minor. And we're very strict on those.
12 And -- but I'm here.

13 So I could just ask you to look at our record.
14 And I have personally talked to everybody. And I work on
15 the floor. They definitely got the message. And -- and I
16 know Amanda will be checking anybody under 90 years old,
17 but I felt it was the right thing to do, to bring her back
18 and give her a second chance. She's been there seven
19 years. So --

20 CHAIR U`U: Thank you.

21 MR. ELLISON: But it is what it is, you know. I
22 can't change that.

23 CHAIR U`U: Thank you, Mr. Ellison. Any
24 questions by Members of the Board?

25 VICE-CHAIR UEOKA: Yes. How long -- when did

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1 you rehire Amanda Larson? Because it's only been two
2 months since --

3 MR. ELLISON: No. I rehired her maybe two --
4 two or three weeks after I let her go.

5 VICE-CHAIR UEOKA: Thank you.

6 MR. ELLISON: I rethought it. I'm known as
7 Second Chance Tim.

8 CHAIR U`U: Any other questions for the Board?
9 Seeing none, Director's argument as to penalty.

10 MR. HANANO: Thank you, Chair. As Mr. Ellison
11 stated, original license for the licensee was issued back
12 in March of 1992. There are no prior convictions
13 whatsoever. In light of that, we're recommending, in
14 Count 1, a 200 -- a \$2,000 fine with 1,000 suspended on
15 the condition that there's no further convictions for the
16 same offense within a one-year period, and a \$500 fine on
17 Count 2.

18 CHAIR U`U: The Board will take this matter into
19 consideration. I'll entertain a motion to go into
20 deliberation.

21 VICE-CHAIR UEOKA: So moved.

22 CHAIR U`U: All those in favor?

23 MEMBER WILLIAMS: Second.

24 CHAIR U`U: Second. All those in favor?

25 (Response.)

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1 (Executive Session, 10:47 a.m. to 10:53 a.m.)

2 CHAIR U`U: We are now back in open session.

3 For Count 1, the penalty is \$1,000 fine. For Count 2, the
4 penalty is a \$500 fine with \$500 of that fine to be
5 suspended provided there is no conviction for the same
6 offense for over a period of one year. The Department
7 will notify you when payment is due. We took all things
8 into consideration, the Board made a decision on the
9 fines. So --

10 MR. ELLISON: Okay. Thank you.

11 CHAIR U`U: Thank you. We will now hear
12 Complaint and Accusation Number 2018-12 against JB's
13 Kitchen & Lounge, LLC doing business as JB's Kitchen &
14 Lounge, Dispenser General License Number 360. Thank you
15 for stepping forward. Can you state the name and what
16 capacity you represent the Respondent?

17 MR. ISHII: Good morning, everybody. My name is
18 Guy Ishii, and I represent JB's Kitchen as the Manager.

19 CHAIR U`U: At this time you have the option of
20 having the charges publicly read or you can waive the
21 reading. What is your preference?

22 MR. ISHII: Can I waive the reading, sir?

23 CHAIR U`U: Yes, you can. Mr. Ishii, for the
24 record, do you represent the Respondent involved?

25 MR. ISHII: Yes, I do.

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1 CHAIR U`U: Do you have legal counsel?

2 MR. ISHII: No, sir.

3 CHAIR U`U: Do you understand that you have a
4 right to have legal counsel present?

5 MR. ISHII: I understand, sir.

6 CHAIR U`U: Do you understand the charges
7 against you?

8 MR. ISHII: Yes, sir, I do.

9 CHAIR U`U: What is your plea to each count?

10 MR. ISHII: Guilty or -- I don't know -- no
11 contest, whatever it is, but I'm not fighting the charges.

12 CHAIR U`U: We need clarification.

13 MR. ISHII: I'm not -- whatever happened --

14 CHAIR U`U: So no contest?

15 MR. ISHII: Yeah, no contest. Whatever
16 happened, you know, that's our fault. There -- there's
17 no --

18 CHAIR U`U: So no --

19 MR. ISHII: And there's no fighting it. No
20 contest.

21 CHAIR U`U: No contest. Thank you for making it
22 clear for myself, also. Do you understand that -- the
23 violations the Department of Liquor Control alleges
24 against you?

25 MR. ISHII: Yes, sir.

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1 CHAIR U`U: Do you understand you have the right
2 to plead not guilty?

3 MR. ISHII: Yes, sir.

4 CHAIR U`U: Do you understand that, by pleading
5 no contest, you waive the right to a hearing in which you
6 could present evidence and question witnesses on your
7 behalf?

8 MR. ISHII: Yes, sir.

9 CHAIR U`U: Is your plea of no contest
10 voluntary, and not the result of force, threats or of
11 promises apart from any plea agreement?

12 MR. ISHII: It is voluntary.

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

19 MR. ISHII: Yes, sir, I understand.

20 CHAIR U`U: Do you still wish to plead no
21 contest?

22 MR. ISHII: Yes, sir, I wish to plead no
23 contest.

24 CHAIR U`U: The Board hereby finds that the
25 licensee has entered a knowing and voluntary plea of no

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1 contest. The Board accepts your plea and finds you guilty
2 of Counts 1 and 2 in Complaint and Accusation Number
3 2018-11. Will the Department present a summary of the
4 case?

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

6 This case involved a minor decoy operation which
7 took place on Thursday, February 1st, 2018. The Minor
8 Decoy Team was comprised of Liquor Control Officers Kayle
9 Matsushima, Andrew Carbonel, Trainees Salika
10 Khangsengsing, Marc Velasquez, and MPD Officers Brandon
11 Phillips and Andrew Cabral as well as a minor decoy --
12 male minor decoy.

13 The Minor Decoy Checklist was reviewed with the
14 minor decoy, informing him of the requirement and rules
15 pertaining to minor decoy operations. The rules required,
16 among other things, that the minor decoy carry his valid
17 Hawaii license card on his person at all times, that he
18 answer any questions about his age truthfully, and that he
19 present his valid Hawaii driver's license card when asked
20 by any employee of the licensed premises to do so. The
21 minor decoy reviewed and signed the Minor Decoy Checklist,
22 indicating he understood what was read to him.

23 The minor decoy's Hawaii driver's license card
24 was printed in a vertical format which clearly indicated
25 that the minor decoy became 21 years of age on 11-21-2020.

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1 As part of the operation, the minor decoy was
2 provided with a \$20 bill to use as buy money.

3 On February 1st, 2018, at about 7:26 p.m.,
4 Officer Phillips entered JB's Kitchen & Lounge located at
5 752-C Lower Main Street, Wailuku, Maui, Hawaii. The minor
6 decoy entered the premises about one minute later. The
7 minor decoy then walked to the booth at the rear of the
8 premises next to the emergency exit, took a seat -- took a
9 seat in the booth. The minor decoy then ordered a
10 Heineken beer from a female server later identified as
11 Kuulei Kuhia.

12 After ordering the Heineken beer from Kuhia,
13 Kuhia immediately asked the minor decoy for
14 identification. In response, the minor decoy handed Kuhia
15 his valid Hawaii driver's license. Kuhia checked the
16 minor decoy's Hawaii driver's license for a few seconds,
17 then handed it back to the minor decoy. Kuhia then walked
18 away and later returned with a 12-ounce bottle of Heineken
19 beer and served it to the minor decoy by placing it on the
20 tabletop in front of the minor decoy. After Kuhia served
21 the Heineken bottle of beer to the minor decoy, Kuhia
22 walked away to attend to other patrons.

23 Following that, the minor decoy took possession
24 of the Heineken bottle of beer and signaled Officer
25 Phillips. At which time, Officer Phillips walked over to

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1 the minor decoy, took possession of the Heineken beer,
2 then subsequently informed Kuhia that she had just sold
3 liquor to a minor.

4 As part of the investigation, Kuulei Kuhia was
5 interviewed, at which time she provided the following
6 statement, in pertinent part: Stated that she checked the
7 date of birth on the minor decoy's ID, but that she
8 miscalculated the minor's decoy's age and acknowledged
9 that she did serve the bottle of Heineken beer to him; she
10 stated that she was the only server working that night
11 along with one other employee of the kitchen; she
12 indicated that she had already called her manager right
13 after the sale took place and that he may be arriving
14 soon.

15 It was noted that Kuhia was very cooperative
16 during the interview.

17 Also, as part of the investigation, the manager,
18 Guy Ishii, was interviewed, at which time he provided the
19 following statement: Stated that JB's Kitchen & Lounge
20 employees annually review the ID checking guide provided
21 by the Department of Liquor Control whenever the licensee
22 receives a new book; Ishii commented that more oversight
23 might be needed for employees.

24 Nothing further, Chair, thanks.

25 DIRECTOR MUKAI: Chair?

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1 CHAIR U`U: Yes.

2 DIRECTOR MUKAI: The summary was for Complaint
3 and Accusation Number 2018-12.

4 CHAIR U`U: Okay.

5 DIRECTOR MUKAI: I believe you --

6 CHAIR U`U: I'm sorry about that. Now it's
7 clear. Thank you for clarifying that. 2018-12. Any
8 questions by the Member of the Board at this time? Having
9 seen none, Mr. Ishii, you now have the opportunity to make
10 a statement regarding this case. You may, also, inform
11 the Board of any mitigating circumstances which may or may
12 not apply to sentencing.

13 MR. ISHII: Well, first of all, I wanna
14 apologize to the Board for us making this mistake. You
15 know, I know it's a controlled substance, so it's
16 something serious. And I -- I do understand the -- that
17 what happened was is, actually, not an oversight, but it's
18 a lacking of training on our part. When somebody makes a
19 mistake like that, it's not -- yeah, they made the
20 mistake, but that, also, tells me as a manager that I have
21 to do more training or do something else to mitigate the
22 circumstances again.

23 So can I explain what are the things that we've
24 done?

25 CHAIR U`U: Please do.

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1 MR. ISHII: So I know that the -- you know, when
2 she looked at the -- when I spoke to her separately, poor
3 thing, she was so upset, and it was an honest mistake, but
4 that doesn't matter at this point, if it's honest or not,
5 but what she told me was she felt like, when she looked at
6 it, there was like other customers, so she just kind of
7 rushed and then she miscalculated. So what that told me,
8 when I was listening to her, we needed something that's
9 easy to -- to tell you, you look up and it just say, okay,
10 today is this and if it's not this date, then you cannot
11 serve this person liquor. And so one of the things that I
12 did was I went to Budweiser. And then they have these ID
13 check calendars. I don't know if you've see 'em, it's a
14 digital calendar, and it will tell you if you're not -- if
15 you are born -- if you are not born on this day or before,
16 you're not -- you're not gonna be served liquor. So if
17 you guys come in -- and I apologize, I should have taken a
18 picture, but we do have it. I have installed one. I went
19 to Budweiser, I installed it, and I put it where it's in
20 view of everybody. It's -- so all of the -- if they have
21 any questions or, you know, they just can look up the --
22 the service help can look up and see that you're not to
23 serve them on this date.

24 And, also, there's the -- that's one thing we
25 did. There's, also, the -- that came with the ID check,

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1 the new license, you know, licensees, you check the
2 license to see what is valid or not. There was a Hawaii
3 license paper that shows vertical is -- you know, the
4 vertical and the parallel. So what I did is I laminated
5 that. I took it to Kinko's or one of those, Office Max,
6 and I laminated that. And I put it, also, on the very top
7 drawer to double-check and then to see what is a valid
8 license, you know, the vertical and the horizontal. And I
9 went one by one with each employee separately, not a group
10 thing. And I just had one by one to make sure they had
11 separate questions. So I briefed everyone of 'em.

12 And then the new -- the new book -- the new
13 license book for the state of -- for the country of Canada
14 and the USA, I went through the book so if they had
15 questions about all the other states, you know, any
16 questions. You know, there's like little different types
17 of markings, so in case there's somebody from a different
18 state, then they could look at that. So --

19 And, also, too, instead of the yearly thing, you
20 know, maybe -- like I was thinking at least biyearly, like
21 at least twice a year, or quarterly, that I review it with
22 each of them.

23 So those are the things that I've done. And,
24 you know, of course I sat down, I said if there's any
25 questions or anything like that, and if they understood.

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1 And especially the employee in question, like I said, I
2 guess even when you -- you read the book, and then if you
3 get pressured or something, sometimes you just make the
4 wrong decisions, yeah. In this case was a wrong decision
5 by her. So that's what prompted me for the quick -- even
6 though you may know, like she said, ah, shucks, I
7 should've known, the -- you know, the vertical is the one
8 that's not -- and I said, well -- you know, she was
9 rushed, that's why I got that ID thing from Budweiser. So
10 that you can have a quick glance and then it can tell you
11 right then. Of course, the vertical ID tells your age,
12 it's not -- not an ID that is over 18. And there's other
13 distinguishing marks.

14 Those are the things that I've done to mitigate
15 this happening again and again, too, like the amount of
16 times that we -- we brief the employees.

17 CHAIR U`U: Thank you, Mr. Ishii.

18 MR. ISHII: So I don't know if you guys got any
19 questions for me.

20 CHAIR U`U: Any questions?

21 MR. ISHII: I -- I'd be happy to answer any of
22 your questions.

23 CHAIR U`U: I got a question. How -- how much
24 employees do you have?

25 MR. ISHII: We got three.

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1 CHAIR U`U: Okay, three employees. Say you
2 hired a new employee, would you willing -- are you gonna
3 train the new employee instead of the waiting for the
4 twice a year?

5 MR. ISHII: Oh, of course not, sir. I would
6 train the -- I would definitely train that, knowing what I
7 know now. And it will be like an initial briefing. I
8 haven't been with JB's the longest of times, but -- but
9 my -- just based on the situation, and whenever there's a
10 mistake, you adjust to the situation so that these things
11 don't happen again. So knowing what I do know now, I
12 would definitely do like more than one briefing. Of
13 course, the initial briefing when the new employee comes
14 in.

15 CHAIR U`U: Any more questions from the Board?

16 VICE-CHAIR UEOKA: I have a question. So is
17 Ms. Kuhia still employed?

18 MR. ISHII: Yes, ma'am. What I -- it wasn't
19 intention, from what I -- whether to keep a person or not
20 is based on what I see as the intention. And why we
21 decided to keep her was it was a mistake. It wasn't kind
22 of like a real blatant I'm not even going to check the
23 license at all. And, you know -- and she -- her intent
24 was to check it to see if they were enough -- you know,
25 that they met the age. And, obviously, she did do -- she

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1 failed that. But she's still employed. And I felt as
2 though that she did not do that blatantly, she -- as far
3 as trying to just sell the beer to somebody underage. If
4 that was the case, she would have been gone.

5 VICE-CHAIR UEOKA: Okay. Thank you.

6 CHAIR U`U: Any other questions by the Board
7 Members? Seeing none, the Director's argument as to
8 penalty, please?

9 MR. HANANO: Thank you, Chair.

10 Original license for this licensee was issued
11 back in September of 2010. There is one prior conviction
12 for the same offense back in November of 2013. So it's
13 within that five-year period. And because of that, we are
14 recommending, in Count 1, a \$2,000 fine with no portion of
15 the fine being suspended due to the prior conviction back
16 in November of 2013. And in Count 2, a \$500 fine.

17 MR. ISHII: Can I respond to that, if -- if
18 possible?

19 CHAIR U`U: Go ahead.

20 MR. ISHII: I -- I cannot justify what happened
21 in two thousand -- what was that, sir?

22 MR. HANANO: '13.

23 MR. ISHII: '13, I was not part of the -- that
24 organization. What I can tell you now, with this mistake,
25 and that's even worse because it's like twice in the --

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1 but I can, I want to say, guarantee you, but I will try my
2 best to make sure that it doesn't happen again. And --
3 and I do understand, Mr. Hanano, that we did it twice.
4 And irregardless I was there the first time or, whatever
5 it is, the second time, but I do hope you guys reconsider
6 the penalty because we are a small restaurant. If you
7 guys stepped in that restaurant, nothing is -- it's not
8 easy for us to make a living. So if you guys could see
9 your way, because I -- I -- I've -- we're gonna try our
10 best to ensure that this doesn't happen again, but if you
11 guys can see your way, because it's -- you know, you get
12 your good days and your bad days in any of these -- in
13 your business, but if, you know, we were to be assessed
14 \$2,000, it just would be rough. It's not easy, but it
15 would be rough. I mean, we wouldn't fail or whatever, but
16 it's not easy to be assessed that. And then it's our
17 fault. And if we did get assessed that, whatever you guys
18 decide, you know, we'll abide by because, like the
19 prosecutor said, twice. And that's no excuse. That is no
20 excuse. All I can tell you -- you guys is what I'm doing
21 now and what -- I'm trying to ensure that it doesn't
22 happen again. So thank you.

23 CHAIR U`U: Thank you, Mr. Ishii. The Board
24 will take this matter into consideration. I'll entertain
25 a motion to enter deliberation. Motion?

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1 VICE-CHAIR UEOKA: So moved.

2 CHAIR U`U: Second?

3 MEMBER WILLIAMS: Uh-huh.

4 CHAIR U`U: Motion to deliberate. Thank you.

5 (Executive Session, 11:10 a.m. to 11:14 a.m.)

6 CHAIR U`U: The Board is now back in session.

7 Mr. Ishii, we deliberated and, just to let you know, the
8 Count 1, the minimum assessment will be the \$2,000. So
9 for Count 1, the Board assesses the penalty of a \$2,000
10 fine. On Count 2, the Board assesses a fine of \$500, \$500
11 of which of that will be suspended provided there is no
12 conviction for the same offense for a period of one year.
13 The Department will notify you when payment -- when
14 payment is due -- notify you when payment is due.

15 MR. ISHII: So I will get something by mail and
16 then say pay this, and then we can just mail it or bring
17 it here?

18 CHAIR U`U: Or you can pay it now. I'm kidding.
19 I'm kidding. You can talk to them.

20 MR. ISHII: If somebody could lend me their
21 credit card, appreciate it.

22 CHAIR U`U: Have a good day.

23 MR. ISHII: Thank you. Appreciate you guys'
24 time.

25 CHAIR U`U: Can I have a motion to adjourn?

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VICE-CHAIR UEOKA: So moved.

MEMBER NASCIMENTO: Second.

CHAIR U`U: All those in favor, say "aye."

(Response.)

(Gavel.)

(Meeting adjourned, 11:15 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 2nd day of May, 2018.

/s/ Tonya McDade

Tonya McDade
Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Reporter