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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 9:10 a.m., on Thursday, October 4th, 2018.

Reported by: Sandra J. Gran, RPR, CSR 424

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APPEARANCES

BOARD MEMBERS PRESENT:

- Bruce U'u, Chairperson
- Zachary Helm, Vice Chairperson
- Richard Bergson, Member
- Jerrybeth DeMello, Member
- Herman Nascimento, Member
- Jason Williams, Member
- Lahela Aiwohi, Member

Staff present:

- Edward Kushi, First Deputy Corporation Counsel
- Peter Hanano, Deputy Prosecuting Attorney
- Glenn Mukai, Director
- Georgette Tyau, Deputy Director
- Gene Silva, Liquor Control Officer III
- Kayle Matsushima, Liquor Control Officer III
- Lianne Suzuki, Private Secretary
- Karilee Yoshizawa, Liquor Control Officer IV

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THURSDAY, OCTOBER 4, 2018; 9:10 A.M.

WAILUKU, MAUI, HAWAII

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CHAIR U'U: (Gavel.) Aloha and good morning. The meeting of the Liquor Adjudication Board is now called to order.

Will all the Board Members and Staff please introduce yourselves. Starting with our Commission Secretary.

MS. YOSHIZAWA: Kari Yoshizawa, Liquor Control.

MS. SUZUKI: Lianne Suzuki, Liquor Control.

MR. SILVA: Gene Silva, Liquor Control.

MEMBER DeMELLO: Jerrybeth DeMello from Lahaina.

MEMBER AIWOHI: Lahela Aiwohi, Kula.

MEMBER BERGSON: Richard Bergson, Lahaina.

MR. KUSHI: Ed Kushi, Corp. Council's office.

CHAIR U'U: Bruce U'u, Paia.

MEMBER HELM: Zach Helm, Molokai.

MEMBER WILLIAMS: Jason Williams, Wailuku.

MEMBER NASCIMENTO: Herman Nascimento, Makawao.

DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

MS. TYAU: Georgette Tyau, Liquor Control.

MR. HANANO: Peter Hanano, prosecuting attorney.

MS. MATSUSHIMA: Kayle Matsushima, Liquor Control.

CHAIR U'U: We will now hear Complaint and Accusation No. 2018-21 against MH Enterprises, Incorporated

1 doing business as Kobe's Japanese Steak House.

2 Will the respondent or its representatives please  
3 step forward and state your names and in what capacity you  
4 represent the respondent.

5 MS. HALEAKALA: Good morning. My name is Martha  
6 Haleakala, I'm the president and owner of Kobe Steak House.

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

10 MS. HALEAKALA: I'll waive the reading.

11 CHAIR U'U: Mrs. Haleakala, for the record, do you  
12 represent the respondent -- do you represent the respondent  
13 involved?

14 MS. HALEAKALA: Yes, I do.

15 CHAIR U'U: Do you have legal counsel?

16 MS. HALEAKALA: No, I do not.

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

19 MS. HALEAKALA: Yes.

20 CHAIR U'U: Do you understand the charges against  
21 you?

22 MS. HALEAKALA: Yes, I do.

23 CHAIR U'U: What is your plea to each count?

24 MS. HALEAKALA: I plead no contest to Count 1 and I  
25 plead --

1 MR. HANANO: I'm sorry, Chair. There is a plea  
2 agreement in this case and pursuant to that agreement, the  
3 licensee will plead no contest to Count 2 and Count 1 will be  
4 dismissed with prejudice.

5 CHAIR U'U: Okay. Any questions from the board?  
6 Again, Count 1 will be dismissed and Count 2 will be a no  
7 contest.

8 (No response.)

9 CHAIR U'U: Do you understand the violations the  
10 department of liquor control alleges against you?

11 MS. HALEAKALA: Yes, I do.

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

14 MS. HALEAKALA: Yes.

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

18 MS. HALEAKALA: Yes.

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

22 MS. HALEAKALA: It's voluntary.

23 CHAIR U'U: Do you understand that on each count if  
24 the board accepts your plea of no contest, you'll be found  
25 guilty and that the board may issue a reprimand or assess and

1 collect a penalty of up to \$2,000 or revoke any license at any  
2 time or suspend the right of the licensee to use the  
3 licensee's license?

4 MS. HALEAKALA: I do.

5 CHAIR U'U: Do you still wish to plead no contest?

6 MS. HALEAKALA: Yes.

7 CHAIR U'U: The board hereby finds that the license  
8 has entered a knowing and voluntary plea of no contest. The  
9 board accepts your plea and finds you guilty of Count 2  
10 reflected in Complaint and Accusation No. 2018-21.

11 Will the department present the summary of the case.

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

13 On Sunday, May 6, 2018 at about 10:58 p.m. Liquor  
14 Control Officer Marc Weisenfeld and Trainee Salika  
15 Khansengsing attempted to conduct an inspection at the Kobe  
16 Japanese Steak House located at 136 Dickinson Street, Lahaina,  
17 Hawaii. Upon arrival, liquor control officers found the front  
18 entry doors to the premises to be locked. Through the window  
19 liquor control officers observed people inside to be cleaning.

20 Thereafter liquor control officers proceeded to the  
21 Lahaina Coolers Restaurant & Bar to conduct an inspection.  
22 After concluding the inspection there, liquor control officers  
23 head back towards the direction of Front Street. While  
24 passing the Kobe Japanese Steak House liquor control officers  
25 observed through a large window of the restaurant a man and

1 woman sitting at the bar. The man appeared to be drinking a  
2 glass of beer. Following that observation, liquor control  
3 officers again attempted to conduct an inspection of the Kobe  
4 Japanese Steak House.

5 After knocking on the window and getting their  
6 attention, the manager, later identified as Eileen M. Hirouji  
7 unlocked the front door and permitted liquor control officers  
8 to enter. Upon entry, the Liquor Control Officer Weisenfeld  
9 walked to the bar and observed the male, later identified as  
10 William McKinley Garrett, III, sitting with what happened to  
11 be a glass of beer on the bar in front of him. When asked  
12 Garrett what he was drinking, Garrett replied, "Beer." Upon  
13 request Garrett presented his Employee Approved By the  
14 Director card.

15 After that Officer Weisenfeld spoke to the manager  
16 Hirouji and informed Hirouji that drinking liquor after the  
17 establishment was closed with the front doors locked was a  
18 violation. Hirouji stated that she was unaware of the rule.

19 As part of the investigation Officer Weisenfeld  
20 obtained copies of the time sheets for May 6, 2018. The time  
21 sheets reflected that the time -- that at the time the  
22 violation was issued, neither the manager nor Garrett had  
23 punched out, both were technically still on the clock and  
24 working while Garrett was drinking.

25 Nothing further, Chair. Thank you.

1 CHAIR U'U: Do we have any questions from the board?

2 (No response.)

3 CHAIR U'U: Seeing none, Mrs. Haleakala, you now  
4 have the opportunity to make a statement regarding this case.  
5 You may also inform the board of any mitigating circumstances  
6 which may or may not apply to sentencing.

7 MS. HALEAKALA: We're talking about here two  
8 employees of Kobe Steak House that have worked for me for over  
9 20 years. My bartender was 72, my manager is 59. Wil has  
10 since retired -- Mr. Garrett has since retired and he's not  
11 working anymore, he's had hip replacement surgery and unable  
12 to be here today. I find it hard to believe that he would  
13 ever say that he was drinking beer sitting at the bar and that  
14 Eileen said that she was unaware of the rule after being in  
15 management, having cards and working there for so long. So I  
16 have really a hard time believing those things.

17 If the glass was allegedly beer that was sitting on  
18 that -- on the bar, I don't understand why that wasn't proven  
19 to be a fact if it was there, that the inspector didn't go  
20 over. Because Mr. Garrett told me that it was not a beer  
21 glass, the glass in the picture is a soda glass, it's not a  
22 beer glass, and he -- he did not say, I'm drinking beer.

23 They were waiting for Mr. Okamura to finish his  
24 closing procedure in the sushi bar. They go to the kitchen  
25 after he is finished, that's why the three of them were still

1 on the clock, they close the session on the POS, which locks  
2 them -- which logs them out, and then they turn on the alarm  
3 and they lock the restaurant and leave. That's been our  
4 closing procedure for as long as I've been at Kobe, which is  
5 over 25 years.

6 So Eileen said that she didn't know that she  
7 couldn't have the door locked and you do not close and count  
8 money in Lahaina anymore with the door open because it's  
9 just -- we don't even stay open anymore late night because of  
10 the -- the condition of things in Lahaina and the problem we  
11 have with the homeless people coming into the restaurant late  
12 at night, so the --

13 The violation of them drinking while being on the  
14 clock, they're logged out automatically when they close the  
15 session and leave. And the three that were logged in were in  
16 the process of closing. Eileen and Wil were sitting at the  
17 bar waiting for Mr. Okumora, who is the last to finish in the  
18 sushi bar. So that's really all that I have to say.

19 CHAIR U'U: Any questions by the members of the  
20 board?

21 MR. KUSHI: Question, Chair.

22 Ms. Martha?

23 MS. HALEAKALA: Yes.

24 MR. KUSHI: Do you have a sign saying, I'm open, I'm  
25 closed?

1 MS. HALEAKALA: No, we do not.

2 MR. KUSHI: Maybe you should get one.

3 CHAIR U'U: Any other questions by the board?

4 MEMBER BERGSON: I have just a quick question,  
5 Chair. It's more on, I guess, what the -- the rule and the  
6 law is. So if the employees had punched out, would it have  
7 been --

8 MEMBER AIWOHI: Been different?

9 MEMBER BERGSON: Would it have made a difference?

10 MS. MATSUSHIMA: Not necessarily.

11 MEMBER BERGSON: So if you're punched out and you're  
12 having a pau hana --

13 MEMBER AIWOHI: A pau hana, yeah.

14 MEMBER BERGSON: -- it's no different than if you're  
15 on the clock?

16 MS. MATSUSHIMA: Not necessarily. The definition of  
17 employee for the rules of the liquor commission state whether  
18 somebody is compensated or not, as long as they're acting in  
19 the name of the business, it's considered to be on duty, so --

20 MEMBER AIWOHI: So if they punch out -- so I guess,  
21 yeah, so the clarification is if they punch out, they're no  
22 longer representing the establishment.

23 MS. MATSUSHIMA: Right. I guess -- the way I  
24 explain it when I give the exam is that an employee can wear  
25 two hats in a place of business: They can be an employee and

1 a service provider or a customer and a service receiver, but  
2 they can't be both at the same time. Does that kind of make  
3 sense? So as a customer, they wouldn't be able to be doing  
4 work for the premises whether they're compensated or not, so  
5 on the clock or off the clock. They have to come in as a  
6 customer like any other customer, they wouldn't go into  
7 authorized areas where employees go, so they have to -- and  
8 they have to be served by an on-duty employee.

9 CHAIR U'U: Any other questions from the board?

10 (No response.)

11 CHAIR U'U: Can we have the director's argument to  
12 the penalty?

13 MR. HANANO: Yes, Chair.

14 The original license for this license was issued  
15 back in September of 2002. There are prior convictions  
16 involving selling liquor to a minor and that was back in 2005  
17 and 2010. So due to the prior convictions, we are on  
18 recommending Count 2 a \$500 fine.

19 CHAIR U'U: The board will take this matter to  
20 executive session. I'll entertain a motion to go into  
21 deliberation. Do I have a motion?

22 MEMBER HELM: Motion.

23 CHAIR U'U: Second?

24 MEMBER AIWOHI: Second.

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

1 (Response.)

2 CHAIR U'U: Motion carried. We will go into  
3 deliberation. (Gavel.)

4 (The board went into deliberations from 9:16 a.m. to 9:24 a.m.)

5 CHAIR U'U: The board is now back in session. After  
6 careful deliberation, the board has come up with a \$500 fine,  
7 \$500 of that fine will be suspended provided there's no  
8 conviction of the same offense for a period of one year.  
9 Thank you.

10 MS. HALEAKALA: Thank you very much.

11 CHAIR U'U: For the -- just notification that Jason  
12 Williams will be recusing himself.

13 We will now hear Complaint and Accusation  
14 No. 2018-22 against Monkeypod Kitchen by Merriman.

15 Thank you guys for stepping forward.

16 MR. PROBENZA: Good morning. My name is Gabriele  
17 Probenza, I'm the attorney and authorized representative of  
18 IP 1, LLC doing business as Monkeypod Kitchen.

19 CHAIR U'U: Can you state the name again for us?

20 MR. PROBENZA: Yeah. Gabriele Probenza,  
21 G-A-B-R-I-E-L-E, Probenza, P-R-O-B-E-N-Z-A.

22 To my right is Sara Hill, she's the COO of IP 1,  
23 LLC.

24 CHAIR U'U: Thank you. At this time you have the  
25 option of having the charges publicly read or you can waive

1 the reading. What is your preference?

2 MR. PROBENZA: We've reached a plea agreement and we  
3 waive reading of the charges.

4 CHAIR U'U: Okay. Thank you. Mister -- Gabriele,  
5 for the record, you're representing the respondent involved,  
6 you are legal counsel. Do you understand the charges against  
7 you?

8 MR. PROBENZA: Yes, I do.

9 CHAIR U'U: Again, what is your -- for the record,  
10 what is your plea to each count?

11 MR. PROBENZA: To the remaining counts, which are  
12 Count 1, Count 4, and Count 5, we plead no contest to all  
13 three.

14 CHAIR U'U: And for the record, Count 2 and Count 3  
15 was dismissed?

16 MR. HANANO: That's correct, Chair.

17 CHAIR U'U: Thank you.

18 Do you understand the violation that the department  
19 of liquor control alleges against you?

20 MR. PROBENZA: Yes, I do.

21 CHAIR U'U: Do you understand that you have the  
22 right to plead not guilty?

23 MR. PROBENZA: Yes.

24 CHAIR U'U: Do you understand that by pleading no  
25 contest, you waive the right to a hearing in which you could

1 present evidence and question witnesses on your behalf?

2 MR. PROBENZA: Yes, I understand.

3 CHAIR U'U: Is your plea of no contest voluntary and  
4 not the result of force, threats, or of promises apart from  
5 any plea agreement?

6 MR. PROBENZA: Yes, it's voluntary.

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

13 MR. PROBENZA: Yes.

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

15 MR. PROBENZA: Yes.

16 CHAIR U'U: The board -- the board hereby finds that  
17 the licensee has entered a knowing and voluntary plea of no  
18 contest. The board accepts your plea and finds you guilty of  
19 Counts 1, 4, and 5 reflected in Complaint and Accusation  
20 No. 2018-22.

21 Will the department present a summary of the case?

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

23 On March 27, 2018 at approximately 9:06 p.m. Maui  
24 Police were called to the Monkeypod Kitchen by Merriman  
25 located at 10 Wailea Gateway Place in Wailea, Maui, Hawaii in

1 regards to a disorderly conduct case where it was reported  
2 that a highly intoxicated adult female, later identified as  
3 Katya Garcia, was refusing to leave the Monkeypod's Kitchen  
4 and was causing -- causing patrons of the restaurant to be  
5 alarmed. However, after Garcia was informed that police were  
6 called, Garcia left the restaurant and was then last seen  
7 walking through the parking lot prior to police arrival.

8           Upon police arrival at the Monkeypod Restaurant,  
9 police met with the restaurant's manager on duty Tiana Elaban.  
10 At that time Eleban related that one of her bartenders advised  
11 her that Garcia had been cut off from purchasing additional  
12 alcoholic beverages due to Garcia's apparent signs of  
13 intoxication.

14           As police were speaking to Eleban, police observed  
15 Garcia driving a dark colored Chrysler van in the parking lot  
16 headed towards the Wailea Ike Drive. Police observed Garcia  
17 driving past them with the front door of the van wide open.  
18 Other police officers were immediately notified to be on the  
19 lookout for the van. At about 9:18 p.m. police located the  
20 van and eventually effected a traffic stop near 3300 Wailea  
21 Alanui Drive. Police identified Katya Garcia as the operator  
22 of the van.

23           Upon making contact with Garcia, police detected a  
24 strong odor of liquor emanating from within. Garcia's face  
25 was flushed, her eyes red and watery, her speech slurred.

1 Initially when asked by police to produce her driver's  
2 license, Garcia gave some -- gave police some type of  
3 membership card instead. As part of their investigation  
4 Garcia participated in the standardized field sobriety test.  
5 As a result of those tests, police determined that Garcia's  
6 mental and physical coordination and judgment had diminished  
7 such that Garcia could not operate a motor vehicle safely on  
8 the roadway. Police arrested Garcia for operating a vehicle  
9 under the influence of an intoxicant.

10 Garcia subsequently agreed to take a breath test  
11 which resulted in a reading of 0.166 percent of BAC. The  
12 legal limit being 0.08 percent. Garcia was subsequently  
13 charged with operating under the influence of an intoxicant  
14 pursuant to HRS, Hawaii Revised Statute Section 291E-61, where  
15 she eventually pled guilty and was sentenced on May 16th, 2018  
16 to the charge.

17 Due to the facts and circumstances surrounding  
18 police involvement in Garcia's case, the department of liquor  
19 control initiated an investigation of the Monkeypod Kitchen by  
20 Merriman. Pursuant to that investigation it was determined  
21 that on March 27, 2018 the following occurred:

22 Katya Garcia initially entered the Monkeypod Kitchen  
23 by Merriman at about 3:00 p.m. Over the course from 3:00 p.m.  
24 to 7:30 p.m. Garcia was served a total of six mai tai drinks.  
25 During that time frame Garcia was also served a pot sticker

1 appetizer at about 5:49 p.m., at about 7:42 p.m. Garcia was  
2 served a Pumpkin Patch ravioli dish. At about 8:00 p.m. staff  
3 informed manager Eleban that Garcia was showing signs of  
4 intoxication, making a mess with her food, and disrupting  
5 other guests. At about 8:25 p.m. Garcia began swearing at the  
6 bartenders and was asked to leave the premises. Garcia began  
7 talking to talking to other patrons, asking them if they would  
8 like sexual favors.

9 At about 8:35 p.m. Garcia exits the Monkeypod  
10 Kitchen by Merriman and at about 8:40 p.m. Garcia reenters the  
11 Monkeypod Kitchen and sits at the bar. Manager Eleban asked  
12 Garcia to follow her outside. Once outside, Eleban informed  
13 Garcia that Garcia is no longer welcome at the restaurant.  
14 Garcia protests and argues with Eleban. At about 8:50 p.m.  
15 Eleban called -- calls Maui Police Department and as  
16 previously stated, Garcia's eventually arrested.

17 Also pursuant to the investigation copies of the  
18 licensee's time sheets for the relevant time period were  
19 obtained; however, a review of the documents revealed that the  
20 time sheets did not indicate the actual time in and time out  
21 for management employees.

22 Nothing further, Chair. Thank you.

23 CHAIR U'U: Any questions by members of the board?

24 (No response.)

25 CHAIR U'U: Seeing none, Gabriele, you have the

1 opportunity to make a statement regarding this case. You may  
2 also inform the board of any mitigating circumstances which  
3 may or may not apply to sentencing.

4 MR. PROBENZA: Thank you, Chairperson. I just  
5 wanted to give some background first and let the board know  
6 that Monkeypod/IP 1, LLC takes this matter very seriously and  
7 so we're here pursuant to our no contest plea just to explain  
8 the procedures that we have and the improvements we've made  
9 and perhaps a little bit of mitigating circumstances not as to  
10 the overservice, but the Counts 4 and 5.

11 So for the overservice, the first violation, I'm  
12 going to defer to Sara Hill to explain the procedures because  
13 she's more familiar with the improvements that have been made.

14 With respect to Count 4, it regards failing to  
15 immediately prevent or suppress disorderly, immoral, various  
16 conduct. In this circumstance when we have, you know, the  
17 mistake of overservicing a customer, you kind of are treading  
18 into this ground immediately. And I'd just point out that  
19 they were in a little bit of a bind, that once they had  
20 overserved, now they're in a position where they have to  
21 immediately suppress, get this kind of -- get this person on  
22 their way outside, but also make sure that, you know, they're  
23 not pushing them into a car, which ended up happening here.  
24 So just that they were in a little bit of a bind and we  
25 request you take that into account in the sentencing phase.

1 But, again, no excuse, if the overservicing did, indeed,  
2 contribute to that conduct, then they were, unfortunately, at  
3 fault.

4 As with regards to the time sheet violation, their  
5 records are actually quite good and as the prosecutor pointed  
6 out, the missing piece here was that the time in and out for  
7 managers is zeroed out. That was something that Monkeypod  
8 does on an accounting basis because these are salaried  
9 customers. So they actually do punch in, they punch out, but  
10 then those time sheets get zeroed just for the managers. So  
11 they've since rectified that situation and we'd appreciate it  
12 if you'd take that into account.

13 I'll turn it over to Sara for the accounting  
14 procedures.

15 MS. HILL: Hi. Thank you all so much for speaking  
16 with us today. I just wanted to let you know a little bit  
17 about our ServSafe training and procedures at Monkeypod. This  
18 is, as I'm sure you know that, our first time in front of this  
19 board in seven and a half years at Monkeypod Wailea and we  
20 see, you know, up to about 1200 guests just for dinner  
21 service, so we take our liquor service responsibilities  
22 extremely seriously and the training very seriously.

23 So when all of our employees begin employment with  
24 us, whether they're liquor servers or not, not just our  
25 servers and bartenders, they're required to watch the LC's

1 video that you guys have wonderfully provided to kind of give  
2 an overview of safe service. They're also required to take a  
3 written test. And that's every single employee in our  
4 building: Back of house, every -- every prep cook,  
5 dishwasher, line cook, every front of house employee, of  
6 course, including servers, bartenders, managers. And our  
7 servers and bartenders are required to take a more rigorous  
8 version of that test.

9 We call it the layman's guide to responsible serving  
10 that kind of goes through a stoplight theory of responsible  
11 liquor service. So a green light for us is somebody who works  
12 in, who's clearly just fine, hasn't had anything to drink, and  
13 they're allowed to drink responsibly and appropriately.

14 A yellow light is somebody who maybe either walks in  
15 the door and seems a little bit off to begin with or who has  
16 been drinking or trying to drink with us at a rate that is a  
17 little bit concerning. And typically in that phase we ask our  
18 employees that a manager be involved. And the reason we train  
19 our entire staff is that we see it, you know, maybe -- maybe a  
20 line cook who's putting that pizza up on the pizza counter  
21 kind of sees that a bar guest looks rowdy or something, they  
22 can say, Hey, manager, like, it looks like something might be  
23 going on over there. And so even if our bartenders are kind  
24 of stuck behind the bar and a manager hasn't been able to jump  
25 in, you know, we've got kind of eyes and ears all over the

1 restaurant. So typically, you know, at that yellow light  
2 phase is when we would want a manager to step in, introduce  
3 themselves, just in case this results in a situation where  
4 later the -- the guest is going to need to be cut off or asked  
5 to leave. And we slow down service at that point, we make  
6 sure the guest gets food, gets water, always has water  
7 available to them.

8 And then a red light is somebody who is not allowed  
9 to drink with us anymore and sometimes at a red light phase  
10 somebody's totally fine, just not going to be allowed to  
11 drink. They can finish out their meal with the rest of their  
12 party and they can go on their -- their way, but they're just  
13 not going to be allowed to have any more alcohol with us. We  
14 would, of course, make sure they have a DD or, you know, a  
15 safe ride home at that point. Or it could be something in  
16 this situation where somebody escalates quickly and they have  
17 made wildly inappropriate comments around our guests, around  
18 our staff, and we need to ask them to leave right away. So  
19 that's our standard training process.

20 Since this incident -- and, you know, we do  
21 refreshers throughout the course of the year just as a matter  
22 of course. Always at holiday times and in the summer  
23 especially we really hammer home those safe service  
24 procedures. People are on vacation and -- and want to drink  
25 too much at holidays and then in the summer they are sitting

1 at the pool in the day and it's extra hot and they're just not  
2 aware of -- of how that dehydration can affect them. And so  
3 those are times when we're always really cognizant about safe  
4 serving procedures. But since this incident, we have done  
5 some additional kind of reminding training with our bartender  
6 staff.

7 I think one of the things that was a breakdown in  
8 communication in this situation for us was the -- this woman  
9 was -- was with a -- was with us from about 3:00 p.m. and, you  
10 know, didn't leave until 8:45ish and we had a shift change  
11 during that time. And I think during that shift change the  
12 bartenders who were her initial server and then her ongoing  
13 server should have done a better job communicating with one  
14 another and communicating with the manager starting that shift  
15 change to make sure that everybody was well apprised of where  
16 she was in her -- in her drinking experience with us. So  
17 we've talked a lot about that with our bar team, with our  
18 servers, with our managers to make sure that everybody's  
19 really checking in with one another and staying on top of  
20 guest behaviors.

21 The other issue that I did want to just point out  
22 was that in this situation, you know, this woman told us that  
23 she was -- had called an Uber and so we were escorting -- our  
24 manager Tiana was -- Ms. Eleban was escorting her out of the  
25 building, waiting for her to get this Uber and then the woman

1 ran off. And at that point Tiana, Ms. Eleban, proactively  
2 called the police because, you know, she did not want this  
3 woman, you know, out in the community and potentially driving  
4 herself away and endangering herself and others.

5 So, you know, that's something that we train our  
6 managers to do, to get -- to get the property security  
7 involved if there's a situation that they feel like is out of  
8 their control and, you know, certainly to get the police  
9 involved as well. That happens not hardly ever at our  
10 restaurant, that is a very, very rare situation for us, but  
11 it's something that we feel strongly about being the right  
12 thing to do in a situation like this and have certainly not  
13 reprimanded and encouraged that our managers continue to do  
14 that same thing if something like this happens again.

15 So, you know, it's unfortunate that this woman did  
16 jump in a car and it's unfortunate that we weren't able to  
17 prevent that from happening, but I assure you that we take  
18 this situation very seriously and, you know, if there is a  
19 situation in the future where someone is behaving  
20 inappropriately where we make an overservice mistake that  
21 results in somebody getting in a car like this again, we would  
22 not hesitate to call the police again, that's the right thing  
23 to do and something that's a guiding principle for our  
24 company.

25 So, you know, we've done quite a bit of training in

1 light of this experience and hope that that will help to  
2 prevent any future instances.

3 CHAIR U'U: Thank you. Any questions from the  
4 board?

5 MEMBER HELM: Yeah, I do have, Chair.

6 How many employees you have during this -- at this  
7 restaurant?

8 MS. HILL: I don't want to give you a -- an exactly  
9 incorrect number, but we're about 190 to 205, so it can  
10 fluctuate, of course, seasonally.

11 MR. PROBENZA: Like totally or you mean on a shift  
12 at any one time?

13 MEMBER HELM: More or less on a shift like --

14 MS. HILL: Oh, on a shift?

15 MEMBER HELM: -- you know, waitress, bartenders,  
16 barmen.

17 MS. HILL: Thirty-five-ish between the front of  
18 house and back of house employees.

19 MEMBER HELM: How much --

20 If you don't mind?

21 CHAIR U'U: Go ahead.

22 MEMBER HELM: How much customers at the time of that  
23 incident?

24 MS. HILL: At the time of the incident, so she -- I  
25 mean, obviously people come in and out.

1 MEMBER AIWOHI: Happy hour?

2 MS. HILL: Huh?

3 MEMBER AIWOHI: Happy hour?

4 MS. HILL: Happy hour, yeah, the restaurant is very  
5 busy. I don't know exactly off the top of my head that day,  
6 but typically on an evening and this was in the middle of the  
7 summer when we're super busy and so we can have anywhere from  
8 about 800 to a thousand guests that come in and out of the  
9 restaurant every evening that time of year, so it's a lot of  
10 human beings moving through the doors.

11 MEMBER U'U: Also, I've got one more question for  
12 the department. I wanted clarity on Count 4, failed to  
13 immediately prevent or suppress any violence. So what would  
14 be the -- what would be the right -- what was -- what is  
15 expected of the holder to -- to do when -- because when you  
16 say it's, you know, immediate, failed to do immediate and I  
17 see this is -- and about taking out Garcia, I don't think that  
18 was immediate, I don't know, so what is the definition for  
19 clarity.

20 MR. HANANO: That would be our position, is that  
21 they should have done it earlier, 'cause there's -- there's  
22 things in the report -- and I didn't read that, but because  
23 there's a question now, I'll get into that. But basically I  
24 read somewhere in here, I can't find it, but -- and I don't  
25 know if it's based on the licensee's policy of this

1 green/yellow/red light, but at one point I read in the reports  
2 that the employees made a decision just to ignore this woman,  
3 you know, and just ignore her and maybe she'll like go away or  
4 something like that and so --

5 MR. PROBENZA: Can I --

6 MR. HANANO: Yeah. And so that's -- you know, to  
7 me, when I see that, it's like, Okay, you guys aren't taking  
8 steps to actively try to remove this person, you know. And  
9 then it got worse, then she started, you know, asking the  
10 other patrons in front of their families, you know, for sexual  
11 favors and all this kind of stuff and, you know, I -- it  
12 shouldn't have gotten to that point.

13 CHAIR U'U: Thank you. You can respond.

14 MR. PROBENZA: Yeah. I'd just -- my reading of the  
15 report, I think that that -- that statement may have happened  
16 around the time when she came back in. Because she was  
17 escorted out, she was asked to leave, then she came back in  
18 and I believe in the report the employees were saying, Oh,  
19 we'll just freeze her out, but the manager had come to escort  
20 her out again. That said, I mean, it could've been -- it  
21 could've been done earlier, yeah.

22 MR. HANANO: She was there for six hours.

23 MR. PROBENZA: Yeah.

24 MR. HANANO: And she shouldn't have been allowed to  
25 come in -- back in any way; right? I mean --

1 MEMBER AIWOHI: You don't have security; right?

2 MS. HILL: No.

3 MEMBER AIWOHI: You don't have security?

4 MS. HILL: No, we don't have security and --

5 MEMBER AIWOHI: Okay. Just making -- yeah.

6 MS. HILL: Yeah. And centralized security was --  
7 was called to help, get them involved to get this woman out of  
8 the building.

9 Just to clarify, when the woman came back in, she  
10 was not served any alcohol, of course, and so the minute she  
11 was making inappropriate comments was when the manager was --  
12 you know, got involved and asked her to leave right away  
13 because she was making fellow -- fellow guests and employees  
14 really uncomfortable. So we are trying to get her out of the  
15 situation as soon as possible. And then the manager  
16 Ms. Eleban had to lead the guest downstairs in order to go in  
17 and call security because the guest was not behaving in an  
18 appropriate or safe manner towards Ms. Eleban.

19 And so, you know, she felt like it was a situation  
20 where lady to lady, she did not want to be responsible for,  
21 you know, physically restraining or trying to put this woman  
22 in a -- you know, in a vehicle or prevent her from -- from  
23 getting in her own vehicle, so that's when she left her  
24 downstairs, walked back in the building, and let the -- the  
25 greet staff, the bar staff, and, you know, her fellow managers

1 know, Hey, this woman is not allowed into the building. I'm  
2 calling security.

3 And then the woman tried to walk in at that point  
4 and employees, you know -- and I think she was trying to talk  
5 to the bar staff and talk to people and say, What did I do?  
6 What did I say? And they were not engaging with her because  
7 they didn't want to incite anything else. When she was being  
8 asked to leave, the woman picked up a -- like a lemon peeler  
9 and a lemon off the bar and so, you know, the bartenders  
10 removed all things from her area and were trying to just  
11 escort her out of the building. Again, this was very strange  
12 situation for us, I don't know.

13 MR. PROBENZA: To be fair to the prosecutor, there  
14 are some instances in the record where I think the employees  
15 are saying, you know, early in the shift this woman came off  
16 quirky and they -- they took her as being quirky and maybe  
17 that was a misjudgment as to intoxication already at that  
18 state, you know, so I just want to be fair to the prosecutor.

19 CHAIR U'U: Okay. Any more questions from the  
20 board?

21 (No response.)

22 CHAIR U'U: All righty. At this time we'll have the  
23 director's argument as to a penalty?

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

25 The license for this licensee was issued back in

1 February of 2011. There are no prior convictions. In light  
2 of that, we're recommending Count 1 a \$2,000 fine with one  
3 count -- \$1,000 suspended on the condition that there is no  
4 further conviction for the same offense within a one-year  
5 period; Count 4, a \$250 fine; and Count 5 also a \$250 fine.

6 CHAIR U'U: Thank you. The board will take this  
7 matter into consideration. I'll entertain a motion to go into  
8 deliberation. May I have a motion.

9 MEMBER HELM: So moved.

10 CHAIR U'U: May I have a second?

11 MEMBER AIWOHI: Second.

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

13 (Response.)

14 CHAIR U'U: Motion to deliberate. (Gavel.)

15 (The board went into deliberation from 9:48 a.m. to 10:05 a.m.)

16 CHAIR U'U: The board is not back in session. Okay.  
17 For Count 1 there will be a thousand dollar fine, a thousand  
18 dollars of that being suspended provided there is no  
19 conviction of the same offense for a period of one year. For  
20 Count 4, there will be a \$250 fine, which \$250 of that fine  
21 will be suspended provided there is no conviction of the same  
22 offense for a period of one year. And for Count 5, there will  
23 be a \$250 fine. Thank you for your time. The department will  
24 notify you when payment is due.

25 MR. PROBENZA: Thank you very much for your time --

1 MS. HILL: Thank you.

2 MR. PROBENZA: -- and for the chance to explain. We  
3 won't be back.

4 CHAIR U'U: Do us a favor.

5 MS. HILL: It's been a pleasure I hope to never have  
6 again.

7 (Laughter.)

8 MS. HILL: Thank you.

9 CHAIR U'U: All right. Anything?

10 MR. HANANO: No.

11 CHAIR U'U: Make a motion to dismiss?

12 UNKNOWN MEMBER: Dismiss.

13 CHAIR U'U: Second?

14 MEMBER AIWOHI: Second.

15 CHAIR U'U: All those in favor, say "aye."  
16 (Response.)

17 CHAIR U'U: (Gavel.)

18 (The proceedings were adjourned at 10:06 a.m.)

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